FINDINGS AND RECOMMENDATIONS

I. Introduction

During the late evening hours of September 29, 2014, and into the early morning of September 30, 2014, members of the Lambda Tau chapter of the Alpha Kappa Alpha (AKA) sorority, a Greek organization at UConn,\(^1\) gathered to paint UConn’s Spirit Rock in honor of their chapter’s upcoming charter day.\(^2\) The Spirit Rock had been painted earlier that week by members of the Pi Kappa Alpha (Pike) fraternity in honor of a Pike member who had been injured in a car accident.

\(^1\)The Lambda Tau chapter is a city-wide chapter, which means that the membership does not solely consist of UConn students. The chapter consists of UConn students as well as students from other area institutions. Of the seven AKA student members involved in this incident, three are UConn students (Student 2, Student 3 and Student 4).

\(^2\)UConn prohibits the painting of rocks and other forms of UConn landscape with the exception of “paintable rocks” (also known as “Spirit Rocks”) located on UConn property that are identified in UConn’s Rock Painting Policy as follows: “The Rock – across from North Garage; Tower Rocks – bottom of the walkway to Towers behind St. Thomas Aquinas Church; Buckley/Shippee Rock – on the south side of the road leading to the Buckley/Shippee parking lot.” This policy further provides that the “tradition of rock painting, properly regulated, has a positive impact on campus. It provides an outlet to show school
The following day, Student 1,3 AKA’s campus advisor, alerted various University officials that during the evening’s rock painting event, the small group of female, mostly African American members of AKA (including herself) were confronted by a larger “mob” of male, mostly Caucasian members from Pike and “verbally assaulted” by the men.4 Specifically, Student 1 described that Pike members ran toward the women at the rock with their fists clasped, asked them, “What the fuck are you doing?” and one male said “Fuck you” to Student 1.5 She further stated that the men yelled at the AKA women, “berated” them, and asked when they were going to be done painting the rock (so that they could repaint it). Student 1 stated that this conduct led to her contacting the UConn Police Department (UCPD) at approximately 11:00 pm on the night of the incident. Student 1 further explained that the police responded to the scene and encouraged the men to stay away from the rock while AKA members painted it. According to Student 1, after the UCPD left the rock area the first time, additional members of Pike, members from Tau Kappa Epsilon (TKE), and members from the suspended fraternity Sigma Alpha Epsilon (SAE) arrived at the Spirit Rock area. Student 1 described that for the next approximately two hours, this group of men (which she counted as consisting of as many as fifty people) intimidated, threatened and harassed the AKA women by throwing a football over their heads, swatting trash on the ground near them with golf clubs, and “encroaching on their space.” At approximately 3:00 am, two Pike members allegedly walked up to and touched the rock and asked when the AKA women were going to be done painting because they intended to paint over the rock when they finished. Student 1 stated that shortly after this encounter, another male walked toward the rock and had a picture taken as if he was urinating on the rock. An AKA member then placed another call to UCPD, who again responded to the scene. She explained that at this point, the police officers instructed the men to leave the area and obtained the men’s agreement not to paint over AKA’s paint until noon on September 30, 2014. By 3:30 am, all of the Pike members had left the area near the rock.

Following Student 1’s report, UConn’s Office of Community Standards initiated an investigation into the incident. Community Standards found that Pike’s conduct as an organization on September 29-30, 2014 violated the Student Code in that they participated in or incited others to participate in the disruption or obstruction of a University activity, and they engaged in harming behavior.6 Based on this finding, Community Standards recommended that strong education measures be taken “in order to correct the current climate surrounding this incident and the negative impact on the Greek community, specifically

---

3 Student 1 is a Ph.D. student and lecturer with the History Department at UConn. She previously worked as a staff member in the Office of Fraternity & Sorority Life.

4 Student 1 addressed this email to three members of the Office of Fraternity & Sorority Life staff: Director Todd Sullivan, Assistant Director Jamel Catoe, and Graduate Assistant 1. It was carbon copied to Cathy Cocks, Director of the Office of Community Standards.

5 The one male alleged to have said “Fuck you” to Student 1 was later identified as Student 9, a member of Sigma Alpha Epsilon (SAE). Student 9 learned about and joined the incident at the Spirit Rock from his roommate, a member of Pike.

6 Though the complaint alleged harassing behavior from members of Pike, SAE and TKE, the Community Standards report focused on Pike as the organizational respondent because the great majority of individuals present that evening were members of Pike. The evidence did not support finding that a member of TKE was present and the two SAE-affiliated students present were not involved for the entire duration of the event. Except as noted herein, this report similarly focuses largely on Pike as an organization.
the impact on AKA.” In response, on November 6, 2014, Student Activities placed Pike on probation. They were banned from painting rocks on campus, and were required to complete educational training to address “underlying issues … of sexism, racism, bystander intervention and microagression.”

On November 10, 2014, the African American Cultural Center hosted a Town Hall forum for the community to discuss issues of diversity on campus, specifically the incident at the Spirit Rock. During the course of the three-hour event, multiple individuals shared information alleging that AKA members experienced both sex and race-based harassment from members of Pike during the Spirit Rock incident, including Student 1 being called a “fat black bitch.”

During and following the investigation, sanctioning and Town Hall Forum, members of AKA also called attention to messages posted about the incident on the social media sites Twitter and Yik Yak, including a “shout out to the asshole black co-ed fraternity painting over Pikes memorial for their brother who’s in critical condition. Real classy you guys are A+ people;” “FUCK AKA YOU FAT BLACK BITCHES;” “Student 1 is fat and black. And a bitch;” “I don’t hate you because your black. You’re black because I hate you;” and “AKA. The epitome of white man’s burden.”

On November 19, 2014, AKA appealed the decision to Student Activities, requesting that Pike, TKE and SAE be suspended, and alleging that “sexually and racially driven remarks” had been made during the Spirit Rock incident. In response to the appeal, on November 25, 2014, the matter was referred to the Office of Diversity and Equity (ODE) to determine whether race and/or sex-based behavior occurred during and/or after the Spirit Rock incident (including social media activity) in violation of University policy prohibiting discriminatory harassment, including the harassment protections contained within The Student Code. ODE is a neutral University office responsible for investigating claims of discrimination and harassment based on protected classifications. Where investigations reveal the presence of discriminatory or harassing behavior, ODE is responsible for making recommendations to mitigate the effects of discriminatory or harassing conduct.

This memorandum summarizes the allegations, factual background, and the Findings and Recommendations of ODE arising from this investigation. As is discussed in further detail below, the evidence uncovered in ODE’s investigation does not support finding that any individual students or Pike as an organization violated The Student Code with regard to race-based or sex-based discrimination or harassment. That is because a preponderance of the evidence did not support finding that all of the alleged race-based and sex-based behaviors occurred and for those behaviors that were shown to have occurred by a preponderance of the evidence, the behaviors were not “severe or pervasive” such that they created.

---

7 On March 13, 2015, while still under probation, Pike was suspended for five years by Student Activities for endangering behavior in connection with two parties it held in November.

8 On October 3, 2014, Todd Sullivan shared with Community Standards social media posts from Yik Yak. In the November 19, 2014 appeal submitted by AKA, they also submitted screenshots from Yik Yak and Twitter. Additionally, multiple members of AKA raised the Yik Yak messages and their impact during their ODE interviews.

9 Yik Yak is an anonymous social media application that allows individuals to anonymously create and view “Yaks” within a 10 mile radius. It differs from other anonymous sharing applications in that it is intended for sharing primarily with those in close proximity to the user, potentially making it more intimate and relevant for people reading the posts. All users have the ability to contribute to the stream by writing, responding, and liking or disliking yaks. (http://en.wikipedia.org/wiki/Yik_Yak)
a hostile environment based on race or sex under the relevant analysis. Moreover, much of the speech, particularly the speech contained on social media, was both anonymous (i.e. not attributable to any individual student and/or organization) and also covered by the protections of the First Amendment.

This conclusion notwithstanding, the investigation clearly demonstrated that the members of AKA and many others within the UConn community were deeply impacted by the Spirit Rock events and their aftermath. In particular, the students negatively impacted by the events of that evening and their aftermath consistently reflected that the “spectacle” of a large group of mostly white men surrounding a much smaller group of mostly black women supported their assertion that the incident felt both sex and race-driven. This feeling was exacerbated especially by the impact of race-based and sex-based postings on the anonymous social media site Yik Yak. Continued education, training, awareness and climate enhancement measures focused not only on the Greek community, but the entire University community, will be critical moving forward to ensure a learning environment free from discrimination, harassment and retaliation. In addition, transparent and inclusive University-wide conversations, reflection and dialogue about the critical issues surrounding race, gender, civility and community are currently in progress and will be of the utmost importance as a continuing educational remedial measure moving forward.

II. Summary of Allegations

In their appeal submitted November 19, 2014, the complaining student organization, AKA, alleged that members of Pike (and one member each of TKE and SAE) harassed them while they painted the Spirit Rock; specifically that they engaged in race-based and sex-based language and behaviors. The members of AKA further alleged that the University’s investigation into the incident was “mishandled,” did not adequately consider the parties’ testimonies equally, and did not provide appropriate resources to the AKA students impacted negatively by the events of the night in question and their aftermath.

