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Lifting Voices: Towards Equal Education for Pregnant and Parenting Students in New York City

Tamara Ling
Fordham University School of Law

LIFTING VOICES: TOWARDS EQUAL EDUCATION FOR PREGNANT AND PARENTING STUDENTS IN NEW YORK CITY

*Tamara S. Ling**

We all love to learn, but we feel disrespected.[1]

PROLOGUE

East 128th Street in Harlem, New York City, is empty, but for a middle-aged man walking along the sidewalk. Outside of the old school building, there is no sign, no central entrance — there is only a ramp leading to a side door of dull gray metal. The man on the sidewalk calls out, "What are you looking for? Looking for the school for pregnant girls?" Hands clasped, he draws an exaggerated circle in front of his middle, and then points to the gray door. In faded paint, small stenciled letters read, "P-911 — School for Continued Education."

Inside, hallways are papered in children's finger paintings and student election campaign flyers. In breaks between classes, students stop by a nursery filled with toys and books to visit their babies. Here there are no advanced placement classes and there is no school band, yet for the students, all of whom are either expectant or new mothers, this "pregnancy school" is the only way to continue their educations.

Some students chose to come to P-911 because it offers them basic academic instruction and social services in a small, nurturing environment.[2] Others, after being compelled to leave their main-

* J.D., Fordham University School of Law, 2002; B.A., East Asian Studies, *cum laude*, Bryn Mawr College, 1997. I am very grateful to the students and service providers whose experiences shaped this project. I thank Joan Davis for her invaluable insights into the New York City educational system. I also thank Professor Beth G. Schwartz for her guidance and support. I dedicate this work to Wyman, Lily, and Jessica Ling for their unwavering love and encouragement, and to James Regan for his faith.

1. Interview with Resident, Inwood House Maternity Residence, in New York, N.Y. (Mar. 8, 2002).

2. Interview with Joan Davis, Assistant Principal and Director of LYFE, New York City Board of Education, in New York, N.Y. (Jan. 4, 2002) (transcript on file with author).

stream schools, had to choose between coming to P-911 or dropping out of school completely.[3] And then, there is Emily,[4] who was forced to leave her mainstream school, but refuses to accept the alternative that P-911 offers.

For Emily, that man on the sidewalk is one of the reasons she refuses to attend P-911. She is embarrassed by the thought that once she walks up that ramp and through that grey door, her pregnancy is all other people will see. She does not want to be labeled by her pregnancy — there is so much more to her than that. But how can she express and explore all the other facets of her identity when, to that man and everyone else who sees her at P-911, she is just another "pregnant girl"?

The other reason why Emily refuses to attend P-911 is because she wants to be challenged to learn and grow academically. Her goal is to continue progressing toward the high school diploma she was striving for before she became pregnant. But all of the courses offered at P-911 are in basic subjects that she has already completed.

Because no regular school will admit her, and she will not enroll in a pregnancy school, Emily is left out of school completely. Deprived of her education, Emily worries that she is losing her hopes of a happy future, for herself and for her child.

INTRODUCTION

Throughout New York City there are many girls, like Emily, who are denied access to public education because they are pregnant or have children.[5] Pregnant and parenting students are routinely subjected to hostile and punitive treatment in mainstream public schools,[6] resulting in their educational disenfranchisement.[7] In a

3. "[T]he New York Civil Liberties Union receives numerous complaints of pregnant students who are 'eased out,' 'counseled out,' or simply pushed out of school." Letter from Norman Siegal, Executive Director, New York Civil Liberties Union and Donna Lieberman, Director, Reproductive Rights Project, to Harold Levy, New York City Education Chancellor (Aug. 3, 2000), *at* http://www.nyclu.org/rrp_chancellor1.html (last visited July 7, 2002).

4. Emily is a pseudonym for a pregnant teenager in New York City. The following narrative is based upon her real life experiences.

5. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

6. Throughout this Comment, the terms "mainstream schools" and "mainstream school system" refer to general education programs administered by the New York City Board of Education.

7. "[H]ostility, harassment and outright discrimination are discouraging girls from staying in school when they are pregnant or parenting . . . ." New York Civil Liberties Union, *NYCLU Gives Schools Chancellor Levy an "F" for failing to Stop*

recent survey of pregnant and parenting teenagers in the New York City foster care system, forty percent stated that they dropped out of school while pregnant,[8] and twenty-two percent stated that they were "forced to change schools" due to their pregnancies.[9]

This discrimination against pregnant and parenting students persists despite the legal protection provided by Title IX of the Education Amendments, enacted by Congress in 1972, ("Title IX") which guarantees educational equality for all students, regardless of pregnancy or parental status.[10] Decades of empirical evidence demonstrating the critical link between educational attainment and positive outcomes for teenage mothers and their children have also failed to compel mainstream schools to accommodate pregnant and parenting students.[11] Instead, pregnant and parenting students are either driven out of the education system entirely,[12] or pushed into separate pregnancy school programs.[13]

P-911 is one of New York City's five pregnancy schools,[14] or "P-Schools,"[15] dedicated exclusively to serving pregnant and parenting students.[16] Begun in the late 1960s as an effort to counter the high risk of school drop out among pregnant and parenting adolescents,[17] pregnancy schools seek to provide educational and social

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Discrimination Against Pregnant and Parenting Girls Who Are Trying to Stay in School, at http://www.nyclu.org/boe032702.html (Mar. 23, 2002).

8. ADVOCATES FOR CHILDREN, EDUCATIONAL NEGLECT: THE DELIVERY OF EDUCATIONAL SERVICES TO CHILDREN IN NEW YORK CITY'S FOSTER CARE SYSTEM 6 (2000).

9. *Id.* at 41.

10. Education Amendments of 1972, §§ 901-902, 20 U.S.C. § 1681 (1972).

11. "Studies have shown that the best indicator for long-term success of teen parents and their children is the educational achievement of the parent." THE CITY-WIDE TASK FORCE ON PREGNANT AND PARENTING ADOLESCENTS & CITY COUNCIL MEMBERS, TEENAGE CHILDBEARING IN NEW YORK CITY: THE CRISIS CONTINUES 11 (1995) [hereinafter CITY-WIDE TASK FORCE].

12. An environment has been created "where pregnant and parenting students are pushed out of New York City public schools." Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

13. "Often the only open door [for pregnant and parenting students] is in a P-school." *Id.*

14. In New York City, schools for pregnant and parenting students are known informally as "pregnancy schools." Interview with Joan Davis, *supra* note 2. Throughout this Comment, the term "pregnancy schools" refers to school programs specifically designed for pregnant and parenting students.

15. Each school for pregnant and parenting students is denoted by a "P" followed by the school number. *Id.*

16. *Id.*

17. DANIEL SCHREIBER & RUBY J. DAY, SCHOOLS FOR PREGNANT GIRLS 4 (1971).

services within insulated pregnancy and mothering-centered sites.[18] Although these services are vital,[19] their provision in separate settings has permitted the mainstream school system to continue to disregard its responsibilities towards pregnant and parenting students.

