

Censorship of Sexual Assault Survivors in the Educational Context

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INTRODUCTION

Numerous concerns regarding the negative impacts of bullying have led to the creation of new institutional rules aimed at curbing hate speech and false speech, particularly within the educational setting. While these steps are well-intentioned, authority doling out discipline ought to be concerned with the negative policy impacts of censoring speech that is otherwise protected and of public import. This concern is especially true to the extent that the censored speech relates to exposing or reporting incidents of sexual assault.

This Article explains how the push toward regulating offensive speech has undermined the ability for sexual assault survivors to come forward about their experiences in safe and supportive ways, especially within the educational context. Recent examples of institutional discipline and retaliation exemplify how bullying codes and social agendas originally aimed at censoring hate speech and misinformation can be misconstrued to target important speech of particular public concern.

Part I of this Article will examine how institutional discipline, particularly in school settings, has undermined the goals of bullying codes while silencing survivors of sexual assault. Part II will look at the ways in which retaliatory defamation lawsuits have also been used to censor sexual assault survivors through claims of false speech. While relying on an example outside of the educational setting to illustrate the ways in which defamation plaintiffs have taken aim at survivors more generally, Part II will also explain how students have been particularly targeted by defamation lawsuits and related threats. Part III will discuss the problematic policy consequences that comes from attempting to censor speech on issues relating to sexual assault and will argue that the regulation of speech ought to be tempered where speech of public import is at risk of being silenced. Finally, this Article concludes that any pushes toward regulating more speech should be carefully

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crafted such that these regulations will not pose even more burdens on sexual assault survivors seeking to share valuable information about their own experiences.

I. INSTITUTIONAL DISCIPLINE

In recent decades, states and local legislatures have turned their attention toward combatting bullying in school settings, in part as an effort to regulate hate speech in schools. The Centers for Disease Control and Prevention (CDC) define bullying as “any unwanted aggressive behavior(s) by another youth or group of youths . . . that involves an observed or perceived power imbalance and is repeated multiple times or is highly likely to be repeated.”¹ From 1990 to 2010, more than 120 bills addressing bullying were enacted nationwide.² By 2015, all fifty states had passed laws directing schools districts or individual schools to develop policies that address bullying.³

The Supreme Court’s rulings around this time provided some additional guidance and push for anti-bullying regulations.⁴ For example, in *Davis v. Monroe County Board of Education*, the Supreme Court found that a public elementary school did not do enough to prevent student-to-student sexual harassment in the case of a fifth-grade girl being subjected to sexual advances by her classmate.⁵ Over the dissent’s acknowledgment that a school’s “power to discipline its students for speech that may constitute sexual harassment is . . . circumscribed by the First Amendment,” the Court found that schools can incur liability to the extent they fail to police or discourage such kind of conduct through anti-bullying codes or other means.⁶

Although the goals of anti-bullying policies are certainly admirable, research regarding their effectiveness is limited.⁷ Even where policies have been well-crafted, however, it is important for schools implementing and applying bullying rules to assess each situation on an individual, case-by-case

¹ *Preventing Bullying*, CTNS. FOR DISEASE CONTROL & PREVENTION (CDC) (2018), <https://www.cdc.gov/violenceprevention/pdf/bullying-factsheet508.pdf> [<https://perma.cc/8M6W-25C8>].

² Dewey G. Cornell & Susan P. Limber, *Do U.S. Laws Go Far Enough to Prevent Bullying at School?*, AM. PSYCH. ASSOC. (Feb. 2016), <https://www.apa.org/monitor/2016/02/ce-corner> [<https://perma.cc/MD3Y-YRNH>].

³ *Id.*

⁴ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999); *Scruggs v. Meriden Bd. of Educ.*, No. 3:03CV2224(PCD), 2005 WL 2072312 (D. Conn. Aug. 26, 2005), *rev'd in part on reh'g on other grounds*, 2006 WL 2715388 (D. Conn. Sept. 22, 2006).

⁵ See *Davis*, 526 U.S. at 646–47. The Supreme Court ruled in a 5–4 decision that sexual harassment by one student of another could constitute discrimination under Title IX if they do not attempt to regulate such conduct by adopting anti-bullying codes, creating a shift and impetus for schools to better regulate and guide students’ behavior.

⁶ *Davis*, 526 U.S. at 667 (Kennedy, J., dissenting); *id.* at 646–47 (majority opinion).