III. Document Collection

1. Investigative Findings Report (Issued October 20, 2014) and Attached Evidence – provided by the Office of Community Standards

2. Appeal submitted on November 19, 2014 to the Department of Student Activities by AKA – provided by Student Activities

3. Notice of reopening of University investigation on November 25, 2014 to AKA from Christine Wilson – provided by Community Standards

4. ODE Interview Statements from AKA Members and Advisor
   a. Interview Statement of Student 2, December 5, 2014
   b. Interview Statement of Member 1, December 19, 2014
   c. Interview Statement of Student 4, December 10, 2014
   d. Interview Statement of Member 2, December 17, 2014
   e. Interview Statement of Student 3, February 15, 2014
   f. Interview Statement of Student 1, January 14, 2015
5. ODE Interview Statements from Pike Members
   a. Interview Statement of Student 5, February 10, 2015
   b. Interview Statement of Student 6, February 4, 2015
   c. Interview Statement of Student 7, February 5, 2015
   d. Interview Statement of Student 8, February 3, 2015

6. ODE Interview Statements from Other Students
   a. Interview Statement of Student 9, February 11, 2015
   b. Interview Statement of Student 10, December 5, 2014
   c. Interview Statement of Student 11, January 12, 2015

7. ODE Interview Statements and Other Materials from UConn Administrators
   a. Interview Statement of Jamel Catoe, Assistant Director, Office of Fraternity and Sorority Life, January 20, 2015
   b. Interview Statement of Eleanor Daugherty, Ph.D., Associate Vice President for Student Affairs & Dean of Students and Christine Wilson, Ph.D., Assistant Vice President for Student Affairs & Director of Student Activities, February 27, 2015
   c. Interview Statement of Graduate Assistant 2, Office of Fraternity and Sorority Life, January 16, 2015
   d. Interview Statement of Todd Sullivan, Director, Office of Fraternity and Sorority Life, January 13, 2015
   e. Interview Statement of Ashley Vrabely, Program Associate, Office of Community Standards, February 15, 2015
   f. Correspondence submitted by Graduate Assistant 1, Office of Fraternity and Sorority Life
   g. Correspondence submitted by the Office of Community Standards
   h. Interview summaries submitted by Cathy Cocks regarding meetings with Student 1
   i. Correspondence submitted by the Office of Diversity and Equity staff

8. Other Materials
   a. Interim Suspension Letter issued by Community Standards to Pike on October 3, 2014
   b. Sanction Letter issued by Student Activities to Pike on November 6, 2014
   c. Emails to the UConn community from Susan Herbst, Ph.D., President, University of Connecticut; Michael Gilbert, Ph.D., Vice President for Student Affairs; and Eleanor Daugherty, Associate Vice President for Student Affairs & Dean of Students
   d. ODE Investigation Summary

---

10 At the time of the incident, Graduate Assistant 1 was also working with ODE as part of her graduate practicum. Since that time, Graduate Assistant 1 has been working with ODE as a graduate student employee.
IV. Timeline of Relevant Events

A. AKA Arrival at the Spirit Rock through 11:06pm

Members of AKA (specifically, seven students and their advisor, Student 1) planned to meet at the Spirit Rock at 10:00pm on September 29, 2014 to paint the rock in honor of their chapter’s upcoming charter day (which was on September 30, 2014). Student 1 and six student members of AKA arrived at the Spirit Rock between 10:00 and 10:30pm. Shortly after the AKA members’ arrival, three members left the rock and traveled to Walmart to purchase additional painting materials. Student 1 and the three remaining AKA members remained at the rock. The seventh member (Student 4) arrived separately from the other six members, and prior to the police being called.

At approximately 10:30pm, two Pike members walked to the Spirit Rock where the AKA members were painting. They asked the AKA members what they were doing and explained that Pike members had painted the rock as a dedication to one of their fraternity brothers who was in the hospital. Student 1 responded that the AKA members were painting the rock in celebration of their charter day, which was the following day, September 30, 2014. The discussion lasted approximately five minutes and Student 1 described this interaction as “respectful.” A second interaction between the AKA members and a member of Pike occurred about fifteen minutes later; the women stated that this male student was also respectful and congratulated them on their chartering day. Shortly after, there was a third interaction with a Pike member; while the women did not allege that he was harassing, he was not as respectful as the previous Pikes, persisting in trying to convince the women not to paint over the Spirit Rock. Student 1 described him as “aggressively pleading,” and that he “reluctantly” returned to his car and left.

Following this third interaction at approximately 11:00pm, Student 1 called Jamel Catoe, Assistant Director of the Office of Fraternity and Sorority Life. Student 1 stated that she advised Mr. Catoe that she suspected that there was going to be a situation because the AKA members had been approached by members of Pike, who were being rude. Mr. Catoe stated that Student 1 told him that she was considering calling the police because Pike was “stalking” AKA.

B. Altercation Between AKA and Pike from approximately 11:06 pm through 11:20 pm

Around 11:20pm, there was an altercation between the AKA members and the group of men. In the complaint submitted by Student 1 to Community Standards on September 30, 2014, AKA alleged that fifteen minutes after the Pike member in the SUV left, “a mob … of eight Pike men are running towards the rock, yelling and clapping their fist. We are greeted with ‘What the fuck are you doing?’ We were verbally assaulted by the mob, and I stepped in and introduced myself as the campus advisor with the hope that would calm the group.” In statements to Community Standards, as well as the AKA President’s interview with Community Standards, the women described that the group yelled things such as, “Paint AKA on the rock and go” and “When are you gonna be done,” they were rude and insulting, called the women “disrespectful,” they used profanities, and people in cars driving by around that time also shouted insults at them, including sex-based language. In statements to ODE, the women claimed that during this altercation, an unknown person or persons in the group also called them “whores” and that someone called Student 1 a “fat black bitch.”
The Pikes interviewed disagree that any race-based or sex-based language was used. While the Pike members denied running at or otherwise calling out harassing comments, several Pike members acknowledged that when Student 1 was speaking with the group of men, Student 8 told the AKA members to “just put AKA” on the rock and the date of their charter. They stated that this is what motivated Student 1 to call the police.

All of the people interviewed who were at the rock that night, both members of Pike and AKA, stated that during this time, there also was a specific altercation between Student 1 and a non-Pike member (but an apparent friend of some of the Pike members), Student 9. As was stated in the Community Standards report, their interaction “heightened emotions and created the hostile environment between the two groups,” and following Student 9 and Student 1’s contact, members of Pike began talking directly to members of AKA. Student 9 described that there were members of Pike who “chimed in” while he spoke with Student 1. A member of Pike estimated that at least five people approached the AKA members to talk to them. In interviews with ODE, both members of Pike and AKA agreed that an unknown number of Pike members told AKA to “just put AKA on the rock and leave.”

Given the disparate accounts of what exactly happened between the individuals involved, ODE carefully reviewed footage from a surveillance video. As was described by Community Standards, “The footage provided from the University of Connecticut Police started at 11:00pm and went until 4:00am. The camera that captured the footage is located on top of the North Parking Garage. The camera continuously rotated from the Lodewick Visitors Center to UConn’s Jorgensen Center for the Performing Arts and back. Therefore, it is important to note that the camera was not always fixated on the events occurring at the rock on the night of the incident. The camera does not capture sound.” The following events were documented in the footage up to and following the altercation:

- At 11:06pm, as seen in the video footage, two members of Pike arrive, accompanied by their roommates who are not members of Pike, one of whom is Student 9. They gather at the intersection of the sidewalk at Hillside Road and the entrance to the X Lot across the street from the North Garage. A fifth and sixth person arrive by 11:07pm; five of the men sit, one rides around the area on a Razor Scooter.
- A seventh person joins around 11:11pm; the group grows to eight or nine by 11:13pm. The men alternate sitting and standing. At 11:15pm, three men leave the group to go to cars parked in the X Lot; another individual joins the group of men. As one car leaves the lot at 11:15pm, there are eight individuals visible in the group; at 11:18pm, there are either eight or nine individuals in the group.
- At 11:18pm, the video camera pans over the scene, moving to the left from the men to the rock; the men are clustered in a circle on the grass and sidewalk, no closer to the rock than the sign for the X Lot. Student 1 and three AKA members are visible at the rock, the three other AKA members are standing with their backs to the rock and towards the men, and Student 1 is facing the women.
- The video camera then pans beyond the scene to the North Garage entrance; the camera is away from the scene for about one minute, about 11:19:20 to 11:20:20pm. When it pans back and the Spirit Rock comes into view, Student 1 is walking from the rock, and is nearly at a sidewalk that is just roughly past the halfway point between the Spirit Rock and where the men had been standing. The camera continues to pan to the right; as Student 1 crosses the sidewalk, the group of men come into view and they have moved fully into the grassy area closer to the rock, the group now just south of the sign.
The video does not capture when the group of men moved onto the grass area, when Student 1’s attention turned to the men, or when Student 1 began walking.

At 11:20pm, Student 1 joins the group of men, Student 9 visible at the front of the group. At 11:21pm, the camera captures one of the three AKA members starting to walk from the rock to join Student 1; when it pans over the group of men and Student 1, she is now enmeshed in the circle of Pike members.

The camera pans to the left and away from the scene; when it returns at 11:22pm, only one AKA member is visible at the rock. Two women are on the sidewalk that is between the rock and the group, and one woman is a body length behind where Student 1 is standing, no longer within the circle. The person who was behind Student 1 joins the group of men, seems to say something, then turns and walks away. The camera pans to the right and loses the scene for a few seconds; at 11:22:43pm, a bright flash of Student 1’s cell phone screen is visible; she begins to walk away from the group, pausing at the dividing sidewalk and looking at her phone just as the camera pans out of view.

When the camera scans back, at 11:23:51pm, three women can clearly be seen at the Spirit Rock; with the shadows, it is difficult to tell if Student 1 is at the rock. As the camera moves to the right at 11:24pm, the group of men come into view; some are sitting down on the grass, some standing. There are two police cars present, and with two officers clearly in view standing on the sidewalk where the men first began gathering.

Student 9 and Student 1’s altercation occurred during this time. They agree that Student 9 used the word “fuck.” Beyond this agreement, they otherwise presented differing accounts of the altercation:

Student 1 provided information regarding this altercation on several occasions to Community Standards and to ODE:

- In her initial report to Community Standards on September 30, 2014, she reported that Student 9 then “got in my face and said ‘FUCK YOU’ and clasped his fist in front of me as if he was going to strike me.” On October 3, 2014, Student 1 told Community Standards that when Student 9 started to swear at the AKA women, she identified herself as a University employee and AKA’s chapter advisor and the other men then led Student 9 away from her while he continued swearing.
- On November 18, 2014, Student 1 stated that additionally, Student 9 and the other men running to confront the AKA members called them “whores,” and said “What the fuck are you doing?” When she responded by introducing herself as the campus advisor, Student 9 responded, “Fuck you.” Student 1 then said, “Excuse me, do you know Todd Sullivan? I will be reporting this to him.” He replied, “Who the fuck are you?” and some of the other men tried to calm him down.
- On January 14, 2015, Student 1 told ODE that twelve men approached the AKA members yelling, “You’re disrespectful, get the fuck away from the rock, whores, stop painting.” In response, Student 1 asked the men to calm down, and Student 9 responded, “Fuck you.” Student 1 then advised him that she worked at UConn and Student 9 responded, “Who the fuck are you?” Some of the men pushed him away and she advised them that she would be reporting the incident to Cathy Cocks (Director of Community Standards) and Todd Sullivan (Director of the Office of Fraternity and Sorority Life).
In his interview with ODE, Student 9 stated that he told the AKA members, including Student 1, that they were being “disrespectful” for painting over the Pike tribute to a fellow member who was in the hospital. Student 1 indicated that she would call Todd Sullivan and asked if Student 9 knew who she was. In his Community Standards interview, Student 9 stated that he responded, “No, who the fuck are you?” Student 1 began yelling and he walked away. Student 9 denied that he said “Fuck you” to Student 1 and denied using any sex-based language towards her or other AKA members.