This Comment examines the educational environment facing pregnant and parenting students in New York City and argues that positive integration, rather than separation, of pregnant and parenting students and their needs into the mainstream school system is critical to achieving educational equality. Part I provides a historical account of the exclusion of pregnant students from public schools until the late 1960s. Part II discusses the social and legal changes that led to the creation of pregnancy schools and the recognition of the educational rights of pregnant students. These reforms culminated in the passage of Title IX, which affirmed the rights of pregnant students to remain in school and established requirements for separate pregnancy schools. Part III analyzes the educational program provided by pregnancy schools under the comparability requirements of Title IX. Part IV examines enrollment in pregnancy school programs under the voluntariness requirements of Title IX. Part V describes the pervasive discrimination facing pregnant and parenting students in mainstream schools. Part VI demonstrates how the separation of pregnant and parenting students from the general school population isolates and marginalizes them. Finally, Part VII proposes altering the institutional structure of mainstream schools to achieve substantive equality and to empower pregnant and parenting girls through education.

I. EXCLUSION

Until 1968, pregnant students in New York City's public schools were required to drop out of school once their pregnancies became known or apparent to school officials.[20] This "known or shows" dismissal policy was not unique to the New York City school system.[21] Until the late 1960s, more than two-thirds of the school dis-

18. The five family centers in New York City are administered by the Program for Pregnant and Parenting Services within District 79 (alternative high schools). Interview with Joan Davis, *supra* note 2.

19. *Id.*

20. SCHREIBER & DAY, *supra* note 17, at 11.

21. KRISTEN LUKER, DUBIOUS CONCEPTIONS 62 (1996) (citing a 1968 Children's Bureau survey).

tricts throughout the country maintained formal policies expelling pregnant students from school.[22] These expulsion policies were justified on the grounds that pregnant students required medical and emotional protection from school settings, and that their presence would be harmful to other students.[23]

The medical protection rationale cited the dangers of climbing stairs, carrying books and maintaining full academic course schedules to the health of pregnant students.[24] This reasoning was unsubstantiated by medical facts, because most pregnant women are able to sustain full activity throughout their pregnancies.[25] Rather, it served as a "cover up for puritanical moral judgments."[26]

The educational exclusion of pregnant students was rooted in a condemnation of adolescent, and most likely premarital, sexual activity.[27] Pregnant students were considered harmful to other students under the theory that "one bad apple spoils the bushel of apples."[28] Therefore, they were cast out of school to prevent the "contamination" of other girls.[29] School administrators feared that the mere sight of a pregnant girl in the classroom would influence other girls to follow her example and become pregnant themselves.[30]

Schools were seen as sterile environments, removed from the unseemly realities of the outside world.[31] Students were seen as inno-

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22. *Id.*

23. A caption of a cartoon, published in 1971, depicting commonly accepted reasons for excluding pregnant students from school stated, "If you let them stay in regular school, they might get bumped in the halls, or other students might be unkind to them, or the other girls might realize that babies grow inside people and run out and start them." CHARLES H. HARRISON, SCHOOLGIRL PREGNANCY: OLD PROBLEM; NEW SOLUTIONS 24 (1972) (citing a cartoon published by the Cyesis Programs Consortium). *See also* HOWARD J. OSOFSKY, THE PREGNANT TEEN-AGER: A MEDICAL, EDUCATIONAL AND SOCIAL ANALYSIS 64-65 (1968).

24. The advocates for the medical protection rationale did not, however, cite these concerns regarding pregnant students in separate pregnancy schools. HARRISON, *supra* note 23, at 23 (citing a report by the Atlanta Pregnancy Program about justifications for excluding pregnant students from regular schools).

25. "Most physicians allow patients full activity and employment opportunity throughout a pregnancy, unless complications supervene." OSOFSKY, *supra* note 23, at 64.

26. *Id.*

27. SCHREIBER & DAY, *supra* note 17, at 2.

28. OSOFSKY, *supra* note 23, at 65.

29. LUKER, *supra* note 21, at 96 (quoting *The Case of the Pregnant School Girls*, READER'S DIG., Sept. 1970); SCHREIBER & DAY, *supra* note 17, at 2.

30. SCHREIBER & DAY, *supra* note 17, at 2.

31. Until the mid-1970s, even visibly pregnant married teachers were formally forbidden to enter school grounds, "lest their swelling bellies cross that invisible bound-

cent children, to be protected from those realities.[32] Pregnant girls were seen as "pushers of immorality among other students,"[33] and schools refused to tolerate their presence.[34]

A pregnant, unmarried girl was branded as a "criminal and her pregnancy a crime for which she must assume feelings of guilt."[35] It was feared that if a pregnant girl was permitted to remain in school, the school would appear to condone her conduct, and thus appear to condone premarital sex.[36] Instead, schools insisted upon teaching pregnant students "an object lesson in the wages of sin" through educational banishment.[37]

This lesson was meted out solely upon girls, rather than upon female and male partners alike.[38] Boys who engaged in premarital sex resulting in pregnancy did not face expulsion or any other consequences for their actions.[39] The lack of commensurate measures against male students reflected the disparity between traditional attitudes towards male and female adolescent sexuality.[40] While adolescent male sexuality was permissively accepted, adolescent female sexuality was repressively denied — a double standard that has persisted to the present.[41] Accordingly, the physical mark of

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ary separating the real world (where sex and pregnancy existed) from the schools (where they did not)." LUKER, *supra* note 21, at 2.

32. Schools were "where the minds of innocent children could be corrupted." *Id.* The exclusion of pregnant students served "to shield the school pupulation [sic] from the sexual facts of life." SCHREIBER & DAY, *supra* note 17, at 2.

33. HARRISON, *supra* note 23, at 6.

34. According to commentators in the early 1970s, the policy of excluding pregnant students from school "implies that school-age marriage and pregnancy are evil and insists the school will not see the evil, not hear about it, and not speak about it." *Id.* at 4.

35. *Id.*

36. According to the school principal, the pregnancy expulsion policy in a school district in Massachusetts was originally drafted due to the "desire on the part of the school committee not to appear to condone conduct on the part of unmarried students of a nature to cause pregnancy." HARRISON, *supra* note 23, at 24 (citing Ordway v. Hardgraves, 323 F.Supp. 1155 (D.Mass. 1971)).

37. "Traditionally, U.S. public schools have felt that a pregnant girl should be expelled . . . as an object lesson in the wages of sin." LUKER, *supra* note 21, at 96 (quoting *The Case of the Pregnant School Girl*, READER'S DIGEST, Sept. 1970).

38. *Id.* at 62.