⁷ See generally William Hall, *The Effectiveness of Policy Interventions for School Bullying: A Systematic Review*, 8 J. SOC’Y SOC. WORK & RSCH. 45, 45 (2017)

basis.⁸ A failure to do so can not only undermine the goals of these policies but serve to actively counter them. This is especially true where the alleged act of bullying involves speech on a matter of public concern, particularly within the context of reporting sexual assault.

The recent push to combat offensive speech, including bullying, has had the detrimental impact of imposing discipline on and silencing survivors of sexual assault and their allies. Take, for example, *Norris v. Cape Elizabeth School District*.⁹ In October 2019, a public high school in Maine suspended Aela Mansmann, a 15-year-old high school student, for speaking up about sexual assault in her school. Mansmann had posted a sticky note in the girls' restroom at school that stated: "There's a rapist in our school and you know who it is." Within minutes of Mansmann placing her message, another student entered the bathroom, removed the note, and took it to school administrators. Word of the sticky note quickly spread; photos of the note were shared across the school and, as a result, students began actively discussing the topic of sexual assault on campus. Grapevine conversation also led to students figuring out, and who, the note was referring to, including which classmate was the perpetrator of the alleged sexual assault. After an investigation by school administrators into the sticky note,¹⁰ Mansmann was identified as being the original writer and was suspended for bullying. She challenged the suspension in court on First Amendment grounds, winning at both the federal trial and appellate levels. But the damage that the school caused with regard to students' willingness to come forward and speak out on such issues in the future is already done.¹¹ Students who may have been thinking about coming forward or speaking will now likely be reluctant to do so out of the fear that they, too, might be subjected to discipline.

Similarly, in September 2021, allegations surfaced about the University of Montana School of Law's mishandling of sexual assault reports. One student, who reported that her law school friend was sexually assaulted by one of their classmates, shared that the then-Associate Dean—who has since stepped down—threatened to report her and her friend to the bar association

⁸ Understandably, this might raise concerns over discriminatory or arbitrary enforcement. Indeed, black students are significantly more likely to face severe discipline than their white peers for misconduct in a school setting. See Travis Riddle & Stacey Sinclair, *Racial Disparities in School-Based Disciplinary Actions Are Associated with County-Level Rates of Racial Bias*, 116 PROC. NAT'L.ACAD. SCIS. 8255, 8255 (Apr. 23, 2019). While I do believe case-by-case assessments can help with the evaluation of bullying incidents because each instance will be unique in kind, it is important that evaluators approach each situation with an eye toward due process and, ideally, after receiving implicit bias training. See generally THE IMPACT OF IMPLICIT BIAS TRAINING, HANOVER RSCH. (Mar. 2019), <https://f.hubspotusercontent00.net/hubfs/3409306/The-Impact-of-Implicit-Bias-Training.pdf> [<https://perma.cc/5P5C-AT66>] (discussing the effectiveness of such training).

⁹ 969 F.3d 12 (1st Cir. 2020)

¹⁰ But not the sexual assault.

¹¹ See *Powell v. Alexander*, 391 F.3d 1, 16–17 (1st Cir. 2004) (“[R]etaliatory actions may tend to chill individuals’ exercise of constitutional rights.” (quoting *ACLU of Md., Inc. v. Wicomico Cnty.*, 999 F.2d 780, 785 (4th Cir. 1993))).

for being “vindictive” if they did not “drop the matter.”¹² Characterizing speech on sexual assault reporting as “vindictive” and threatening career-impacting punishment as a result has the obvious impact of silencing survivors.

Along the same vein, when a high school sophomore in Georgia was coerced into performing oral sex on a classmate, she reported it to her first-period teacher the following day.¹³ The ensuing investigation led the reporting student to be asked a series of unrelated or unprofessional questions (*e.g.*, What were you wearing at the time? Why didn’t you just bite your classmate’s genitals?).¹⁴ Within days of reporting the incident, the student was told that she would be suspended until the school could conduct a joint disciplinary hearing during which both the victim and her assailant would be able to cross-examine each other.¹⁵ But such a hostile discipline-imposing reaction often makes reporting sexual assault a daunting prospect for students at a time when sexual assault is already vastly unreported. Rather than assuming a student is making up false and offensive accusations and suspending or otherwise punishing them when they come forward about sexual assault, schools ought to react with support—especially given the nature of the sensitive and important speech at issue.

