

CHAPTER 9

LEARNER PREGNANCY

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A school cannot punish a learner, or limit a learner's access to education as a result of her pregnancy.

OVERVIEW

In 2017, around 17 percent of girls between the ages of 12 and 19 who were not attending an education institution had fallen pregnant in the previous twelve months. The highest percentage of these girls came from KwaZulu-Natal, followed by the Eastern Cape and the Western Cape.

In September 2021, at the Portfolio Committee on Basic Education, the Department of Basic Education revealed that 1 053 girls between the ages of 10 and 14 had given birth during the year, while 35 209 babies were delivered from mothers who were between the ages of 15 and 19. According to a 2020-2021 report from the Gauteng Department of Education, the number of learners who fell pregnant in Gauteng alone was 23 226.

There are many reasons why school-going girls fall pregnant, and they often include the unavailability of adequate reproductive health services and information on sexual health. However, concerning incidences of rape and gender-based violence have also led to unwanted pregnancies and are indicative of the fact that girls are not safe in our communities.

Pregnant learners are a vulnerable and often marginalised group who

require additional care and support to ensure that they are able to access education and remain in school before and after childbirth. The purpose of this chapter is to explain the domestic laws and policies and the international and regional law protecting pregnant learners; and to set out the legal and social obligations of all relevant duty bearers towards protecting the right of pregnant learners to access education and to re-enter school after giving birth.

NATIONAL LAWS AND POLICIES PROTECTING PREGNANT LEARNERS

The South African Constitution contains several provisions that not only protect the rights of pregnant learners, but also require that the state take steps to eliminate unfair discrimination and realise their right to a basic education.

Section 7(2) of the Constitution, for example, requires the state to respect, protect, promote and fulfil the rights in the Bill of Rights. This section places both negative and positive obligations on the state to ensure that the rights in the Bill of Rights are both protected and realised.

Section 9(3) of the Bill of Rights states that the State must not unfairly discriminate against any person based on certain grounds, including gender, sex, pregnancy and marital status. Section 9(4) also states that no person may unfairly discriminate against anyone on these same grounds.

Section 10 of the Constitution states that everyone has the right to dignity and to have their dignity respected and protected, while Section 29(1)(a) protects everyone's right to a basic education.

Section 14 of the Constitution protects everyone's right to privacy, which includes a learner's right to confidentiality concerning their health status.

Section 12(2) of the Constitution protects everyone's right, including that of learners, to bodily and psychological integrity, which includes the right to

make decisions concerning reproduction. The Bill of Rights also makes special provision for children in Section 28(2). This section states that the best interest of the child is of paramount importance in every matter concerning the child.

These constitutional provisions are interrelated, and require that where the rights of a pregnant learner are concerned, all these rights must be respected when responding to and managing incidents of learner pregnancy in schools.

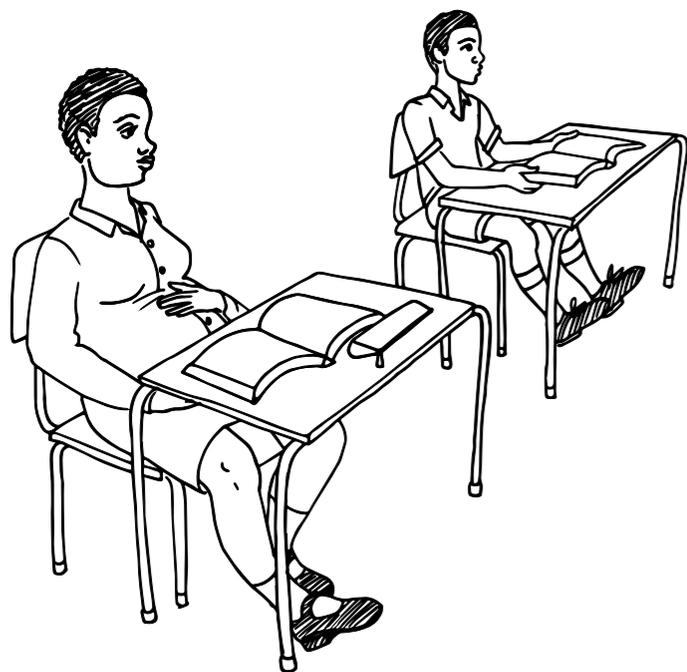
In terms of legislation, section 9 of the Children's Act states that "[i]n all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied". This is in line with section 28(2) of the Constitution.

