

By Electronic Mail
October 20, 2015

Secretary Arne Duncan
U.S. Department of Education
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

Assistant Secretary Catherine Lhamon
U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Request for Guidance Reminding Schools of Obligations Under Title IX and Title VI to Address Sex- and Race-Based Harassment Occurring on Yik Yak and Other Anonymous Social Media Applications

Dear Secretary Duncan and Assistant Secretary Lhamon:

As organizations working to advance women's equality and civil rights, we are writing to request that the Office for Civil Rights (OCR) promptly issue guidance to universities and colleges reminding them of their legal obligations under Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964 to protect students from harassment and threats based on sex, race, color, or national origin carried out via Yik Yak and other anonymous social media applications.

The undersigned organizations represent a broad constituency of U.S. women's rights and civil rights organizations in diverse fields. Many of our organizations work directly on college campuses with faculty and student groups. We write jointly to express grave concern regarding pervasive sex- and race-based online harassment and intimidation on college campuses around the country.

The use of anonymous social media to engage in this type of discriminatory behavior was widely reported in the news media in the 2014-2015 academic year, including incidents at the University of Mary Washington, where female students were threatened with rape, murder and other abuse via Yik Yak, and at Clemson University where racially abusive Yaks appeared after a student march protesting the failure to indict the police officer responsible for the death of unarmed African-American teenager Michael Brown in Ferguson, Missouri. These events underscore the urgent need for OCR to remind schools of their obligation to address all forms of sex- and race-based harassment, including cyber threats and harassment, which violate federal civil rights laws.

Title IX prohibits sex discrimination, including sexual harassment of students, in education programs or activities that receive federal financial assistance (hereby referred to as

“academic institutions” or “schools”).¹ Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.² Sexual harassment can also take the form of gender-based harassment, including against LGBTQ students, which “may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.”³ Title IX prohibits discrimination and harassment “based on gender identity or failure to conform to stereotypical notions of masculinity or femininity,”⁴ and “prohibits sexual harassment and gender-based harassment of all students regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.”⁵

Similarly, Title VI prohibits discrimination on the basis of race, color, or national origin in federally-funded education programs or activities.⁶ Acts prohibited by Title VI may include overtly racist behavior, such as the use of racial slurs, or targeted harassment based on actual or perceived race, ancestry, or ethnic characteristics.⁷ Students who are harassed based on their actual or perceived faith may also be protected by Title VI if the harassment is based on the faith group’s actual or perceived shared ancestry/ethnic characteristics.⁸

¹ 42 U.S.C. § 1681; *see also* United States Department of Education Office for Civil Rights, April 4, 2011 “Dear Colleague” letter concerning sexual harassment of students and sexual violence (“2011 Dear Colleague Letter”) at 1, *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

² *See* United States Department of Education Office for Civil Rights, “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” (January 2001) (“2001 Guidance”) at vi, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

³ 2011 Dear Colleague Letter, *supra* note 1, at 3 n.4; *see also* U.S. Department of Education Office for Civil Rights, October 26, 2010 “Dear Colleague” letter concerning harassment and bullying (“2010 Dear Colleague Letter”) at 7-8, *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

⁴ United States Department of Education Office for Civil Rights, April 29, 2014, “Questions and Answers on Title IX and Sexual Violence” (“2014 Sexual Violence Q&A”) at 5, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; *see also* 2010 Dear Colleague Letter, *supra* note 3, at 7-8.

⁵ 2010 Dear Colleague Letter, *supra* note 3, at 8; *see also* 2014 Sexual Violence Q&A, *supra* note 4, at 5-6.

⁶ 42 U.S.C. § 2000d et seq; 34 C.F.R. § 100.3

⁷ *Id.*

⁸ Although Title VI does not specifically prohibit harassment motivated solely by religion, students who are members of a religious group that shares, or is perceived to share, ancestry or ethnic characteristics are protected by Title VI if the harassing behavior is based on both perceived or actual shared ancestry/ethnicity and religion. *See* 2010 “Dear Colleague Letter,” *supra* note 3, at 5-6. “[G]roups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith.” *Id.* at 5. Recognizing and emphasizing the shared ancestry and ethnicity triggers for Title VI is particularly important to protect the civil rights of students from religious minority communities, such as Muslim, Sikh, Jewish, and Hindu students, among others.