Unfortunately, punishment for reporting sexual assault in a school environment is all too commonplace. Studies show that 15% of survivors who report their experience to their school are threatened with or face punishment for coming forward.¹⁶ This has led to 62.5% of reporting students in higher education programs to either take a leave of absence, transfer schools, or drop out altogether.¹⁷ Allies like student newspapers that have sought to discuss sexual assault in the university context have likewise been censored and silenced. For example, David Rudd, the President of the University of Memphis, was quick to criticize—at a widely-attended university forum—a student newspaper for reporting on an ongoing sexual assault investigation at his university, calling such stories “irresponsible.”¹⁸ But beyond mere public

¹² Keilsa Spzaller, *UM Law Students: Deans Discouraged Reports of Sexual Misconduct; Elder Investigated*, MISSOULA CURRENT (Sept. 27, 2021), <https://missoulacurrent.com/montana-to-day/2021/09/law-students-misconduct/> [<https://perma.cc/E3DS-66M6>].

¹³ Nora Caplan-Bricker, *My School Punished Me*, SLATE (Sept. 19, 2016), <https://slate.com/human-interest/2016/09/title-ix-sexual-assault-allegations-in-k-12-schools.html> [<https://perma.cc/M93J-EWTK>].

¹⁴ *Id.*

¹⁵ Her request for separate hearings (so the experience would be less traumatizing) was also denied. *Id.*

¹⁶ THE COST OF REPORTING, KNOW YOUR IX RIGHTS 15, <https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf> [<https://perma.cc/YK7M-4V9S>], at 15.

¹⁷ *Id.*

¹⁸ Gabriel Greschler, *Criticized, Sued, and Overcharged: Are Barriers to Reporting on Sexual Assault Surmountable for Student Journalists?*, STUDENT PRESS L. ASS’N (May 8, 2018), <https://splc.org/2018/05/barriers-to-reporting-on-sexual-assault-on-campus/> [<https://perma.cc/ACA9-JE8G>]; Gus Carrington and Mitchell Koch, *Campus leadership answers questions about sexual assault issues*, THE DAILY HELMSMAN (Mar. 21, 2018), <https://www.dailyhelmsman.com>.

criticism, colleges have gone so far as to sue newspapers to prevent publication of stories relating to sexual assault investigations on campus.¹⁹

Just because speech can be offensive, specifies a name, or relates to sexual misconduct does not necessarily make it offensive or hateful speech worthy of censoring²⁰ via a bullying code or institutional chastisement. Administrators and authority figures doling discipline or criticism ought to be concerned with the policy impacts of silencing speech of significant public concern.

II. DEFAMATION LAWSUITS

Plaintiffs seeking to silence reporting on sexual assaults are unfortunately sometimes able to do so with the threat of a defamation lawsuit—this is especially true in states without anti-SLAPP statutes.²¹ Defamation is a cause of tort action designed to prevent the spread of harmful lies and misinformation. Yet, our legal system often permits defamation actions to be used as a sword against well-meaning and protected speech (even if court cases ultimately vindicate the speaker).²² For instance, retaliatory lawsuits against persons coming forward about their experiences surviving sexual assault are unfortunately all too common.²³ Because many of these lawsuits are charac-

com/news/campus-leadership-answers-questions-about-sexual-assault-issues/article_c21c7f18-b491-11e7-aed0-73bbab360926.html [https://perma.cc/3AFP-PXEG].

¹⁹ Greschler, *supra* note 18.

²⁰ While the Supreme Court has been clear that we do not generally prohibit “hate speech” under the First Amendment, schools have the ability to set their own rules relating to keeping school environments productive places of learning. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969).

²¹ Approximately thirty states have anti-SLAPP laws, which are designed to dismiss frivolous claims against free expression in a quick and easy manner. Anti-SLAPP laws provide procedural protections for citizens who find themselves on the receiving end of lawsuits intended to punish them for speaking out on public matters. States with anti-SLAPP laws include Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Vermont, and Washington. No attempts to enact a federal anti-SLAPP law have been successful yet. See Nicole Ligon, *Protecting Local News Outlets from Fatal Legal Expenses*, 95 N.Y.U. L. REV. ONLINE 280, 289–94 (2020).

²² *Id.* at 291–92.