Furthermore, Section 10 of the Children's Act provides that every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way; and views expressed by the child must be given due consideration. This is an important

principle and right that requires all those involved to engage with a pregnant learner when taking steps to assist and protect her. The learner must be included in the process; and more importantly, her views must be considered.

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) was introduced to prevent and prohibit unfair discrimination and to promote the achievement of equality in South Africa. Section 6 of PEPUDA provides that no one, including the state, may discriminate unfairly against any person.

Section 8 of PEPUDA also makes it illegal to discriminate on the basis of gender. In particular, Section 8(f) prohibits discrimination on the basis of pregnancy, while Section 8(g) prohibits discrimination where it results in limiting women's access to social services or benefits, such as health and education. In other words, a school cannot punish a learner, or limit a learner's access to education as a result of her pregnancy, as this would amount to discrimination on the basis of both gender and pregnancy.



The South African Schools Act (SASA) gives effect to the right to education guaranteed by the Constitution. In terms of Section 3(1) of SASA, anyone whose child is due to turn seven in a given school year **must** make sure that their child attends school. The period of compulsory attendance ends on the last school day of the year a learner turns 15, or their last day of Grade 9 (whichever comes first). However, as the Constitutional Court held in *Johannes Moko v Acting Principal of Malusi Secondary School, Tlou Mokgonyana and Others* (CCT 297/20), the right to basic education, as protected in Section 29(1)(a) of the Constitution, is not limited to only primary school education or education up to Grade 9 or

the age of 15. Both the state and learners' parents/guardians therefore have a duty not to impair or diminish a learner's right to both primary and secondary school, as well as a duty not to prevent a learner from writing matric exams.

Section 5(1) of SASA also states that "[a] public school must admit learners and serve their educational requirements without unfairly discriminating in any way". This means that pregnant learners, especially those of compulsory school-going age, must be enrolled and be allowed to attend school.

The Integrated School Health Policy, published in 2012, aims to contribute to the optimal health and development of schoolgoing children, to address

health barriers to learning, and to make provision for a package of health services that should be provided at schools. This includes providing health education on topics such as sexual and reproductive health, contraception, and teenage pregnancy. In terms of this policy, learners should be assessed once at each of the four educational phases, by a professional nurse.

During later educational phases, the Policy requires that more emphasis be placed on ensuring that learners are able to access sexual and reproductive services, and that all learners should be counselled with regard to sexual and reproductive health, which can include the provision of contraception.

The National Education Policy (NEPA) was introduced to provide for the making and applying of national education policy regarding schools. Section 3(4)(o) of NEPA states that the Minister of Basic Education may determine national policy dealing with education support services such as health, welfare, counselling and guidance as part of the Department of Basic Education's (DBE's) responsibility.

Even though NEPA allows the Minister to publish a national policy on learner pregnancy, to date the Minister has only circulated a draft policy for public comment. In 2007, the DBE introduced national guidelines titled 'Measures for the Prevention and the Management of Learner Pregnancy'. These guidelines attempted to address the discrimination pregnant learners were experiencing at school. However, as will be discussed below, these still led to schools implementing discriminatory and exclusionary policies. In 2009, after an influx of reports that pregnant learners were still being expelled because of their pregnancy, the DBE corresponded with all the provinces, indicating that this was not allowed, and that learners must be allowed to return to school as soon as they are able after giving birth.