39. Male students "were rarely if ever expelled from school after getting married or after impregnating a young woman." *Id.*

40. *Id.*

41. *See, e.g.*, Cazares v. Barber, No. 90-0128, slip op. (D. Ariz. 1990). Plaintiff, who was academically qualified for membership in the National Honor Society ("NHS"), was rejected because "she was pregnant, unmarried and not living with the father of the child." *Id.* The court noted that a male student who fathered a child, but was not married to the child's mother, was accepted as a candidate for the school's NHS chapter. *Id.* (cited in Thomas A. Schweitzer, *'A' Students Go to Court: Is Mem-*

pregnancy made girls easy targets for denouncement, while boys remained unscathed.[42]

The emotional protection rationale reflected the internalization, by girls themselves, of the social stigma associated with teenage pregnancy.[43] Many girls were made to believe that their pregnancies made them "dirty or cheap."[44] These feelings often led to drastic efforts to disguise or end their conditions, creating grievous danger to themselves and their unborn children.[45] To shield them from harsh external judgments and concomitant internal negativity, pregnant students were excluded from schools.[46]

II. THE END OF EXCLUSION AND THE BEGINNING OF PREGNANCY SCHOOLS

In the late 1960s and early 1970s, school districts throughout the country began to move away from excluding pregnant students from school and towards enabling them to continue their educations.[47] Growing awareness of the connection between denial of educational services and negative outcomes for teenage mothers and their children, as well as changing public perceptions of pregnant teenagers, created the impetus for schools to develop schools specifically for pregnant students.[48] Increased legal enforcement of pregnant student's rights to equal educational opportunities began with civil litigation in the courts and culminated in the passage of Title IX, which guaranteed access to public schools for pregnant students.[49]

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bership in the National Honor Society a Cognizable Legal Right?, 50 SYRACUSE L. REV. 63, 77 (2000)).

42. LUKER, *supra* note 21, at 68.

43. As one young woman wrote in 1968, "I'm a teenager who has made a big mistake. I am pregnant. I'm not proud of what I've done and I hope and pray other teenagers will read my letter, wake up, and start to lead a good, clean life." *Id.* at 96 (quoting Cosby & Logan, *Continuing Education for Unwed Mothers*, SCHOLASTIC TCHR. 15 (1968)).

44. *Id.*

45. Some pregnant girls "pretended to gain weight and even to have menstrual periods, in order to hide [their] real conditions[,]" others attempted suicide. *Id.*

46. HARRISON, *supra* note 23, at 25.

47. For example, an educational committee in Illinois made the following statement in the early 1970s, "The trend is definitely towards assisting pregnant students to continue with their education. In 1940, approximately seventy percent of the high school districts denied attendance to these girls. The number denying attendance now is around the forty percent mark." *Id.* at 16.

48. *Id.*

49. 34 C.F.R. § 106.40 (2002). "Court decisions, revised state policies, and changing attitudes of people of all ages are putting more and more pressure on local school

A. Social Construction of the Pregnant Teenager

In a 1955-59 study, the New York City Bureau of Attendance found the highest rates of pregnancy and school drop out among low-income African-American teenage girls.[50] The study also found that the majority of these students were performing below expected academic levels, and approximately half of them had prior histories of truancy and negative attitudes towards school.[51] Consequently, a profile of pregnant teenagers as poor, African-American, and at high risk for academic failure, began to emerge.[52]

Forced withdrawal from school only reinforced extant feelings of educational disenfranchisement and pushed already "under-achieving" students further behind academically.[53] By alienating pregnant girls from the educational process, pregnancy expulsions virtually insured that they would never return to school.[54] These findings fueled growing concerns regarding the connection between adolescent pregnancy and truncated education, which in turn, jeopardized the future prospects of teenage mothers and their children.[55]

In the late 1960s and early 1970s, teenage pregnancy and childbirth became widely regarded as the catalysts for "dismal future[s] of unemployment, poverty, family breakdown, emotional stress, dependency on public agencies and health problems of mother and child."[56] Research statistics indicated that for the majority of girls, childbirth during adolescence began a cycle of poverty and dependency upon public welfare for themselves and their children.[57] The children of teenage mothers not only faced dauntingly high risks of

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boards and administrators to come up with new policies that offer expectant students something better than banishment from education." HARRISON, *supra* note 23, at 1.

50. The study involved 259 pregnant students and found that 68.5% were African-American, 17% were Latina, and 11.2% were Caucasian. SCHREIBER & DAY, *supra* note 17, at 3.

51. OSOFSKY, *supra* note 23, at 69 (citing J. Pakter et. al, *Out-of-Wedlock Births in New York City II: Medical Aspects*, 51 AM. J. PUB. HEALTH 846 (1961) (including data from the New York City Bureau of Attendance regarding IQ scores of study participants)).

52. *Id.*

53. *Id.* at 75.

54. *Id.*

55. LUKER, *supra* note 21, at 62.

56. *Id.* at 73 (quoting Joseph Califano, Secretary, U.S. Department of Health, Education, and Welfare, 94 CONG. REC. 20,410-20,413 (1976) (bound edition)).

57. Over half of the women on public assistance gave birth to their first child in adolescence. The families of these young mothers were seven times more likely than other families to live, and remain living, below the poverty line. NANCY COMPTON ET AL., HOW SCHOOLS CAN HELP COMBAT STUDENT PREGNANCY 18-19 (1986).

infant mortality and illness, they were also highly likely to develop emotional and social problems that led to academic failure.[58] As a result, teenage pregnancy was cast in the public consciousness as, "one of the most serious and complex issues facing the nation."[59]

Ironically, this attention upon teenage pregnancy and parenthood came during a time when birth rates among adolescents were actually declining.[60] The 1950s were the years in which childbirth among adolescents hit its peak — teenagers were having twice as many children as they had in the decades before.[61] The increased focus had much to do with increases in premarital sex,[62] and out-of-wedlock births.[63] In the 1950s, almost all teen mothers were married by the time their babies were delivered, where as in 1970, approximately thirty-three percent of births to teenage mothers were out-of-wedlock.[64]

B. The Development of Special Programs for Pregnant Students

The rising political and social clamor over the issue of teenage pregnancy placed school policies towards pregnant students under increased scrutiny.[65] In response, many school districts, including New York City, created alternative school programs specifically for pregnant girls.[66] This separation of pregnant students from the rest of the school population satisfied both the traditional perspective, which remained hostile to the presence of pregnant students in mainstream schools, and a newer social perspective, which viewed pregnancy as a trauma and pregnant teenagers as a unique population requiring a sheltered school environment.[67]

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58. *Id.* at 15-19.

59. LUKER, *supra* note 21, at 73.

60. *Id.* at 11.

61. *Id.* at 8.

62. A survey conducted in the mid-1970s showed that approximately forty percent of unmarried urban adolescents were sexually active. *Id.* at 61 (citing Melvin Zelnik & John Kantner, *Sexual and Contraceptive Experience of Young Unmarried Women in the United States, 1971 and 1976*, 9 FAM. PLAN. PERSP. 55-71 (1977)).

63. In 1960, only fifteen percent of births to teenagers were out of wedlock. *Id.* In 1970, that number doubled to nearly thirty-three percent. *Id.* at 67.