²³ See Julia Jacobs, *#MeToo Cases’ New Legal Battleground: Defamation Lawsuits*, N.Y. TIMES (Jan. 12, 2020), <https://nyti.ms/39uSXXP> [https://perma.cc/96JJ-DFUX]; Tyler Kingkade, *As More College Students Are Saying “Me Too,” Accused Men Are Suing for Defamation*, BUZZFEED NEWS (Dec. 5, 2017, 11:26 AM), <https://bit.ly/2XOpXou> [https://perma.cc/88K7-B625]; Alyssa R. Leader, *A “SLAPP” in the Face of Free Speech: Protecting Survivors’ Rights to Speak Up in the “Me Too” Era*, 17 FIRST AMEND. L. REV. 441, 443 (2019); Bruce Johnson & Davis Wright Tremaine, *Worried About Getting Sued for Reporting Sexual Abuse? Here Are Some Tips*, AM. C. L. UNION BLOG (Jan. 22, 2018, 4:00 PM), <https://bit.ly/2UTRV2a> [https://perma.cc/85V7-DLM6]; Madison Pauly, *She Said, He Sued*, MOTHER JONES (Mar/Apr. 2020), <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/> [https://perma.cc/BM7N-YNZV]; Kara Fox & Antoine Crouin, *Men Are Suing Women Who Accused Them of Harassment. Will It Stop Others from Speaking Out?*, CNN (June 5, 2019, 4:24 PM), <https://www.cnn.com/2019/06/05/europe/metoo-defamation-trials-sandra-muller-france-intl/index.html> [https://perma.cc/3GQH-33TY]; Sui-Lee Wee

terized as “he said, she said,” courts are often reluctant to dismiss such actions at the early motion to dismiss stage, opting instead to give the parties the chance to present concrete evidence at the summary judgment level. The result is that survivors are forced to endure time-consuming,²⁴ expensive,²⁵ and emotionally draining litigations. This is enough to make many survivors think twice before speaking out about their experiences, causing a self-regulation of speech due to the way in which we allow censoring behaviors to remain unchecked in our legal system.

Take, for example, the lawsuit that California Assemblyman Matt Dababneh brought against lobbyist Pamela Lopez. Lopez attended a wedding celebration in January 2016, where she encountered then-sitting Assemblyman Dababneh. During the party, Lopez entered the restroom alone, but was followed by Dababneh. Dababneh prevented Lopez from exiting the restroom, exposed himself to her, asked her to touch his penis, masturbated in front of her, and then told her not to tell anyone what had happened.²⁶ Lopez remained silent until the following year, when she and another woman who had been sexually assaulted by Dababneh filed a complaint with the Assembly Rules Committee and held a press conference to discuss their experiences.²⁷

Dababneh resigned from the legislature in January 2018 and an outside investigator hired by the Assembly Rules substantiated the accusations against him shortly thereafter.²⁸ But in August 2018, Dababneh sued Lopez for defamation and intentional infliction of emotional distress (IIED) for her testimony accusing him of sexual assault.²⁹ The trial court was reluctant to dismiss the case against Lopez at the early stages of litigation because Dababneh had claimed that he did not commit the acts he was accused of (i.e. “he said, she said”), and the court saw this as reason to allow the case to proceed into discovery. Lopez, hoping to avoid a lengthy and intense discovery process, appealed. On October 1, 2021, the Third Appellate District

and Li Yuan, *They Said #MeToo. Now They Are Being Sued*, N.Y. Times (Dec. 26, 2018), <https://www.nytimes.com/2019/12/26/business/china-sexual-harassment-metoo.html> [<https://perma.cc/4FML-5GDR>].

²⁴ See Thomas A. Waldman, *SLAPP Suits: Weaknesses in First Amendment Law and in the Courts' Responses to Frivolous Litigation*, 39 UCLA L. REV. 979, 1016 (1992); Nicole Ligon, *Protecting Women's Voices: Preventing Retaliatory Defamation Claims in the #MeToo Context*, 94 ST. JOHN'S L. REV. 961 (2021).

²⁵ Newspapers sued for defamation lawsuits spend, on average, approximately \$500,000 to successfully defend themselves. See Ligon, *supra* note 21, at 291.

²⁶ Melanie Mason, *California Assemblyman Accused of Forcing Lobbyist Into Bathroom and Masturbating*, L.A. TIMES (Dec. 4, 2017), <https://www.latimes.com/politics/la-pol-ca-matt-dababneh-harassment-20171204-story.html> [<https://perma.cc/YW67-2PAP>].