C. First UConn Police Department (UCPD) Involvement

At approximately 11:20 pm, Student 1 called the UCPD, who responded at 11:24 pm. Two cars are seen on the video at that time; a third police car arrived by 11:27 pm. She also called Mr. Catoe a second time (at 11:28 pm according to his phone records) to inform him that she had called the police. Around this time, the three AKA members that had gone to Walmart returned to the rock. There is a slight difference in the interview statements regarding what prompted Student 1’s call to UCPD, with her stating that she called after she asked the men not to “heckle” the AKA members and someone responded by asking, “You work here?” However, a Pike member wrote in his Community Standards statement that he told Student 1 to “just call the police” during this interaction, which prompted her to call.

When UCPD officers arrived, they spoke with each group separately and asked the Pike members to leave the AKA members alone. As quoted in the Community Standards’ findings report, the police report “stated that one of the police officers who responded to the call told the men not to harass the women.” However, the two organizations dispute whether this was a directive or not. Members of Pike claim that this was a suggestion from UCPD; AKA members claim that it was a directive.

During this initial response, UCPD also spoke with Student 9 specifically, and he left following that conversation and did not return. Following the police leaving the scene, a member of AKA also left, leaving Student 1 and six AKA-affiliated women present at the rock.

As seen on the surveillance camera footage, UCPD was present at the Spirit Rock until 12:02 am: one car left around 11:57 pm, the second at midnight, and then the third two minutes after that. Throughout the night, UCPD continued to monitor the situation with officers driving by the Spirit Rock during the night, which was recorded on the surveillance video and stated by two members of Pike and a student who had joined the AKA members at the rock.

D. Other Students Join AKA

While the police were present, one member of AKA texted two male friends, both of whom are members of the Greek community: one a member of Kappa Alpha Psi fraternity and one a member of Iota Phi Theta fraternity. She told them about what was happening at the Spirit Rock, and asked one to come because she was concerned about the AKA members’ safety. The other friend came because she stopped responding to his texts, and he grew concerned. These students arrived between 1:00 and 1:30 am. Also during this time, Student 1 was texting with Michael Scott, a non-UConn affiliated advisor of Phi Beta Sigma fraternity (a Greek organization at UConn); she informed him about the incident. Michael then texted Phi Beta Sigma members at 12:18 am asking them to go to the Spirit Rock. Student 13, Student 10 and Student 14 received this text and went to the Spirit Rock, arriving at various times between 12:30 and
2:00am. Student 1 stated that she did not ask Michael to contact his members and ask them to join, but rather that he had done so on his own initiative.

E. Interactions between AKA and Pike between 12:02am and 2:58am

At 12:39am, the number of men on the X Lot sidewalk had shrunk to about five; the members of Pike and AKA stated that most of the men went to the North Garage to pass the time, though many students estimated that this happened around 12:30am.

Both members of AKA and of Pike agree that during this time, Pike members threw a football between themselves, including between those members staying near the rock and those in the North Garage. They also agree that a few of the Pike members were swinging golf clubs. The organizations disagree as to further allegations:

- The AKA members stated that the Pike members occasionally threw the football at them, Student 1 stating to Community Standards that the football hit the rock twice. The women further stated that the men took garbage out of trash cans near the rock and hit the garbage towards the AKA members with the golf clubs. In interviews with ODE, multiple members of AKA stated that the Pike members would continue to insult them during this time, including using race-based and sex-based language, like “whore” or “whores,” “slut,” “black bitches,” and “black whores.” They said that cars continued to drive by and yelled out similar insults as well.
- One of the men present with the AKA members at this time stated that he heard a member of Pike call Student 1 a “fat black bitch,” though he could not identify who said it.

The surveillance video does not reflect at any time that a football was thrown at the AKA members or that any objects were hit towards them with golf clubs.

Between 2:30am and 3:00am, the members of Phi Beta Sigma, Kappa Alpha Psi and Iota Phi Theta left the Spirit Rock.

F. Second Police Intervention and the Incident Conclusion

According to surveillance video, at 2:58am, a group of approximately ten Pike members left the North Garage and walked toward the Spirit Rock and the AKA members. Both members of Pike and AKA agree that two members of Pike touched the rock to determine if it was dry and asked AKA members when they would be finished painting. One member of Pike took a “selfie” photo in front of the rock at this time. In addition, AKA members further alleged that the Pikes became aggressive during this time and that multiple members of Pike took “selfies,” including one member who took a picture while pantomiming urinating on the rock.

Due to the Pike members engaging the AKA members, Student 4, called UCPD at 2:58m. The video records the police arriving at 3:03am. While members of Pike attributed this phone call to Student 1 in interviews, UCPD records state that they received the call from Student 4. Student 1 stated that she was unable to call UCPD because her phone battery had died.
The Pike group dissolved shortly after the second UCPD visit. According to video footage, the last Pike member is seen leaving the area at 3:23am. UCPD remained on the scene until 3:30am, which is approximately when the AKA members left the Spirit Rock as well.

G. University Response to Initial Reports, Community Standards Investigation, First Social Media Concerns, and Sanctioning

On September 30, 2014, Student 1 sent an email to the Office of Fraternity and Sorority Life (OFSL) staff members and Community Standards reporting the incident at the Spirit Rock. This email raised concerns regarding the events of September 29-30.

Greek Life Response

Todd Sullivan, Director of OFSL, spoke with Student 1 on September 30, 2014, via telephone, and also met with her on October 2, 2014. Jamel Catoe, Assistant Director of OFSL, met with Student 1 in person on September 30, 2014. Christine Wilson, Director of Student Activities, also met with Student 1 on September 30, 2014. Graduate Assistant 1, sent an email to Student 2 on October 1, 2014, articulating condolences for the AKAs’ experience and enumerating resources at UConn to support the AKA members. Graduate Assistant 1 sent a similar email to Student 1 on October 2, 2014.

On October 2, 2014, Mr. Sullivan reached out to Student 2 to schedule a meeting for the OFSL staff and the AKA members “as a follow-up and check in and see how the sorority was doing following the incident.” Student 2 and Student 3 met with Mr. Sullivan, Mr. Catoe and Graduate Assistant 2 in the OFSL offices with Student 1 participating via speakerphone on October 3, 2014. This was part of a larger “community response plan” from OFSL to address the Spirit Rock incident as well as the Yik Yak conversations discussed previously. The community response included Mr. Sullivan speaking at the UConn Greek Presidents’ Forum on October 6, 2014, informing them of the incident and talking about respecting fellow community members.

Community Standards Investigation & Student Activities Sanctioning

On October 1, 2014, AKA president, Student 2, submitted a complaint to Cathy Cocks, Director of Community Standards, regarding the incident at the Spirit Rock. This complaint raised concerns regarding the events at the rock, but did not allege that sex-based or race-based language was used by Pike

11 On October 2, 2014, Student 1 emailed Mr. Sullivan, Graduate Assistant 1 and Mr. Catoe saying, “Thank you for the outreach this week. Graduate Assistant 1, I really appreciate your email to Student 2 that included campus resources.” In a second email later that day, she wrote to Graduate Assistant 1, “It was good to see you included that in your message because the women may be feeling something but just not speaking.”

12 Also on October 3, 2014, Mr. Sullivan provided an update to Community Standards. Specifically, he advised Cathy Cocks, Director of Community Standards that his staff had met to discuss Student 1’s allegations and the pictures she had provided pertaining to the incident. He also informed Ms. Cox that the staff did not recognize any of the men in the pictures but that the acting President of Pike, Student 7, had informed them that he and a couple other members were at the rock on the night of the incident and had asked the women of AKA not to paint over their tribute to their fraternity brother. Additionally, Mr. Sullivan provided Ms. Cocks with copies of screen shots from Yik Yak that pertained to the incident.
members against the AKA members during the incident. Community Standards immediately opened an investigation.

On October 3, 2014, Community Standards issued an interim suspension to Pike based on the information received by AKA.

During the investigation, some of the members of AKA submitted written statements. In these statements, four AKA members stated that they heard men say “whore” or “whores” to AKA during the incident. Student 2 also stated this during her Community Standards’ interview. In an October 14, 2014, investigative interview with Community Standards, Student 2 stated that, on more than one occasion that night, the Pikes called the AKAs “whores.” She stated that there were “cars driving by and yelling whore at them.” She said that this occurred sporadically throughout the whole incident.

On October 20, 2014, Community Standards issued a Findings and Recommendations Report detailing its investigation and findings based on the information gathered. Pike was found responsible for two violations of The Student Code, specifically Part III (B) (2), Disruptive Behavior, and Part III (B) (3), Harming Behavior, namely bullying and/or harassment. The report was referred to Student Activities for sanctioning and consideration of “possible Office of Fraternity and Sorority Life and Student Activities policy violations.” As set forth above, Community Standards also recommended that strong educational measures be taken. See Appendix A for the Community Standards Findings and Recommendations Report. Student Activities distributed the report to AKA and Pike on October 22, 2015; on October 24, 2015, Student Activities distributed the report’s evidence attachments (which had been redacted to remove students’ identifying information or images) to AKA and Pike.

On November 6, 2014, Student Activities sanctioned Pike for the incident. In a letter sent to Pike and AKA on November 7, 2014, by Joe Briody, Associate Director for Leadership Development, three sanctions were identified:

- Pike was placed on Organizational Probation, where any further violation of University Policy could result in the suspension of the organization for a period of time or indefinitely. A review of the probationary status of Pike was scheduled to occur after May 9, 2015.
- Additionally, Pike was sanctioned to conduct Educational Training: Working with their advisor and professional staff in the OFSL, the leadership of Pike was required to develop a series of appropriate and substantive educational events to address the underlying issues of this incident including, but not limited to sexism, racism, bystander intervention and microaggression. The content, facilitators and all logistics of these events were required to be detailed in writing by the organization and approved in advance by the ad-hoc committee.
- Finally, Pike was banned from painting any of the campus rocks for the remainder of the 2014-2015 school year.

---

13 Their statements were submitted on October 6, 2014; October 9, 2014; October 9, 2014; and October 8, 2014, respectively.

