



ST. MARY'S
UNIVERSITY

The Scholar: St. Mary's Law Review on Race
and Social Justice

Volume 9 | Number 1

Article 6

10-1-2006

A Pregnant Teenager's Right to Education in Texas.

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A PREGNANT TEENAGER'S RIGHT TO EDUCATION IN TEXAS

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PROLOGUE

It is a hot August day in McAllen, Texas. Sherry, a mother of five, tells her story. Sherry first became pregnant when she was in junior high. She dropped out of high school, but returned when she was twenty-one years

* St. Mary's University School of Law, Candidate for J.D., May 2007; University of Texas at Austin, B.A. Government, May 2004. First and foremost, I want to thank my parents, Kenny and Mary Hausenfluck, for always believing in me and supporting me in every aspect of my life. I am incredibly lucky to have such loving parents. I'd also like to thank my older sister, K.D. Hausenfluck, for being a great role model and my best friend. Special thanks to Lauren Coppola, Bo Joseph, Angus Lupton, Mandee Willey, and Louisa Willson for bearing with me during the research and writing process. Thanks too to Jennifer Selling for all her help with this project. Thanks to Shelia Cheaney for not only giving me this topic, but for all her years of public service. Shelia, I'm honored to call you my friend. And finally, to all the others who touched my life during the summer of 2005; thanks to each of you for helping me become an individual.

old. Instead of being commended for returning to school, Sherry was forced to attend a school for pregnant mothers. She recalls that the babies' fathers were given the option of attending the alternative school, but the mothers were forced to leave their original high schools. "I was okay with going to the [alternative] school because they taught us how to be mothers,"¹ Sherry said.

Sherry's oldest daughter, Megan,² also became pregnant in high school. The school gave her daughter the option of transferring to the alternative school; however, Sherry was afraid to send her daughter to the alternative school because the pregnant students were inter-mixed with the "delinquent" students.³ Sherry was terrified her daughter would make friends with gang members, or worse, that the gang members may harm her daughter or her daughter's baby. In the end, Megan stayed in regular high school until her baby was born and then took two classes at the alternative school.

Sherry's second child, Cathy,⁴ also became pregnant when she was in high school. When it came time to decide what school Cathy should attend, Sherry decided to pay \$800 and send Cathy to a school only for pregnant mothers in another school district.⁵ Sherry hoped that through an alternative education program, her daughter would learn how to be a mother, benefiting Cathy and her child in the long run. Instead, the alternative school did not provide the education for which she hoped. Sherry explained, "[a]ll the classes [were] self-paced and it [was] hard to get those [pregnant] girls to do their school work."⁶

Sherry contends, Megan is more prepared in life because she attended regular high school.⁷ Megan has taken college classes and maintains a steady job. Cathy, on the other hand, is not prepared to attend college.

1. Interview with Sherry Rodriguez, in McAllen, Tex. (Aug. 16, 2005) (on file with The Scholar: St. Mary's Law Review on Minority Issues) (detailing her account as a pregnant teenager).

2. Megan is a pseudonym for Sherry's daughter.

3. Interview with Sherry Rodriguez, *supra* note 1 (on file with The Scholar: St. Mary's Law Review on Minority Issues) (explaining the alternative education program was housed at Options in Education High School, now Lamar Academy). When Megan was in high school, all students who violated a school code or the law were transferred to Options High School. *Id.*

4. Cathy is a pseudonym for Sherry's second daughter.

5. See Teen Age Parenting Program, <http://www.psj.k12.tx.us/high.htm> (last visited Oct. 20, 2006) (explaining that the Teen Age Parenting Program (TAPP) is an alternative school in Pharr, Texas). TAPP is a school of choice and was established to provide pregnant or parenting mothers between grades 7–12 a quality education. *Id.*

6. Interview with Sherry Rodriguez, *supra* note 1 (implying that Cathy needed more structure in her school atmosphere).

7. Throughout this comment, the terms "regular high school" and "mainstream education" refer to the state of Texas' general education programs.

Sherry believes that it is important a pregnant teenager receives a good education because that teenager is responsible for her baby.⁸

I. INTRODUCTION

*"We have no greater public priority than to ensure our children can succeed because of a quality education."*⁹

It is a tough time to be a teenager in Texas. It is an even tougher time to be a pregnant teenager in Texas. The high rate of pregnancies among today's teenagers makes stories like Sherry's typical in Texas schools.

Since 1995, Texas has been an abstinence-only state.¹⁰ Schools in Texas are not required to teach sex education,¹¹ but if one chooses to do so, it "must present abstinence from sexual activity as the preferred choice of behavior . . . for unmarried persons of school age."¹² Textbooks used in health classes "deliberately omit information about contraception, birth control, family planning, abortion, sexual intimacy, [and] different sexualities"¹³ because "abstinence from sexual activity . . . is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus [HIV] or acquired immune deficiency syndrome [AIDS], and the emotional trauma associated with adolescent sexual activity."¹⁴

The problem with abstinence-only education in Texas is that teenagers are still having sex. A recent report shows 46% of high school females and 57% of high school males in Texas admit to having sex.¹⁵ Because Texas does not require sex education to be taught in its schools, teenagers

8. Interview with Sherry Rodriguez, *supra* note 1.

9. Rick Perry, Governor, State of Tex., Speech (June 18, 2005), available at http://www.governor.state.tx.us/divisions/press/speeches/speech_061805.

10. See TEX. EDUC. CODE ANN. § 28.004(e) (Vernon 2006) (establishing the law regarding human sexuality instruction in Texas schools). The section directs that any course materials and instruction relating to human sexual activity should emphasize abstinence. *Id.*

11. See National Association of State Boards of Education, *Texas State-Level School Health Policies*, <http://www.nasbe.org/HealthySchools/States/Texas.pdf> (last visited Oct. 20, 2006) (explaining that education in HIV, STD, and pregnancy prevention are not required in Texas' schools).

12. TEX. EDUC. CODE ANN. § 28.004(e)(1) (Vernon 2006).

13. Steven Schafersman, *Health Education Textbook Adoption*, July 14, 2004, <http://www.texscience.org/health/tcs-oral-testimony.doc>.

14. TEX. EDUC. CODE ANN. § 28.004(e)(3) (Vernon 2006).

15. See Katie Turner, *Contraception Could Slow Soaring Birth Rate*, THE DAILY TEXAN, July 20, 2004, available at <http://www.dailytexanonline.com/media/storage/paper410/news/2004/07/20/Opinion/Turner.Contraception.Could.Slow.Soaring.Birth.Rate694505.shtml?noreferrer=200610042009&sourcedomain=www.dailytexanonline.com> (arguing that teaching about "contraceptives does not mean that more students will have sex").

are ignorant as to the consequences of unprotected sex.¹⁶ Lack of information about how to obtain and use contraceptives makes teenagers in Texas more susceptible to sexually transmitted diseases and teen pregnancy. Approximately 19,754 teenagers were pregnant in 2001.¹⁷ This number makes Texas one of the highest ranked states in the nation for live births.¹⁸

Until the late 1960's, pregnant girls throughout the country were forced to drop out of school once their pregnancies became noticeable.¹⁹ Pregnant students were seen as disruptions and school officials feared that non-pregnant students would be "contaminated" by the pregnant student and therefore want to become pregnant too.²⁰ School administrators also argued that pregnant students needed medical attention and protection that a regular school could not provide.²¹ These concerns created feelings of alienation among pregnant students and often forced them to give up on their education.²²

The feminist movement and the passage of Title IX increased the legal enforcement of a pregnant student's right to an equal education.²³ Title IX, passed by Congress in 1972, makes it illegal to discriminate on the

16. Schafersman, *supra* note 13.

17. Texas Department of Health, *Texas Teen Pregnancy and Birth Facts 2001*, <http://www.dshs.state.tx.us/famplan/pdf/Teen01.pdf> (last visited Oct. 20, 2006); see TEX. DEP'T OF STATE HEALTH SERVICES, REPORTED PREGNANCIES, BIRTHS, FETAL DEATHS, AND ABORTIONS BY COUNTY OF RESIDENCE FOR WOMEN AGE 13-17 TEX. (2002), <http://www.dshs.state.tx.us/CHS/VSTAT/vs02/t14b.shtm> (reporting that 23,311 out of 818,118 girls between thirteen and seventeen became pregnant in 2002). This report shows that out of the total teen pregnancies, 19,704 were live births, 122 were fetal deaths, and 3,485 were aborted. *Id.*

18. See Turner, *supra* note 15 (declaring that "Texas is currently tied with Mississippi for having [the] highest teen birth rate in the United States"); see also Texas Department of Health, *supra* note 17 (reporting that in 2001, Texas was second in the nation for teen births).

19. See Tamara S. Ling, Comment, *Lifting Voices: Towards Equal Education for Pregnant and Parenting Students in New York City*, 29 FORDHAM URB. L.J. 2387, 2390-91 (2002) (asserting that until the late 1960's many school districts "maintained formal policies expelling pregnant students from school").

20. See *id.* at 2391 (explaining that school administrators thought pregnant teenagers were harmful "under the theory that 'one bad apple spoils the bushel of apples'" (citing HOWARD J. OSOFSKY, THE PREGNANT TEEN-AGER: A MEDICAL, EDUCATIONAL AND SOCIAL ANALYSIS 65 (1968))).

21. See *id.*

22. See *id.* at 2392 (describing that pregnant teens were seen as immoral and "branded as a 'criminal and her pregnancy a crime for which she must assume feelings of guilt'" (quoting CHARLES H. HARRISON, SCHOOLGIRL PREGNANCY: OLD PROBLEM; NEW SOLUTIONS 4 (1972))).

23. *Id.* at 2399.

basis of sex.²⁴ Any school that receives federal funding can no longer prevent a pregnant student from attending school or participating in any other extra-curricular activity.²⁵ A school may require a pregnant teen to obtain a note from her doctor certifying that she is “physically and emotionally able to participate in school or a particular activity,” but this certification is required by all students, not just those who are pregnant.²⁶ A pregnant student must also be granted excused absences for the period of time the teenager’s doctor finds to be medically necessary.²⁷ Title IX also entitles a pregnant student the choice to leave her home campus and attend an alternative education program.²⁸ Such alternative programs must be comparable to the education she would receive if she were not pregnant.²⁹

Today, pregnant students cannot legally be forced to drop out of school. It is the pregnant teenager’s own choice to remain in their respective schools, drop out, or attend an alternative education program in their district.³⁰ Many pregnant teenagers decide to attend alternative educa-

24. 20 U.S.C. § 1681(a) (2000) (stating that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”).

25. *See* 34 C.F.R. § 106.31(a) (2005) (declaring that “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance”).

26. *See* ANNE DELLINGER, PUBLIC SCHOOLS AND PREGNANT AND PARENTING ADOLESCENTS 21 (Inst. of Gov’t of Univ. of N.C. ed., 2004) (explaining a pregnant student’s right to “stay in school and be treated equally” requires that the pregnant student not be singled-out as the only student required to bring certification that she is physically and emotionally well).

27. *See* 34 C.F.R. § 106.40(b)(5) (2005) (mandating that a school provide a pregnant or parenting student “a leave of absence for so long a period of time as is deemed medically necessary by the student’s physician”).

28. *See id.* at § 106.40 (b)(1) (declaring that a school “shall not discriminate against any student, or exclude any student from its education 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, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient”).