In February 2018, the DBE circulated a draft 'National Policy on the Prevention and Management of Learner Pregnancy in School' for public comment. While the DBE's steps to finally develop a national policy on learner pregnancy were welcomed, the draft policy received criticism. In a joint submission endorsed by the Legal Resources Centre, SECTION27 and the Equal

Education Law Centre it was noted (among other observations) that the draft policy remained vague, lacked sufficient clarity, and fell short of the definition of a 'policy'. In addition, the joint submission stated that the draft policy was silent on the protection of rights of learner fathers; failed to specify or allocate roles and responsibilities to key role players; and although reference was made to an 'Implementation Plan' that was meant to accompany the draft policy and contain further detail, this plan was not publicly circulated.

In September 2021, Cabinet approved a finalised policy titled 'Department of Basic Education Policy on the Prevention and Management of Learner Pregnancy in Schools'. This policy introduces important changes, and aims to:

- Provide quality, age-appropriate comprehensive sexuality education
- Provide access to youth-friendly sexual and reproductive health services
- Ensure the return and retention of learners, after they have given birth, in an appropriate grade
- Facilitate pregnant learners' access to ante-natal care during pregnancy at school through collaboration with social sector partners and NGOs
- Provide a supportive, stigma-free, non-discriminatory environment for learners before and after birth, to ensure the continuation of learning and support their physical and psychological needs
- Provide for the effective development and training of educators
- Provide for the care, counselling and support of pregnant learners.

Importantly, the policy obliges schools to reasonably accommodate pregnant learners during their pregnancy, which may include making provision for short- to medium-term absences while pregnant, as well as allowing them to return to school after delivery and accommodating their learning, health and maternal needs.

In addition, the policy expressly provides that "no educator, school staff member or fellow learner may discriminate against, humiliate or abuse a learner physically, emotionally, or psychologically, based on their pregnancy or post-pregnancy status".

The policy also expressly states that attention will be paid to the identity and rights of the biological father involved, whether he is a learner, educator, or person outside of the basic education system. More specifically, if the father is a learner, the policy states that he should be "counselled and guided to assume and sustain his rights and responsibilities". Importantly, however, the policy also states that if the father is an educator or other member of staff, he should be suspended and subjected to disciplinary and legal procedures; and if the father is a person outside of the basic education system, he should be subjected to inquiry and action if a learner was coerced, sexually violated, assaulted, or if statutory rape has occurred.

However, the policy does contain some concerning provisions, including the following requirements:

- A pregnant learner is to remain in school during and after pregnancy. To facilitate the application of

the relevant rights, learners who are over six months pregnant will be required to submit a medical certificate indicating the status of their pregnancy and estimated delivery date.

- In addition, the pregnant learner will be asked to provide medical reports to her appointed teacher or school principal certifying that it is safe for her to continue with her schooling if she wishes to stay in school beyond 30 weeks (8 months) of pregnancy.
- If the learner does not provide this information and fails to provide an explanation, she may be asked to take a leave of absence until medical proof is provided. Medical information provided by the learner to the principal shall be strictly confidential to protect the learner's right to privacy.

Even a cursory look at these provisions points to potential issues of contention, such as the insistence of the provision of a medical certificate, failing which a learner may not be allowed back to school. Such an approach does not take into account the socio-economic and social challenges learners may find themselves in, and may violate their right to privacy and dignity.

In addition, the policy notes that a document titled 'Implementation Plan for the Policy on the Prevention and Management of Learner Pregnancy in Schools' will describe how the policy's goals will be achieved. This implementation plan is also intended to provide further detail on aspects such as learners' rights of access and associated referrals to appropriate counselling, care and support, as well as steps to be taken for establishing a Sub-Committee on the Prevention and Management of Learner Pregnancy. Unfortunately, this implementation plan does not accompany the policy.

Despite these shortcomings, the policy does present an opportunity to set out the protective measures that must be followed by all schools in the country when assisting pregnant learners.

The DBE's 'National Policy on HIV, Sexually Transmitted Infections and Tuberculosis for Learners, Educators, School Support Staff and Officials in all Primary and Secondary Schools in the Basic Education Sector', published in 2017, is also noteworthy. While this policy aims to ensure that schools and officials respond properly and systematically to HIV, sexually

transmitted diseases and tuberculosis, it also addresses learner pregnancy. In particular, it states that no learner will be denied access to school because of pregnancy, among other things; and that every person has the right to access relevant, factual, comprehensive education on sexuality, which includes information on pregnancy (see Chapter 21 of this book on Comprehensive Sexuality Education).