Schools have a legal obligation to remediate harassment, whether in-person or online, that creates a hostile environment.⁹ Once a school knows, or reasonably should know, that harassment has created a hostile environment, both Title IX and Title VI require the school to take “immediate and appropriate action to investigate or otherwise determine what occurred” and take “prompt and effective steps” to eliminate the hostile environment, prevent its recurrence, and address its effects.¹⁰

In its October 2010 Dear Colleague Letter, OCR clarified that prohibited harassment may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating.¹¹ The 2010 Dear Colleague Letter takes an important step in clarifying that prohibited harassment can occur through the use of technology such as cell phones or the Internet.

Since the 2010 Guidance was published, however, the technology used by students to communicate with their peers has expanded to include anonymous social media applications. Students have used these applications to harass, threaten, and attack their peers while hiding behind a perceived shield of anonymity. So far, academic institutions have not adequately responded to this new phenomenon, essentially allowing students to engage in sex- and race-based harassment that would otherwise be prohibited by Title IX and Title VI.

We request that the Office for Civil Rights issue guidance reminding academic institutions of their legal obligations to prevent and remedy all forms of prohibited harassment, including harassment through anonymous social media applications.¹²

I. Online Harassment Disproportionately Affects Women and People of Color and is a Significant Problem Among Young Adults

Online harassment – including name-calling, doxing (revealing someone’s personally identifiable information, such as their home address, to encourage others to engage in harassment of that individual), threatening others, and efforts to humiliate, embarrass, or intimidate – is a

⁹ *See id.* at 4-5.

¹⁰ *Id.* at 2-3.

¹¹ *See id.* at 2.

¹² The Office for Civil Rights is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 *et seq.*), which prohibit discrimination the basis of disability. OCR recently issued guidance, on October 21, 2014, concerning bullying of students with disabilities. *See* “Dear Colleague” letter concerning disability discrimination (“2014 Dear Colleague”), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>. This guidance built upon OCR’s 2010 Dear Colleague letter on harassment and bullying, *supra* note 6, but did not include any information on online harassment based on disability or any examples of this form of disability-based discrimination at institutions of higher education. In issuing the requested guidance, OCR should make clear, once again, that online harassment based on disability is prohibited by federal laws, and that colleges and universities are under a legal obligation to investigate any such discrimination, including through anonymous social media applications, to determine whether it has created a hostile environment that requires action to end the discrimination, eliminate the hostile environment, remedy its effects, and prevent its recurrence.

significant problem among young adults. A 2014 study conducted by the Pew Research Center found that around 70 percent of young adults aged 18-24 years have been the target of some form of online harassment, and young women in this age range experience disproportionately higher levels of severe online harassment compared to their male counterparts.¹³ For example, 26 percent of young women aged 18-24 years, versus seven percent of young men in this same age range, have been cyberstalked, and 25 percent of young women aged 18-24 years have been the target of online sexual harassment versus 13 percent of men.¹⁴

People of color are also particularly impacted by online harassment. Around 51 percent of African-Americans who use the internet, and 54 percent of Hispanics, reported experiencing online harassment, compared to 34 percent of whites.¹⁵ African-American and Hispanics were also more likely to have witnessed online harassment than whites, and in particular, were more likely to have witnessed physical threats, purposeful embarrassment, and cyber-stalking.¹⁶

Although the Pew study did not analyze the impact of online harassment specifically on LGBTQ adults, research conducted by Campus Pride indicates that LGBTQ college students are more likely to experience harassment than their heterosexual peers.¹⁷ There is good reason to believe that much of this harassment occurs online. A recent study conducted by the Gay, Lesbian & Straight Education Network (GLSEN) of online harassment of youth ages 13-18 years found that 42 percent of LGBT youth had experienced harassment online.¹⁸ The vast majority of targeted students, 71 percent, reported being harassed or bullied because of their sexual orientation, gender expression, or both,¹⁹ and 32 percent reported being sexually harassed online.²⁰

Victims of online harassment have suffered from anxiety, posttraumatic stress disorder, depression, and other forms of emotional distress, and can incur financial and other costs as a result of the harassment.²¹ Communities also suffer. Among all internet users aged 18-29 years,

¹³ Maeve Duggan, *Online Harassment*, Pew Research Center (Oct. 22, 2014), available at <http://www.pewinternet.org/2014/10/22/online-harassment> (last visited 5/21/15).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* Of those surveyed, 88 percent of Hispanics and 84 percent of African-Americans witnessed at least one kind of online harassment, compared to 69 percent of whites.

¹⁷ *2010 State of Higher Education for LGBT People*, 10 (2010), available at <http://www.campuspride.org/research/projects-publications/> (last visited 9/1/15).