29. *See id.* at § 106.40 (b)(3) (asserting that when a pregnant student voluntarily attends an “education program or activity separately for pregnant students . . . [the school district] shall ensure that the separate portion is comparable to that offered to non-pregnant students”).

30. *See* Jane’s Due Process, Inc., *Your Rights as a Pregnant Student*, http://www.janesdueprocess.org/info_preg_teens/right_educ/index.htm (last visited Oct. 20, 2006) (explaining that a pregnant student may not be excluded from any educational program); *see also* Jane’s Due Process, Inc., *Alternate Education Programs*, http://www.janesdueprocess.org/info_preg_teens/right_educ/alternate_education.htm (last visited Oct. 20, 2006) (stressing

tion programs. Unfortunately, alternative education programs may not be the best choice because, the quality of such programs is questionable.³¹

This comment focuses on a pregnant teenager's right to an education in Texas while emphasizing that alternative schools may not provide an equal or the best education for a pregnant student. Part II provides a legal and historical background of a pregnant student's right to an education in Texas. It discusses the exclusion of pregnant students from high school and how this exclusion has led to social stereotyping and higher poverty among teenage mothers. It also discusses how the courts have enforced Title IX and have prohibited the discrimination of pregnant students from school and extracurricular activities. Part III discusses the effect Title IX has had on a pregnant student's opportunity for an adequate education. It examines how Texas schools are currently dealing with teenage pregnancy and explains the pregnancy related programs that districts in Texas can offer their students. It continues an analysis of Title IX but specifically considers alternative education programs. It focuses on a pregnant student's voluntary decision to leave her home campus and attend an alternative program. Part IV examines the education a pregnant student receives in an alternative education program and whether it is, in fact, "equal" to an education she would receive in her home school. It analyzes the problems pregnant teenagers encounter while attending an alternative education school and emphasizes the importance an education provides to a pregnant teenager. It also demonstrates the social harm that may result by separating pregnant students from non-pregnant students and the social benefit that may result from their inclusion. Part V provides solutions for improving a pregnant teenager's education opportunities by providing outreach to high school counselors and educating pregnant teenagers about their rights.

that a "student cannot be forced to attend an alternative school just because she is pregnant or a parent").

31. See DELLINGER, *supra* note 26 (stating that "[w]hile alternative programs can offer valuable support [to a pregnant student], there is widespread perception that they are not academically comparable to the regular curriculum"); *see also* Ling, *supra* note 19, at 2400 (arguing that it is hard to determine if a separate pregnancy school program is comparable to a mainstream school program because there are no regulations that set forth comparability criteria and there is no case law on point).

II. LEGAL BACKGROUND

*“Education gives power to the life and hopes of every child. Education means empowerment; it means opportunity; it means a brighter future.”*³²

In *New Jersey v. T.L.O.*,³³ the United States Supreme Court recognized that a state has an interest in guaranteeing that all educators effectively educate and train their students.³⁴ Although the Court recognized that it is the state’s responsibility to control the public school system, the federal government continues to have an influence on how public education systems operate throughout the nation.³⁵

A. History of Public Education in Texas

Education has been a priority to the people of Texas since its secession from Mexico in 1836. The Texas Declaration of Independence includes Mexico’s failed attempt “to establish any public system of education”³⁶ as one of the reasons they rebelled against the Mexican government.³⁷ The authors of the Texas Declaration of Independence knew that unless Texans were educated, there was little hope of “civil liberty, or the capacity

32. Press Release, Office of the Governor Rick Perry, Gov. Perry Unveils Blueprint to Build on Successes of Tex. Education System (Mar. 14, 2002), available at <http://www.governor.state.tx.us/divisions/press/pressreleases/PressRelease.2002-03-14.3103>.

33. 469 U.S. 325 (1985).

34. Patty Blackburn Tillman, *Procedural Due Process for Texas Public School Students Receiving Disciplinary Transfers to Alternative Education Programs*, 3 TEX. WESLEYAN L. REV. 209, 210 (1996) (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 350 (1985)). “The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility.” *New Jersey v. T.L.O.*, 469 U.S. 325, 350 (1985).

35. See U.S. Department of Education Homepage, <http://www.ed.gov/index.jhtml> (last visited Oct. 20, 2006), for examples of federally funded education programs.

36. See THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1063, 1065 (Austin, Gammel Book Co. 1898). The declaration states that the Mexican government

[h]as failed to establish any public system of education, although possessed by almost boundless resources, (the public domain,) and although it is an axiom in political science, that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government. *Id.*

37. See Becky Stern, *Judicial Promulgation of Legislative Policy: Efficiency at the Expense of Democracy*, 45 SW. L.J. 977, 980 (1991) (explaining that the lack of adequate public schools was one reason Texans rebelled against Mexico’s government); see also Mikal Watts & Brad Rockwell, *The Original Intent of the Education Article of Texas Constitution*, 21 ST. MARY’S L.J. 771, 776 (1990) (stating that part of the reason the Texas people revolted from the Mexican government was because of its failure to provide a public school system).

for self government.”³⁸ When Texas became an independent nation in 1836, the framers of the Republic of Texas Constitution granted the Texas legislature the power to create a system of public education.³⁹ In 1854, the first public school system was established in Texas;⁴⁰ however, in its early years, funding for education took a “back seat” to the railroad industry.⁴¹ It was not until the Texas Constitution of 1876 was adopted that Texas children were granted the right to an education and provided stable state funding.⁴² The Texas Constitution states “it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”⁴³ The Framers of the Texas Constitution recognized the need for “a general diffusion of knowledge” and thus added the education clause to preserve “the liberties and rights of the people.”⁴⁴

Since then, the Texas public school system has grown to include “1,041 independent school districts and 190 charter schools.”⁴⁵ The Texas Legislature allocated “the largest portion of the 2006-07 state budget . . . to public education”.⁴⁶ This funding, along with federal funds and local property taxes, ensures that every person between the ages of five and twenty-one has access to a free public education.⁴⁷ The latest data published by the Texas Education Agency (TEA) shows that over four million students currently take advantage of the state’s free education.⁴⁸

38. THE DECLARATION OF INDEPENDENCE, *supra* note 36.

39. Stern, *supra* note 37.

40. See Frederick Eby, *The First Century of Public Education in Texas*, TEXAS PUBLIC SCHOOLS SESQUICENTENNIAL HANDBOOK 35, 42 (2004), available at http://www.tea.state.tx.us/comm/tps_handbook04/pdfs/tps_first_century.pdf (describing the founding of the Texas public school system).

41. See Watts & Rockwell, *supra* note 37, at 778–79 (explaining that between 1856 and 1870 the railroad industry completely depleted Texas’ permanent school fund).

42. *Id.* at 791.

43. TEX. CONST. art. VII, § 1 (“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of the efficient system of public free schools.”).

44. *Id.*

45. Press Release, Sen. Jeff Wentworth, State Sen. Dist. 25, The ABC’s of School Finance and Reform (Aug. 19, 2005), available at <http://www.wentworth.senate.state.tx.us/pr05/c081905a.htm>.

46. *Id.* (explaining that the 2006–2007 state budget allocates \$36.8 billion to public education).

47. TEX EDUC. CODE ANN. § 25.001(a) (Vernon 2006) (stating that “[a] person who is at least five years of age and under 21 years of age on the first day of September of any school year is entitled to the benefits of the available school fund for that year”).

48. See TEX. EDUC. AGENCY, DEP’T OF ACCOUNTABILITY & DATA QUALITY, ENROLLMENT IN TEX. PUBLIC SCHOOLS 2003–04 5 (2005), available at <http://www.tea.state.tx>.

During the 1995 Legislative session, the Texas Education Code was completely rewritten under Senate Bill 1 to provide Texas children the opportunity to “achieve a high standard of student performance.”⁴⁹ Under the revamped Education Code, the goal of public education in Texas is “to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future”⁵⁰ The Code also guarantees students *equal opportunities* to participate in education, services, or activities “within the jurisdiction or geographical boundaries of the educational institution.”⁵¹

B. Federal Government's Role in the Texas Education System

Although the United States Constitution does not expressly give Congress the power to regulate education, the federal government has played and continues to play a significant role in the educational process.⁵² Beginning in 1803, Congress required that a state have an education provision in its constitution to be admitted into the Union.⁵³ The federal government now influences education through guidelines and mandates

us/research/pdfs/enrollment_2003-04.pdf (giving data regarding enrollment in Texas public schools).

49. See Marilyn Kuehlem, *Education Reforms From Gilmer-Aikin To Today*, TEXAS PUBLIC SCHOOLS SESQUICENTENNIAL HANDBOOK 60, 68 (2004), available at http://www.tea.state.tx.us/comm/tps_handbook04/pdfs/tps_gilmer_aikin.pdf (providing details of the Texas Education Code rewrite).

50. TEX. EDUC. CODE. ANN. § 4.001(a) (Vernon 2006) (establishing that “[t]he mission of the public education system . . . is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation”).

51. *Id.* at § 1.002(a) (emphasis added) (declaring that “[a]n educational institution undertaking to provide education, services or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide equal opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to this code”).

52. See Cato Institute, *Education and Child Policy: Federal Education Policy*, <http://www.cato.org/research/education/fed-education.html> (last visited Oct. 20, 2006) (expressing that although the Tenth Amendment gives the states and local governments the power to regulate education, the federal government also plays an active role in education).

53. See Augustus F. Hawkins, *Becoming Preeminent in Education: America's Greatest Challenge*, 14 HARV. J.L. & PUB. POL'Y 367, 372 (1991) (explaining that throughout history, the United States government has had an interest in education, but education has never “been an equal-opportunity endeavor”).

that provide funding to schools.⁵⁴ In 2001, the federal government spent 7.7% of the gross domestic product on education expenditures.⁵⁵

The federal government's role has progressed from "ensuring that each state offered education to its citizens[,] to addressing the educational needs of particular groups within our society."⁵⁶ For example, Congress attempted to level the playing field for women by enacting Title IX of the Educational Amendments of 1972.⁵⁷ Congress' two main objectives in passing Title IX were to 1) withdraw federal funding from educational programs supporting sexually discriminatory practices and 2) provide protection to individuals facing discrimination.⁵⁸ The law provides that "no person in the United States shall . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."⁵⁹ It was amended in 1974 to be applicable to athletic programs and today, Title IX prevents gender discrimination in "admissions, recruitment, course offerings, counseling, financial assistance, student health, insurance benefits, housing, marital and parental status of students, harassment and athletics."⁶⁰

Title IX is now applicable to pregnant or parenting students.⁶¹ It is illegal for any education program receiving federal financial assistance to discriminate against a pregnant or parenting student by excluding her

54. See Cato Institute, *supra* note 52 (listing "student discipline, the content of sex education courses, and the gender of textbook authors" as examples of regulations the federal government imposes on education).

55. See NATIONAL CENTER FOR EDUCATIONAL STATISTICS, DIGEST OF EDUCATIONAL STATISTICS, 2003, available at <http://nces.ed.gov/programs/digest/d03/tables/pdf/table29.pdf>, for a list of total educational expenditures.

56. See Hawkins, *supra* note 53, at 374 (showing that some of the nation's attempts to finance educational programs were considered weak).

57. 20 U.S.C. § 1681 (2000) ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . .").

58. Ann K. Wooster, Annotation, *Sex Discrimination in Public Education Under Title IX—Supreme Court Cases*, 158 A.L.R. FED. 563, 563 (1999–2005).