In addition, the policy states that places such as schools should provide a positive and supportive environment where learners can access information, care, counselling and support. This includes accommodating any reasonable absence related to treatment, care, counselling and support linked to pregnancy, among other things. During the implementation of the policy, schools are also required to recognise that girls and young women are in a particularly vulnerable position, especially in relation to unplanned pregnancy, and must also address the learning needs of those pregnant learners with special learning needs or disabilities to ensure their inclusion in the provision of teaching and learning. Importantly, the policy also requires schools to develop their own policies in response to learner pregnancy.



PROVINCIAL POLICIES ON LEARNER PREGNANCY

Some provincial education departments such as the Western Cape Education Department (WCED) do have a pregnancy policy in place, which sets out guidelines for schools in managing learner pregnancy. Worryingly, the policy states that pregnant learners are to be considered learners with 'special needs' and that they must be given counselling. This terminology stigmatises pregnant learners as being 'troubled' or in need of psychological help, and perpetuates negative social attitudes towards pregnant girls.

Learner pregnancy is dealt with in different ways across the provinces, because there is no national policy. SGBs have been left to determine their own learner pregnancy policies in schools, without any guidance as to what is lawful. In many instances these policies have been discriminatory. Pregnant learners are being subjected to unlawful practices at schools, including being threatened with suspension or expulsion, or being refused a catch-up

plan for missed lessons. Some learners have not been allowed to return to school for at least a year after giving birth.

The effect of the lack of a national policy can be seen in a case brought by two Free State schools, Welkom and Harmony High ('the schools'), against the head of the Free State Department of Education ('HOD').

The SGBs of the schools adopted pregnancy policies that provided for the automatic exclusion of pregnant

learners. In particular, learners who fell pregnant were not readmitted to school in the year in which they gave birth. The effect of these policies was that pregnant learners would be forced to repeat their current grade should they decide to return. These unlawful policies were in line with a 2007 DBE national policy titled 'Measures for the Management and Prevention of Learner Pregnancy'. This policy encouraged discriminatory conduct by promoting the view that a



SGBs and educators need to draft policies that do not discriminate against pregnant learners but comply with the Constitution.

pregnant learner should take a leave of absence of up to two years to “exercise full responsibility for parenting”.

The Welkom and Harmony policies were applied even though both schools were aware of a national circular titled ‘Management and Governance Circular’. This circular stated that learners may not be expelled because they are pregnant, and that pregnancy policies and interventions must not punish, but be “rehabilitative and supportive”. The circular also encouraged learners to return to school as soon as possible.

Both schools had forced a learner to leave because of pregnancy. After being told of this, the HOD ordered the principals to allow the learners back

immediately. The SGBs refused, and took the HOD to court to stop him from interfering with their policies.

In the judgment, the Constitutional Court stated that pregnancy policies differentiate between learners on the basis of pregnancy and gender (because male learners are not negatively impacted by these policies). This differentiation amounts to unfair discrimination. The Court also stated that the policies infringe on a pregnant learner’s right to basic education by requiring them to repeat up to an entire year. The policies violate the learners’ rights to human dignity, privacy, and bodily and psychological integrity, by obliging other learners to report their pregnancy to school authorities, thus stigmatising

them even more. It is clear that the 2007 DBE pregnancy policy on which the schools relied when drafting their policies is against the law and the Constitution.

The Constitutional Court also stressed the importance of cooperative governance between HODs and SGBs, meaning they should work together to make sure that all learners can enjoy a quality education. The Welkom judgment highlighted the importance of SGBs and educators drafting policies that do not discriminate against pregnant learners but comply with the Constitution. These cases also showed the urgent need for a national learner pregnancy policy, to ensure a uniform standard that upholds the best interests of pregnant learners.