64. *Id.*

65. HARRISON, *supra* note 23, at 1.

66. *Id.* at 27 (Special programs for pregnant girls only . . . are gaining in favor.); *see also id.* at 15-19, 27-31, 38-52 (describing pregnancy programs in a number of school districts throughout the United States).

67. GAIL L. ZELLMAN, A TITLE IX PERSPECTIVE ON THE SCHOOLS' RESPONSE TO TEENAGE PREGNANCY AND PARENTHOOD 8 (1981).

As adolescents, pregnant girls were considered physically and emotionally unprepared for pregnancy and child rearing.[68] As unmarried teenagers, pregnant girls were considered in need of protection from harsh social judgments.[69] As poor, African-American teenagers, pregnant girls were considered to be at risk of educational failure.[70] By focusing solely on pregnant students, separate pregnancy school settings attempted to address the myriad of emotional, health, and academic issues facing pregnant girls.[71]

In September 1967, the Martha Neilson School, New York City's first "school for pregnant girls,"[72] was established in the Bronx.[73] By July 1970, there were six pregnancy schools throughout New York City.[74] These schools were designed to "change in a positive direction the academic profile of low achieving pregnant students," while increasing their skills "in infant care and allied homemaking areas."[75] Because pregnancy schools focused upon the condition of pregnancy as the locus of the trauma, students were only enrolled in pregnancy schools for the duration of their pregnancies.[76] After delivery, they were expected to return to their regular home schools or transfer to other high schools.[77]

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68. OSOFSKY, *supra* note 23, at 13-15.

69. A community action specialist at the National Invitational Conference on Parenthood in Adolescence stated: "One of the reasons generally given for establishing separate schools or centers for the [pregnant] girl, instead of allowing her to remain in her own school environment, is that we need to protect the girl from harmful attitudes of society." HARRISON, *supra* note 23, at 25 (citing Consortium on Early Childbearing and Childrearing, *Sharing Supplement: A Report on National Invitational Conference on Parenthood in Adolescence*, (1970)).

70. OSOFSKY, *supra* note 23, at 68-69.

71. "The unique services required by expectant students can best be provided in a centralized location." HARRISON, *supra* note 23, at 27.

72. New York City's school programs for pregnant students were known as "schools for pregnant girls," as indicated by the title, "Schools for Pregnant Girls in New York City," of a paper presented in February 1971 to the American Association of Schools Administrators by Daniel Schreiber, Assistant Superintendent, and Ruby J. Day, Coordinator, New York City Board of Education. SCHREIBER & DAY, *supra* note 17, at 1.

73. CITIZENS COMM. FOR CHILDREN OF N.Y., INC. & THE FRANKLIN AND ELEANOR ROOSEVELT INST., FOR A BETTER LYFE, 17-18 (1990); SCHREIBER & DAY, *supra* note 17, at 3.

74. SCHREIBER & DAY, *supra* note 17, at 3.

75. *Id.* at 4-5 (listing pregnancy school objectives for 1970-71).

76. After delivery, students were unable to remain enrolled in the pregnancy schools, which were only intended to serve them for the term of their pregnancy. CITY-WIDE TASK FORCE, *supra* note 11, at 11.

77. HARRISON, *supra* note 23, at 51 (describing the New York City Program in 1972); SCHREIBER & DAY, *supra* note 17, at 6.

Separate from the mainstream schools, pregnancy schools were "multi-disciplined including a regular secondary school curriculum with provision for special health and counseling needs."[78] For "low-achieving pregnant students," pregnancy schools focused on improving educational outcomes, developing marketable job skills, providing parenting and homemaking skills instruction and providing access to health and social welfare services.[79]

Academically, pregnancy schools offered classes in the basic academic subjects of English, mathematics, social studies, and science.[80] Vocational instruction in business education and home economics was also provided.[81] Licensed teachers taught small classes, grouped according to grade level.[82] Within classes, individualized instruction and flexibility were emphasized because students attended the program at irregular intervals during the year and often had varying educational needs within the same grade level.[83]

Students accessed social and medical services through the help of on-site guidance counselors and social workers.[84] Pregnancy schools maintained close associations with community agencies in order to provide students with prenatal medical care, emotional counseling, and assistance with public benefits.[85] However, these services were made available to expectant mothers only.[86] In fact, school policies did not make any provisions for expectant fathers.[87] Fathers were able to access minimal services only through casual contact with the pregnancy schools.[88]

The pregnancy school program quickly met with success.[89] In 1969-70, two years after its inception, sixty students graduated from high school, forty-eight of whom continued on to higher education.[90]

78. SCHREIBER & DAY, *supra* note 17, at 6.
79. *Id.* at 4-5.
80. *Id.* at 5.
81. *Id.*
82. *Id.* at 4.
83. *Id.*
84. *Id.* at 5-6.
85. *Id.* at 6.
86. HARRISON, *supra* note 23, at 51.
87. *Id.*
88. *Id.*
89. SCHREIBER & DAY, *supra* note 17, at 8.
90. *Id.*

C. The Right to Public Education

In September 1968, the New York City Board of Education officially reversed its policy of exclusion towards pregnant students, acknowledging that its "responsibility for the education of all school age children includes the pregnant teenager."[91] Thereafter, New York City public schools were prohibited from expelling students on the basis of pregnancy, and pregnant students were given the opportunity to continue their education by attending their regular schools.[92] The fact that this reversal did not occur until a full year after the establishment of the pregnancy program indicated the strength of the Board of Education's preference for separating pregnant students from the rest of the school population.

1. *Legal Challenges to Exclusion*

Civil litigation brought against school districts by students expelled under pregnancy exclusion policies provided schools with significant incentives for reform.[93] The most notable of these cases was *Ordway v. Hargraves*.[94] In 1971, after being expelled because of her pregnancy, Fay Ordway brought suit against her high school to challenge the practice of pregnancy expulsions.[95] She argued, "I couldn't see that my being married or not being married had anything to do with my education — everyone needs an education. So I decided to fight for mine."[96] The Massachusetts District Court agreed, holding that pregnancy was not a legitimate reason for Ordway to be denied her right to public education.[97] The district court's decision was reinforced by the United States Department of Justice, which notified state education departments that the "termination of school attendance by reason of pregnancy of a pupil is a violation of the pupil's constitutional right to public education."[98]

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91. *Id.* at 3 (quoting N.Y. City Bd. of Educ., Special Circular No. 10 (1968)).

92. *Id.* at 3-4.

93. Civil litigation challenging pregnancy expulsions prompted schools in Massachusetts and Missouri to review their regulations concerning pregnant students. HARRISON, *supra* note 23, at 15-18.

94. Ordway v. Hargraves, 323 F. Supp. 1155 (D. Mass. 1971); *see also* Houston v. Prosser, 361 F. Supp. 295 (N.D. Ga. 1973); Shull v. Columbus Mun. Separate Sch. Dist., 338 F. Supp. 1376 (N.D. Miss. 1972); Perry v. Grenada Mun. Separate Sch. Dist., 300 F. Supp. 748 (N.D. Miss. 1967).