¹⁸ *Out Online: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth on the Internet*, 7-8 (2013), available at <http://www.glsen.org/learn/reasearch/national/out-online> (last visited 9/1/15).

¹⁹ *Id.* at 8.

²⁰ *Id.* at 10.

²¹ *See generally* Danielle Keats Citron, *Hate Crimes in Cyberspace*, 6-11 (2014). Victims of online abuse who experience trauma may develop disabilities as a result of the abuse and are entitled by law to receive

over 90 percent have witnessed harassment online, with 44 percent witnessing physical threats, 42 percent witnessing sustained harassment, 39 percent witnessing sexual harassment, and 36 percent witnessing cyber-stalking.²²

Most online harassment, especially of women, occurs through social networking sites or applications. Sixty-six percent of all internet users, and 73 percent of women in the Pew study who reported experiencing online harassment, reported that their most recent incident occurred in this manner.²³ Much of this harassment is anonymous. Around half of those who had experienced online harassment reported in the Pew study that they did not know the identity of the perpetrator of their most recent incident.²⁴

Anonymous cyber-harassment can be just as, or even more, threatening as harassment from readily identifiable individuals. Anonymous users on Yik Yak, for example, targeted members of the University of Mary Washington student group, Feminists United, with online harassment and threats of violence. One member of the group later explained its impact on her:

People gave out the locations of our members, and threatened to rape and kill us. I was terrified. I did not know if the person sitting next to me in class had just threatened to hurt me anonymously, and I had no way to gauge the seriousness of these threats. I began strategically carrying my key and [rape] whistle when I walked the thirty feet between my apartment and my car, and I began to seek help for the psychological and emotional damage I was feeling.²⁵

Studies show that individuals are more likely to act injuriously when they believe they are acting anonymously.²⁶ “When people have the opportunity to separate their actions on-line from their in-person lifestyle and identity they feel less vulnerable about . . . acting out.”²⁷ Lack of perceived accountability only adds to the problem.²⁸ In addition, the internet also allows for

long term care, support and services. Persons with disabilities have civil, human and disability rights that are protected under the Americans with Disabilities Act of 1990 and other disability laws that assist them with living independent lives.

²² Duggan, *supra* note 13.

²³ *Id.*

²⁴ *Id.*

²⁵ Julia Michels, *We're Being Threatened on Yik Yak – And Our University Isn't Protecting Us*, Feminist Campus Blog (May 14, 2014), <http://feministcampus.org/were-being-threatened-on-yik-yak-and-our-university-isnt-protecting-us/>.

²⁶ See Citron, *supra* note 21, at 58-60.

²⁷ John Suler, *The Online Disinhibition Effect*, 7 *CyberPsychology & Behavior* 322 (2004), available at http://www.academia.edu/3658367/The_online_disinhibition_effect (last visited June 23, 2015).

²⁸ See Citron, *supra* note 21, at 58.

formation of cyber-mobs, groups of individuals who target victims for online abuse.²⁹ Individuals within the cyber-mob may be strangers to one another, but the collective impact of the harassment and abuse can be profound.³⁰

II. Anonymous Social Media Applications, such as Yik Yak, are Frequently Used as a Platform for Sex- and Race-Based Harassment Prohibited by Title IX and Title VI

Anonymous social networking applications are becoming increasingly popular on college campuses and have given perpetrators an easy platform for online harassment, including cyber-stalking, cyber-threats, and other forms of cyber-assault. Applications such as Yik Yak,³¹ 4chan,³² BurnBook,³³ After School,³⁴ Fess,³⁵ and others specifically allow students to send anonymous messages to other users within their academic communities. Some users of these applications have then exploited the perceived shield of anonymity to engage in sustained harassment of their peers.

The severity of this problem on college campuses is exemplified by recent news stories covering the emergence of Yik Yak and other anonymous social media applications as a vehicle to intimidate, harass and threaten individual students and student groups.³⁶ Much of this abusive harassment is sex- and/or race-based and therefore prohibited under Title IX and Title VI.

²⁹ See *id.* at 5.

³⁰ As journalist Amanda Hess, who has been targeted with cyber-abuse and is a victim of cyber-stalking, explains, “Today, a legion of anonymous harassers are free to play their ‘games’ and ‘pranks’ under pseudonymous screen names, but for the women they target, the attacks only compound the real fear, discomfort, and stress we experience in our daily lives.” *Why Women Aren’t Welcome on the Internet*, Pacific Standard (Jan. 6, 2014), <http://www.psmag.com/health-and-behavior/women-arent-welcome-internet-72170>

³¹ Yik Yak is an anonymous messaging application that allows users to create and view posts, called Yaks, within a 1.5 mile radius. See Yik Yak, <http://www.yikyakapp.com/legal/> (last visited 5/14/2015).