INTERNATIONAL AND REGIONAL LAW PROTECTING PREGNANT LEARNERS

South Africa has signed a number of international and regional treaties and conventions that strengthen the state’s responsibility to protect and support pregnant learners, and ensure that they are able to access basic education and remain in school during and after pregnancy.

Section 10(f) of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) states that:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women ... the reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely.

Section 28(1)(e) of the UN Convention on the Rights of the Child (UNCRC) obliges State Parties to:

Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

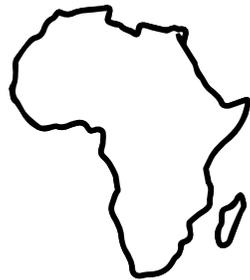
In addition, South Africa has signed and ratified the UN Convention on Economic, Social and Cultural Rights

(ICESCR), which recognises everyone’s right to education. The Committee on Economic Social and Cultural Rights, which is responsible for overseeing the implementation of the ICESCR, has interpreted this right further in General Comment 13 and explains that one of the features of this right includes ‘Accessibility’. According to the Committee, ‘accessible’ education has three overlapping dimensions, one of which is non-discrimination. In this regard, the Committee notes that “education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination, on any of the prohibited grounds”.

In 2017, South Africa submitted its first report to the Committee in which it explained how the provisions of the ICESCR were being implemented

domestically. In the following year, the Committee released its ‘Concluding Observations’ in which it responded to South Africa’s report and noted its concern for the high rate of teenage pregnancy that was contributing to high drop-out rates for girls.

The Committee recommended that the state ensure that facilities and services for sexual and reproductive health are available and accessible to all, particularly in rural areas. The Committee also recommended that the State reduce the high rate of teenage pregnancy, ensure access to and availability of sexual and reproductive health information and contraceptives for all, especially in rural areas, and provide the necessary support services for pregnant adolescent girls, including measures to enable them to continue with their education.



WHAT OBLIGATIONS DO AFRICAN LEGAL MECHANISMS IMPOSE ON SOUTH AFRICA TO PROTECT PREGNANT LEARNERS?

South Africa is party to various African legal mechanisms containing stronger and more specific obligations that recognise the discrimination that girls and women often face, and require that deliberate steps be taken to support pregnant learners and prevent increasing school drop-out rates. It is on the basis of these provisions that countries such as Sierra Leone and Tanzania have been able to approach regional treaty bodies to address the exclusion of pregnant girls from access to education.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) requires all African member states to take measures to promote keeping girls in schools. This Protocol adds to South Africa's responsibilities under the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

12(2)(c) of the Maputo Protocol states that:

State Parties shall take specific positive action to (c) promote the enrolment and retention of girls in schools.

23(g) of the African Youth Charter (AYC) states that South Africa must:

Provide educational systems that do not impede girls and young women, including married and/or pregnant young women, from attending.

The African Youth Charter requires signatory states to eliminate discrimination against girls, and obliges states to ensure that there are no barriers in the education system that block pregnant learners from attending school.

Article 11(6) of the African Charter on the Rights and Welfare of the Child (ACRWC) states that:

State Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity

to continue with their education on the basis of their individual ability.

The African Charter on the Rights and the Welfare of the Child also places an obligation on signatory states to take "appropriate measures" to ensure that children who fall pregnant have a chance to continue their education.

Only the African legal mechanisms speak specifically about supporting **pregnant** girls. South Africa has signed all these mechanisms, and the state is therefore bound to ensure that pregnant learners, and learners who are mothers, are not unlawfully denied access to school.

In addition to the above, in 2013 the Ministers of Education and Health in 20 countries in Eastern and Southern Africa gathered in Cape Town, South Africa, and committed to the Eastern and Southern African Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa.