95. *Ordway*, 323 F. Supp. at 1155 .

96. LUKER, *supra* note 21, at 98 (quoting Fay Ordway).

97. *Ordway*, 323 F.Supp. at 1155.

98. A memorandum issued by the Pennsylvania Secretary of Education in 1971 advised school districts that the exclusion of pregnant students from school would be

2. *Title IX*

Student pregnancy and parenthood became school concerns under federal law with the enactment of Title IX of the Education Amendments in 1972.[99] Title IX, a product of the civil rights and feminist movements of the late 1950s to early 1970s,[100] prohibits federally funded schools from discriminating against students on the basis of sex.[101] For female students generally, Title IX removes sex-based barriers to educational resources, including academic and athletic opportunities.[102] For pregnant students specifically, Title IX opens school doors that were once locked by explicitly establishing their right not only to remain in school, but also to be treated as equal to their non-pregnant peers.[103]

Title IX's regulations regarding student pregnancy and parenthood state, "A recipient [of federal funding] shall not discriminate against any student, or exclude any student from its educational program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom . . . ."[104]

Title IX not only codifies the reversal of policies excluding and discriminating against pregnant students, it also establishes requirements for separate pregnancy school programs.[105] The regulations regarding separate pregnancy programs state:

> A recipient [of federal funds] which operates a portion of its educational program or activity separately for pregnant students, admittance to which is completely voluntary on the part

considered a constitutional violation by the Department of Justice. HARRISON, *supra* note 23, at 14.

99. Education Amendments of 1972, §§ 901-902; 20 U.S.C. § 1681 (1972). The bill, passed by Congress on June 8, 1972, was signed into law by former President Richard Nixon on June 23, 1972, and became effective on July 1, 1972. Iram Valentine, *Title IX: A Brief History*, WEEA DIG. 2 (1997).

100. Valentine, *supra* note 99, at 3 (describing the origins and effects of Title IX).

101. "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational programs or activity receiving federal financial assistance." 20 U.S.C. § 1681.

102. *Id.* Conflict over the interpretation of Title IX's regulations concerning school sports eclipsed other aspects of the statute, including the language regarding pregnant and parenting students. ZELLMAN, *supra* note 67, at 1. Indeed, the furor over perceived threats to college football and other competitive, male-dominated sports has led many people to believe that Title IX is exclusively concerned with sports. *Id.*

103. 34 C.F.R. § 106.40 (2002).

104. *Id.*

105. *Id.* § 106.40(b)(3).

> of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.[106]

Paragraph (b)(1) of that section states that, "A recipient shall not discriminate against any student, or exclude any student from its education program or activity . . . unless the student requests voluntarily to participate in a separate portion of the program or activity or the recipient."[107]

Thus, under Title IX, separate pregnancy school programs must be "completely voluntary on the part of the student" and "comparable" to the programs provided to non-pregnant students.[108]

III. COMPARABILITY OF NEW YORK CITY'S PREGNANCY SCHOOLS UNDER TITLE IX

A. The Standard of Comparability

Title IX mandates that separate pregnancy school programs must be comparable to mainstream school programs.[109] Unfortunately, the regulations do not explicitly set forth the criteria for determining comparability and there has been no case law directly on point.[110] Generally, as established through determinations made in the context of equal athletic opportunity, Title IX requires comparability of the "availability, quality, and kinds of benefits, opportunities, and treatment afforded."[111] Title IX does not require that these benefits and opportunities be identical, but does require that they be generally equivalent.[112]

The Office for Civil Rights ("OCR") in the Department of Education, the federal agency responsible for the enforcement of Title IX, has performed compliance reviews of pregnancy school programs in order to determine comparability.[113] However, the OCR's review criteria are extremely limited in scope.[114] In comparing pregnancy programs with mainstream programs, the OCR has examined whether the academic instruction, including required

106. *Id.*
107. *Id.* § 106.40(b)(1).
108. *Id.* §§ 106.40(b)(1), (b)(3).
109. *Id.* § 106.40(b)(3).
110. Deborah Brake, *Legal Challenges to the Educational Barriers Facing Pregnant and Parenting Adolescents*, CLEARINGHOUSE REV. 141, 147-50 (1994).
111. This standard is derived from guidelines for school athletics under Title IX. *Id.* at 149 (citing 34 C.F.R. § 106.41 (2002)).
112. *Id.*
113. *Id.*
114. *Id.*

courses, is "parallel," whether the same number of credits is granted for course completion and whether courses are taught by qualified instructors.[115]

A more comprehensive analysis may be gleaned from constitutional review of separate educational programs under the Equal Protection Clause of the Fourteenth Amendment.[116] In *Newberg v. Board of Public Education*, the Pennsylvania Court of Common Pleas found that the operation of "separate but equal" sex-segregated magnet schools violated the Equal Protection Clause.[117] In making its determination, the court compared factors including the following: course offerings, extracurricular activities, types of degree available, class size, teaching qualifications, academic and recreational facilities, library resources, availability of computers and other equipment, student performance, average per student expenditures, and school reputations.[118]

B. Comparing Pregnancy Schools to Mainstream Schools in New York City

1. *New York City's Family Centers*

Now officially labeled "family centers," rather than "schools for pregnant girls," New York City's five pregnancy schools are administered under the Board of Education's Program for Pregnant and Parenting Services.[119] Each pregnancy school enrolls approximately 150-200 students and they are located throughout New York City.[120]

Initially, New York City's pregnancy schools were intended to serve pregnant students only for the term of their pregnancies.[121] Over time, these schools have expanded their functions to serve students during pregnancy and after childbirth.[122] Typically, students remain in pregnancy schools for a period of eighteen months,

115. *See, e.g.*, Richmond City Pub. Sch., 19 INDIVIDUALS WITH DISABILITIES EDUC. L. REP. 440 (1992).

116. Brake, *supra* note 110, at 149-50.

117. Newberg v. Bd. of Pub. Ed., 20 Pa. D. & C.3d 682 (Ct. Comm. Pl. 1983).

118. *Id.*

119. Interview with Joan Davis, *supra* note 2.

120. New York City's pregnancy schools are located in Manhattan, the Bronx, Queens, and Brooklyn. *Id.*

121. CITY-WIDE TASK FORCE, *supra* note 11, at 11.

122. *Id.*

after which they are expected to return to their home schools or transfer to other schools.[123]

Approximately 200 students complete the pregnancy program and are eventually able to obtain their high school diplomas every year.[124] Many of these students go on to attend college.[125] Although funding has not been available to conduct a long-term study, former students often report successes attributed to the help they received through the pregnancy program.[126]

While the current pregnancy schools continue to provide the supportive environment and multidisciplinary approach established by the original pregnancy schools, their academic integrity has been questioned.[127] Pregnancy school advocates stress that pregnancy schools are programs, rather than diploma-granting schools.[128] As such, they are meant to provide a combination of transitional academic and pregnancy-related services rather than comprehensive, long-term academic instruction.[129] However, compliance with Title IX's mandate of comparability is not conditional upon status as a "school" — it is applicable to any "portion" of the educational program operated separately for pregnant students.[130]

Advocates also cite the difficulties of creating appropriate academic instructional programs for pregnant students since many of them have had difficulties functioning in their previous schools.[131] Echoing the profile of pregnant teenagers developed nearly four decades ago, pregnancy school students are typically uncomfortable in school settings, academically low-achieving, and truant.[132] Many are also recent immigrants to the United States.[133] However,

123. Many students transfer from pregnancy schools to other schools within the alternative school system because the alternative schools tend to be smaller than mainstream schools and offer both high school diploma and General Equivalency Degree ("GED") programs. Interview with Joan Davis, *supra* note 2.