³² 4chan is an image-based bulletin board where anyone can post comments and share images. Bulletin boards are categorized by topic. See 4chan, <http://www.4chan.org/> (last visited 5/14/2015).

³³ Burnbook is an application where users can click on their schools to post anonymous comments. See Twitter, <https://twitter.com/Burnbookapp> (last visited 5/14/2015).

³⁴ After School is an “anonymous and private message board for your school.” According to their website, “when [students] post, your message is created and available for everyone at the school to see. However, no one will be able to tell who posted it unless you put identifying information in your message.” See After School, <http://afterschoolapp.com/app/> (last visited 5/14/2015).

³⁵ Fess is a mobile application that “allows high school students to anonymously post thoughts, ideas, or secrets to the rest of the students within their high school. Fess is a place for high schoolers to express themselves, and share content within a closed community. Only students are allowed in, and none of what’s posted is allowed out. Students can access what their peers have posted, and comment, like, or flag the content and the anonymous posters.” See Fess, <http://www.fessapp.com/fessfaq> (last visited 5/14/2015).

³⁶ See e.g. Jonathan Mahler, *Who Spewed That Abuse? Anonymous Yik Yak App Isn’t Telling*, New York Times, (Mar. 8, 2015), <http://www.nytimes.com/2015/03/09/technology/popular-yik-yak-app-confers-anonymity-and-delivers-abuse.html>

At the University of Mary Washington in Fredericksburg, Virginia, for example, Yik Yak users sexually harassed a feminist student group by threatening sexual assault and physical harm after individual members spoke out against rape culture and incidents of sexual assault on campus.³⁷ At Eastern Michigan University, students posted dozens of demeaning, crude, and sexually explicit comments and imagery about three female professors on Yik Yak.³⁸ Student activists who spoke out against sexual assault, racism and homophobia at Dartmouth College became the target of anonymous online posts declaring that they would be raped, lynched and shot,³⁹ and at Kenyon College in Ohio, several Yik Yak posts were made threatening violence, and even sexual assault, against the women who lived and worked at the campus' center for women.⁴⁰

Anonymous race-based harassment through Yik Yak is also pervasive on college campuses. At American University in Washington, DC, for example, Yakkers posted successive invidious comments targeting African-Americans, such as “Their entire culture just isn’t conducive to a life of success. It just isn’t. The outfits. The attitudes. The behavior.”⁴¹ Another comment read, “Slavery was the worst thing to happen to this country, bringing them over here...ugh.”⁴² African-American students have also been targeted at Clemson University in South Carolina. One Yakker wrote, “I would be completely ok with Clemson being an all white school. Except for football.”⁴³ Another said, “The only thing niggers are good for is making Clemson better at football.”⁴⁴ Still another, “Jesus I hate black people.”⁴⁵ At Clemson, hateful Yaks also targeted Indian students and East Asians, referred to as “chinks,” in addition to LGBT students, Mormons, and women.⁴⁶

³⁷ See Shaila Dewan & Sheryl Gay Stolberg, *University of Mary Washington, Where Woman Was Killed, Faces Scrutiny*, New York Times (May 6, 2015), <http://www.nytimes.com/2015/05/07/us/university-of-mary-washington-where-woman-was-killed-faces-scrutiny.html>.

³⁸ Mahler, *supra* note 36.

³⁹ Tyler Kingkade, *Dartmouth May Punish Protesters Subjected to Rape, Death Threats*, Huffington Post (Apr. 29, 2013), http://www.huffingtonpost.com/2013/04/29/dartmouth-rape-death-threats_n_3157298.html.

⁴⁰ Ryan Chapin March, *Why Your College Should Ban Yik Yak*, Huffington Post (Oct. 3, 2014), http://www.huffingtonpost.com/ryan-chapin-mach/why-your-college-campus-should-ban-yik-yak_b_5924352.html.

⁴¹ Stephen Tschida, *Racist Comments on Mobile App Disturb American U. Students*, WJLA.com (Mar. 19, 2015), <http://www.wjla.com/articles/2015/03/racist-comments-on-mobile-app-disturb-american-u-students-112437.html>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Clemson Yik Yaks!, <http://clemsonyikyak.tumblr.com/> (last visited July 16, 2015).