14 The four students who referenced hearing the word “whore” submitted written statements only to Community Standards (i.e., were not interviewed by Community Standards).
Other Administrative Response

On October 2, 2014, Dean of Students Eleanor Daugherty contacted Willena Price, Ph.D., Director of the African-American Cultural Center, regarding the incident and addressing the needs of the AKA members. That same day, Dr. Price contacted Student 1 via telephone to provide support, and continued to provide ongoing support from that point forward. Also on October 2, 2014, Dr. Daugherty and Dr. Wilson reached out to Student 1 and Student 2 to check-in and schedule a meeting to discuss the incident. On October 6, they scheduled a meeting for October 9, 2014. At that meeting, Drs. Daugherty and Wilson, Student 1 and Student 2 discussed what changes Student 1, Student 2 and the AKAs wanted to see implemented to address the “question of respect” that the incident raised and agreed to action steps moving forward.

On October 3, 2014, Student 1 met with ODE’s Sarah Chipman, Case Manager, and Alexis Boyd, Title IX Investigator. During this meeting, Ms. Chipman and Ms. Boyd reviewed “several campus-based support options” like the Dean of Students Office and Counseling & Mental Health Services for Student 1 and the impacted AKA members. Ms. Boyd emailed Student 1 on October 6, 2014, to follow up on their meeting and to remind her of the available campus-based resources.

On October 31, 2014, Student 1 wrote to UConn President Herbst and the President’s Chief of Staff, Rachel Rubin, requesting a meeting with the President due to “a serious concern for safety, civility, and mutual respect on campus, particularly in the communities of color. The ladies I advise are very concerned these men will not be held accountable for their actions. In all my years at UConn, I've never seen such disrespect, but more importantly, the harassment, stalking, verbal assaults and use of intimidation to instill fear of any kind are serious acts, and this needs to be addressed.” Ms. Rubin responded that day and thereafter held an in-person meeting with Student 1 to discuss her concerns.

H. Town Hall Forum, Additional Allegations of Race-Based and Sex-Based Language

During meetings and interviews with members of the offices of Fraternity and Sorority Life, Student Affairs, Dean of Students, ODE and Community Standards between September 30 and October 9, 2014, Student 1 did not allege that Pike had used sex-based or race-based language during the incident.

- Student 1 met with Todd Sullivan, Director of OFSL on September 30, 2014; Christine Wilson, Director of Student Affairs on September 30, 2014; Alexis Boyd and Sarah Chipman of ODE on October 3, 2014; and Ashley Vrabely of Community Standards on October 3, 2014.
- In their interviews with ODE, Mr. Sullivan and Ms. Vrabely both stated that they asked Student 1 if the men who had harassed the AKAs used any sex-based or race-based language. They stated that Student 1 told them that the men had not.
- According to Dean of Students Daugherty and Assistant Vice President of Student Affairs Christine Wilson, during their October 9, 2014 meeting with Student 1 and Student 2, they asked if the men who had harassed the AKA members used any sex-based or race-based language. Student 1 and Student 2 said that they did not. Drs. Daugherty and Wilson stated that Student 1 and Student 2 described that the incident did not involve race-based or sex-based issues but rather was “a question of respect.”
On November 10, 2014, the African-American Cultural Center hosted a Town Hall forum for the community to discuss issues of diversity on campus, specifically the incident at the Spirit Rock. Staff from ODE were present at the Town Hall. During the course of the three-hour event, multiple individuals shared information alleging that AKA members experienced both sex and race-based harassment from members of Pike during the Spirit Rock incident, including Student 1 being called a “fat black bitch.”

I. Post-Town Hall Forum Events, including ODE Response, the AKA Appeal, and other University Response and Support

AKA Appeal and ODE Investigation

Based on the disclosures of race-based and sex-based language having been used that were made during the Town Hall forum, ODE reviewed a copy of the findings report and requested from Community Standards all the materials and documents used in its investigative findings to review the initial allegations and information.

On November 19, 2015, AKA appealed the sanction that had been issued to Pike, including the lack of findings levied against SAE and TKE. The appeal included a specific request to review the race-based and sex-based language.

On November 24, 2014, ODE Title IX investigators Alexis Boyd and Meredith Smith and UConn’s Title IX Coordinator, Associate Vice President Elizabeth Conklin met with Student 1, who was accompanied by a support person (a member of the AKA graduate chapter) to inform her that ODE was reviewing the information in the Community Standards’ report as well as the information shared at the Town Hall with regard to Title IX and sex discrimination. During this meeting, the ODE staff explained the investigation process and the support resources available at the University for Student 1 and the AKA members attending UConn.

On November 25, 2014, Assistant Vice President for Student Affairs and Director of Student Activities Christine Wilson granted AKA’s appeal. In granting the appeal, Dr. Wilson stated that “in light of new or additional information you shared in your appeal, we will re-open the university’s investigation into this matter. This process will include … exploring the direct applicability of race and gender upon the behaviors present during the incident.” As set forth above, this investigation was referred to ODE which investigates matters of sex-based discrimination and harassment.

Social Media Postings after Town Hall Forum

Immediately following the November 10th Town Hall Forum, numerous incredibly distressing posts were made on the anonymous social media application Yik Yak about the Spirit Rock incident and its aftermath. These posts referenced the AKA members, and Student 1 in particular, in a demeaning, derogatory manner, including using race-based and sex-based language.
Additional University Response after Town Hall Forum

On November 13, 2014, OFSL presented a public State of the Union to the UConn Greek community. It was an opportunity for the office to acknowledge some of the concerns and issues within the community and to present new initiatives and future plans on the office’s response to discord in the community and incidents of bias.

On November 19, 2014, President Susan Herbst sent a letter via direct email to all members of the University community:

As we approach the Thanksgiving holiday, I wanted to take a moment to wish you well. Next week, many students will be away for a week-long break before returning to complete coursework and begin final exams, ending another fall semester. It is a well-deserved rest; yet for those of us who work here, seeing the students depart is always bittersweet, as it is the students who make our campuses as vibrant and lively as they are. It is why universities are such special and unique places to live, work and learn.

But campuses are, unfortunately, not immune from the difficult issues that affect every community at times, and UConn is no exception. Many of you may be following the ongoing discussion related to a dispute that took place on the Storrs campus at the end of September which involved some members of two Greek letter organizations – Pi Kappa Alpha and Alpha Kappa Alpha – and others. It is alleged that what began as a disagreement between students escalated into an ugly verbal confrontation that included insults based on race and gender.

These are serious allegations that the university continues to thoroughly investigate, as it should. There is no room for hateful speech or incivility on our campuses. In addition, I am appalled by the comments being made anonymously through social media directed at Alpha Kappa Alpha and other members of our community. I will be meeting with the student leaders of Greek letter organizations in the coming weeks to discuss the broad issues raised during a November 10 town hall meeting in connection with what took place in September.

It is important that our community know that UConn students, faculty, and staff share a responsibility – year-round – to reinforce the values of diversity, civility, and respect that are so important to us. “Civility” is a term that is used so often on campuses that we need to ensure that its meaning does not become diluted or lost. For all of us who live and work here, it is a very real thing, and something we aspire to make part of our daily lives. If there is anywhere that true civility can thrive, it is a university. It is up to all of us to make these values a reality.

Once again, I hope you are able to enjoy a restful and pleasant holiday next week as we look forward to the remainder of the semester – and ongoing discussion.
On November 20, 2014, a student organization, the Greek Community Affairs Board, sponsored the UConn Greek-Life Town Hall Meeting, providing an open forum discussion on the AKA/Pike incident and other issues within the Greek Community or the greater campus community in their relationship with the Greeks. UConn administrators, including Dr. Christine Wilson; Dr. Angela Rola, Director of the Asian-American Cultural Center; Kathleen Holgerston, Director of the Women’s Center; Elizabeth Cracco, Assistant Director Student Health Services; ODE Title IX Investigators Meredith Smith and Alexis Boyd; Jim Wohl, University Ombuds, Drs. Michael Gilbert, Willena Price and Dana Wilder, Assistant Vice Provost; and the OFSL staff were present. At this forum, Student 5, Vice President of Pike, read a public apology to the members of AKA for the behavior of the Pike members at the Spirit Rock.

On November 21, 2014, Director of Community Standards Cathy Cocks met with Student 1 to discuss a second complaint that she made regarding Student 9’s (member of SAE) behavior towards her during the incident. They spent time reviewing the surveillance video and discussing the investigation process.

On December 1, 2014, Student 1 sent an email to University officials, including ODE, setting forth her concerns about the University’s complaint processes and response to the Spirit Rock incident. Specifically, Student 1 questioned why the Community Standards’ investigation did not analyze what was expected to be explored during the ODE investigation, questioned why Community Standards’ report had not been provided to ODE or UCPD prior to the Town Hall Forum, and expressed disappointment with not receiving institutional support shortly after the incident.

On December 2, 2014, all members of the University community received the following email from Vice President Gilbert and Dean of Students Daugherty:

To the UConn Community:

Just before the Thanksgiving holiday break, President Herbst wrote to the campus community about a dispute that took place on the Storrs campus in late September involving some members of Greek letter organizations, and which allegedly escalated into an ugly verbal confrontation that included insults based on race and gender.

As members of the University community, the ability for individuals to freely express their views with civility and respect is paramount. Yet when that expression occurs in a hateful and harmful way, it is a serious concern for our community. As a result, the University – including UConn’s Police Department, the Office of Diversity and Equity, and the Community Standards Office – continues to conduct ongoing investigations into this matter.

As President Herbst noted in her letter, there is no room for hateful speech on our campuses. It’s now time for our community – students, faculty, alumni, and staff – to engage in difficult discussions that reinforce and explore the values of diversity and civility at UConn. We believe it is important for our campus to seize upon the opportunity to engage in a thoughtful and honest dialogue on the significance of the issues presented to our campus and their local, national, and global relevance.
In response to this challenge, the Division of Student Affairs will consult students, faculty, and staff and various University committees to launch and help promote a slate of programs beginning in January 2015 that address the issues of race, diversity and climate on college campuses, and to provide new venues for lively and civil discourse on these issues. As this work gets under way, we invite your suggestions for programs, speakers, events, and inquiries about collaborating with our offices.

We welcome the input of the campus community and encourage those who may be interested in being a part of the planning process to volunteer. Please direct your suggestions, comments, and/or questions to our office at vpsa@uconn.edu.