59. 20 U.S.C. § 1681 (2000); see Charlie James Harris, Jr., *Message to the Judiciary: The Proper Application of Title IX May Save Our Children*, 63 UMKC L. REV. 429, 431 (1995) (explaining that the sponsor of the Title IX legislation, Senator Bayh, intended Title IX to provide "the women of America something that is rightfully theirs — an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure jobs of their choice with equal pay for equal work" (citing 118 CONG. REC. 5808 (1972))).

60. See Suzanne Eckes, Commentary, *Another Pin for Women: The National Wrestling Coaches Associations' Title IX Case Is Dismissed*, 182 EDUC. L. REP. 683, 684 (2004).

61. See 34 C.F.R. § 106.40 (2005) (stating that Title IX protections are now applicable to pregnant or parenting students).

from class or any extra-curricular activity.⁶² Some honor societies and school clubs forbid members from engaging in sex before marriage but cannot discriminate based on pregnancy alone.⁶³ In *Pfeiffer v. Marion Center Area School District*, the Third Circuit held that a pregnant student could be dismissed from the National Honor Society (NHS) on the basis of participation in pre-marital sex “as long as both genders were treated similarly”⁶⁴ In *Pfeiffer*, Arlene Pfeiffer became pregnant while already a member of her school’s chapter of NHS.⁶⁵ She was dismissed from her school’s chapter for not upholding the “high standards of leadership and character” that are required as part of membership.⁶⁶ The court concluded that Pfeiffer’s dismissal was not based on gender, pregnancy, or failure to marry after becoming pregnant, but rather because engaging in premarital sex was inconsistent with the organization’s standards.⁶⁷ Although a school organization may set abstinence-until-marriage as one of its membership requirements, the “organization may not use pregnancy as the only way of deciding who has had sex before marriage.”⁶⁸ If a school organization or association does not dismiss all members who have engaged in premarital sex, then it cannot only prohibit a pregnant or parenting student from participating.⁶⁹

62. *See id.* at § 106.40 (b)(1) (“A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of such student’s pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.”); *see also* Jane’s Due Process, Inc., *supra* note 30 (applying this code ensures that a pregnant or parenting student will not be excluded from “special classes, like Honors or AP, and extra-curricular activities, like band, Latin Club, or dance team”).

63. Jane’s Due Process, Inc., *National Honor Society*, http://janesdueprocess.org/info_preg_teens/right_educ/nhs.htm (last visited Oct. 20, 2006).

64. *Chipman v. Grant County Sch. Dist.*, 30 F.Supp. 2d 975, 978 (E.D. Ky. 1998).

65. *Pfeiffer v. Marion Ctr. Area Sch. Dist.*, 917 F.2d 779, 781–82 (3d Cir. 1990) (describing Pfeiffer as “a good student who earned high grades”). Pfeiffer was inducted into NHS in 1981 two years prior to becoming pregnant. *Id.*

66. *Id.* at 782 (explaining the faculty council’s reason for dismissing Pfeiffer from NHS as her “[f]ailure to uphold the high standards of leadership and character required for admission and maintenance of membership”).

67. *See id.* at 784–85 (finding that Pfeiffer was dismissed from NHS because she did not maintain “standards of leadership and character,” and not based upon “her sex, her pregnancy, or . . . her failure to marry after she had engaged in premarital sexual activity”); *see also* Thomas Schweitzer, “A” *Students Go To Court: Is Membership in the National Honor Society a Cognizable Legal Right?*, 50 SYRACUSE L. REV. 63, 75 (2000) (describing that Pfeiffer was dismissed because “the faculty council considered that the example set by [Pfeiffer’s] premarital sex was inconsistent with . . . [NHS] standards”).

68. *See* Jane’s Due Process, Inc., *supra* note 63, for an explanation of a pregnant student’s right to be a member of National Honor Society.

69. *Id.*

Several cases from throughout the United States have re-emphasized that pregnant students cannot be discriminated against via exclusion from curricular or extracurricular activities.⁷⁰ For example, in 1985 a district court in Illinois held in *Wort v. Vierling* that the dismissal of a pregnant student from the National Honor Society was a violation of Title IX and the Fourteenth Amendment of the United States Constitution because the student had been excluded based on her pregnancy.⁷¹ Since only females can become pregnant, dismissal based solely on pregnancy is a form of discrimination under federal law.⁷²

Five years later, in *Cazares v. Barber*, a district court in Arizona also held that denial of membership to a pregnant student was improper.⁷³ In this case, the qualified pregnant plaintiff was denied membership to NHS while a male student who had impregnated another female out of wedlock was admitted.⁷⁴ The district court found that Cazares was denied admission to her school's chapter of NHS solely because "she was pregnant, unmarried and not living with her child's father."⁷⁵ The judge also concluded that the plaintiff "would suffer irreparable injury if she were excluded because of her pregnant, unmarried status."⁷⁶

The most recent case involving a pregnant student's right to participate in NHS is *Chipman v. Grant County School District*. In this case, two female students, Chipman and Glass, applied for membership into NHS.⁷⁷ Glass had a daughter and Chipman was pregnant during the se-

70. See *Wort v. Vierling*, Case NO. 82-3169, slip op. (C.D. Ill. Sept. 4, 1984), aff'd, 778 F.2d 1233 (7th Cir. 1985) (finding the court was without jurisdiction to consider the defendant's appeal). The lower court ruled that Title IX had been violated when Wort was dismissed from NHS because she was pregnant. *Id.* at 1234; see also *Cazares v. Barber*, 959 F.2d 753, 754 (9th Cir. 1992) (upholding a district court's decision to admit a pregnant student into her high school's NHS chapter); *Chipman v. Grant County Sch. Dist.*, 30 F. Supp. 2d 975, 978 (E.D. Ky. 1998) (holding that the plaintiffs' probability of success in proving discrimination based on their pregnancy status is high).

71. Schweitzer, *supra* note 67, at 76-77.

72. See *Chipman*, 30 F. Supp. 2d at 978 (explaining that discrimination based on gender is a violation of the Fourteenth Amendment's Equal Protection Clause).

73. See *Cazares*, 959 F.2d 753 (affirming a district court's holding that Cazares, a pregnant student, should be awarded attorney's fees and be inducted into the NHS). Cazares was denied admission into NHS because she "was pregnant, unmarried, and not living with her child's father." *Id.* at 755.

74. Schweitzer, *supra* note 67, at 77.

75. *Cazares*, 959 F.2d at 754.

76. See *id.* at 753 (granting a permanent injunction and ordering that the school's NHS induction ceremony not be held without Cazares).

77. See *Chipman v. Grant County Sch. Dist.*, 30 F. Supp. 2d 975, 977 (E.D. Ky. 1998) (explaining that in order to be a member of Grant County High School's NHS, a student must "demonstrate outstanding scholarship, service, leadership, and character").

lection process.⁷⁸ The Grant County National Honor Society selection committee offered NHS membership to each junior with a grade point average of 3.5 or higher.⁷⁹ Though their grades met the qualifications, Chipman and Glass were not offered positions. Although the selection committee did not ask all the applicants, male or female, if they had engaged in premarital sex, the committee still based their decision to reject the plaintiffs because each “had engaged in premarital sexual activity and had given birth to a child out of wedlock.”⁸⁰ The court found that since 100% of young women who were visibly pregnant or who had a child out of wedlock were denied membership to NHS, while 0% of the young men and women who had premarital sex that did not result in a pregnancy were not denied admission, the NHS committee discriminated against the pregnant students only.⁸¹

As mentioned above, Title IX not only guarantees a pregnant student the right to participate in school activities, but it also gives a pregnant student the opportunity to attend an alternative education program.⁸² Alternative education programs were established in Texas in 1995 when the 74th Legislature enacted the Safe Schools Act.⁸³ These programs “provide accelerated instructional services to students at risk of dropping out of school.”⁸⁴ The Safe Schools Act requires public schools to remove a student that is disruptive to the education environment and transfer him or her to an alternative education program.⁸⁵ Although alternative edu-

78. *Id.*

79. *Id.*

80. *Id.* (explaining that the NHS selection committee would have examined evidence of a male's paternity, but that it was unlikely that such evidence would be presented to the committee “in any way but rumor and gossip”).

81. *See id.* at 979 (explaining that there is a disparate impact on females who become pregnant). Although the NHS policy was to exclude members for engaging in pre-marital sex, the committee could not tell, and thus could not exclude, membership to males who engaged in pre-marital sex or females who engaged in pre-marital sex but did not become pregnant or who obtained an early abortion. *Id.*

82. *See* 34 C.F.R. § 106.40(b)(3) (2005) (“A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student . . . shall ensure that the separate portion is comparable to that offered to non-pregnant students.”).

83. *See* TEX. EDUC. AGENCY, UPDATE ON ALTERNATIVE EDUCATION (2003), <http://www.tea.state.tx.us/sboe/schedule/0703/alternativeed.html> (requiring school districts to establish Disciplinary Alternative Education Programs (DAEP) “to serve students who commit specific disciplinary or criminal offenses”).

84. *See* Tex. Educ. Agency, *Overview of 2005 Alternative Education Accountability (AEA) Procedures*, Apr. 8, 2005, <http://www.tea.state.tx.us/aea/2005develop/procedures4805.ppt#1>.

85. *See* TEX. EDUC. CODE ANN. § 37.006(a) (Vernon 2006), for a list of reasons a student must be removed from a regular class setting and required to enroll in a disciplinary alternative education program.

cation programs must be established for disruptive students, many school districts implement alternative education programs “that are not necessarily disciplinary in nature” but instead “operate dropout recovery programs and/or provide other alternative high school settings.”⁸⁶

There are currently 357 alternative education programs registered in Texas.⁸⁷ By law, the decision to attend one of these programs is entirely up to the pregnant teenager and therefore a school official cannot force her to transfer.⁸⁸ Federal law requires that the education received by a pregnant teenager in an alternative program be the same caliber as that received at a home campus.⁸⁹ Texas adheres to federal law by requiring

A student shall be removed from class and placed in a disciplinary alternative education program . . . if the student:

- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm . . . or terroristic threat . . . ; or
- (2) commits the following on or within 300 feet of school property, . . . or while attending a school-sponsored or school-related activity on or off of school property:
 - (A) engages in conduct punishable as a felony;
 - (B) engages in conduct that contains the elements of the offense of assault . . . ;
 - (C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:
 - (i) marihuana or a controlled substance . . . ; or
 - (ii) a dangerous drug . . . ;
 - (D) sells, gives, or delivers to another person an alcoholic beverage, . . . commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
 - (E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical . . . ; or
 - (F) engages in conduct that contains the elements of the offense of public lewdness *Id.*

86. See TEX. EDUC. AGENCY, *supra* note 83, <http://www.tea.state.tx.us/sboe/schedule/0703/alternativeed.html> (explaining that alternative education programs are for students that are “often at risk of dropping out of school, have previously dropped out, or have found that the traditional school settings are not appropriate for their learning needs”). Students usually do not enroll in alternative education programs because of disciplinary problems, but some students may have previously attended Disciplinary Alternative Education Programs. *Id.*

87. See Commissioner of Education Final Decisions, *Alternative Education Accountability Procedures for 2005 and Beyond*, TEX. EDUC. AGENCY, Mar. 2005, <http://www.tea.state.tx.us/aea/2005develop/05aeafinaldecisions.pdf> (detailing that 82% of the students at the 357 alternative education campuses in Texas were labeled “at-risk students”). In Texas, 46% of the students enrolled in all campuses (7,813) were “at-risk.” *Id.*

88. 34 C.F.R. § 106.40(b)(1) (2005). The statute states that

[a] recipient shall not discriminate against any student, or exclude any student from its education 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, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. *Id.*

89. *Id.* at § 106.40 (b)(3).

that students enrolled in alternative education programs pass the same standards set by the state for graduation from traditional education programs.⁹⁰

Title IX further protects pregnant students from discrimination by mandating that if a school requires a doctor's certificate from a pregnant teen stating that she is physically and emotionally capable of attending normal classes and participating in extracurricular activities, it must also require similar notice from all non-pregnant students.⁹¹ A pregnant student must also be excused from her classes when she attends a medical appointment, and if her doctor requires her to take a leave of absence from school, she must be "reinstated at the point she was when she took the leave."⁹²

III. LEGAL ANALYSIS

*"Every child is entitled to a public education, but public education is not entitled to every child. Let's give children who need a second chance new choices that can forever change their future. Let's give them school choice."*⁹³

Access to quality education is necessary for a pregnant student to succeed in society.⁹⁴ Education can encourage economic independence, self-

90. See TEX. EDUC. CODE ANN. § 37.008(a)(4) (Vernon 2006) (describing the courses disciplinary alternative education programs must focus on as "English language arts, mathematics, science, history, and self-discipline").