This commitment was undertaken under the leadership of UNAIDS, with the support of the Regional Economic Communities (EAC and SADC). In terms of this, ministers undertake to step up efforts to ensure adolescents' and young people's access to good-quality, comprehensive sexuality education (CSE) and youth-friendly sexual and

reproductive health (SRH) services in the Eastern and Southern African (ESA) region, and to work in partnership with young people, parents, civil society, and community and religious leaders to achieve the goals set out in the 2013 ESA Commitment. Some of the steps increase state obligations, and require the relevant ministers to:

- Maximise the protective effect of education through Education for All by keeping children and young people in school, which reduces HIV risk and maternal mortality and improves gender equality, while ensuring access to educational opportunities for those living with HIV and young women who are pregnant; and
- Strengthen gender equality and rights within education and health services, including implementing measures to address all forms of sexual violence, abuse and exploitation in and around school and community contexts, while ensuring legal and other services for boys and girls, and young men and women.

Importantly, these legal mechanisms show that the state has a responsibility to make sure that pregnant learners are surrounded by a supportive and understanding environment in which their needs and circumstances are accommodated.

PREGNANT LEARNERS CONTINUE TO BE DISCRIMINATED AGAINST IN SCHOOLS

Despite this strong domestic, regional and international legal framework, in practice, gender inequality is still prevalent in South African schools and across the African Continent, and pregnant learners are still experiencing gender-specific barriers to basic education in a way that decreases their learning opportunities.

In June 2019, the Centre for Reproductive Rights and the Legal and Human Rights Centre, from Tanzania, filed a complaint before the African Committee of Experts on the Rights and Welfare of the Child, challenging the expulsion and exclusion of pregnant girls from public schools in Tanzania. The complaint was filed on behalf of female students in Tanzania, and alleges violations of the African Charter on the Rights and Welfare of the Child and other international and regional human rights instruments ratified by the country. The decision is still pending.

The promotion of gender equality in the case of pregnant learners means that

pregnant learners must be afforded the same opportunities and equal access to basic education as other learners, and that active steps must be taken to protect these learners from dropping out or being excluded from school activities.

One of the greatest indications that pregnant learners are not receiving the support they need to re-enter the education system after giving birth, and to remain in school, is the low rate of attendance and/or high drop-out rates of female learners due to pregnancy. In September 2021, in a presentation before the Portfolio Committee on Basic Education, the Department of Education highlighted that 33 percent

of girls who leave school due to pregnancy do not return to school.

According to the 2019 General Household Survey (GHS), 8.6 percent of individuals between the ages of 7 and 18 years of age left school to attend to family commitments such as marrying, falling pregnant and minding children. However, 17.1 percent of women drop out of school for these reasons, as opposed to 0.3 percent of men.

Teachers are often reluctant to help pregnant learners, and are not willing to support them with access to books, notes and homework while they are at home before giving birth or recovering afterwards. Catch-up classes are often

Another indicator that pregnant learners are faced with barriers that affect their access to education is the increase in reports of discriminatory practices.



Punishing learners because they are pregnant is against the Law and the Constitution.

not provided either. Some learners have faced expulsion as a result of pregnancy, while others have reportedly been forced to continue attending school until the day they give birth. Recent news reports have also shown that schools are obliging learners to sign 'commitment forms' promising that they will not fall pregnant during an academic year, and they face serious consequences (such as expulsion) if they do.

Pregnant learners are increasingly being requested to provide the school with money in case they need medical assistance while at school. Others have been forced to have a guardian always accompany them to school, with schools reasoning that the guardian, and not the school, would then be liable in case of a medical emergency. More recently, schools have reportedly

refused access to pregnant learners, claiming that school staff would not know how to respond to any medical emergency involving the learner. It was only after a series of legal letters that these girls were allowed back into school. These practices cause stumbling blocks, and cause great distress for pregnant learners.

There may be several reasons that discrimination against pregnant learners takes place in schools and communities. The most common of these are stereotypes concerning the role of women at home and in communities. This is also an issue that may have an impact on girl children not returning to school after their pregnancies.

