

Survivors Speaking Out: A Toolkit About Defamation Lawsuits and Other Retaliation

A Resource for Advocates and Attorneys who Assist Survivors

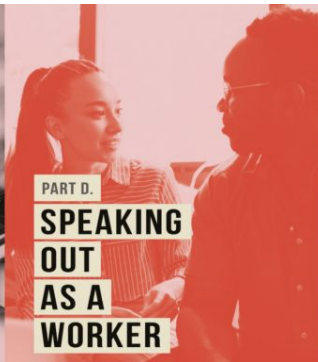
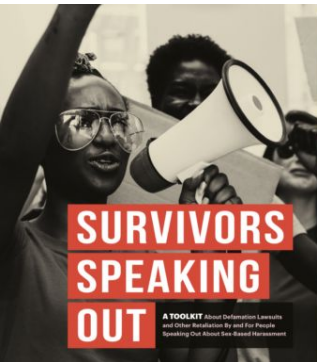


Legal Network for Gender Equity Webinar
November 2, 2023, 12:00-1:00 pm ET



Today's Agenda

- I. Introductions
- II. Toolkit overview
- III. Resources for survivors
- IV. Q&A and concluding remarks





Emma Grasso Levine (she/they) is the Senior Manager of Title IX Policy and Programs at Advocates for Youth. In this role, they manage Know Your IX, a survivor- and youth-led project of Advocates for Youth that empowers students to end sexual and gender-based violence in schools. Previously, Emma was a Know Your IX Student Engagement Organizer, where she supported student survivors organizing for change on their campuses and trained students on anti-carceral solutions to gender-based violence.

She holds a degree from NYU, where she concentrated in Social & Cultural Analysis and Dramatic Writing and focused their thesis on transformative justice and community-based solutions to sexual violence.

At NYU, they organized with Students for Sexual Respect (SSR), an organization advocating for survivor-centered policies, reproductive justice, and students' right to an education free of gender-based violence. As a leader of both SSR and the Governance Council of Minority and Marginalized Students, Emma successfully organized to create survivor-centered policy change, improve Title IX trainings and processes to be inclusive of LGBTQ+ students' experiences, and provide free menstrual hygiene products to students. She is an organizer, advocate, and writer currently based in Washington, DC.



Elizabeth Tang (she/her) is a Senior Counsel at the National Women's Law Center, where she focuses on ending sex-based harassment (including sexual assault, dating violence, and stalking) in schools through know-your-rights education, policy advocacy, and litigation.

Prior to law school, she interned at the American Civil Liberties Union and the United States Senate and worked at Apne Aap Women's Collective, an organization serving sex workers and their children in Mumbai, India. Elizabeth served as the former chair of NWLC United's bargaining committee and led her union to its first contract with NWLC.

Outside of work, she has served as a legal observer with the National Lawyers Guild and a community organizer with several socialist and abolitionist organizations in DC to defund the police, create non-carceral safety responses, and support residents harmed by immigration detention. Elizabeth received her JD from the University of Pennsylvania and her BA from Harvard College.

Toolkit Overview

- **Background:** By and for survivors who have faced defamation lawsuits and other retaliation
- **Audience:** Students, workers, and other survivors who want to speak out about harassment (or already have)
- **Goals:** Help survivors understand their **rights, risks, and options** so they can make an informed decision about whether to speak out and, if so, how to do so safely
 - ***We support you whether you choose to speak out or not!***
- **Contents**
 - Dear Reader letter
 - FAQs
 - Final Thoughts letter
 - Glossary
 - Appendix: State Anti-SLAPP Laws

Dear Reader

This toolkit was written by advocates and survivors, many of whom have spoken out about **sex-based harassment** and then faced **defamation lawsuits** and other **retaliation**. We wrote this toolkit to share the things many of us wish we had known back when we spoke out. If you have faced sex-based harassment (including at school or work) and are thinking about speaking out about the harassment (or already have spoken out), then this toolkit is for you.