124. This figure includes students who complete their graduation requirements at pregnancy schools and receive their diplomas from their home high schools, as well as students who complete their graduation requirements after transferring from pregnancy schools to mainstream schools. *Id.*

125. *Id.*

126. *Id.* One such success story is Mignon Callender, who was a student at P-911 in the 1980s and is now an infant and childhood teacher in the LYFE Program. Telephone Interview with Mignon Callender, Teacher, LYFE Program (Feb. 28, 2002) (discussing her experiences as a student and a teacher).

127. CITY-WIDE TASK FORCE, *supra* note 11, at 11.

128. Interview with Joan Davis, *supra* note 2.

129. *Id.*

130. 34 C.F.R. § 106.40(b)(3) (2002).

131. Interview with Joan Davis, *supra* note 2.

132. *Id.*

133. *Id.*

these characteristics are not exclusive to pregnant students — they are also exhibited by non-pregnant students for whom the Board of Education has established alternative schools.[134]

2. *Comparing P-931 and Pacific High Schools*

P-931 and Pacific High School are located just across from one another on Schermerhorn Street in Brooklyn.[135] Both are part of District 79, the superintendency for alternative schools.[136] Both serve students who have not had "positive" academic experiences in other schools.[137] Both serve relatively small numbers of students — enrollment at P-931 is approximately 150-200 students,[138] while enrollment at Pacific High School is 359.[139] As demonstrated by the following comparison between the course offerings and extracurricular activities offered at each school,[140] it is clear that even within the same alternative school district, pregnant students are not provided the same "availability, quality, and kinds of benefits and opportunities,"[141] as non-pregnant students.

P-931 offers a core curriculum of credit-bearing academic classes, including parenting skills and English as a second language.[142] The core curriculum consists of course work in the basic required subject areas of English, mathematics, social studies, science, health, music, and art.[143] Neither advanced placement courses, nor specialized academic programs are available to students.[144]

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134. The New York City Board of Education has established alternative schools targeting "drop out, at-risk, newly arrived immigrant and basic literacy" for the general school population. Richard Organisciak, Alternative High School Superintendent, New York City Board of Education, *at* http://www.nycenet.edu/dist_sch/dist/default.asp?Dist=79 (last visited July 7, 2002).

135. Interview with Joan Davis, *supra* note 2.

136. Organisciak, *supra* note 134.

137. Pacific High School, *at* http://www.nycenet.edu/hs_directory/Brooklyn/Pacific_High_School.htm (last visited July 7, 2002).

138. Interview with Joan Davis, *supra* note 2.

139. Pacific High School, *supra* note 137.

140. While it is beyond the scope of this Comment to conduct a complete evaluation of the comparability of pregnancy schools and mainstream schools in New York City, it is possible to analyze comparability in the key areas of course offerings and extracurricular activities.

141. Brake, *supra* note 110, at 149.

142. Interview with Joan Davis, Assistant Principal and Director of LYFE, New York City Board of Education, in New York, N.Y. (Mar. 15, 2002).

143. *Id.*

144. *Id.* The Pregnant and Parenting Program has been developing a "shared instruction" program which allows student from pregnancy schools to take more advanced courses at mainstream schools in neighboring areas. Interview with Joan Davis, *supra* note 2. Under Title IX, this type of shared instruction may satisfy the comparability requirement by allowing students to benefit from courses available

In contrast, beyond the core curriculum, Pacific High School offers students an advanced placement English course and an array of special academic programs including the following: College English, Honors English, Interdisciplinary Institute for Math, Science, Horticulture and Social Science, evening school, Saturday school, PSAT/SAT [Scholastic Aptitude Test] preparation, Regents Exam preparation, law, debate, model congress, mock trials, executive internships, mentoring, art history, studio art, computer technology, on-line Internet research, web page design, group intergenerational program, extended day program in video and radio production, Educational Video Center internship, and video and music production programs.[145]

At P-931, the only extracurricular activity currently available is a "Mommy and Me" program.[146] For one hour after school, one day a week, mothers play and interact with their children.[147] Even this minimal activity is not offered at any of the other four pregnancy schools.[148] As a result, pregnancy school students are not offered any opportunities to foster any interests beyond those related to their parenting status.

At Pacific High School, extracurricular activities include the following: video, audio technology and production, school-to-work, co-op, horticultural gardening, parent and student choirs, chess, Latin beat, photography, boys basketball, girls basketball, co-ed softball, step and cheerleading groups, and a student leadership program.[149]

IV. VOLUNTARINESS OF ENROLLMENT IN NEW YORK CITY'S PREGNANCY SCHOOLS UNDER TITLE IX

A. The Standard of Voluntariness

Under Title IX, enrollment in separate pregnancy programs must be completely voluntary.[150] Unfortunately, as with the requirements for comparability, the regulations do not explicitly set forth the criteria for determining voluntariness and there has been

through regular school programs. Brake, *supra* note 110, at 150. However, this shared instruction program is not available to all pregnancy school students. Interview with Joan Davis, *supra* note 2. It is currently offered only to students at P-931, who are able to take classes at Pacific High School. *Id.*

145. Pacific High School, *supra* note 137.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. 34 C.F.R. §§ 106.40(b)(1), (b)(3) (2002).

no case law directly on point.[151] However, some guidance is provided by standards of voluntariness in other legal contexts.

A voluntary confession, in the context of criminal proceedings, is only considered voluntary if given, "freely, with full knowledge of its nature and consequences" and is not obtained through, "overpersuasion, coercion, or compromise of benefit."[152] Consistently, voluntary waivers of constitutional rights must be "knowing and intelligent."[153] Applying these criteria to pregnancy schools, enrollment is only voluntary if pregnant and parenting students are fully cognizant of all the educational options available to them and their decisions are made without overpersuasion, coercion, or compromise of their educational benefits.[154]

B. Freedom of Choice

> A guidance counselor suggested I go to another school — actually, a lot of teachers suggested to me to please leave. I was kinda upset because they isolated me from everyone and my teachers did not really treat me the same as before.[155]
>
> I was immediately told to transfer to a P-School as soon as school officials found out I was pregnant. I was not given a choice to stay at my school.[156]

Under Title IX, in order for pregnancy enrollment to be voluntary, schools must explain the educational options available to pregnant students without advising them to transfer to pregnancy schools.[157] In New York City, however, many pregnant students are openly discouraged from remaining in their home schools by school officials who simply tell them to transfer to pregnancy schools, without any counseling that would provide them with information regarding their legal rights to choose or the educational options open to them.[158] If they do not immediately comply, they are ostracized by their teachers and isolated from their peers.[159]

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151. Brake, *supra* note 110, at 147.