91. See 34 C.F.R. § 106.40(b)(2) (2005) ("A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.").

92. See Carolyn Ellis Staton, *Sex Discrimination in Public Education*, 58 MISS. L.J. 323, 336 (1988) (explaining that it is important pregnant mothers stay in school so they do not become "a part of the growing feminization of poverty"). Thus, it is imperative that pregnant students "not be discriminated against by . . . [their] schools." *Id.* at 335.

93. See Rick Perry, Governor, State of Tex., State of the State Address (Jan. 26, 2005), available at http://www.governor.state.tx.us/divisions/press/speeches/speech_012605#education (arguing that giving children options in schooling, such as charter schools, will help struggling, at-risk students succeed).

94. See Deborah Brake, *Legal Challenges to the Educational Barriers Facing Pregnant and Parenting Adolescents*, 28 CLEARINGHOUSE REV. 141, 141 (1994) (stating that there is a high correlation between teenage pregnancy and parenting and "low levels of educational attainment"). Teenage mothers that are "enrolled in school during and immediately after child birth [are] more likely to complete high school and to delay subsequent pregnancies." *Id.* at 142. A teen mother is also less likely to be on welfare if she receives a high school diploma. *Id.*

sufficiency, and a chance of moving out of poverty and off welfare.⁹⁵ It also contributes to the health and development of a pregnant student's future children.⁹⁶ It is difficult to ensure equal access and a quality education for pregnant teenagers on a national level because the federal government has no data documenting school practices and policies with regard to pregnant students.⁹⁷ To make matters worse, the government does not keep records of the number of complaints received regarding the treatment of pregnant students throughout the nation.⁹⁸

A. *Pregnancy-Related Education in Texas*

Texas does not have a statewide requirement to ensure pregnancy discrimination does not take place in its schools, despite a federal law making it illegal to discriminate against a pregnant student.⁹⁹ The state does, however, provide school districts two funding options for pregnancy-related programs.¹⁰⁰ Regardless, neither is mandatory, and thus school dis-

95. See NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION, A REPORT OF THE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION, TITLE IX AT 30: REPORT CARD ON GENDER EQUITY 59 (June 2002), available at <http://www.ncwge.org/title9at30-6-11.pdf> (stressing that the "proper implementation of Title IX can protect pregnant and parenting students from discrimination and serve as a tool ensure that these students receive a quality education that will allow them to attain self-sufficiency").

96. See *id.* at 55 (explaining that it is imperative teen parents obtain an education because studies show during "their first 13 years of parenthood, [they] have an annual income of less than half the poverty rate").

97. See generally *id.* (stating that although no national data exists documenting schools' policies regarding pregnant students, anecdotal evidence suggests that discrimination against pregnant teenagers frequently occurs).

98. See *id.* at 57 (explaining that because the Office of Civil Rights (OCR) does not have a proper coding system to identify complaints coming from pregnant or parenting students, this class of students "are unaware of their rights and the steps they can take if they believe their rights have been violated").

99. See Rachel Proctor, *De-Schooling in Luling*, THE TEX. OBSERVER, July 19 2003, available at <http://www.texasobserver.org/article.php?aid=830> (noting that without a statewide policy, school district's vary "from offering comprehensive pregnancy programs to quietly showing . . . [pregnant] students the door").

100. Email from Lauralea Bauer, Life Skills (PEP) Program Administrator, Texas Education Agency, to Amber Hausenfluck (Oct. 3, 2005, 10:03 CST) (on file with author) (explaining the difference between the Pregnancy Related Services (PRS) and the Life Skills for Parenting Students Grant (Previously Pregnancy Education and Parenting (PEP)). PRS are "support services . . . a pregnant student receives during the pregnancy prenatal and postpartum periods to help her adjust and stay in school." *Id.* PRS can include Compensatory Education Home Instruction (CEHI). *Id.* PRS "services are delivered to the student when: 1) the student is pregnant and attending classes on a district campus; 2) the pregnancy prenatal period prevents the student from attending classes on a district campus; and 3) the pregnancy postpartum period prevents the student from attending classes on a district campus." *Id.* The Life Skills Program for Student Parents are "designed to improve attendance, increase graduation rates, and enhance parenting skills

tricts are at liberty to decide what program, if any, should be established for the protection of their pregnant students.¹⁰¹

Under state law, “[a] school district may provide an integrated program of educational and support services for students who are pregnant or who are parents.”¹⁰² One of the state’s funding options, the Life Skills Program for Student Parents, developed out of this legislation to “provide integrated programs of educational and support services designed to improve school attendance, increase graduation rates, and enhance parenting skills for students who are pregnant or who are parents and at risk of dropping out of school.”¹⁰³ A school district may apply for grant money from the state to support pregnancy-related education, but it is up to the school district receiving the funding to plan and design the program.¹⁰⁴ If a school district receives approval, the program must at a minimum provide

individual counseling, peer counseling, and self-help programs; career counseling and job-readiness training; child care for the students’ children on the campus or at a child care facility in close proximity to the campus; transportation for children of students to and from the campus or child care facility; transportation for students, as appropriate, to and from the campus or child care facility; instruction related to knowledge and skills in child development, parenting, and home and family living; and assistance to students in the program in obtaining available services from government agencies¹⁰⁵

for student’s pregnant or who are parents and at risk of dropping out of school.” *Id.* Programs, at minimum, include:

1) [I]ndividual counseling, peer counseling, and self-help programs; 2) Career counseling and job-readiness training; 3) [D]ay care for the students’ children on the campus or at a day-care facility in close proximity to the campus; 4) [T]ransportation for children of students to and from the campus or day-care facility; 5) [T]ransportation for students, as appropriate, to and from campus or day-care facility; 6) [I]nstruction related to knowledge and skills in child development, parenting, and home and family living; and 7) [A]ssistance to students in the program in obtaining available services from government agencies or community service organizations, including prenatal and postnatal health and nutrition programs. TEX. EDUC. CODE ANN. § 29.085(b) (Vernon 2006). *Id.*

101. *Id.*

102. *Id.* at § 29.085(a); *see also* Bauer, *supra* note 100.

103. Tex. Educ. Agency, *Life Skills Program for Student Parents*, <http://www.tea.state.tx.us/pep/programinfo.html> (last visited Oct. 22, 2006); *see also* Bauer, *supra* note 100.

104. *Id.*

105. *Id.*

The Life Skills Program for Student Parents provided grants to 205 districts during the 2004-05 school year,¹⁰⁶ leaving 836 school districts responsible for educating pregnant teenagers without state funding¹⁰⁷ or requiring districts to request that the state allot extra money for each individual pregnant student.¹⁰⁸

The option that allocates extra money for individual pregnant students is Pregnancy Related Services (PRS) which allows a district to “receive . . . funding for providing support services to pregnant students.”¹⁰⁹ These services are afforded to a student when “the student is pregnant and attending classes on a district campus” and when the pregnancy prenatal period and the pregnancy postpartum period prevent the student from attending classes on a district campus.¹¹⁰ Under PRS, a district must establish a Compensatory Education Home Instruction (CEHI) program to provide “academic services to the student at home or hospital bedside when pregnancy prevents the student from attending school and during the postpartum period.”¹¹¹ Under CEHI, a certified teacher will provide face-to-face instruction to the student up to six weeks after delivery.¹¹² A district may choose to offer both CEHI and other PRS programs to pregnant students, but funding is only received by the district while services are being provided to the student during the prenatal and postpartum periods.¹¹³

106. Bauer, *supra* note 100 (stating that 205 school districts in Texas were awarded Life Skills grants for the 2004–2005 school year, but that figures for the 2005–2006 school year were not complete).

107. *See id.* (inferring that since there are currently 1,041 school districts in Texas and only 205 Life Skills grantees, 836 school districts were left without Life Skills funding). *See generally* TEX. EDUC. AGENCY, FY 2005 FUNDING ALLOTMENTS (2005), <http://www.tea.state.tx.us/pep/continueAPP05/FY2005PEPGRANTALLOCATIONSSheet2.xls> (listing 208 district recipients of Life Skills grants).

108. *See* Proctor, *supra* note 99 (detailing that school districts can also receive PRS funds to help educate their pregnant students).

109. TEX. EDUC. AGENCY, *Pregnancy Related Services*, July 24, 2006, <http://www.tea.state.tx.us/interagency/prs.html#whatisprs> (indicating that each district, when a PRS is in place, may receive 2.41 weighted funding for providing services to the pregnant students).

110. Bauer, *supra* note 100.

111. *See* Luling High School, *Pregnancy Related Services Program*, <http://www.luling.txed.net/Schools/highschool/PRS.pdf> (last visited Oct. 22, 2006), for an example of a school district’s pregnancy related services program.

112. *See id.* (explaining that CEHI is only available for up to six weeks after delivery, but if complications arise with the pregnancy or delivery or if there are complications with the health of the teenager or her baby, the six-week period may be extended for a period not to exceed four calendar weeks).

113. Bauer, *supra* note 100 (declaring that “[d]istricts may not code any student as PRS in the attendance accounting system unless CEHI is included as one of the services provided by the district’s PRS program”).

B. *Exclusion of Pregnant Students*

Although programs like PRS and CHEI make it easier for a pregnant teenager to receive an education by providing them with emotional and physical assistance, school districts are not required to participate in either program.¹¹⁴ Linda Crawford, the state's contact for Pregnant Related Services at the Texas Education Agency (TEA) said, "[t]here are certainly districts where pregnancy is still punished Every year we get calls from parents and students saying their district just tells them, 'you've made your bed and now you lie in it because we're not going to help you.'"¹¹⁵ One teenager contacted Jane's Due Process¹¹⁶ seeking a judicial by-pass because she did not want to go through the same humiliation she faced while pregnant with her first child.¹¹⁷ The pregnant teen said, "[t]he teachers wouldn't look me in the eye. They didn't expect me to finish my homework. When I really started to show, the school told me that I needed to attend night classes or transfer" ¹¹⁸ Ironically, although Texas attempts to discourage teenagers from obtaining abortions by passing strict consent laws,¹¹⁹ pregnancy discrimination discourages pregnant teenagers from going through with the pregnancy.