Females are often considered to be caregivers, or more suited to domestic work, with less emphasis placed on their

SOME DISCRIMINATORY PRACTICES THAT PREJUDICE PREGNANT LEARNERS

If you as a pregnant learner or learner with children experience any unlawful actions, there are certain steps you should follow to ensure you are able to attend school and complete your education. Examples of unlawful actions against pregnant learners or learners returning to school after giving birth include:

- being suspended from school by the SGB
- being recommended for expulsion by the SGB
- being forced to go home without being told when you may return
- if a school refuses to provide you with homework or tasks while you are away
- not being allowed to write exams
- being told to pay a deposit to the school in case of a medical emergency
- being told that you cannot attend school without a parent or someone responsible accompanying you at school
- being told to be at school until the day you give birth to your baby
- returning to school after giving birth and the school refusing to provide a catch-up plan
- not being allowed to return to school, or only being allowed to return after some specified rigid time after giving birth
- not being allowed to return to school in the same year that you gave birth
- being forced to submit a medical certificate indicating the status of your pregnancy and estimated delivery date, and being expelled or suspended until you provide this information or an explanation for why you don't have this information
- being forced to provide medical reports to your teacher or school principal showing that it is safe for you to be at school after 30 weeks (eight months) of pregnancy, and being expelled or suspended until you provide this or an explanation for why you don't have this information.

STEPS TOWARDS ENSURING THAT A PREGNANT LEARNER'S RIGHT TO EDUCATION IS PROTECTED

Document your experience at school. Make notes of any conversations with the school principal or the teachers.

1. Consider informing your parents/guardian about what is going on, and ask that they come with you to school for a meeting with the principal. You do not have to tell your parents/guardian if you are not comfortable with doing so.
2. You can, by yourself or with your parents, set up a meeting with the principal to discuss things. In that meeting you or your parent/guardian are entitled to ask that you be:
 - (a) allowed to remain at school until the time that your medical doctor or nurse says that it is no longer safe for you to be there
 - (b) allowed to stay in school if you are not able to provide a doctor's certificate or medical reports on the status of your pregnancy
 - (c) allowed to return to school as soon as you have given birth
 - (d) provided with a catch-up plan
 - (e) sent homework and tasks while you are at home.
3. Ask the principal that any agreement reached is written and signed.
4. If you or your parent/guardian is unable to reach an agreement with the school, you should approach your local education district office for assistance. The district office is responsible for all schools in your area. The office is run by the District Director.
5. If the district office is unwilling to assist you or your parents or fails to solve things, you or your parents can approach civil society organisations for assistance, or approach your Provincial Education Department. See the 'List of Organisations' at the end of this Handbook for contact details of such organisations and bodies.



educational needs. Recent data supports the existence of this view, showing that female learners are more likely to stay home due to family commitments such as child minding and pregnancy. This pattern further entrenches discriminatory views about the role of women in society, and advances gender discrimination in communities.

Prejudicial and judging attitudes are also common, with principals and teachers adopting a punishing mindset towards pregnant learners, rather than giving them the support and understanding they desperately need. Often this happens even though our Constitution has expressly prohibited discrimination against women on the basis of pregnancy since coming into force in 1996, potentially signalling an indifference to the law.

Discriminating against pregnant learners may have far-reaching effects on both the learner and society.

Research shows that when a girl falls pregnant at a young age, her chances of completing formal schooling and higher education decrease. A learner who has not completed his or her schooling has a stronger chance of unemployment, and may experience difficulty in finding a well-paying job.

On the other hand, research suggests that mothers with a higher level of education have better-paying jobs, live more healthily and in safer environments, and are more likely to be able to provide proper schooling and health care for their children, further decreasing their children's risk of teenage pregnancy.

Pregnant learners are clearly a vulnerable and marginalised group, often doomed by labels of immorality and shamefulness, and the state is obliged to take positive measures to make sure that they stay in school and complete their education.

CASE STUDY NO. 1

SLOVO HIGH SCHOOL

Lawyers were approached by a mother, Ms Andiswa Motsepe*, whose daughter Angela* was in Grade 12 at Slovo High School*. The mother needed help because the principal had forced Angela to leave school after discovering that she was five months pregnant.