On December 9, 2014, Student 1 sent a letter to numerous members of the University community acknowledging the concerning events of the previous two months and also thanking a large number of University employees for their support, including: “[W]e want to extend a heartfelt thank you to the University of Connecticut community for your support and outreach in the aftermath of September 29th. We greatly appreciate all of the e-mails, letters, and above all, the call to action to improve the experience for ALL-faculty, staff, and students-on this campus.”


IV. Material Facts in Dispute

Based on the information obtained during ODE’s review, the Investigators have identified two major areas where material facts relevant to the analysis of race-based and sex-based harassment are disputed – fist clenching and the use of race-based or sex-based language.

1. Whether a group of Pike members and at least one member of SAE (Student 9) approached Student 1 and the members of AKA at the Spirit Rock while running and clenching their fists at the women.

Student 1 explained in her September 30, 2014 email that shortly after 11:00pm, eight Pike members ran towards the rock (yelling and clasping their fists) and said, “What the fuck are you doing?” In response, Student 1 introduced herself as the AKA campus advisor and Student 9 then “got in my face and said ‘FUCK YOU’ and clasped his fist in front of me as if he was going to strike me.” Student 9 denied this allegation, and the members of Pike interviewed by Community Standards and ODE also denied approaching Student 1 and the AKA members like this.
2. **Whether members of Pike** used race-based and/or sex-based language.

There are three allegations regarding race-based language, all involving the word *black*: the phrase “fat black bitch,” the phrase “black bitches,” and the phrase “black whores.” There also were three allegations regarding sex-based language – namely, “slut,” “whore/whores,” and “bitch.”

A. **“Fat black bitch”**

One of the men who joined the AKAs (Student 10) reported to Community Standards in his October 14, 2014, interview that he heard an unknown person call Student 1 a “fat black bitch” sometime between 1:30am and 2:30am when a group of men approached the rock to see how much longer the AKAs would be painting.

Additionally, two members of AKA (Student 2 and Member 2) stated in their ODE interviews (conducted in December and January) that a third AKA member (Student 15) told them that she heard an unknown person in the Pike group call Student 1 a “fat black bitch” at some point between 11:00pm and 11:45pm. These two women did not personally hear the phrase used. In a statement to Community Standards submitted on October 9, 2014, Student 15 did not report hearing the phrase “fat black bitch” as the two other members described but instead stated that at approximately 10:45pm, “cars drove by with men blurting out offensive comments such as ‘YOU’RE FAT.’” In her Community Standards’ interview on October 14, 2014, Student 2 stated that Student 15 told her about hearing an unknown male call Student 1 “fat.”

All Pike members interviewed by ODE denied hearing and/or using the phrase “fat black bitch.” The use of this statement also was denied by SAE member Student 9 in his ODE interview.

B. **“Black bitches”**

None of the information provided by the students during the Community Standards investigation included allegations regarding the use of the phrase “black bitches.” At the Town Hall Forum on November 10, 2014, Student 1 stated that the AKA members were called “black bitches” by the Pikes. Student 1 stated in her January 15, 2015 ODE interview that she did not hear this language herself, but had learned about such language from the AKA members present. In the ODE investigation, one member of AKA reported hearing an unidentified person in the Pike group say “black bitch.” She was unable to provide either a specific time as to when she heard this phrase, or a specific identity for the person who stated it.

All Pike members interviewed by ODE denied hearing and/or using the phrase “black bitches” during the incident. This also was denied by Student 9 in his ODE interview.

---

15 As stated previously, there were two members of the suspended fraternity SAE in the group of men, though from information gathered in interviews and from surveillance video, these SAE members were not present from about 11:24pm forward (when the police responded). While a male student is seen on the video in a TKE sweatshirt, this student was not identified, and the men at the rock who were interviewed did not identify any TKE members as being present. It is possible that the SAE members were involved in behaviors alleged prior to the police arrival, but even presuming that they were, there were approximately 20 members of Pike present; the SAE members were brought to the incident by a Pike member; and there were only Pike members present for three and a half of the four hours where the men were engaging with the AKA members. Therefore, this section of the analysis, consistent with Community Standards’ analysis, focuses on Pike and its members.
C. “Black whores”

None of the information provided by students during the Community Standards investigation included allegations regarding the use of the phrase “black whores.” At the Town Hall Forum on November 10, 2014, Student 1 stated that the AKA members were called “black whores.” In her interview with ODE, she said that she did not hear this language herself but had learned about such language from the AKA members present at the rock during the incident. One member of AKA stated in her January ODE interview that she heard “black whores” said by an unknown member of Pike at an unspecified time during the incident. (It is important to note that there were multiple allegations regarding the use of the word “whore” or “whores,” however, without the word “black,” which is discussed below).

All Pike members interviewed by ODE denied hearing and/or using the phrase “black whores” during the incident. This was also denied by Student 9 in his ODE interview.

D. “Slut”

Two members of AKA described hearing the word “slut” used once, by an unknown person or persons in the Pike group at an unknown time during the incident. Both members reported this in their statements to Community Standards, and one stated this again in her ODE interview.

All Pike members interviewed by ODE denied hearing and/or using the word “slut” during the incident on September 29-30, 2014. This also was denied by Student 9 during his ODE interview.

E. “Whore/Whores”

In their written statements to Community Standards, four members of AKA stated that they heard one or more men say “whore.” The members differ as to how it was said. One member reported in her written statement that she heard the word yelled from unknown people in the Pike group at some point during the altercation that occurred around 11:20 PM. A second member also reported this in her written statement, then further described in an interview with Community Standards that she heard “whore” yelled at the AKA members from passing cars, though she could not provide an exact time as it occurred “sporadically.” Two other members wrote that they heard the word only yelled from cars that drove by the rock. Neither of these students was able to identify who was in the cars, including whether they were affiliated with Pike.

In interviews conducted by ODE in December and January, three of the four students provided additional information. One member stated that she heard the word used not by individuals in cars but by “men from the group of Pikes ‘at least five times’” over the course of the incident. The other two students stated that they heard “whore” used four or “at least” four times from Pike members but could not identify who exactly in the group use this language. However, one of these students indicated that she heard Student 9 say “whore” once while arguing with Student 1. In addition, a fifth AKA member described to ODE that when Pike members moved to the parking garage toward the end of the evening, she heard someone say “whores” twice.

Additionally, Student 1 alleged in her November 18, 2014 complaint to Community Standards about Student 9’s behavior towards her that she heard a male in his group say “whore” (without the word
“black”) when Student 9 and other men walked toward the rock from the garage shortly after 11:00pm. She also reported this in her January ODE interview.

All Pike members interviewed by ODE denied hearing and/or using the word “whore” during the incident on September 29-30, 2014. This was consistent with the denial by SAE member Student 9.

F. “Bitch”

One member of AKA reported in her Community Standards statement that she heard the word “bitch” shouted by the Pikes prior to the police being called the first time (at about 11:20pm).

All Pike members interviewed by ODE denied hearing and/or using the word “bitch.” Student 9 also denied hearing and/or using the word in his ODE interview.

VI. Findings and Recommendations

A. September 29-30, 2014 Spirit Rock Incident

It is undisputed that several members of Pike\textsuperscript{16} visited the Spirit Rock while the members of AKA painted it on September 29, 2014. It also is undisputed that various members of Pike waited from 11:00pm to 3:30am in the area surrounding the Spirit Rock for the AKAs to finish painting. Furthermore, it is undisputed that following the first interaction with UCPD at 11:24am until approximately 3:00am, members of Pike stood in various locations in varying levels of proximity to the AKA members, including the parking lot and stop sign beside the Spirit Rock; a garbage can within 25 feet of the Spirit Rock; and across the street in the North Garage where they hit trash on the ground by the garbage can with golf clubs and threw a football between members in the parking lot and the members in the North Garage.

However, there are disputes as to whether members of Pike approached the AKA members with their fists clenched and whether the Pike members used race-based or sex-based language during the incident. This second disputed issue triggers the following two questions for analysis: first, whether there is a preponderance of evidence that Pike members used race-based or sex-based language during the incident; and second, whether the alleged race-based and/or sex-based language created a hostile learning environment for the AKAs under the applicable guiding analysis.

1. Fist Clenching

With regard to fist clenching, Student 1 stated in her September 30, 2014 email that shortly after 11:00pm, eight Pike members ran towards the rock (yelling and clasping their fists) and said, “What the fuck are you doing?” In response, she introduced herself as the AKA campus advisor and Student 9 then “got in my face and said ‘FUCK YOU’ and clasped his fist in front of me as if he was going to strike me.”

\textsuperscript{16} There were three individuals who were not affiliated with Pike who were a part of the group of men that night: two members of Sigma Alpha Epsilon (Student 9 and Student 16) and a member of Tau Kappa Epsilon (TKE). The investigation conducted by Community Standards into Student 9’s behavior concluded on December 6, 2014, with a finding of no violation of the Student Code. The member of TKE was not identified in the Community Standards’ investigation. Therefore, ODE’s findings are limited to the members of and the Pike organization and are hereinafter referred at times within these findings as the “Pike group.”
None of the Pike members indicated that they had their fists clasped when approaching or interacting with the AKA women and Student 9 denied that he ever had his fists clasped during his interactions with the AKA women. While two members of AKA who submitted written statements and/or participated in ODE and Community Standards’ interviews described the Pike members as having their fists clenched during their interactions, this was not reflected by all of the AKA members, making it difficult to corroborate Student 1’s statement.\textsuperscript{17} Equally important, although the video surveillance did not capture Student 1 and Student 9’s face-to-face interaction, it did capture her walking towards him and the Pike group at 11:20pm followed by another member of the AKA group joining Student 1 at the Pike group at 11:21pm. While the video quality is not clear enough to rely solely on its viewing to resolve this question, it bears noting that clenched fists are nowhere apparent on the video coverage and the men did not run towards the rock or the AKA members. Rather, the video demonstrated that the men walked to the stop sign and stopped, and that Student 1 approached the men. Finally, none of the photographs from that evening show any of the men with their fists clenched.

Taking the totality of the evidence into consideration, there is insufficient evidence to find that it is more likely than not that Student 9 and/or members of Pike had their fists clenched or clasped in an aggressive posture during the Spirit Rock incident.