⁴⁵ *Id.*

⁴⁶ *Id.*

The use of Yik Yak to threaten and harass students is of particular note because the application is so pervasive on college campuses. Yik Yak is designed to allow users within a 1.5 mile radius of each other to post and view anonymous “Yaks.” This geo-locating feature means that users know that those posting and viewing “Yaks” are in close proximity, within the same geographic community – usually a college campus.

Yik Yak has grown quickly since launching in 2013. Using a business model focused on marketing to college students, Yik Yak now has millions of users. It is on about 1600 college campuses with around 50 to 80 percent of each student body using the application.⁴⁷ In the fall of 2014, Yik Yak experienced about 100,000 downloads per day, and was downloaded more times than Facebook, Twitter, or Pinterest.⁴⁸ The company continues to focus on expansion at college campuses and employs over 350 college campus reps.⁴⁹

Despite its popularity, not all college students have embraced Yik Yak given its use as a forum for cyber-harassment, intimidation, and threats. The student government at the University of Michigan-Dearborn passed a resolution calling on the school administration to ban the use of Yik Yak on campus.⁵⁰ The resolution noted that the application had “become a venue for anonymous hate speech, sexual harassment, and other impermissible forms of discrimination and Yik-Yak users on the University of Michigan-Dearborn campus and surrounding areas have begun targeting specific groups based on ethnicity, sexual orientation, gender, appearance, religion, and culture. . . .”⁵¹

Although not going as far as the Dearborn resolution, Emory College’s student government also passed a resolution last year denouncing the use of Yik Yak as a forum for hate speech and harassment.⁵² The author of the resolution, a sophomore at the school, stated that it was “a symbolic statement that says that the University is going to be consistent in its application of the discriminatory harassment policy across all media. The same anonymous hate speech written in a physical forum is subject to all this disciplinary action . . . [but] no disciplinary action in a digital forum. That is an unacceptable inconsistency.”⁵³ A college junior who supported the resolution suggested that the anonymous nature of Yik Yak contributed to a hostile environment

⁴⁷ Alyson Shontel, *How 2 Georgia Fraternity Brothers Created Yik Yak, A Controversial App that Became a ~\$400 Million Business in 365 Days*, Business Insider (Mar. 12, 2015), <http://www.businessinsider.com/the-inside-story-of-yik-yak-2015-3>

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Courtney Morrison, *Student Government Poses Yik Yak Resolution*, The Michigan Journal (Jan. 20, 2015), <http://michiganjournal.org/2015/01/20/student-government-poses-yik-yak-resolution/>

⁵¹ *Id.*

⁵² *SGA Passes Amended Yik Yak Resolution*, The Emory Wheel (Oct. 7, 2014), <http://emorywheel.com/sga-passes-amended-yik-yak-resolution/>

⁵³ *Id.*

at the school: “These people are behind a screen, we have no idea who they are and I know people who have been personally victimized by this who do feel harassed. . . .I know many people who do not feel comfortable being on Emory’s campus at this time.”⁵⁴

III. Schools Have Failed to Respond Appropriately to Harassment Occurring Through Yik Yak and Other Anonymous Social Media Applications

Academic institutions have not responded consistently or appropriately to the growing use of anonymous social media applications as a tool for harassment, threatening behavior, and intimidation. Given the use of these applications to create sexually and racially hostile environments, institutions that fail to take immediate and appropriate action to end and prevent the recurrence of sex- and race-based online harassment and cyber-violence are in violation of their legal obligations under Title IX and Title VI.

Many schools have shirked these legal obligations by citing vague First Amendment concerns. At the University of Mary Washington, for example, administrators and lawyers for the University repeatedly stated that, as a public university, they were bound by the First Amendment to permit threatening posts on Yik Yak and could not disable the application.⁵⁵ The school’s Title IX coordinator also sent an email to students informing them that the university has “no recourse for such cyber bullying” and instructed students to file a report with Yik Yak if they became the subject of threatening or abusive comments on the social media application.⁵⁶

A similar approach was taken by Duke University whose Vice President of Student Affairs told the student newspaper that the university would not restrict use of Yik Yak.⁵⁷ Instead of university action, he explained, “Individuals who feel that they have been harmed in any way [by harassing or threatening posts on Yik Yak] are always free to consult with their own legal advisors” in order to take action against Yik Yak.⁵⁸

Likewise, administrators at Clemson University and Kenyon College refused to ban Yik Yak out of fear it would infringe on students’ freedom of speech.⁵⁹ Administrators at Eastern

⁵⁴ *Id.*

⁵⁵ See Erin Gloria Ryan, *Entire College Rugby Team Suspended Over Recorded ‘Fuck a Whore’ Chant*, Jezebel (Mar. 23, 2015), <http://jezebel.com/entire-college-rugby-team-suspended-over-recorded-fuck-1692488876>.