152. *Id.* at 147-48 (citing 29 AM. JUR. 2D *Evidence* §§ 529, 531).

153. *Id.* at 148 (citing 16 AM. JUR. 2D *Const. Law* § 205).

154. *Id.*

155. Narrative based on a complaint reported to the NYCLU by a pregnant student in New York City. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

156. Narrative based on a complaint reported to the NYCLU by a pregnant student in New York City. *Id.*

157. Brake, *supra* note 110, at 148.

158. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

159. *Id.*

Thus, many pregnant students are given no choice but to transfer to pregnancy schools.[160]

Even when pregnant students are permitted to remain in mainstream schools, they are frequently given the message that they are not welcome.[161] As one school counselor asked a pregnant student, "[I]t's your legal right to stay, we can't discriminate . . . Do you want to be here or do you want to go to a school for you?"[162]

V. PUSHING PREGNANT AND PARENTING STUDENTS OUT OF NEW YORK CITY'S SCHOOLS

Title IX prohibits schools from discriminating against or excluding pregnant and parenting students.[163] However, in New York City mainstream schools, some pregnant and parenting students are ordered to leave their schools without explanation.[164] Many of the pregnant and parenting students who remain are then subjected to unequal and punitive treatment.[165]

A. The Persistence of Exclusion

> A seventh grade student is told by a school counselor that she should stay home from school because her pregnancy is distracting to other students. Not only is she told to stay at home during her pregnancy, she is also told to transfer out of her school permanently.[166]
>
> The option wasn't to stay at my school, because once you became pregnant, you had to be out.[167]

Although "pregnancy expulsions" have been outlawed, many pregnant students in New York City continue to be actively pushed out of mainstream schools.[168] Akin to the former "known or shows" policy, once their pregnancies become apparent, pregnant

160. *Id.*

161. Reproductive Rights Project, New York Civil Liberties Union, *Survey of New York City High School Admissions Practices Regarding Pregnant and Parenting Teens* (Dec. 1, 2000), *at* http://www.nyclu.org/rrp_p_survey.html (last visited July 7, 2002).

162. *Id.* (quoting a guidance counselor at John Jay High School).

163. 34 C.F.R. § 106.40 (b) (2002).

164. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

165. *Id.*

166. Narrative based upon a complaint reported to the NYCLU by a pregnant student in New York City. New York Civil Liberties Union, *supra* note 7.

167. *Id.*

168. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

students have been directly asked to leave.[169] In these cases, pregnant students are not even directed to transfer to pregnancy schools – they are simply told that they may not stay.

Despite the changes of the 1960s and 1970s, societal condemnation of teen pregnancy has survived.[170] Negative assumptions about pregnant students persist.[171] These prejudices are so accepted in school culture that one school official openly referred to pregnant students as a "freaky nuisance."[172]

The increased significance of high-stakes testing has also perpetuated active discrimination against pregnant and parenting students by teachers and school administrators.[173] Schools are under intense pressure from the Board of Education to raise standardized test scores and attendance rates. As a result, schools have created a system of "winnowing out" low-achieving students, by encouraging school drop-out.[174] Because many pregnant and parenting students are struggling academically, this practice disproportionately impacts them.[175]

B. Discrimination

Under Title IX, schools are required to provide the same accommodations for pregnancy that would be provided to students with other short-term disabilities.[176] For instance, for all pregnancy-related medical issues, pregnant students must be provided with excused absences and make-up assignments, just as they are provided to students with other health needs.[177] Home instruction services must be provided to students who cannot attend school due to

169. *Id.*

170. *Id.*

171. *Id.*

172. Reproductive Rights Project, *supra* note 161 (citing a school official at Morris High School).

173. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

174. *Id.*; Telephone Interview with Vera Thigpen, Teen Age Services Act ("TASA") Program (Jan. 10, 2002) (discussing challenges to providing educational resources to pregnant and parenting girls).

175. Letter from Norman Siegal & Donna Lieberman to Harold Levy, *supra* note 3.

176. Brake, *supra* note 110, at 145, 148-49 ("[T]he Title IX regulation prohibit[s] discrimination based on pregnancy and require[s] pregnancy to be treated the same as any other temporary disability.") (citing *Sex Discrimination Regulations, Hearings Before the Subcomm. On Postsecondary Educ. of the Comm. on Educ. & Labor*, 94 Cong. 20 (1975)).

177. *Id.* at 149.

pregnancy or childbirth on the same basis as they are provided to students who miss school for other health reasons.[178]

In New York City, however, mainstream schools have refused to provide accommodations for pregnant and parenting students that would have been made for non-pregnant or parenting students.[179] For example, a student requested that her homework be sent home during her pregnancy so that she would be able finish the semester and take her final exams.[180] Instead, she was denied the work, and informed by her teachers that she would receive failing grades in all her classes.[181]

In another case, a sixteen year old student was ordered, by an assistant principal, to sign a contract stipulating that if she failed a single course, her two month old son would be removed from the school's day care program.[182] To place similar conditions on any other services provided by the school, such as counseling or medical services, would be unheard of.[183]

C. Constructive Exclusion

Many mainstream school officials consider the prohibition of formal non-exclusion to be the only implication of Title IX regarding pregnant and parenting students.[184] Under this narrow construction, schools must do nothing more than open their doors – the structures of the schools themselves need not change.[185] Accordingly, mainstream schools often fail to make any effort to allow pregnant students to continue attending their regular programs.[186]

Consequently, discrimination and neglect by teachers and administrators continue to constructively exclude pregnant and parenting students. While formal policies state that pregnant and parenting students must not be excluded, school staff members are not given any guidance on how to actually ensure that they are included.[187] As one mainstream school official stated, "[N]obody

178. *Id.*
179. Letter from Normal Siegal & Donna Lieberman to Harold Levy, *supra* note 3.
180. *Id.*
181. *Id.*
182. A recent complaint from Tiffany Flores, a student at John Jay High School in Brooklyn. New York Civil Liberties Union, *supra* note 7.
183. *Id.*
184. ZELLMAN, *supra* note 67, at vii.
185. *Id.*
186. *Id.*
187. New York Civil Liberties Union, *supra* note 7.

tries to help you, especially here."[188] Any help for pregnant students who remained in the mainstream program would depend upon the willingness of individual staff members to offer it.[189] Given the Board of Education's failure to address the hostile treatment perpetuated against pregnant and parenting students on a regular basis,[190] there is no administrative pressure on staff to accommodate pregnant students, or even an expectation that they will.[191]

VI. MARGINALIZATION THROUGH SEPARATION

Although pregnancy schools offer many pragmatic benefits, the separation of pregnant and parenting students from the general school population furthers their marginalization in society. Pregnant and parenting girls must simultaneously bear the weight of the negative characterization of their motherhood, the expectation that they alone are responsible for childrearing, and the importance of education to the production of income. Isolation in pregnancy schools reinforces the stigmatization of adolescent pregnancy, constrains girls to their roles as mothers, and handicaps their academic and social progress.