2. **Race-Based and Sex-Based Language**

   a. “Black bitch” and “black whore”

   With regard to race-based language, ODE received conflicting information regarding the use of the word \textit{black}. In her December 10, 2014 ODE interview, one AKA member (Student 4) stated that she heard the phrases “black whore” and “black bitch” each used once by someone towards the group of AKA members. However, she was unable to give specific information as to who made the comments and when these phrases were used during the course of the incident. In addition, in her October 9, 2014 written statement to Community Standards, this witness did not identify the word “black” as having been said during the incident. Rather, she alleged that the men said “fat whore, bitch, [and] disrespectful bitch.” The members of Pike interviewed by ODE denied hearing and/or using any race-based language against the AKA members. No other witnesses indicated that they heard anyone say “black whore” or “black bitch.” Without any corroboration of these phrases having been used and the omission of this allegation within the statement provided less than two weeks after the incident, there is insufficient evidence to find that it is more likely than not that the phrases “black bitch” and “black whore” were used that night as alleged.\textsuperscript{18}

---

\textsuperscript{17} It is important to note that when asked to provide a detailed description of the incident during her ODE interview, Student 1 did not describe the Pike men or Student 9 as having their fists clenched or clasped when they walked toward and interacted with her and the AKA women. Rather, in her ODE interview, Student 1 indicated that when Student 9 and the other men approached the AKA women shortly after 11:00pm, she had her back facing the men and was focused on Student 15’s reaction to a “whore” comment.

\textsuperscript{18} ODE recognizes that this witness (Student 4) was not interviewed during the Community Standards’ investigation and thus was not prompted with questions about what comments were heard. However, the detailed description of the other comments (“fat whore, bitch, [and] disrespectful, bitch”) within her Community Standards’ statement made shortly following the incident, constrains ODE from finding by a preponderance of the evidence, based on her ODE interview statements alone, that the word \textit{black} was used as alleged.
b. “Fat Black Bitch”

In his October 15, 2014 Community Standards’ interview and December 5, 2014 ODE interview, Student 10 stated that he heard the phrase “fat black bitch” used once during the incident to describe Student 1 when a group of men approached the rock sometime between 1:30am and 2:30am. Student 10 explained that the phrase was not shouted or yelled, and that he did not see who made the comment as his back was towards the group of men at the time. The evidence demonstrated that none of the other AKA members heard the comment, including Student 1, who was within Student 10’s eyesight. Although two AKA members (Student 2 and Member 2) indicated that another AKA member (Student 15) had heard the comment, Student 15 set forth a different recollection of the incident. In her October 9, 2014 written statement to Community Standards, she stated that at approximately 10:45pm, unknown persons from cars driving by the Spirit Rock yelled out comments to the women about being “fat.” Student 15 did not indicate that there were any references to race and did not indicate that she heard the “fat black bitch” comment. Similarly, another witness (Member 1) indicated in her December 19, 2014 ODE interview that a different AKA member (Student 3) had heard someone call Student 1 a “fat black bitch.” However, Member 1 did not disclose this in her October 8, 2014 written statement to Community Standards and Student 3, who submitted her written statement within two days of the incident, did not describe hearing such a comment made during the incident. In addition, during her February 15, 2015 ODE interview, Student 3 denied that she heard anyone say “fat black bitch” during the incident.

Although all of the members of Pike interviewed by ODE denied hearing and/or using any race-based language, Student 10’s consistent statements that he heard the comment weighs in favor of finding that it is more likely than not that the comment was made once during the incident, as heard by Student 10. The evidence does not support finding, however, that the comment was yelled or repeatedly stated, nor does it support finding who in particular made the comment.

c. “Whore,” “Slut” and “Bitch”

With regard to sex-based language, there were allegations regarding the use of three words: *whore*, *slut* and *bitch*. As to the use of the word “whore,” in their initial written statements to Community Standards in early October 2014, four of the six student members of AKA (Student 2, Student 15, Student 19 Both Student 2’s and Member 2’s statements regarding what Student 15 heard evolved from what was shared during the Community Standards’ investigation (a few weeks following the incident) compared to what was shared during ODE’s investigation (several months following the incident). Specifically, as to Student 2, her October 6, 2014 written statement to Community Standards did not make any reference to Student 15 indicating that she had heard a “fat black bitch” comment. During her Community Standards’ interview on October 14, 2014, Student 2 stated that Student 15 told her about hearing an unknown male call Student 1 “fat.” She did not reference the use of the word “black” nor the phrase “fat black bitch.” However, in her ODE interview on December 5, 2014, Student 2 stated that Student 15 had heard an unknown male call Student 1 a “fat black bitch” just prior to the police being called at approximately 11:20pm (which would have been prior to Student 10’s arrival at the rock). It is also important to note that Student 2 did not disclose that Student 10 had heard a male call Student 1 a “fat black bitch” in either her written statement to Community Standards or her Community Standards’ interview. However, during her ODE interview, she indicated that Student 10 had told her on the night of the incident that he had heard someone call Student 1 a “fat black bitch.” Similarly, as to Member 2, her October 8, 2014 written statement to Community Standards did not make any reference to Student 15 indicating that she had heard a “fat black bitch” comment and made no reference to such a comment having been made during the incident. However, during her December 17, 2014 ODE interview, Member 2 stated that when she returned from Walmart, her sorority sisters told her that someone called Student 1 a “fat black bitch” (again, this would have been prior to Student 10’s arrival at the rock).
4 and Member 2) stated that they heard the word “whore” (or “whores”) multiple times during the incident.\(^2\) Three of these four students (Student 2, Student 15 and Member 2), stated that “whores” was used by unidentifiable men in cars that were passing by the Spirit Rock. One student, Student 4, attributed one use of the word directly to a particular individual, Student 9. Student 1 and Student 2 provided different information in that they stated that it came from an unidentifiable man within a large group of men accompanying Student 9 when he was engaging with Student 1 and the other AKAs. However, Member 1 stated that when Pike members moved to the parking garage toward the end of the evening, someone said “whores” twice.\(^2\)

Taking this all into consideration, particularly the disclosure of these comments close to the time of the incident and corroboration among multiple witnesses at that time, the evidence supports finding that it is more likely than not that members of Pike repeatedly used the words “whore” and/or “whores” toward the AKA members, and that individuals in cars passing the Spirit Rock during the incident also used the words “whore” and/or “whores” toward the AKA members. That said, there is insufficient information to support finding that the individuals in the cars were connected to Pike given that the witnesses were unable to identify these individuals and no other evidence, including video surveillance, demonstrated that they were connected to Pike. Also, there is insufficient information to find that it is more likely than not that Student 9 in particular used the term “whore” at or near the time of his interaction with Student 1. Although Student 4 indicated that the term was used by Student 9 during their encounter, she did not provide this information at the beginning of the Community Standards’ investigation, close in time to the incident. Although that fact is not dispositive, likewise, although Student 1 detailed her interaction with Student 9 during the Community Standards’ investigation, close in time to the incidents, she too did not indicate that the word “whore” was used; rather, that statement was made after that investigation had closed. Finally, during her ODE interview, Student 1 did not identify Student 9 as the person responsible for saying “whore.” Therefore, again, while the evidence supports finding that this term was used in a derogatory fashion by men in the Pike group as against the AKA members, the evidence does not allow ODE to make a finding regarding who exactly used this term.

As for the term “slut,” in her October 8, 2014 written statement to Community Standards, one AKA member (Member 2) described that she heard the word “slut” said by unidentifiable individuals in passing cars. She consistently recalled this in her ODE interview on December 17, 2014 and stated that the AKA members were called “sluts” once during the incident. Member 2 further stated that she did not know whether the individuals in the car joined Pike at the rock thereafter. Although the members of Pike interviewed by ODE denied hearing and/or using any sex-based language against the AKA members, including the word “slut,” and none of the other witnesses reported having heard this term used during the incident, Member 2’s statement close to the time of the incident and her consistent reporting of this comment weighs in favor of finding that it is more likely than not that “slut” was used once by unidentifiable individuals in passing cars.

\(^2\) In her January 2015 ODE interview, Student 1 explained that following her meetings with Community Standards and ODE on October 3, 2014, she realized that she too had heard the word “whore” used when Student 9 and other men walked toward the AKA women around 11:00pm.

\(^2\) Member 1 did not mention the use of the term “whores” in her October 8, 2014 written statement to Community Standards but rather described this language during her December 19, 2014 ODE interview.
As to the use of the term “bitch,” seven witnesses unaffiliated with Pike (Student 2, Member 1, Student 15, Member 2, Student 1, Student 3 and Student 12) did not directly hear this term used by a Pike member during the incident. That said, two witnesses unaffiliated with Pike heard the term used. Specifically, Student 10 consistently stated in his October 15, 2014 Community Standards’ interview and his December 5, 2014 ODE interview that he heard one of the men from Pike call Student 1 a “fat black bitch” after two Pike members walked up to the rock and asked when they were going to be finished. Also, one of the AKAs (Student 4) stated in her October 9, 2014 written statement to Community Standards that the men said “fat whore, bitch, [and] disrespectful, bitch” to the AKA members. She also indicated in her December 10, 2014 ODE interview that when Student 1 interacted with Pike one time, she heard someone say “black bitch.” The members of Pike interviewed by ODE denied hearing and/or using any sex-based language against the AKA members, including the word “bitch.” As set forth above, the evidence supports finding that the term “bitch” was used once in the context of “fat black bitch.” Taking this into consideration along with Student 4’s early reporting of “bitch” having been used during the incident, it is more likely than not that the term was said multiple times by unidentifiable members of Pike during the incident. That said, there is insufficient information to find that “bitch” was shouted or yelled repeatedly at the AKAs. Only one person (Student 4) indicated that “bitch” was used in this manner. It would be reasonable to expect the other witnesses to have heard the term if it had been repeatedly shouted toward the group as alleged. Accordingly, the evidence supports finding that it is more likely than not that the word “bitch” was stated and overheard.

B. Hostile Environment Analysis

As set forth above, ODE finds that there is a preponderance of evidence that: (1) the comment “fat black bitch” was stated (not yelled) once by an unidentifiable Pike member between 1:30 and 2:30am; (2) unidentifiable members of Pike repeatedly used the words “whore” and/or “whores” toward the AKAs during the incident; (3) unidentifiable individuals in cars passing the Spirit Rock during the incident also used the words “whore” and/or “whores” toward the AKAs; (4) “slut” was used once by unidentifiable individuals in passing cars; and, (5) “bitch” was said (not yelled) multiple times by unidentifiable members of Pike during the incident. Furthermore, ODE finds that there is not a preponderance of evidence to find that: (1) Student 9 and/or members of Pike had their fists clenched or clasped in an aggressive posture during the Spirit Rock incident; (2) Student 9 used any race- or sex-based language, including “whore,” during the incident;22 (3) the phrases “black bitch” and “black whore” were said during the incident; (4) individuals in the cars that used the words “whore” and/or “whores” and/or “slut” were connected to Pike; and (5) “bitch” was shouted repeatedly at the AKAs.