⁵⁶ See Leah Cox, University of Mary Washington, Diversity and Inclusion Email (Mar. 27, 2015), <http://diversity.umw.edu/> (last visited 5/21/15).

⁵⁷ Will Walker, *Duke Stands by Yik Yak as Other Schools Move to Restrict It*, The Chronicle (Feb 4, 2015), <http://www.dukechronicle.com/articles/2015/02/04/duke-stands-yik-yak-other-schools-move-restrict#.Vae4HflViko>.

⁵⁸ *Id.*

⁵⁹ See Mahler, *supra* note 36; Sean Decatur, *Respectful Difference*, Inside Higher Ed (Oct 6, 2014), <https://www.insidehighered.com/views/2014/10/06/essay-how-one-college-responded-anonymous-offensive-postings-yik-yak>.

Michigan University and Dartmouth have also declined to address known sexual harassment occurring on Yik Yak and other anonymous posting sites.⁶⁰

The Office for Civil Rights made clear in its October 2010 Dear Colleague Letter that harassing student conduct triggers responsibilities on the part of a school under civil rights statutes, including Title IX and Title VI, when the harassment is based on sex, race, color, and/or national origin and is “sufficiently serious that it creates a hostile environment.”⁶¹ Failure to respond to or adequately address this harassment, even if it occurs online, is a violation of schools’ legal obligations.

Students, however, are using anonymous social media applications like Yik Yak to intimidate, harass, and threaten individuals based on sex and race, creating a hostile environment for students.

At the University of Mary Washington, for example, Yakkers posted hundreds of abusive comments on Yik Yak, including one that read “Gonna tie these feminists to the radiator and grape them in the mouth,” a reference to a *Whitest Kids You Know* skit that clearly insinuates threatening physical and sexual violence.⁶² At Kenyon College, a Yacker proposed a gang rape at the women’s center, and at Middlebury College, a Yacker targeted a female student with name-calling and posted a sexual reference about her.⁶³

At Syracuse University, Yakkers, in a series of comments, ridiculed African-American students participating in a step show, calling them “monkeys.”⁶⁴ Yakkers also targeted African-American students at Clemson, posting comments using racial slurs, degrading African-Americans, and bemoaning their very presence at the school.⁶⁵ At Emory, one Yacker told other posters, “Guys stop with all this hate. Let’s just be thankful we arn’t black.”⁶⁶

Incidents like these clearly fall into the category of sex- and race-based harassment that is likely prohibited discrimination under Title IX and Title VI. Schools therefore have the

⁶⁰ See Mahler, *supra* note 36; see also John Laueran, *Dartmouth, USC Probes for Sexual Misconduct Responses*, Bloomberg (Jul. 22, 2014), <http://www.bloomberg.com/news/articles/2013-07-22/dartmouth-usc-in-probes-for-sexual-misconduct-responses>.

⁶¹ 2010 Dear Colleague Letter, *supra* note 3, at 1.

⁶² David Goldman, *Campus Uproar Over Yik Yak App After Sex Harassment, Murder*, CNN Money (May 7, 2015), <http://money.cnn.com/2015/05/07/technology/yik-yak-university-of-mary-washington/>.

⁶³ Mahler, *supra* note 36.

⁶⁴ Meghan Mistry, *Racist Yik Yak Posts Considered “Hate Speech” by Syracuse*, USA Today (May 6, 2015), <http://college.usatoday.com/2015/05/06/racist-yik-yak-posts-considered-hate-speech-by-syracuse/>.

⁶⁵ See *Clemson Yik Yaks!*, *supra* note 44.

⁶⁶ Mahler, *supra* note 36.

obligation to investigate and remediate these types of harassing incidents, as appropriate. As explained in the October 2010 Dear Colleague Letter:

Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by the school.⁶⁷

Students who have been targeted by anonymous cyber harassment and assault – especially through Yik Yak, where the perpetrators, because of the geo-location feature of the application, are within the campus community – have reported that the harassment has interfered with their academic studies and that they have had to seek therapy, change their extra-curricular activities, and even take extra security precautions.⁶⁸

Nonetheless, academic institutions, many mistakenly citing the First Amendment, have not been quick to take action to properly investigate anonymous online harassment and cyber-violence. Many schools have taken the stance that they have no recourse for students experiencing harassment on these sites. Students are therefore left to fend for themselves against vicious threats and harassment simply because it is conducted on a new platform.