Regardless of federal legislation which prohibits schools from excluding pregnant students from participating in school activities,¹²⁰ the principal at one central Texas high school allegedly told Margaret Contreras to stay home after he found out she was pregnant.¹²¹ Margaret approached

114. *Id.*

115. See Proctor, *supra* note 99 (explaining that in an abstinence-only state it is "not surprising that when schools deny the existence of teenage sex, some will also try to deny its results").

116. Jane's Due Process, Inc., Welcome to Jane's Due Process, www.janesdueprocess.org (last visited Oct. 22 2006) ("Jane's Due Process (JDP) is a non-profit organization that serves as an information and advocacy center promoting fair and equal access for Texas teenagers seeking legal services in order to make a reproductive choice.").

117. Jane's Due Process, Inc., Stories from Other Teens, http://www.janesdueprocess.org/info%5Fpreg%5Fteens/right_educ/stories.htm (last visited Oct. 22, 2006).

118. *Id.*

119. See TEX. OCC. CODE ANN. § 164.052 (Vernon 2005) (stating that as of September 2005, teenagers under the age of 18 are required to obtain *written consent* from one of their parents or legal guardians prior to an abortion being performed in Texas).

120. 34 C.F.R. § 106.40 (2005).

121. See Proctor, *supra* note 99, for a teenage mother's account of the discrimination she faced at school. Contreras became pregnant when she was 16 years old. *Id.* Her sister, Celia Leon had been forced out of school when she, two years earlier, also became pregnant. *Id.* Contreras was fearful of what would come if she told anyone at Luling High School of her pregnancy, so waited until her fifth month of pregnancy before doing so. *Id.* When she did, Contreras was told "she could no longer attend regular classes" because her pregnancy was "inappropriate [and] would be a bad influence on other students." *Id.*

her principal hoping she could be provided with pregnancy services like home instruction or parenting classes, but instead was told that her district did not offer such services and her only option was to take night classes and receive a GED.¹²² Even though the district in which Margaret was enrolled received \$3,532 in PRS funds from the state that year,¹²³ Margaret was forced to drop out of regular classes so the other “students wouldn’t see her swelling belly” and she would cease being a “bad influence on the other students.”¹²⁴ Margaret wondered why the school district was “being so cruel.”¹²⁵

In 2002, Andrea Gunn of the Texas Civil Rights Project filed a class action suit on behalf of Margaret and her sister, Celia Leon, who both alleged the school district “denied them an equal opportunity to attend school or receive other educational services while pregnant, in violation of Title IX.”¹²⁶ Margaret’s suit resulted in a negotiated settlement in which the school district was required to modify its policies regarding pregnant students and was prohibited from excluding pregnant teenagers from attending school.¹²⁷ Margaret was also allowed to re-enroll in

122. *See id.* (explaining that Contreras had heard that other schools were offering pregnancy services and hoped Luling High School also offered home instruction, parenting classes, or prenatal check-ups).

123. *See id.* (noting that Luling High School officials would not comment on how the PRS funds received by the district were spent during the time Contreras was excluded from school).

124. *Id.* (detailing that Contreras was told her pregnancy was “inappropriate [and] that . . . [she] would be a bad influence on the other students”).

125. *Id.*

126. Texas Civil Rights Project, Settlement Reached in Case Against Luling ISD for Title IX Violations in Provision of Pregnancy Services, Aug. 14, 2002, <http://www.texascivilrightsproject.org/newspub/TITLE%20IX%20PRESS%20RELEASES.htm#Pregnancy> (claiming specifically that Contreras and Leon “were denied homebound or other educational services and encouraged to leave school when they became pregnant”); *see also* Proctor, *supra* note 99 (stating that the district refused to comment, but allowed Contreras and Leon to re-enroll in high school while the case was pending). Contreras re-enrolled, even though she was again pregnant, but Leon has been unable to attend school while supporting her three children. *Id.*

127. Email from Sheri Joy Tolliver, Attorney, Texas Civil Rights Project, to Amber Hausenfluck (Oct. 5, 2005, 09:01:35 CST) (on file with author) (explaining that the Contreras and Leon cases culminated in a negotiated settlement with Luling Independent School District which was then approved by the Western District of Texas); *see also* Texas Civil Rights Project, *supra* note 126. The Settlement Agreement states that

[1] Starting with the 2002–2003 school year, the LISD shall include a detailed description of its Pregnancy Related Services (PRS) program in the Luling High School Student Handbook;

[2] Starting with the 2002–2003 school year, the LISD shall issue to each student, upon entrance and acceptance into the PRS program, a separate brochure or booklet

school and work her way toward a high school diploma.¹²⁸ Ms. Gunn called the settlement “a great victory in the struggle against pregnancy discrimination and the egregious effects of such discrimination, including increasing high school drop-out rates.”¹²⁹

Unfortunately, despite this “victory,” discrimination against pregnant teenagers is still prevalent. The Texas Education Code requires guidance counselors to implement special programs to decrease drop-out rates, but the code fails to specifically require special programs for pregnant teen-

which lists all the details and services provided as part of the PRS program in the LISD;

[3] Starting with the 2002–2003 school year, the LISD shall provide its PRS students the opportunity to address through in-person meetings any questions or concerns they may have during the period that PRS program services are received;

[4] Starting with the 2002–2003 school year, the LISD shall provide for the assessment of its PRS program by and through the district’s annual Health Services Review. The purpose of such assessment shall be to ensure that the PRS program is meeting the needs of LISD’s pregnant and/or parenting students, and shall take place at a publicized LISD Board of Trustees meeting;

[5] Starting with the 2002–2003 school year, the LISD shall create and distribute a Student Services Handbook, which will detail services, including pregnancy-related instruction, offered by the school district as well as county and state agencies;

[6] Starting with the 2002–2003 school year, the LISD shall assign the position of Title IX Coordinator, and its attendant duties and responsibilities, to an administrator other than the Superintendent;

[7] The new Title IX Coordinator and the Luling High School Counselor shall receive training regarding Title IX, if available, within 12 months;

[8] Not later than the start of the 2002–2003 school year, the LISD will adopt and implement appropriate written policies and procedures designed to inform the LISD administrators, staff, and teachers about the potential for liability under Title IX for pregnancy discrimination and other forms of gender discrimination. These policies will be made available in a hard copy format in the LISD administrative offices, and, within 12 months, on the district’s website;

[9] Not later than the start of the 2002–2003 school year, the LISD shall include in the Student Handbook a section designed to inform Luling ISD secondary students and their parents about their rights under Title IX for pregnancy discrimination and gender discrimination. This information will also be made available on the district’s website within 12 months; and

[10] Money damages. *Id.*

128. Texas Civil Rights Project, *supra* note 126; *see also* Proctor, *supra* note 99 (noting that Contreras said she “would welcome . . . [any pregnancy-related services] that would make it easier for her to finish the nearly three years of coursework that stands between her and a diploma”).

129. Texas Civil Rights Project, *supra* note 126.

agers.¹³⁰ Gunn argues school districts should “put in a permanent pregnancy plan that includes things like homebound educational services, parenting classes, and adequate counseling because these girls are at risk of dropping out.”¹³¹ Without statewide mandatory programs geared specifically towards pregnant, at-risk students, pregnant teenagers will not receive much-needed education they are afforded under the Texas Education Code.

Though funding is available, many schools do not properly seek or utilize funds that create programs to specifically help pregnant teens.¹³² According to the TEA, larger school districts are more likely to seek funding to establish pregnancy-related programs for their students (and thus may be less likely to expel a student for becoming pregnant).¹³³ For example, the Fort Worth Independent School District, a large school district, has implemented a program in which five case-managers counsel pregnant teenagers at a special pregnancy school and in regular classes.¹³⁴ But since the choice to seek funding and implement such programs is discretionary, many schools do not provide pregnancy-related programs for their students. A Fort Worth ISD counselor emphasized this very point when she stated, “[h]ere in Fort Worth we’re doing everything it takes to keep those kids in school. But in rural areas there’s great inconsistency, and schools [do] push kids out once they get pregnant, even though it’s totally illegal.”¹³⁵

130. Proctor, *supra* note 99.

131. *See id.* Gunn states:

Pregnant teens who are able to stay in school need certain services in order to be treated comparably to their peers We want the school to put in a permanent pregnancy plan that includes things like homebound educational services, parenting classes, and adequate counseling because these girls are at risk of dropping out. *Id.*

132. *See generally id.*, for examples of how some school districts throughout Texas utilize funding while other districts do not. Urban areas are more likely to implement pregnancy related programs because they are larger school districts and thus have more pregnant students. *Id.* Rural areas with smaller school districts often do not develop special programs for pregnant students. *Id.*

133. *Id.*

134. *See id.* (describing Fort Worth as “a model for school districts like Luling” because it “offers one of the most comprehensive programs in the state”). Every year, Fort Worth ISD “serves around 1,000 identified pregnant or parenting students . . . out of a student body of about 80,000.” *Id.* The Fort Worth program incorporates “baby bucks” which allow expectant mothers to be rewarded for attending prenatal exams. *Id.* The expectant mother earns “baby bucks” which can be traded in for baby wipes and diapers. *Id.*

135. *See* Proctor, *supra* note 99 (explaining that some districts are eliminating their pregnancy programs or simply not applying for them because of pressure from community members that think that by providing these services, schools are condoning teenage pregnancy).

C. *Pregnancy and Alternative Education Programs*

Currently, school districts in Texas, while not expressly preventing pregnant students from remaining at their home campus, are “encouraging” pregnant teenagers to enroll in alternative education programs.¹³⁶ Often counselors suggest or try to persuade a pregnant student to attend such programs by stating that the student “will feel more comfortable” or that “other students will treat her differently” if she chooses to stay at her home school.¹³⁷ Title IX provides that a pregnant student’s decision to attend one of these programs must be “completely voluntary,” and the program must be “comparable” to those allocated for non-pregnant students.¹³⁸ Yet it appears that many schools compel, not persuade, pregnant teenagers to attend alternative programs.

Although there is no case law defining what constitutes “voluntary” under Title IX, it can be assumed that in order for a pregnant student’s decision to be “completely voluntary,” she “must be fully aware of all of . . . [her] options and must be free from over-persuasion and coercion.”¹³⁹ The “subtle guidance” a pregnant student receives from her counselor undoubtedly influences her decision.¹⁴⁰ The pregnant teen often feels she has no choice but to side with the counselor’s recommendation to attend an alternative school.¹⁴¹ A school counselor should instead provide explicit guidance that completely informs a pregnant teenager of her options. Counselors must also emphasize that the decision to participate in an alternative education program is completely voluntary. To do otherwise constitutes “coercing a student to participate in an alternative program [which] is illegal.”¹⁴²

136. See generally Tolliver, *supra* note 127 (stating that Luling is the only district the Texas Civil Rights Project has encountered that has attempted to completely expel pregnant students). Most complaints come from students who are excluded from participating in extra-curricular activities. *Id.*

137. Interview with Shelia Cheaney, Executive Director, Jane’s Due Process, in Austin, Tex. (June 24, 2005) (on file with author).

138. 34 C.F.R. § 106.40(b)(1)-(3) (2005).