Having found that there is sufficient evidence that the sex-based terms “whore,” “slut,” and “bitch” and the race-based comment “fat black bitch” were used during the Spirit Rock incident, the next question is whether this behavior created a hostile learning environment under the applicable standard.23 In

22 It is important to note that Community Standards investigated and addressed Student 9’s use of the work “fuck” during his interaction with Student 1. Since this matter previously has been addressed and the use of one curse word does not create a hostile learning environment based on sex or fall outside the protection of the First Amendment, ODE does not herein analyze Student 9’s individual conduct during his interaction with Student 1.

23 Although AKA requested in its appeal that this incident be reviewed under Part III(B)(4) of The Student Code (Relationship violence, sexual misconduct, and/or stalking), ODE has reviewed whether this incident constituted sex-based or race-based harassment (hostile learning environment) because the allegations themselves (and the evidence) do not constitute relationship violence, sexual misconduct, or stalking as those terms are defined in The Student Code.
analyzing hostile learning environment claims based on sex and race, ODE is guided by the standards set forth by the United States Department of Education’s Office of Civil Rights (OCR), including through guidance entitled Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, Fed. Reg., Vol. 66, No. 12 (Jan. 19, 2001), Sexual Harassment: It’s Not Academic, U.S. Department of Education, Office for Civil Rights, Washington, D.C. (2008), and Racial Incidents and Harassment Against Students. Fed. Reg., Vol. 59, No. 47 (March 10, 1994). Using these standards, a violation of The Student Code may be found if the students created or were responsible for allowing a hostile learning environment to be created through harassing conduct that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, and privileges provided by the University. This element has both a subjective and objective component; the misconduct must be sufficiently severe or pervasive to create an objectively hostile or abusive environment, and the victim must also subjectively perceive the environment to be abusive. This objective standard should not be applied in a vacuum, however, particularly in the educational context. As OCR has provided, consideration should be given to the context in which the harassment has taken place. Similarly, the trier of fact must adopt the perspective of a reasonable person’s reaction to a similar environment under similar or like circumstances. Whether such a hostile environment has been created depends on the particular circumstances of the incident(s). Relevant considerations include, but are not limited to:

- how much of an adverse effect the conduct had on the student’s education;
- the type, frequency, or duration of the conduct;
- the identity, age, and sex of the harasser(s) and the victim(s), and the relationship between them;
- the number of individuals who engaged in the harassing conduct and at whom the harassment was directed;
- the size of the school, location of the incidents, and context in which they occurred; and
- whether other incidents occurred at the school involving different students.

Critically, though, “[t]he harassment must … rise above the level of simple acts of teasing and name-calling … even where these comments target differences in” sex and race.”

Equally important, in addition to the above factors, it cannot be ignored that the “First Amendment rights of speech … extend to the campuses of state universities.” The First Amendment generally

---

24 As set forth by OCR in Racial Incidents and Harassment Against Students. Fed. Reg., Vol. 59, No. 47 (March 10, 1994), with respect to racial comments in particular, when determining if they are severe, pervasive or persistent, the “particularized characteristics and circumstances of the victim” must be considered, including the “context, nature, scope, frequency, duration, and location of the racial incidents, as well as the identity, number, and relationships of the persons involved.”


26 Widmar v. Vincent, 454 U.S. 263, 268-269 (1981). The First Amendment guarantees the right to free expression and is applicable to the states through the Due Process Clause of the Fourteenth Amendment. Gitlow v. New York, 268 U.S. 652, 666 (1925). “‘Harassing’ or discriminatory speech, although evil and offensive, may be used to communicate ideas or emotions that nevertheless implicate First Amendment protections. As the Supreme Court has emphatically declared, ‘[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable.’” Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 209 (3d Cir. 2001) (quoting Texas v. Johnson, 491 U.S. 397 (1989)).
prevents the government from proscribing speech because of disapproval of the ideas expressed. Freedom of speech, however, has never been interpreted “to give absolute protection to every individual to speak whenever or wherever he [or she] pleases or to use any form of address in any circumstances that he [or she] chooses.” Indeed, “our society, like other free but civilized societies, has permitted restrictions upon the content of speech in a few limited areas, which are ‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’” One such permissible restriction on speech is the proscription on “fighting words.” The Supreme Court has defined “fighting words” as “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” That said, hateful, racist, and offensive speech is entitled to First Amendment protection and only loses that protection under the “fighting words” doctrine if it can be said to have incited “imminent lawless action” or “an immediate breach of the peace.”

Accordingly, a university's ability to discipline its students for speech that may constitute harassment is restricted by the First Amendment. Specifically, there is no “harassment exception” to the First Amendment; that is, the courts “have found no categorical rule that divests ‘harassing’ speech as defined by federal anti-discrimination statutes, of First Amendment protection.” While there is no question that non-expressive, physically harassing conduct is entirely outside the ambit of the free speech clause, “[w]hen laws against harassment attempt to regulate oral or written expression on such topics, however detestable the views expressed may be, [the courts] cannot turn a blind eye to the First Amendment implications.”

Turning to the analysis in the present case, there is no question that the AKA members at the Spirit Rock perceived the environment as hostile, intimidating and abusive. During this incident, the actions of the group of men at the rock—a larger group of mostly white men surrounding a smaller group of black women—exacerbated the social and historical context between white men and black women, an incredibly upsetting dynamic specifically and consistently identified by the AKA members.

As to the objective component of this analysis, under the “reasonable person” standard employed by the courts in sex-based and race-based harassment cases, particularly cases within the learning environment under Title IX, ODE finds that the evidence does not support finding that the conduct at the rock was objectively offensive to the point that it unreasonably interfered with AKA members’ learning

---


28 Courts have analyzed the difficult problems raised by university speech codes designed to deal with peer sexual and racial harassment. See, e.g., Dambrot v. Central Michigan University, 55 F.3d 1177 (6th Cir. 1995) (striking down university discriminatory harassment policy because it was overbroad, vague, and not a valid prohibition on fighting words); UWM Post, Inc. v. Board of Regents of University of Wisconsin System, 774 F. Supp. 1163 (ED Wis. 1991) (striking down university speech code that prohibited, inter alia, “discriminatory comments” directed at an individual that “intentionally . . . demean” the “sex . . . of the individual” and “create an intimidating, hostile or demeaning environment for education, university related work, or other university-authorized activity”); Doe v. University of Michigan, 721 F. Supp. 852 (ED Mich. 1989) (similar); Iota XI Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (overturning on First Amendment grounds university’s sanctions on a fraternity for conducting an “ugly woman contest” with “racist and sexist” overtones).

environment. This is not to say that the incident was not deeply upsetting and did not result in difficulty for all members involved. Rather, this determination is guided by the relevant legal analysis, which is focused on the severity and pervasiveness of the actions of that night. The Pike members involved in the Spirit Rock incident were students directing their conduct toward fellow students (undergraduate and graduate). None of the alleged male harassers were identified as employees of the University, which is important because unlike incidents between, for example, a faculty member harassing a student, there is not a power differential that puts the victim in an objectively unequal position. Turning to duration, this incident took place from about 10:20pm (when the first Pike members first arrived and respectfully spoke with the AKA members at the Spirit Rock) until about 3:30am (when the last Pike members left the area)—totaling five hours. This was an extended and difficult evening to be sure, but the event itself was limited to that one five-hour period. As to the frequency of the sex-based conduct, one AKA member (Student 2) described it as occurring “sporadically” throughout the evening. Another AKA member (Member 2) reported hearing sex-based slurs approximately six times over the course of the incident (five uses of “whores” and one of “sluts”). Only one AKA member heard “bitch” and believed that it was said multiple times throughout the evening. As to the frequency of the race-based conduct, the comment “fat black bitch” was said once. The multi-hour length of time of the incident combined with the intermittent use of the language speaks to the low frequency of the behavior in the context of the relevant analytical framework. Finally, and of import, there was no allegation that the events of this evening were a part of a larger pattern of harassment from Pike towards AKA. Taking this all into consideration, the offensive sex-based language, while hurtful, degrading and disrespectful, did not constitute pervasive or persistent conduct under the applicable standard.

In analyzing hostile environment claims under Title VI (which prohibits discrimination based on race in the educational context) and Title IX, courts have referred to the OCR guidance formulated by the Department of Education.

OCR has provided that “[t]he identity of and relationship between the alleged harasser and the subject or subjects of the harassment is an important factor to be considered within the investigation. “A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.” OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, Title IX, January 19, 2001, citing Davis v. Monroe County Board of Educ., 526 U.S. 629, 653 (1999) (“The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX’s guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment.”).

“The standard for proving severe and pervasive harassment is high.” Donohoo v. Ohio Dept. of Youth Services, 2002 U.S. Dist. LEXIS 23613 (6th Cir. 2002). See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. at 633-34 (standard met where there was a five-month “string of incidents,” including unwanted touching, directed at fifth-grade girl and resulting in sexual misconduct conviction); T.Z. v. City of New York, 634 F. Supp. 2d 263, 271 (E.D.N.Y. 2009) (finding question of fact existed as to “pervasiveness” where seventh-grade plaintiff was held down by another student while third student removed her clothing and touched her inappropriately); Riccio v. New Haven Bd. of Educ., 467 F. Supp. 2d 219, 227 (D. Conn. 2006) (finding question of fact existed as to whether harassment was severe and pervasive where eighth-grade plaintiff was subjected to sex-based name-calling “nearly every school day, in class, in-between classes, and at lunch,” sometimes “by more than a dozen students,” over eight-month period).

The Supreme Court has admonished courts to take pains when applying Title IX in the school setting to ensure that the purported harassment is sufficiently severe, noting that “students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it,” but “[d]amages are not available for simple acts of
Furthermore, although terms such as “bitch,” “whore,” and “fat black bitch,” are incredibly negatively impactful, these terms would not, as utilized that evening, constitute “fighting words” outside the protection of the First Amendment. That is particularly true here, given that the evidence supported that many of these phrases were overheard rather than directed at AKA members.