Other schools, however, have taken action to stop online harassment and attacks, eliminate the hostile environment, and prevent harassment from recurring. Several universities have banned Yik Yak from their wireless networks.⁶⁹ Other academic institutions have assigned staff members to monitor the applications for threats or harassing conduct and have distributed campus-wide emails denouncing the harassment.⁷⁰

⁶⁷ 2010 Dear Colleague Letter, *supra* note 3, at 2.

⁶⁸ See Citron, *supra* note 21, at 39-45 (recounting a law student's experience with sex-based online harassment and cyber-stalking); Lindley Estes, *UMW Feminists United File Title IX Complaint Against University*, Fredericksburg Free Lance-Star (May 8, 2015), http://www.fredericksburg.com/news/education/umw-feminists-united-file-title-ix-complaint-against-university/article_68f62dce-a46a-5be8-8eec-df8ecddb50b.html

⁶⁹ Mahler, *supra* note 36 (reporting that John Brown University in Arkansas banned the app after “its Yik Yak feed was overrun with racist commentary”); Wilson Ring, *Norwich University Blocks Yik Yak App on Campus*, Huffington Post (Sept 14, 2014), http://www.huffingtonpost.com/2014/09/24/norwich-yik-yak-block_n_5878658.html; Julia Rose, *Popular App Banned at Utica College After Reports of Cyber Bullying*, CNY Homepage (WUTR) (Nov. 13, 2014), http://www.cnyhomepage.com/story/d/story/popular-app-banned-at-utica-college-after-reports/91812/WzLmyl_nbkGEdRtFLcFiJw; Anna Webb, *Yik Yak: Online Bullying or Free Speech? College of Idaho Tries to Ban Controversial App*, Idaho Statesman (May 14, 2014), http://www.idahostatesman.com/2015/05/14/3802467_yik-yak-online-bullying-or-free.html?rh=1 (reporting that the College had requested that Yik Yak “geo-fence” its campus). Many high-schools have also “geo-fenced” Yik Yak, making it unavailable on their campuses. AJ Dellinger, *All The Threats, Petitions, and Bans against Yik Yak*, Daily Dot (Dec. 10, 2014), <http://www.dailydot.com/technology/yik-yak-bans/>.

⁷⁰ See Dellinger, *supra* note 69.

IV. Request for Guidance Reminding Schools of Their Legal Obligations Under Title IX and Title VI to Address Sex- and Race-Based Harassment, Including Harassment Occurring on Anonymous Social Media Applications

In order to ensure that Title IX and Title VI continue to protect students from discrimination that creates a sexually or racially hostile environment, the Office for Civil Rights must remind schools of their legal obligation to promptly investigate and address sex- and race-based harassment, including harassment that occurs online. OCR must also provide clarification to schools on their obligations surrounding anonymous online harassment and intimidation.

Academic institutions currently have no explicit guidance on how to respond to sex- and race-based harassment occurring through Yik Yak and other anonymous social media applications. Although the October 2010 Dear Colleague Letter generally recognizes that harassment prohibited by Title IX and Title VI may include the use of cell phones or the Internet, it should explicitly specify schools' obligations to respond to the emerging trend of anonymous harassment through social media.

OCR should also make clear that the First Amendment does not prevent schools from taking action to eliminate sex- and race-based harassment, whether that harassment occurs in-person or online. The definition of actionable harassment provided by OCR does not infringe on protected speech. Rather, it prohibits conduct that interferes with a student's ability to participate or benefit from a school's activities or educational programs. This standard complies with U.S. Supreme Court jurisprudence on the First Amendment and student speech. Once a verbal act "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school," institutions may regulate or restrict student speech.⁷¹ Student speech may be regulated if it "substantially interfere[s] with the work of the school or *impinge[s] upon the rights of other students.*"⁷²

Severe, pervasive, or persistent anonymous online-harassment and cyber-attacks that are based on sex, race, color, or national origin impinge on the civil rights of students, as defined in Title IX and Title VI. OCR guidance must make clear that once speech reaches this threshold, whether or not through an anonymous social media application, schools, including public schools, are legally bound to take "immediate and appropriate action" to investigate what occurred, and if "discriminatory harassment" has occurred, to take "prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring."⁷³ This action is consistent with the balance struck by the U.S. Supreme Court between students' First Amendment rights and the need to ensure that schools can function appropriately and protect the rights of others.

As the perpetrators of harassment and intimidation on applications like Yik Yak are anonymous, OCR should also clarify the steps an academic institution can take to satisfy its civil

⁷¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 509 (1969) (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

⁷² *Id.* (emphasis added).