It is so powerful that more and more people are starting to speak out about facing **sex-based harassment**. Speaking out and sharing your story can be hard, but it can also be empowering and healing. Many survivors also share their story because they want to help keep their communities safe from violence.

Sadly, this powerful movement of storytelling and advocacy has led to a backlash. Many victims are understandably worried about the risks of speaking out, such as facing **retaliation**. Retaliation includes the risk of being sued for **defamation** by the person who harmed them (the **abuser**). Unfortunately, many abusers and their supporters are using defamation lawsuits and other forms of retaliation¹ against survivors to try to keep us silent.

We wrote this toolkit to give survivors a starting point: to help you understand your rights, risks, and options if you have faced **sex-based harassment** and are worried about **retaliation**, including a potential **defamation lawsuit**. We hope this toolkit will help you (1) make an informed decision about how and whether to speak out and (2) protect yourself from harm.

Our hope in writing this toolkit is not to discourage survivors from speaking out, but to ensure you can make an informed decision when sharing your story. We hope this toolkit can help you in your journey to reclaim power and control over your life.

With love and solidarity,

Survivors, Students, and Advocates at National Women's Law Center;
Know Your IX, Advocates for Youth; Harvard Law School's Cyberlaw Clinic;
and Vanderbilt University Law School's First Amendment Clinic

Ways to Speak Out

- **What are my options for sharing my story?**
 - **Everyone:** in person, online, news, op ed, public statement, anonymous statement, police report
 - **Students:** complaints with school, state/federal agency, lawsuit
 - **Workers:** complaints with HR, union, state/federal agency, lawsuit
- **Is it possible to remain anonymous?**
 - There is always a chance that you will be recognized based on the details you share
 - In some cases, the person you disclose to must share your story with others
 - Sometimes, you can be anonymous in a lawsuit (“Jane Doe”)
 - But you can be sued even if you are anonymous (“Shitty Media Men” spreadsheet)
- **What if I don’t name my abuser?**
 - Your abuser might sue you even if you didn’t name them (Johnny Depp and Amber Heard)
 - Your school or workplace might punish you even if you don’t name your abuser (Maine student’s sticky note)



Things to Keep in Mind When Speaking Out

- **How can I stay safe while speaking out?**
 - Make a safety plan
- **Should I talk to a lawyer about speaking out?**
 - If you're thinking of speaking out or already have, it can be a good idea.
 - If you've been sued, you should talk to a lawyer.
- **Where can I find a lawyer? How much can a lawsuit cost?**
 - Most hourly rates are \$100s or \$1,000+ / hr. There are also court costs
 - Toolkit has info on pro bono (free) and “low bono” (low cost) lawyers, [Legal Network for Gender Equity](#) and [TIME'S UP Legal Defense Fund](#), law school clinics, insurance policies, anti-SLAPP laws, etc.
- **Can the police investigate even if I don't want them to?**
 - Yes, and in some DV cases, you could be fined, arrested, or jailed if a judge orders you to testify and you refuse.
 - **Students:** many school and medical staff are mandatory reporters, so telling them could trigger a police report.
- **Can speaking out publicly affect my civil protection order hearing or a police investigation?**
 - No, it should not affect whether a court grants your protection order or whether the police investigate. But the police may ask you not to share some info publicly.



Speaking Out as a Student or Worker

- **Can speaking out affect my education / job?**
 - Yes, survivors who spoke out have been punished at school / work. But retaliation is illegal.
 - **Students:** You can ask your Title IX office for tutoring, deadline extensions, or other [supportive measures](#).
- **If I speak out, can my school / employer investigate the harassment even if I don't want them to?**
 - **Students:** Sometimes. Your school generally won't investigate unless you ask them to. But in some cases, it may have to investigate even if you don't want it to in order to protect other students (e.g., multiple victims, teacher abuser).
 - **Workers:** Sometimes. Your employer generally won't investigate unless you make a complaint to your boss or HR. But if you report sex-based harassment that might violate federal or state law, then your employer must investigate or take other action even if you don't want it to.
- **Can speaking out publicly during my school's / employer's investigation affect the investigation?**
 - It depends. If you signed a nondisclosure or non-disparagement agreement (NDA) **before** reporting sex-based harassment, then the agreement can't be legally enforced (Congress passed the [Speak Out Act](#) in December 2022).
 - If your school/employer asks you to keep quiet, it's a good idea to talk to a lawyer.
- **Can my school / employer punish me for "bullying" my abuser?**
 - Retaliation is illegal, but it does happen. Your school / employer could punish you directly. Or, your abuser could try to get you in trouble by claiming you are "bullying" or "defaming" them, or that you were the real abuser.
 - A lawyer can help you understand if you have a retaliation claim.