²⁷ *Id.*

²⁸ Melody Gutierrez, *Calif. Assembly Investigation Upholds Harassment Allegation Against Dababneh*, S.F. CHRON. (Aug. 27, 2018), <https://www.sfchronicle.com/politics/article/Calif-Assembly-investigation-upholds-harassment-13186625.php> [<https://perma.cc/ALV3-99JJ>].

²⁹ Complaint, *Dababneh v. Lopez*, No. 34-2018-00238699-CU-DF-GDS (Cal. Super. Ct. 2018) https://capitolmr.com/wp-content/uploads/2018/08/2018-08-14-Complaint-in-Dababneh-v.-Lopez_-1.pdf [<https://perma.cc/4Y9V-LB5M>].

California Court disagreed with the lower court, finding that California's anti-SLAPP law allowed for the case, which had already been subject to investigative findings, to be dismissed at the motion to dismiss level.³⁰ The appellate court instructed the lower court to proceed accordingly.

While Lopez was ultimately successful in coming forward and defending herself against defamation accusations, that it took several years for her to lift the claws of Dababneh's lawsuit is concerning. In states where no anti-SLAPP law exists to ward off frivolous defamation suits, such cases can take even longer because defendants may need to endure the entire discovery process.³¹ If speaking to the press about one's experiences with sexual assault may lead to retaliation that lasts for years on end, that could have the detrimental impact of silencing survivors' speech, and both personal and public reporting, on important matters of public concern.

Lopez's experience is sadly not unique. Characterizing sexual assault reporting as false or misinformation and taking aim at speakers sharing their experiences via defamation lawsuits has become a disturbing trend in recent years.³² Because these types of retaliatory actions are all too commonplace,³³ legislatures ought to be mindful to think through whether defendants in defamation suits have sufficient protections from frivolous censorship attempts. States without strong anti-SLAPP laws should seriously consider enacting the Uniform Public Expression Protection Act ("UPEPA")—a uniform anti-SLAPP law gaining traction in a number of state legislatures—in an effort to ensure that survivors and others speaking on important issues of public concern are not unnecessarily censored to the detriment of society at large.³⁴

³⁰ *Dababneh v. Lopez*, No. C088848, 2021 WL 4487407 (Cal. Ct. App. Oct. 1, 2021). California's anti-SLAPP law is considered a strong and helpful one from a defendant's perspective. Pursuant to CAL. CIV. PROC. CODE § 425.16 (West 2022), defendants can move to strike a complaint by demonstrating that they are being sued for "any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue." California courts have consistently construed this already-inclusive language broadly, making the statute widely applicable to various speech on diverse issues. See Thomas R. Burke, ANTI-SLAPP LITIGATION § 2:5 (Oct. 2021) (listing cases). California's statute also mandates that costs and attorney's fees be awarded to successful anti-SLAPP movants, and California courts have steadfastly adhered to this provision by granting generous awards of attorney's fees to successful anti-SLAPP movants. Likewise, California's statute provides for an immediate discovery stay and a right of appeal (with de novo appellate review), among its many defendant-positive facets.

³¹ Ligon, *supra* note 21, at 289–94.

³² See *supra* note 23.

³³ See, e.g., *Mazzara v. Provencher*, No. 19-05026-cag, 2020 WL 7787036 (Bankr. W.D. Tex. Dec. 4, 2020); *Elliot v. Donnegan*, 469 F. Supp. 3d 40 (E.D. N.Y. 2020). This is also not unique to the United States. Women, even celebrities, in other countries have been censored and retaliated against for coming forward about their experiences with sexual assault. See, e.g., Alexandra Stevenson and Steven Lee Myers, *China Can't Censor Away Growing Anger Over Athlete's #MeToo Accusation*, N.Y. Times (Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/world/asia/peng-shuai-zhang-gaoli-china-tennis.html> [<https://perma.cc/PMQ5-A3Q4>].