139. See Brake, *supra* note 94, at 148 (comparing the voluntariness requirement in a pregnancy case to the voluntariness requirement of a criminal confession). In the criminal context, confessions given by the accused must be “made freely, with full knowledge of its nature and consequences, and [must] not [be] procured through overpersuasion, coercion, or promise of benefit.” *Id.* at 147–48.

140. See *id.* at 148.

141. Cheaney, *supra* note 137 (describing the pressure teens feel to side with an authority figure, especially an authority in a school setting).

142. See generally CALIFORNIA WOMEN’S LAW CENTER, FEDERAL MODEL POLICY ON THE CIVIL RIGHTS OF PREGNANT AND PARENTING STUDENTS 6 (2003), available at http://www.cwlc.org/files/docs/policy_brief_parenting_teens_fed_law.pdf (laying out a model for all school districts to follow when adopting a comprehensive pregnant and parenting student policy). This model plan encourages that all faculty, staff, and administration be fa-

IV. ACCESS TO EDUCATION

*“An educated Texan is an unlimited Texan . . . [F]or Texas to prosper beyond our own time on earth we must seek to empower every Texan regardless of the neighborhood they come from or the sound of their last name.”*¹⁴³

Although outright exclusion of a pregnant teenager from attending school hardly occurs, other more subtle forms of discrimination still exist among pregnant students¹⁴⁴ because school employees lack the knowledge or guidance to ensure that pregnant students are included in the educational process.¹⁴⁵ As mentioned above, counselors often fail to inform a pregnant student of her educational options and instead coerce pregnant students to attend separate educational programs.¹⁴⁶ When pregnant students do decide to remain at their home campus, some of their teachers violate Title IX by treating pregnant students differently than other students with medical conditions.¹⁴⁷ For example, a pregnant

miliar with a pregnant and parenting student’s right to remain in their home campus and participate in all school activities. *Id.* The model plan lays out the following rights:

[1] A pregnant or parenting teen may continue to participate in honors and magnet programs, special education placements, alternative or options programs, extracurricular, intramural, and inter-scholastic activities, club athletics, and graduation programs or activities, as well as non-public school programs funded by the students’ district.

[2] Students cannot legally be expelled, suspended, or otherwise excluded from their current educational or extracurricular program, or required to participate in school programs solely on the basis of the students’ pregnancy, childbirth, pregnancy recovery or termination, conditions related to pregnancy, or marital or parental status.

[3] Pregnant or formerly pregnant students cannot be compelled to provide medical certification that they are physically and emotionally able to continue their participation in a school activity or program *unless* such certification is required of all pupils with other health conditions or temporary disabilities requiring a doctor’s care. *Id.*

143. Press Release, Office of the Governor Rick Perry, Education, Job Growth Are Key to Texas’ Future (Jul. 29, 2004), *available at* <http://www.governor.state.tx.us/divisions/press/pressreleases/PressRelease.2004-07-29.3350/>.

144. *See* Brake, *supra* note 94, at 142 (noting that coercing a student to attend an alternative school and/or withholding information about a student’s educational opportunities are examples of subtle forms of discrimination). Other forms of discrimination include: 1) a teacher’s refusal to provide makeup work to a teen who has missed school because she gave birth; 2) a school’s refusal to grant a student who returns after childbirth credit for work she completed before leaving school; 3) a school district’s refusal to provide a pregnant student with home instruction even though the district provides such instruction for other students, that for medical reasons, also miss school. *Id.* at 143.

145. *See* Ling, *supra* note 19, at 2408 (explaining that there is no pressure on school employees to accommodate pregnant students and that any help a pregnant student receives depends upon each individual employee’s willingness to offer it).

146. Brake, *supra* note 94, at 142.

147. *Id.*

student faces discrimination when she is denied “unlimited use of a bathroom pass, access to an elevator, or extra time between classes to travel to distant classrooms” that other students with disabilities are afforded.¹⁴⁸ Since such discrimination is prevalent in her home campus, it may be reassuring that a pregnant teenager has the choice of alternative education. However, although alternative education programs at first seem like a fair alternative for pregnant teens, a more in-depth look at the unequal curriculum and the social stigma associated with alternative education reveals the harm such an education may cause.

A. Comparability of Alternative Education

Title IX mandates that separate education programs for pregnant teenagers are comparable to the education they would receive if enrolled in a regular program.¹⁴⁹ While Title IX does not require a quality education, just one that is comparable,¹⁵⁰ the Texas Education Code guarantees all Texas students access to a *quality education*¹⁵¹ and *equal opportunities* to participate in education, services, or activities within their school districts.¹⁵² The 74th Legislature established alternative education programs in Texas to help ensure that students receive the equal opportunities and quality education guaranteed them by both Title IX and the Texas Education Code.¹⁵³ The code requires school districts to provide accelerated instructional services to students at risk of dropping out of school through the operation of alternative education programs.¹⁵⁴ At-risk students enroll in alternative education programs “to expedite [their] progress toward performing at grade level” and completing high school.¹⁵⁵ Under Texas law, a pregnant or parenting teenager is classified as an at-risk student and therefore a candidate for participating in an alternative educa-

148. *Id.* at 143.

149. 34 C.F.R. § 106.40(b)(1) (2005).

150. *See Brake, supra* note 94, at 150 (arguing that because Title IX does not provide for quality education, alternative education programs are often inferior to regular school programs).

151. *See TEX. EDUC. CODE ANN.* § 4.001(a) (Vernon 2006) (ensuring that “all Texas children have access to a *quality education*”) (emphasis added).

152. *See id.* at § 1.002(a) (declaring that “an educational institution undertaking to provide education, services, or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide *equal opportunities* to all individuals within its jurisdiction or geographical boundaries”) (emphasis added).

153. *See generally* Commissioner of Education Final Decisions, *supra* note 87.

154. *See TEX. EDUC. CODE ANN.* § 29.081(b) (Vernon 2006) (stating that “each district shall provide accelerated instruction to a student enrolled in the district who . . . is at risk of dropping out of school”). The code defines a pregnant or parenting teenager as a “student at risk of dropping out of school. *Id.* at § 29.081(d)(5).

155. *See* Commissioner of Education Final Decisions, *supra* note 87.

tion program.¹⁵⁶ As stated earlier, Title IX mandates that the decision to attend an alternative education program for pregnant students be completely voluntary and that the program itself be comparable to the education a non-pregnant student receives.¹⁵⁷ It is difficult to compare the quality of alternative education programs to that of home campuses because 1) Title IX regulations do not explicitly establish criteria for such comparison, 2) each school district's program is different, and 3) there has yet to be case law on point.¹⁵⁸

The obvious goal of alternative education is to help at-risk students stay on track and attain their high school diploma. But despite the goal alternative education has many disadvantages which can make it an unattractive option for pregnant teenagers. The first disadvantage of alternative education programs is that the quality of education is questionable. Next, separation of pregnant students often leads to social stigma. And finally, alternative programs deprive both pregnant and non-pregnant students of valuable life skills that could help all students make better life decisions.

1. The Questionable Quality of Alternative Education

The Texas Education Code simply requires each school district with an alternative education program to provide supervision and counseling while focusing on "English language arts, mathematics, science, history, and self-discipline."¹⁵⁹ Although comparable to a regular campus in that an alternative education program must "have appropriately certified teachers . . . [and] provide each student the opportunity to attend a 7-hour school day," many alternative education programs do not provide extra-curricular activities or advance placement classes for their students.¹⁶⁰ In today's society, participating in extra-curricular activities and

156. TEX. EDUC. CODE ANN. § 29.081(d)(5) (Vernon 2006).

157. 34 C.F.R. § 106.40(b)(3) (2005).

158. See Ling, *supra* note 19, at 2400 (citing Deborah Brake, *Legal Challenges to the Educational Barriers Facing Pregnant and Parenting Adolescents*, 28 CLEARINGHOUSE REV. 141, ALTERNATIVE EDUCATION (July 10, 2003), 147–50 (1994)). See generally COMMITTEE ON PLANNING, TEX. EDUC. AGENCY, UPDATE ON <http://www.tea.state.tx.us/sboe/schedule/0703/alternativeed.html> (describing the different types of alternative education programs a district may choose to put in place and detailing the requirements for each program).

159. TEX. EDUC. CODE ANN. § 37.008(a)(4) (Vernon 2006).

160. See Commissioner of Education Final Decisions, *supra* note 87 (listing the criteria that each alternative education campus must meet). For example, the alternative education program must 1) be dedicated to teaching at risk students; 2) offer nontraditional methods of teaching catered to meet the at-risk youth; 3) have teachers certified "in all areas including special education, bilingual education, and/or English as a second language (ESL) to serve students eligible for such services;" 4) provide schooling 7 hours a day. *Id.*

advanced classes is a must for college-bound students and also very important to students entering the workforce.¹⁶¹

The court in *Brown v. Board of Education* best described the importance of equal educational opportunities when it argued “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . . [and] where the state has undertaken to provide . . . [an education], it is a right which must be made available to *all on equal terms*.”¹⁶² A pregnant teenager will soon be providing for herself and her new family. For this reason, a pregnant student would benefit most from enrollment in college prep courses or courses that would prepare her for the workforce.¹⁶³ Alternative education programs that do not provide access to higher educational classes or extracurricular activities deny the pregnant student the right to a quality education.¹⁶⁴ Allowing a pregnant student to teach herself and finish high school faster does not necessarily prepare her for the financial difficulties she will soon be facing.

If an alternative education program does not provide college preparatory courses, honors classes, laboratory science, and advanced placement courses, the pregnant student should be granted access to her home cam-

161. See California Women's Law Center, *Girls' Participation In Sports: An Important Tool In Teen Pregnancy Prevention*, http://www.cwlc.org/files/docs/policy_brief_athletics_teen_pregnancy.pdf (last visited Oct. 20, 2006) (explaining that participation in sports is important for teenagers because it teaches “lessons in teamwork, goal-setting, leadership, and competition”). When a school denies a pregnant student an opportunity to participate in sports it also denies her “[a]n alternative avenue through which to establish their self-worth; [a]n identity-building activity removed from the dating scene; [a] bonding experience with other females; [a] source of empowerment; and [a] means to interact with supportive adult role models.” *Id.*; see also Dunbar Educational Consultants, *Guidance for Students Entering High School*, <http://www.dunbarconsultants.com/planning/index.html> (last visited Oct. 26, 2006) (describing the impact a student's high school schedule has on his or her future).

162. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (holding that segregation based solely on race deprives minority children an equal educational opportunity) (emphasis added). The Court reasoned that education is of great importance in a democratic society because it is the basis of a good citizen and prepares children for the future. *Id.*

163. See Grace Belsches-Simmons, Commentary, *Teenage Pregnancy and Schooling: Legal Considerations*, 24 EDUC. L. REP. 1, 11 (1985) (stating that in today's society, a high school education is necessary for attaining and keeping even the most basic jobs). Giving pregnant and parenting students a quality education and preparing them for the workforce outweighs the allegations that pregnant and parenting students “taint the morals and interfere with the education of children who are not parents.” *Id.*

164. See Brake, *supra* note 94, at 150 (stating that Title IX only requires a pregnant student to receive a comparable education to that of a regular public school, but that this “comparability requirement establishes a floor below which a separate program for parenting students may not fall”). However, the Texas Education Code guarantees a student a quality education. TEX. EDUC. CODE ANN. § 4.001 (Vernon 2006).

pus's programs. Additionally, the student's home campus counselor should assist the student with arranging enrollment in classes required to complete her graduation requirement.¹⁶⁵ Unfortunately, this compromise is not taking place in every alternative school in Texas. Once a student chooses to attend an alternative education program, she often is not encouraged or allowed the opportunity to participate in activities at her regular high school.¹⁶⁶ Because alternative education programs are on shortened schedules and students complete their courses faster than students attending regular high schools, coordinating activities with home campuses is difficult.¹⁶⁷ Students, however, are encouraged to participate in the programs and activities available at their alternative education school, but often those programs and activities at alternative education schools are very limited. Thus, the opportunities are not equal.¹⁶⁸

Although case law does not establish the criteria by which to compare alternative education with regular high school programs, in *Newberg v. Board of Public Education*¹⁶⁹ the court outlined a list of potential factors that could be applied to alternative education programs.¹⁷⁰ The court compares "the course offerings, type of degrees available, class size, teaching qualifications, academic and recreational facilities, library resources, availability of computers and other equipment, extracurricular activities, student performance, average per student expenditures, and the reputation . . ." of two "'separate but equal' sex-segregated magnet schools . . ."¹⁷¹ Using this list to evaluate alternative education programs

165. See CALIFORNIA WOMEN'S LAW CENTER, *supra* note 142 (noting that counselors have a responsibility to assist their pregnant students in accessing and completing all desired and required classes not offered at the alternative school).

166. See Interview with Counselors, Garza Indep. High Sch., in Austin, Tex. (Oct. 24, 2005) (on file with The Scholar: St. Mary's Law Review on Minority Issues) (admitting that their students are not encouraged to participate in activities at their home school because of scheduling conflicts, however counselors thoroughly encourage their students to take advantage of the many extra-curricular programs offered at their campus and internships throughout the community).

167. *Id.*

168. *Id.* (encouraging their students to get involved in activities on campus such as yearbook, newspaper, horticulture, and CIS).

169. *Newberg v. Bd. of Pub. Educ.*, 26 Pa. D. & C.3d 682, 684 n.2 (Ct. of C.P. Phila. County 1983), *appeal quashed*, 478 A.2d 1352 (Pa. Super. Ct. 1984). Three female students, who were denied admission to Central High School solely because they were female, sought recovery under the Equal Protection Clause of the Fourteenth Amendment and Pennsylvania's Equal Rights Amendment. *Id.* at 1353.

170. *Brake*, *supra* note 94, at 150 (citing *Newberg v. Bd. of Pub. Educ.*, 26 Pa. D. & C.3d 682, 684 n.2 (Ct. of C.P. Phila. County 1983), *appeal quashed*, 478 A.2d 1352 (Pa. Super. Ct. 1984)).

171. See *id.* (noting that these separate schools for males and females were challenged under the Fourteenth Amendment's Equal Protection Clause and under the Equal Rights Amendment of Pennsylvania's constitution).

in Texas would give state officials, educators, and students a way to measure the quality of education an alternative program provides making the decision to attend one of these programs easier for a pregnant student.¹⁷²

2. Separation Leads to Social Stigma

A teenager who becomes pregnant and decides to keep her baby is faced with tremendous stress.¹⁷³ The teenager's life will change significantly and the decisions she makes will not only affect her life, but the life of her new child.¹⁷⁴ Teen pregnancy is looked down upon in society and often a pregnant teen is branded as an "outcast" and a failure.¹⁷⁵ Although alternative education programs are beneficial to pregnant teenagers by providing them with a means to finish their education quickly, the segregation contributes to the negative social stigma. Pregnant students as well as non-pregnant students are harmed by such segregation because they no longer have normal socialization.¹⁷⁶

First, separating a pregnant teen from the rest of the student population identifies the student as a "mother" and not a student.¹⁷⁷ She is no longer seen by her peers as an "equal" but rather is socially ostracized.¹⁷⁸ This stigma could lead to increased feelings of depression and isolation. Studies show that teenagers who have low self-esteem are more likely to

172. *See id.* (arguing the factors set out in *Newberg* should be used to compare "the instructional program in the separate program [for pregnant students] with that of the regular public schools").

173. *See* Family Management, *When Children Have Children, Teen Pregnancy*, <http://www.familymanagement.com/facts/english/facts31.html> (last visited Oct. 20, 2006) (stating that when a teenager becomes pregnant, she often has mixed emotions consisting of anger, guilt, and denial).

174. *See id.* (describing that teenagers often do not seek medical advice during their pregnancies which could lead to complications with the fetus). Children born to teen mothers may have problems in school and may have physical or mental problems. *Id.*

175. *See* Ling, *supra* note 19, at 2393 (stating that exclusion from regular high school can make a pregnant teenager feel "dirty or cheap"). Pregnant teens were often seen as immoral and "branded as a 'criminal and her pregnancy a crime for which she must assume feelings of guilt.'" (quoting CHARLES H. HARRISON, *SCHOOLGIRL PREGNANCY: OLD PROBLEM; NEW SOLUTIONS* 4 (1972)). *Id.* at 2392.

176. *See id.* (explaining that separating a pregnant student from her peers "reinforces the stigmatization of adolescent pregnancy, constrains girls to their roles as mothers, and handicaps their academic and social progress").

177. *See id.* (stating that the characterization of motherhood is negative when applied to a teenager).

178. *See id.* (explaining that once pregnant or parenting students are separated from mainstream education they become "powerless to reject their categorization [as a mother and a misfit] by society"). If pregnant students are allowed to remain in regular high school, "[t]hey will be perceived and treated like other students, [and] they will be able to take advantage of educational resources on an equal basis with all other students." *Id.* at 2412.

engage in sexual relationships, which may contribute to the risk of another pregnancy.¹⁷⁹ Because of their low self-esteem, “85-90% of the teenage mothers elect to keep their babies rather than give them up for adoption in the belief that a baby will provide the kind of unconditional love and acceptance [for them] that they perceive society does not.”¹⁸⁰ Unless she gets appropriate psychosocial support to counter the stigma caused by segregation, a pregnant teenager’s already low self-esteem may worsen when removed from regular school.¹⁸¹ Teenage girls ranked popularity amongst their peers as “extremely” or “very important” to their self-esteem.¹⁸² Feelings of isolation from peers may interfere with learning processes since school achievement and self-esteem go hand-in-hand.¹⁸³ Thus, lack of counseling coupled with the social isolation experienced by pregnant teens attending alternative school could jeopardize the student’s mental and emotional health.

Some districts establish “schools of choice” which strictly house students who choose to leave their home campuses because they want to expedite their high school experience.¹⁸⁴ Other districts, however, house students who choose to leave their regular school programs with students who are subject to mandatory removal because they violated the law or

179. Nancy Schimelfening, *Your Guide to Depression: Teen Self Esteem Facts and Sex Facts*, <http://depression.about.com/cs/teenchild/a/teensex.htm> (last visited Oct. 20, 2006) (declaring that “teens who are struggling with their own sense of self-worth are the most prone to unwise decisions about sex”). Often teenagers’ low self-esteem leads them seeking love and approval. *Id.* Some teens associate the intimate feelings of sex with those of expressions of love. *Id.* A teenager with no self-worth may also intentionally get pregnant so that she may fill the emptiness in her life with the love of a child. *Id.*

180. Robert W. Reasoner, *Review of Self-Esteem Research*, NAT’L ASS’N OF SELF-ESTEEM, <http://www.self-esteem-nase.org/research.html> (last visited Oct. 20, 2006).

181. See Interview with Louisa Willson, Candidate for Masters in Counseling, Vanderbilt Univ., in San Antonio, Tex. (Oct. 20, 2005) (explaining that teenagers long to feel accepted by their peers and when they do not “fit in,” they often withdraw and struggle with their own self-worth) (on file with author).

182. See KidsSource OnLine, *Teenage Girls Today are More Independent, Yet Lack Self-Esteem*, (Aug. 19, 1998), <http://www.kidsource.com/kidsource/content4/teenage.girls.esteem.news.html> (reporting that when it comes to self-esteem, teenage girls rank physical appearance first, “followed by popularity among boys, popularity among girls, puberty, sexual activity and family”).

183. See Reasoner, *supra* note 180 (stating that a 1989 study finds “[a]s the level of self-esteem increases, so do achievement scores; and as self-esteem decreases, so does achievement”).

184. See generally Interview with Counselors, *supra* note 166 (explaining that Garza Independent High School is a school of choice for eleventh and twelfth graders). Garza High School, like other schools of choice, is a fully accredited school which students freely chose to attend. *Id.*

the school's code of conduct.¹⁸⁵ Schooling a pregnant teen in an alternative education program which also houses students who have been subjected to mandatory dismissal may jeopardize the health and safety of the mother and her unborn child. Such placement also socially stigmatizes the pregnant teen as a wrongdoer. Becoming pregnant at any age is not against school code or the law, and therefore, these teens should not be subjected to such treatment and criminal stigma.

Finally, when a pregnant student attends an alternative education school, she is no longer offered "the same diversity of perspectives and life experiences that are present in larger school environments."¹⁸⁶ Excluding the pregnant student from normal high school activities such as athletic games, school dances, and daily interaction with peers leaves the pregnant student feeling inferior. Somewhat similar to the racially segregated schools of our country's past, alternative education programs today can generate "a feeling of inferiority as to . . . [pregnant students'] hearts and minds in a way unlikely ever to be undone."¹⁸⁷ "A sense of inferiority affects the motivation of a child to learn" and thus is a detriment to a pregnant student's life.¹⁸⁸

3. Supplementing Traditional Education

The exclusion of pregnant students from mainstream campuses also has a negative impact on non-pregnant students.¹⁸⁹ Gone are the days when non-pregnant students view having a baby in high school as "cool," as more and more women attend college, have careers, and postpone starting a family.¹⁹⁰ By including pregnant students in regular educational

185. See TEX. EDUC. CODE ANN. §§ 37.001–37.011 (Vernon 2006) (establishing the criteria for the removal of a student from a home campus to an alternative education program).

186. See Ling, *supra* note 19, at 2410 (arguing that that daily social and intellectual exchanges between people of different backgrounds are limited when a pregnant student is removed from the regular school setting).

187. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (U.S. 1954) (insisting that separating children in high school "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone").

188. See *id.* (arguing that segregation affects the mental and educational development of the minority group and deprives them of opportunities and benefits that they would obtain if enrolled in a racially integrated school).

189. Ling, *supra* note 19, at 2411.

190. See Oliver Read, *Young Women Challenge The Marriage Norms*, THE ONLINE NEWSHOUR, June 19, 2006, http://www.pbs.org/newshour/generation-next/demographic/marriage_06-19.html (stating that the average age thirty years ago for a female to marry was age twenty, while today it is twenty-five). Women are postponing marriage and children because they are "tak[ing] care of themselves first." *Id.* "Essentially, young adults, especially women, who are graduating from college at a higher rate than men these days,

programs, non-pregnant girls may see the difficulties pregnant teens or teen moms face, and lessons learned may serve as a form of contraception. Not only could this inclusion be a way of discouraging teenagers from having sex, but it could also be used as an education tool.¹⁹¹ Allowing pregnant students in the classroom would help educated both male and female students in prenatal health and the fetal development process.¹⁹² It would give students a better understanding of the entire life process and therefore help students make more informed decisions about their own life plans.¹⁹³

By including a pregnant student in mainstream classes, pregnant students and non-pregnant students alike are given the opportunity to take full advantage of the educational process.