Responding to a Defamation Lawsuit

- **What should I do if I receive a cease-and-desist letter?**
 - A letter is not a court order. If you want to respond (or aren't sure or don't want to), you should talk to a lawyer first.
- **What if my abuser is famous? What if they're not?**
 - A **private figure** (not widely known) must prove you were **negligent** (should have known your statement was "false")
 - A **public figure** (widely known) must prove you spoke with **actual malice** (you knew you were lying or probably lying).
- **What happens if I get sued? How do defamation lawsuits work?**
 - The toolkit explains you usually only 30 days to respond to a lawsuit. It also explains each stage of a lawsuit.
- **What are common legal defenses against a defamation lawsuit in different states?**
 - **Common defenses:** truth, opinion, consent, timing
 - **Absolute privilege:** Some statements can never be the basis of a defamation lawsuit (e.g., made in court, to your spouse)
 - **Qualified privilege:** Some statements must be spoken with **actual malice** to be defamation. Depending on the state: a legislative hearing, Title IX complaint.
- **Does my state protect against retaliatory defamation lawsuits?**
 - If your state has an **anti-SLAPP law**, you may be able to use it to pause discovery, dismiss the case, and make your abuser pay your fees and costs.



Appendix: Anti-SLAPP Laws

Good

Okay

Unclear

Not good

Bad

- **Anti-SLAPP laws:** A **SLAPP** (“strategic lawsuit against public participation”) is an abusive lawsuit filed to silence people who speak out about misconduct, including sex-based harassment. 35 of the 56 states and territories have an anti-SLAPP law.
- **Rights:** You may be protected when you engage in **petition** (asking the govt to help you), **speech** (speaking in a public place about an “issue of public interest”), **press** (news/media), and/or **assembly** (joining a group to promote a shared interest).
 - **EXAMPLE:** Your state’s anti-SLAPP law protects only the right to **petition**. If you named your abuser in a legislative hearing (**petition**), it would be protected. But if you did so on social media (**speech**), it would not be protected.
- **Discovery:** Most state anti-SLAPP laws require the court to pause discovery during an anti-SLAPP motion (with certain exceptions). This is good because discovery can be very invasive.
- **Fees and costs:** If you win the anti-SLAPP motion, your abuser will probably have to pay your fees and costs. If you lose, typically you do not have to pay your abuser’s fees and costs unless the court thinks your motion was not filed in good faith..
- **Appeals:** Most states let you appeal right away if you lose your anti-SLAPP motion without having to finish the rest of the lawsuit.
- **Timing:** If your state passed or updated their anti-SLAPP law recently, a lawyer can help you argue that the law is “retroactive” (it applies to lawsuits filed before the law was passed but are still ongoing).

Resources to share with survivors

- **Defamation**
 - [Survivors Speaking Out Toolkit](#) (defamation, other retaliation, and anti-SLAPP laws)
 - [Defamation Guide](#) (defamation)
- **Students**
 - [Supportive Measures FAQ](#)
 - [How Schools Can Support Survivors while Complying with Trump Title IX Rule](#)
 - [The Cost of Reporting Report](#)
- **Workers**
 - [Workplace Sexual Harassment: The Basics](#)
- **Legal Assistance**
 - [Legal Network for Gender Equity](#)



Questions?



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Survey & Thank you!

Webinar Survey--Survivors
Speaking Out: A Toolkit About
Defamation and Retaliation



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