³⁴ See The Uniform Public Expression Protection Act ("UPEPA") (Unif. L. Comm'n 2020), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=dcbe7300-b708-66eb-843a-8a66ddf3ad7b&forceDialog=1> [<https://>

Students are being particularly affected by the uptick in using defamation actions to silence the reporting of sexual assaults. One lawyer at the Victim Rights Law Center in Boston reports that while only 5% of her cases arise from alleged campus sexual assaults involved an accuser facing a defamation suit in the early 2010s, about half of her cases could be categorized as such beginning in 2017.³⁵ This is a trend that other non-profits are likewise seeing,³⁶ and one that resonates with my own experience as the Supervising Attorney of Duke Law's First Amendment Clinic. Students are especially vulnerable to being silenced by defamation lawsuits because they often lack a primary steady income, making the cost of affording a defense attorney for such an action particularly daunting. As a result, they can be more easily threatened into silence by a demand letter or other threat of a defamation suit before ever entering into litigation. In states where anti-SLAPP laws are lacking, this is particularly concerning because a threat of a defamation lawsuit carries with it the risk of litigating a case for many years with no guarantee of the recovery of attorneys' fees even if the student is ultimately victorious. Anti-SLAPP litigation is therefore needed in states without strong or existing statutes to help ensure that aggressors cannot silence survivors due to the fear of costly and lengthy litigation.

III. POLICY CONSIDERATIONS

Punishing speakers who report sexual assault through institutional discipline or defamation lawsuits can have a disastrous chilling effect by discouraging survivors and advocates from coming forward and speaking out. Students are especially likely to experience sexual violence, often at the hands of their classmates. When the authority figures that they report these experiences to retaliate against them and attempt to censor them, or when our legislatures fail to protect them from extensive frivolous lawsuits, it leads to a gross underreporting of this reprehensible conduct.

Reports show that nationally, 9.7% of high schoolers, including 15.2% of young women, have been the victims of sexual violence.³⁷ Relatedly, one in five women and one in sixteen men are sexually assaulted while in col-

perma.cc/7XKC-HN29]; see, e.g., Jay Adkisson, *Washington State Legislature Passes the Uniform Public Expression Protection Act*, FORBES (Apr. 30, 2021), <https://www.forbes.com/sites/jayadkisson/2021/04/30/washington-state-legislature-passes-the-uniform-public-expression-protection-act/?sh=71e5bc8efe96> [https://perma.cc/AS65-ALN4].

³⁵ As More College Students Are Saying "Me Too," Accused Men Are Suing for Defamation, *Buzzfeed News* (Dec. 5, 2017, 11:26 AM), <https://bit.ly/2X0pXou> [https://perma.cc/WQ76-Z9NQ].

³⁶ *Id.*

³⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, *YOUTH RISK BEHAVIOR SURVEILLANCE – UNITED STATES, 2017* 21 (2018), <https://www.cdc.gov/healthyouth/data/yrbs/pdf/2017/ss6708.pdf> [https://perma.cc/4Z4H-MFKM].

lege.³⁸ Due to stigma and the potential for retaliation, many young victims tend to suppress or trivialize what has happened to them by blaming themselves or viewing their assaults as normal or unimportant behavior.³⁹ Punishing a student for speaking out will only create further stigma surrounding sexual assault and dissuade others from speaking on the extremely important topic.

CONCLUSION

As schools and legislatures consider ways to regulate offensive speech, attention should be given to the public importance of the speech being regulated. Crafting a bullying code to penalize speech just because it causes a classroom disruption and is directed at a classmate fails to take into account the significant potential import that some speech, especially speech relating to sexual assault reporting, might have. And failing to provide defamation defendants legislative coverage or channels to easily dismiss frivolous lawsuits based on someone reporting their sexual assault likewise leads to the silencing of valuable speech on issues of public concern. A push to overregulate speech that might appear offensive or falls into a “he said, she said” categorization can lead to problematic consequences. Reports on sexual assaults provide great value to society; with these policy concerns in mind, it is time to consider the ways in which the push for regulating more speech can ultimately cause sexual assault survivors to face discipline, chastisement, and retaliation at the expense of sharing important information on matters of public concern.

³⁸ NAT'L SEXUAL VIOLENCE RES. CTR., STATISTICS ABOUT SEXUAL VIOLENCE 2 (2015), https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf [<https://perma.cc/KE68-DSPH>].

³⁹ Karen G. Weiss, *You Just Don't Report That Kind of Stuff: Investigating Teens' Ambivalence Toward Peer-Perpetrated, Unwanted Sexual Incidents*, 28 VIOLENCE & VICTIMS 288, 299–300 (2013).