The separation of pregnant and parenting students from the rest of the student population highlights the importance of their identities as potential mothers over their identities as students. Once separated from the mainstream, pregnant and parenting students are powerless to reject their categorization by society.

The construction of alternative pregnancy and parenting-related structures as "female," specifically "pregnant female," reinforces gender role oppression[192] by constricting girls and boys to either female or male gender roles. The provision of parenting skills and pregnancy-related services exclusively in pregnancy schools informs all students, pregnant and non-pregnant alike, that motherhood is a strictly female characteristic. The cultural assumption that females should bear the ultimate responsibility for children is reinforced when only girls receive instruction and services related to pregnancy and parenting. By relating to and educating girls

188. Reproductive Rights Project, *supra* note 161 (citing comments made by a school official at Washington Irving High School).

189. ZELLMAN, *supra* note 67, at vii.

190. New York Civil Liberties Union, *supra* note 7.

191. ZELLMAN, *supra* note 67, at vii.

192. *See generally* Note, *Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression*, 110 HARV. L. REV. 1627 (1997) (discussing "gender role oppression" as permitting women only to express traditional feminine qualities).

solely with regard to their reproductive status, pregnancy schools maternalize them, constraining them to socially constructed maternal roles.[193]

This maternalization isolates pregnant girls and encourages their male partners to abdicate responsibility. By neglecting to include future fathers in parenting skills and other related instruction, pregnancy schools perpetuate the perception that pregnancy and childrearing are strictly female concerns. Society decries the lack of responsibility taken on by fathers; yet, through female-only pregnancy schools, it supports male dereliction of duty by locating all responsibility for children with mothers. Indeed, the failure to include all students, female and male, pregnant and non-pregnant, in pregnancy and parenting related services reinforces the patriarchal imperator of motherhood upon females, to the exclusion of males, and the ignorance surrounding adolescent sexuality.

Moreover, because the student population of pregnancy schools consists solely of pregnant girls, interactions between students do not offer the same diversity of perspectives and life experiences that are present in larger school environments. The richness of social and intellectual exchange between students of different backgrounds is lacking in the limited environment provided by separate pregnancy programs.

Finally, as a result of their limitation to pregnancy schools, the perspectives of pregnant and parenting students are missing from the general cultural dialogue, furthering their marginalization. The voices of pregnant girls are not heard by general society, allowing negative and inaccurate characterizations to fill the silence.

VII. INTEGRATION AS A SOLUTION

The achievement of equality in education requires changing the institutional structure of the mainstream school system to include pregnant and parenting students, and to incorporate their concerns into the general curriculum. If the principles developed in pregnancy schools were applied within the more academically rigorous environment of existing mainstream schools, all students, pregnant and non-pregnant alike, would be encouraged to fulfill their educational potential.

193. The "maternalization" of women occurs when the female body becomes equated with "a body that is 'for' maternity" under institutional rules. Mary Joe Frug, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045, 1050 (1992).

Reformation requires the rejection of the long-perceived shame surrounding teenage pregnancy and the acceptance of pregnant and parenting students as equal to their non-pregnant peers. As illustrated by Martha Minow's example regarding the education of a hearing-impaired child:

> [U]nless the whole class was taught to communicate in the language of the hearing-impaired child, the norm of the hearing world would remain in place and the deaf child would be stigmatized, either for performing poorly in the 'mainstream' classroom or for needing special instruction . . . Inclusion is the goal, but it is an inclusion that changes institutional arrangements and takes the onus of difference off the deaf child.[194]

In order for pregnant and parenting girls to gain actual, rather than merely formal, equality, existing school structures must be altered to include them in the general educational program. Their pregnancy and motherhood should not serve as negative distinctions, but instead, as positive attributes to share with the rest of the school population. Their peers, both male and female, must also be instructed in prenatal health and parenting courses. Otherwise, male disregard for pregnancy and childrearing will remain in place, allowing boys and girls to continue to be ill-equipped for the responsibility of having children.

Flexibility and social services must be offered to all students, lest pregnant and parenting students be derided for failing to perform well in the mainstream classroom or for requiring special treatment. By integrating pregnant and parenting students and their issues into the basic curriculum, schools can work to combat stigma.[195] As pregnant and parenting students' concerns are incorporated into the policies and practices of mainstream schools, pregnancy and childrearing will become "constitutive of the fully human, rather than being defined as exceptions to or as distinct from the fully human."[196]

When pregnant and parenting students are accepted as part of the general school population, they will gain power over their

194. MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 96 (1999) (quoting Martha Minnow).

195. *See* Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41, 43 (1989) ("[I]ntegrating women's issues into the basic curriculum can help to overcome the societal tendency to trivialize women by ignoring them or marginalizing them with the label "special" or "different.").

196. CATHERINE MACKINNON, DIFFERENCE AND DOMINANCE: ON SEX DISCRIMINATION 44 (1984) (arguing that in order for sex equality to exist, differences between females and males must cease to matter).

destinies. Because they will be perceived and treated like other students, they will be able to take advantage of educational resources on an equal basis with all other students. Because school policies and practices will have expanded to meet their needs and address their concerns, the support systems necessary to accommodate pregnancy and parenthood within the school environment will be in place. Thus, pregnant and parenting girls will be able to determine their own educational paths and future endeavors.

Freed from the "strictures of motherhood," pregnant and parenting girls will have an equal chance to become who they want to be. The knowledge that pregnancy does not mark them as deviant from their peers will liberate all girls, pregnant and non-pregnant, by allowing them to explore the other facets of their identities. No longer silenced by their impending motherhood, they may seize the opportunity to embrace it in their own ways.

CONCLUSION

In 1971, a New York City school administrator declared:

> I firmly believe that no school system has the right to exclude a girl, whether married or unmarried, from school because she is pregnant. In fact, it has the obligation and responsibility through positive and overt action to assure that every child — every girl — has the right to full and equal educational opportunities. To do less than this is to cheat them of their birthright.[197]

More than thirty years later, pregnant and parenting students in New York City are still being cheated of their rights to equal educational opportunity. The New York City public school system must begin to fulfill its responsibilities to educate all of its students, regardless of pregnancy or parenthood. Mainstream public schools have been allowed to make pregnant students disappear for far too long. Pregnant students must no longer be forced to choose between being hidden away in pregnancy schools and abandoning their educational ambitions altogether. Now is the time to rescue the dreams that pregnant and parenting girls, like Emily, fear are lost.

197. SCHREIBER & DAY, *supra* note 17, at 11.