V. RESOLUTIONS

*“In order to succeed in the 21st century, our students must be college ready and job ready.”*¹⁹⁴

Although plans to completely prevent teen pregnancies are unrealistic, it is possible to ensure that once a teenager is pregnant, she is granted and given the education she is entitled to under the law. First, this requires the state to locate districts where pregnant teenager’s education rights are being violated. This can be accomplished by conducting a survey in which a caller pretends to be a pregnant teenager and calls a sample of high school admission’s offices around the state. The caller could identify herself as a pregnant student to a school administrator and inquire about

are delaying the settled-down lifestyle because they feel the need to get a better — or at least specific — education to further their careers and themselves.” *Id.*; see also THE ALAN GUTTMACHER INSTITUTE, *TEEN SEX AND PREGNANCY: FACTS IN BRIEF* (1999), available at http://www.agi-usa.org/pubs/fb_teen_sex.html (finding seven out of ten teenage mothers finish high school, but are “less likely than women who delay childbearing to go on to college”).

191. See Ling, *supra* note 19, at 2411 (arguing that by allowing a pregnant student to remain in mainstream programs, schools are also helping end sex stereotyping). Sex stereotyping occurs when only a pregnant mother is separated from her peers and not the male student that impregnated her. *Id.* at 2410. Separating the pregnant students from the non-pregnant students continues to place all the responsibility on the female without distributing any duties to the male. *Id.* This action thus continues “the stigma” of sex inequality. *Id.* at 2411.

192. *Id.*

193. See *id.* (arguing that without prenatal health instruction and parenting courses, “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”).

194. Press Release, Office of the Governor Rick Perry, Gov. Perry Announces \$130 Million Initiative to Boost Graduation Rates (Nov. 12, 2003), available at <http://www.governor.state.tx.us/divisions/press/pressreleases/PressRelease.2003-11-12.2750>.

enrolling in that particular school. The caller would then see what is suggested by the school administrator and document each response.

Student interns at the New York Civil Liberties Union conducted a similar survey during the summer 2000.¹⁹⁵ Interns pretending to be “pregnant teenagers in good academic standing” contacted twenty-eight high school admissions offices.¹⁹⁶ The interns told the school administrators, “I would really like to go to [school name], it’s the closest to my house and it would just be so much easier for me.”¹⁹⁷ Three schools completely refused to enroll the pregnant student¹⁹⁸ and eight others vigorously discouraged them from enrolling.¹⁹⁹ Conducting a survey similar to this in Texas could pin-point schools violating the law. The schools in violation of the law could then be briefed on their obligations under Title IX and the Texas Education Code.²⁰⁰

During a recent round table discussion with three counselors at an alternative school in Austin, the counselors admitted they did not know the law regarding pregnant students.²⁰¹ In order to ensure that all counselors are aware of Title IX and the state’s policy on educating pregnant teenagers, school districts around the state should implement mandatory training in this area prior to counselor certification as well as continuing education classes. In order to become a Licensed Professional Counselor (LPC) a candidate must complete 60 hours of graduate coursework, complete two years under professional supervision, pass a licensure exam, and complete a minimum of fifteen continuing education hours per year.²⁰² Requiring that counselors be educated regarding the legal rights

195. New York Civil Liberties Union, *Survey of New York City High School Admissions Practices Regarding Pregnant and Parenting Teens* (Dec. 1, 2000), available at http://www.nyclu.org/rrp_p_survey.html.

196. *Id.*

197. *Id.* (stressing that schools were contacted multiple times and that responses varied depending on which individual answer the phone).

198. *Id.* (detailing that one school surveyed said, “[t]his is not the school for you . . . Pregnant schools would be more conducive to your needs . . . nobody tries to help you, especially here”).

199. *Id.* (giving an example of one school that asked, “[d]oes it bother you that you are going to be pregnant? Does it bother you that you are going to show in front of the other high school students?”).

200. See generally DELLINGER, *supra* note 26, at 90–91 (explaining that employees must be trained to comply with the state and federal laws regarding pregnant students). Policies need to be organized in a way that the people allowed to administer them will understand. *Id.* It is the duty of higher-level staff to supervise the policy’s implementation. *Id.*

201. Interview with Counselors, *supra* note 166 (admitting that they were not familiar with all of the state requirements associated with educating pregnant students).

202. Interview with Louisa Willson, *supra* note 181 (explaining the requirements to be a Licensed Professional Counselor).

of pregnant students would not be difficult to integrate into long established requirements. If counselors employed at one of the top alternative education schools in Texas were not aware of a pregnant student's right to education, then it is likely that counselors throughout the state are also unaware. Ensuring a pregnant student's right to an education in Texas is not difficult, but school employees must first be informed that these rights exist.²⁰³

Teenagers throughout Texas also need to be aware of their rights to an education under Title IX.²⁰⁴ Requiring a special presentation for entering freshman throughout each school district would be an easy and effective way to educate students about their rights.²⁰⁵ A lawyer specializing in education law or a school counselor familiar with Title IX could conduct the class.²⁰⁶ This information would benefit all students, not just those currently pregnant. In addition to a presentation on Title IX, school nurses, counselors, and administrators should be required to keep pamphlets on a pregnant teenager's legal rights in their office.²⁰⁷ These professionals, when faced with a pregnancy at their school, could provide the student with all her options in one standard and concise form.²⁰⁸ The teenager could then take the brochure home and weigh all her options.

Finally, to ensure a pregnant student is obtaining an adequate education, the Texas Education Agency must hold alternative education programs accountable.²⁰⁹ An alternative school must be subjected to the same guidelines and requirements as home campuses.²¹⁰ Although recently discussed, the state legislature must put these accountability stan-

203. See S.A. Stephens, Wendy C. Wolf & Susan T. Batten, *Improving Outcome for Teen Parents and Their Young Children by Strengthening School-Based Programs: Challenges, Solutions and Policy Implications*, Center for Assessment and Policy Development (1999), available at <http://capd.org/pubfiles/pub-1990-04-01.pdf> (arguing that "simply handing out a one page pamphlet from the National Women's Law Center to students, parents, teachers, community advocates and front-line staff who work with teen parents can raise the issue of equal access to education").

204. See *id.* (arguing that "education and training on Title IX provisions can affect the education opportunities available to teen parents").

205. Interview with Jennifer P. Selling, Attorney at Law, in Austin, Tex. (Oct. 24, 2005) (on file with The Scholar: St. Mary's Law Review on Minority Issues) (discussing how Title IX training for counselors could be expanded to include all students).

206. *Id.*

207. Stephens, Wolf & Batten, *supra* note 203.

208. See *id.* (suggesting that "replication packages and other information on alternative instruction methodologies and other education interventions appropriate for at-risk students should be made available").

209. See Commissioner of Education Final Decisions, *supra* note 87.

210. See *id.* Although accountability criteria are set for each alternative education program, a student not enrolled in the program for over 85 days is still accountable to his home campus. It is difficult to determine how an alternative education program is doing

dards in the Texas Education Code and not allow the Texas Education Agency the unfettered discretion to establish what it feels is best.

VI. CONCLUSION

*“Whatever obstacles to learning our children face, we must empower them to succeed. Students who drop out of school face a future of unfulfilled promise, and our state pays the price for it.”*²¹¹

As much as Texans hate to admit it, teenagers are having sex.²¹² The lack of proper sex education, the difficulty in accessing contraceptives, and strict abortion laws for minors increase the likelihood of pregnancy among teenagers in Texas.²¹³

Dropping out of high school or being excluded from the educational process is no longer a feasible option in today's society.²¹⁴ Dropping out severely limits “students’ opportunities for further education, employment and income.”²¹⁵ A teenager who drops out before graduation is “more likely to live in poverty and [is] three times as likely to be unemployed, underemployed, or working for very low wages.”²¹⁶ Half of all Texans on welfare failed to complete their secondary schooling.²¹⁷ Access to education provides a student economic independence, self-sufficiency, and a chance of moving out of poverty and off of public assistance.²¹⁸

Today, the federal and state governments are responsible for ensuring pregnant students an equal opportunity to obtain an education.²¹⁹ The Texas Education Code guarantees that “all Texas children have access to

when not all students are included in the alternative education programs’ annual report. *Id.*

211. Rick Perry, Governor, State of Tex. Rick Perry’s Remarks on State Education in Texas (Mar. 14, 2002), *available at* http://www.governor.state.tx.us/divisions/press/speeches/speech_031402.

212. Turner, *supra* note 15 (stating that 46% of high school females and 57% of high school males in Texas admit to having sex).

213. Interview with Shelia Cheaney, *supra* note 137.

214. CENTER FOR PUBLIC POLICY PRIORITIES, THE STATE OF TEXAS CHILDREN 2005: TEXAS KIDS COUNT ANNUAL DATA BOOK 39 (2005).

215. *Id.* (indicating that “the average income for a person without a high school diploma is 30% lower than for a person with a high school degree”).

216. *Id.*

217. Perry, *supra* note 211 (noting that “a high school dropout is four times as likely to be unemployed as a Texan with a bachelor’s degree”).

218. See NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION, *supra* note 95, at 55 (reporting that 30% of teen mothers graduate high school by the age 30 compared to the 76% graduation rate of females who delay having children).

219. See TEX. EDUC. CODE ANN. § 4.001(a) (Vernon 2006); 20 U.S.C. § 1681(a) (2000).

a quality education,”²²⁰ while Title IX provides that “no person . . . shall . . . be excluded from participation in, denied benefits of, or be subjected to discrimination under any education program or activity.”²²¹ Although it is illegal for a pregnant student to be excluded from an education, this exclusion often continues through more subtle forms of discrimination.²²² It is common practice to require pregnant students to leave their home high schools and attend alternative education programs. The decision to attend one of these educational options should be “completely voluntary,” and no pregnant student should be pressured into choosing an alternative education simply because their counselor thinks it is best.²²³ Although alternative education programs provide an adequate learning environment for some students, pregnant teenagers need to be provided the best education possible, in the most comfortable atmosphere possible.²²⁴ Again, under the law, it is a pregnant teenager’s right to decide whether an alternative school would provide the correct atmosphere. Because a pregnant teen will soon become a teenage parent, she must have the skills and knowledge necessary to support her child. A pregnant teenager must be able to make the decision regarding her education without any pressure from school officials.²²⁵

With a little work, the state will no longer have to “pay the price” for pregnant teenagers.²²⁶ The state must work to improve the quality of alternative education programs, inform pregnant students of their educational options, and hold schools accountable when a pregnant student’s rights have been violated. Each pregnant teenager will have a “brighter future” when the state assumes its responsibility and protects the legal rights afforded to pregnant teenagers under Title IX and the Texas Education Code.²²⁷

220. TEX. EDUC. CODE ANN. § 4.001(a) (Vernon 2006).

221. 20 U.S.C. § 1681 (2000).

222. Brake, *supra* note 94, at 142.

223. *Id.* at 147–48.

224. *Id.* at 148 (noting that a pregnant teen may chose to attend an alternative program because regular school do not try to “provide pregnant students with the accommodations necessary for them to remain in regular school programs”).

225. *Id.*

226. Perry, *supra* note 211 (stressing the need for “at risk” youth to remain in school). If students drop out of high school, Texas “pays the price” for uneducated Texans. *Id.*

227. Perry, *supra* note 32 (believing “[t]hat every child, regardless of financial means, where they live or the sound of their last name, is entitled to the best education possible”). Providing pregnant teenagers a quality education will help empower them to have a “brighter future.” *Id.*