The investigators would further note, however, that the students negatively impacted by the events of that evening consistently reflected that the “spectacle” of a large group of white men surrounding a much smaller group of black women supported their assertion that the incident felt and was both sex and race-driven. Although the behavior of the Pike members did not rise to the level of a hostile learning environment within the context of Title VI, Title IX and The Student Code, this finding is in no way intended to condone the behavior and language engaged in by Pike members against fellow members of the UConn community. As set forth in the Community Standards’ report, the Pike members’ choices to: remain at the scene while the AKA members painted; repeatedly confront the AKA members about not painting the rock; repeatedly ask the AKA members if they were done painting; linger in the area throwing a football and hitting trash and balls with golf clubs were all actions intended to create an intimidating atmosphere. These actions did not meet the UConn community expectation of “respecting the dignity of all persons.”

Since ODE has not found a hostile learning environment and ODE does not have jurisdiction to determine what sanctions are levied against organizations found to have engaged in this conduct, ODE defers to Student Affairs for a determination of whether additional sanctions are warranted against Pike.

C. Social Media Posts in October and November

There is a further question of whether the messages posted on the social media application Yik Yak and the social media site Twitter (submitted by AKA in their November 19, 2014 appeal) constitute race or sex-based harassment by Pike members or other University students towards AKA members or other University students. AKA members submitted these posts in their appeal and stated that these materials “constitute additional support for reconsideration of the sanctions.”

34 York v. City of Las Cruces, 523 F.3d 1205, 1212 (10th Cir. 2008) (“bitch” does not constitute a fighting word); State v. Hammersley, 134 Idaho 816, 10 P3d 1285 (Idaho 2000) (defendant’s statement to her 13-year-old daughter’s minor friend, to “shut your fucking mouth, you bitch fell within “fighting words” exception to free speech); Gilles v. State, 531 N.E.2d 220, 221-222 (Ind. Ct. App. 1988) (street preacher’s use of terms “sinners,” “whores,” “queers,” “drunkards,” “AIDS people” and “scum of the earth” directed at a crowd constituted fighting words); State v. Broadstone, 233 Neb. 595, 447 N.W.2d 30, 34 (Neb. 1989) (“[y]our wife is a whore” and “[y]our daughter is a whore” held to be fighting words unprotected by the First Amendment); Mikhail v. City of Lake Worth, 2009 U.S. Dist. LEXIS 59919, *4 (S.D. Fla. June 30, 2009) (a street preacher used fighting words when calling people “sinners,” “whores” and “prostitutes”).

35 The UConn Creed (http://dos.uconn.edu/the-uconn-creed/).

36 Also, since ODE’s investigation did not reveal discriminatory conduct by Tau Kappa Epsilon members or Sigma Alpha Epsilon members, ODE is not making recommendations as to sanctions against these organizations or any of their individual members as requested by AKA in their appeal.
The majority of the postings were on the internet-based social media application Yik Yak. A sampling of Yik Yak postings uncovered in ODE’s investigation included: a “shout out to the asshole black co-ed fraternity painting over Pikes memorial for their brother who’s in critical condition. Real classy you guys are A+ people;” “FUCK AKA YOU FAT BLACK BITCHES;” “Student I is fat and black. And a bitch;” “I don’t hate you because your black. You’re black because I hate you;” “AKA. The epitome of white man’s burden;” “Girls in AKA should be whipped;” and, “AKA are bad slaves.” The posts took on an especially hurtful, cruel tone immediately following the November 10th Town Hall Forum.

The harmful effects of the anonymous Yik Yak posts were understandably deeply felt by the women of AKA and the broader community, including other students, staff, faculty, parents and community members. Multiple AKA members in particular reflected feeling unsettled, targeted and unsafe in the weeks following the incident, including particularly in the days and weeks immediately following the Town Hall forum. A defining feature of Yik Yak is that it allows any user to post anonymously. As a result, there is no information linking individual students, including Pike members, to the hurtful messages posted on Yik Yak. Accordingly, there is not a preponderance of evidence to link individual UConn community members, including but not limited to members of Pike, or the organization of Pike itself to any individual posts.

The appeal also included screenshots of posts made on Twitter which referred either directly or indirectly to the Spirit Rock incident and/or AKA. Unlike the application Yik Yak, Twitter postings do generally allow for identification of the poster. The Twitter postings submitted to ODE included posts of Pike members celebrating the end of their interim suspension on November 6, 2014; using hashtags like #tryagainAKA and #doublestandard when talking about some of the allegations made at the November 10, 2014 Town Forum; and critical comments about AKA. Of the twenty-one Twitter accounts in the screenshots submitted by AKA members, six were identified as belonging to members of Pike.

The content of the Twitter posts was significantly different than the comments made on Yik Yak. One specific post made by a UConn Pike member explicitly referenced race in an arguably derogatory manner (“We back N**** after the chapter’s interim suspension was lifted in November (asterisks used by the Pike member in his original post)). Other posts, and in particular a series of Tweets made by a single Pike member, were insensitive if not wholly ignorant in their discussion of the difficult issues of race and the experiences of the AKA members. However, as is discussed in great detail above, while many of the Twitter comments could be considered ignorant, “the protections of the First Amendment must be considered if issues of speech or expression are involved. Federal civil rights laws are intended to protect students from discrimination, not to regulate the content of speech,” wherein the “thoughtless actions” in the speech of some can create harmful effects to others.

Considering the anonymous nature of the most disturbing posts on Yik Yak, the limits imposed by the First Amendment, and the OCR guidance regarding creation of a hostile learning environment, the evidence does not support finding that any individual student or student organization violated any University policy in connection with the social media postings. ODE’s findings are not intended to

37 The Pike member who tweeted this comment himself identifies as black.

diminish the disturbing, unsettling experience that the weeks following the incident had on the AKA members and broader community. However, without the identities of the individuals involved and the limited comments by those identified, ODE is constrained to find that there is not sufficient information to find a violation of University policy. In consideration of these disturbing events, the University has implemented initiatives to enhance education and civility efforts among Greek organizations and the University community as a whole. ODE strongly recommends that events of this nature continue and that University officials periodically reassess with the students, including but not limited to members of AKA, whether additional steps need to be taken.

D. University’s Response Following the Rock Incident and Town Hall Forum

The Office for Civil Rights emphasizes the importance of institutional response to sexual harassment and campus climate concerns: “The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.”

ODE is charged with monitoring compliance with Title IX and ensuring that the University “respond[s] promptly and effectively” to reports of sex discrimination. Given this responsibility, the ODE investigators reviewed the concerns raised by the community and by AKA regarding the University’s response to the Spirit Rock incident, with particular focus on a University’s Title IX (sex) and Title VI (race) obligations.

In its appeal, AKA alleged that the University’s response to their report of the incident was “mishandled,” and throughout interviews with ODE, reflected that support and response measures taken by the University felt insufficient.

As set forth above in the Timeline of Events, ODE carefully reviewed the actions taken by University administrators in response to the concerns raised by AKA. ODE’s review of the University’s response reflects both an immediate and ongoing multi-faceted, multi-office, institutional response that was acknowledged positively on several occasions by the students impacted. The prompt response included Community Standards’ immediate and extensive investigation, sanctioning by Student Activities, and response and support efforts by numerous University administrators and offices, notably including the African-American Cultural Center, the Office of Fraternity and Sorority Life, and the Dean of Students Office.

39 2001 Guidance.

40 Specifically, AKA alleged that Community Standards erred in its investigation by: (1) assigning an investigator to their report that lacked the appropriate background, credentials and neutrality; (2) not inviting AKA members (except Student 1 and Student 2) to in-person interviews while inviting multiple members of Pike to in-person interviews; (3) indicating in its report that the presence of any TKE members was in dispute when a photograph (which the investigator was in possession of) established that a TKE member was present; and (4) indicating in the report that a member of Pike pretended to urinate on the rock was in dispute when the video surveillance presumably demonstrated that this happened (if it does not, then the surveillance video allegedly was not a reliable tool to make factual findings regarding the incident). In addition, AKA alleged that the University’s response was “mishandled” in that Joseph Briody and Christine Wilson failed to accurately communicate that AKA had the option to appeal the decision of the ad-hoc committee that issued sanctions against Pike based on Community Standards’ report. AKA further alleged that the University failed to enforce its Rock Painting Policy when UCPD advised AKA that they could not require any parties to leave the area because the rock was a public space. Lastly, AKA alleged that institutional support was not timely or effectively provided to the impacted students.
Nonetheless, it cannot be ignored that there also was consistent articulation both as events were unfolding and since that time that the community impacted by these events, including AKA members, did not feel sufficiently supported or heard. That important feedback provides an opportunity for the University to enhance its response to incidents of this nature moving forward.

The Bias Incident Response Protocol created by the Dean of Students Office in the Fall 2014 semester (see: http://dos.uconn.edu/bias-incident-protocol/) is designed to guide a more coordinated approach to outreach and assistance for students impacted by similar incidents in the future. The feedback of the students in this case has been an important part of the process to refine these protocols to allow for a greater feeling of support. In addition, the continued establishment of enhanced communications protocols between offices supporting students will foster a more seamless network of care for students impacted by such behaviors. And ongoing education and awareness measures, as recommended by Community Standards in its October 20th report, reaffirmed by Student Activities in its sanctioning measures, and underscored herein by ODE, will be important to diminish the likelihood of similar incidents occurring in the future.

VII. Conclusion

The events of September 29-30, 2014 and their aftermath had a profound and deeply hurtful impact on many members of the University community. However, as is discussed in great detail within this report, a close and careful review of the information available does not lead to a conclusion that individual students or the Pike fraternity engaged in sex-based or race-based harassment in violation of The Student Code. ODE’s investigation is therefore closed.

These findings notwithstanding, ODE respectfully recommends that continued education, training, awareness and climate enhancement measures focused not only on the Greek community, but the entire University community, will be critical moving forward to ensure a learning environment free from discrimination, harassment and retaliation. Where appropriate, ODE would be pleased as an office to assist in supporting such efforts. In addition, transparent and inclusive University-wide conversations, reflection and dialogue about the critical issues surrounding race, gender, civility and community are currently in progress and will be of the utmost importance as a continuing educational remedial measure moving forward.

ODE’s investigators defer to the Division of Student Affairs regarding the previously issued sanctions, and whether any additional measures are appropriate to respond to the information contained within this report.

Finally, if additional information becomes available that would be sufficient to indicate a potential violation, ODE would reopen the investigation. At any point moving forward, any person may contact the Title IX Coordinator with any additional questions or to provide additional information.