⁷³ 2010 Dear Colleague Letter, *supra* note 3, at 2-3.

rights obligations. OCR should reiterate that “if harassment has occurred, doing nothing is always the wrong response,”⁷⁴ and also provide concrete examples of what kinds of actions might be appropriate. These examples could include, but are not limited to:

- investigating all reports of online harassment, whether or not perpetrators are “anonymous”;
- initiating campus disciplinary proceedings against individuals engaging in online harassment;
- geo-fencing of anonymous social media applications that are used to threaten, intimidate, or harass students;
- barring the use of campus wi-fi to view or post to these applications;
- prompt reporting of anonymous online threats of physical and sexual violence to police and the social media application, as appropriate;
- monitoring social media applications to ensure immediate response to online harassment and intimidation;
- providing counseling and appropriate accommodations for targets of online harassment and intimidation and others affected by it; and
- conducting mandatory training or intervention programs for students, faculty, and staff, including Title IX Coordinators and other appropriate administrators, on the use of these social media applications to engage in harassment and intimidation.

As the popularity and use of anonymous social media applications grows on college campuses, it is important that schools do not abdicate their responsibilities under Title IX and Title VI to protect students from discrimination, including harassment and intimidation based on sex, gender, sex stereotypes or race, color, or national origin, simply because that harassment finds a new home. Additional OCR guidance on this issue is necessary to help schools fulfill their legal obligations and help ensure that discrimination on the basis of sex and/or race does not become a barrier to students pursuing educational opportunities.

We thank you for your leadership and look forward to an opportunity to meet with you at your earliest convenience to discuss this urgent issue. Please contact Gaylynn Burroughs, Director of Policy & Research at the Feminist Majority Foundation at gburroughs@feminist.org or by phone at (703) 522-2214 with any questions, or for additional information.

Sincerely,

Feminist Majority Foundation
Advocates for Youth

⁷⁴ 2001 Guidance, *supra* note 2, at iii.

American Association of University Women
Association of Reproductive Health Professionals
Black Women's Blueprint
Black Women's Health Imperative
Center for Partnership Studies
Center for Women Policy Studies
Champion Women
Clearinghouse on Women's Issues
Digital Sisters/Sistas
End Rape on Campus
GLSEN
Hollaback!
Human Rights Campaign
Institute for Science and Human Values
Jewish Women International
Leadership Conference on Civil and Human Rights
Legal Momentum
Media Equity Collaborative
Muslim Advocates
National Alliance for Partnerships in Equity
National Black Justice Coalition
National Center for Lesbian Rights
National Coalition Against Domestic Violence
National Council of Jewish Women
National Council of Women's Organizations
National Disability Rights Network
National Domestic Violence Hotline
National LGBTQ Taskforce
National Organization for Women
National Women's Law Center
SPARK Movement
SurvJustice
The Andrew Goodman Foundation
Turning Anger into Change
UltraViolet
WMC Speech Project
Women's Media Center
YWCA USA

Local Organizations

Atlanta Women for Equality
Collective Action for Safe Spaces
DC Coalition Against Domestic Violence
DC Rape Crisis Center
Democratic Women's Club of Northeast Broward
Empowerment Center – Maryland

Lincoln County Oregon Democratic Central Committee
National Organization for Women – Akron Area, Ohio Chapter
National Organization for Women – Beaver Valley, Pennsylvania Chapter
National Organization for Women – Boulder, Colorado Chapter
National Organization for Women – Brevard, Florida Chapter
National Organization for Women – Central Oregon Coast Chapter
National Organization for Women – Florida Chapter
National Organization for Women – Greater Orlando, Florida Chapter
National Organization for Women – Indiana Chapter
National Organization for Women – Maryland Chapter
National Organization for Women – Middlesex County, New Jersey Chapter
National Organization for Women – Ni-Ta-Nee, Pennsylvania Chapter
National Organization for Women – Oregon Chapter
National Organization for Women – Palm Beach County, Florida Chapter
National Organization for Women – Pennsylvania Chapter
National Organization for Women – Rhode Island Chapter
National Organization for Women – Shore Area, New Jersey Chapter
National Organization for Women – Tacoma, Washington Chapter
National Organization for Women – Tampa, Florida Chapter
National Organization for Women – Thurston County, Washington Chapter
National Organization for Women – Virginia Chapter
National Organization for Women – Washington Chapter
National Organization for Women – Washington, DC Chapter
Network for Victim Recovery of D.C.
PFLAG Oregon Central Coast
Women’s Production Network (Florida)