Days earlier, the principal had handed a letter to Angela and told her to give the letter to her mother. The letter stated that the mother needed to contact the school. Ms Motsepe visited the school the following week and met with the principal and his deputy. The principal told her that he did not want pregnant girls at Slovo High because they were an embarrassment to his school, and he handed Ms Motsepe a copy of the school's pregnancy policy.

Slovo High's pregnancy policy stated that pregnant learners must pay a R200 deposit for use in case of emergencies, including phoning an ambulance or parents. If the learner does not pay a deposit, she must stay home until she pays. A learner must leave school at the end of her fifth month of pregnancy and will only be allowed back three months after giving birth. A learner will not be allowed to write exams during her last trimester. When the learner is back at school, she will not get time off to help her newborn. For example, she cannot say 'my child is sick' or 'I had to take my child for a routine check-up'. The learner will not be allowed to have any contact with the father of the child on school premises, even if the father is also attending Slovo High.

*Names have been changed to protect the privacy of those involved

CASE STUDY NO. 2

KWAZULU-NATAL PUBLIC SCHOOL

In April 2021, a social worker reported that a school principal had excluded a learner from school because of her pregnancy. This incident happened in a public school in KwaZulu-Natal. The learner (henceforth referred to as 'A') was in grade nine.

The school principal called her mother to his office for a meeting, where he coerced mother and child to agree to 'home-schooling' A until she had given birth, after which she could return to school the following year. A's mother stated that this was not an option for her daughter because her daughter requires the specialised intervention of teachers, as she learns at a slow rate. A's mother's concerns were further exacerbated by the fact that A had failed grade eight. A's mother stated that she was employed and could not stay at home to teach A in a manner that would be beneficial to A. The deputy principal confirmed that there were around five other pregnant learners who had been excluded in recent months, and sought to justify this position by providing the rationale for this policy provision as:

- stemming from fear that pregnant learners would negatively influence other learners to fall pregnant, which would disparage the school's name and reputation
- that pregnant learners encourage inappropriate and uncomfortable conversations among children, which in their opinion is further exacerbated by the fact that the school caters to learners from grade 1 to grade 12
- that learner pregnancy would create an additional burden to the school because the learner would have to be accommodated by the teachers, which might not be possible where the school is understaffed with too many learners in each classroom

- that there were no additional resources allocated by the state to cater for pregnant learners, that teachers were not ambulance drivers, and that the school could not be put on hold every time a pregnant learner went into labour.

The school principal was of the opinion that the school governing body and school principal were permitted by law to make their own policies, regardless of how irrational or unlawful they might be. The principal said that he had never received a circular from the DBE on the exclusion of pregnant learners; consequently, he never aligned their school policy to comply with this position.

Even though the Welkom/Harmony case makes it clear that a school can have its own pregnancy policy, it also says that the policy cannot discriminate against a learner because she is female or pregnant. As seen in the first case study, Slovo High's policy was clearly aimed at punishing Angela because she was pregnant, and therefore discriminated against her. Far from supporting both learners in these case studies, the school's policies make it difficult for them to stay in school. As seen in case study no. 1, there was no understanding regarding the learner taking time off when her baby needed her. It was in both learners' best interests to return to school as soon as they could, so that they could receive an education, and become productive members of society and good parents.

South Africa has clear constitutional and international obligations that require the State to ensure that Angela is able to attend school for as long as possible, to return to school as soon as she can, and to get the support that she needs as a young teenage mother.

CONCLUSION

Despite strong constitutional and legislative frameworks requiring that pregnant learners not be discriminated against and be allowed access to basic education during pregnancy and after giving birth, many pregnant learners are still experiencing barriers to education, and remain stigmatised and unsupported in schools.

Schools are obliged to take steps to accommodate pregnant learners with both schoolwork and support services, and must help to change misperceptions about pregnant learners that have led to their undignified and unfair treatment. It is hoped that the DBE's Policy on the Prevention and Management of Learner Pregnancy in Schools will go some way towards guiding schools in their response to learner pregnancy and the development of their own policies to

help prevent further discrimination against pregnant learners.

In addition to this, schools have a responsibility to decrease pregnancy rates and can do this by ensuring that CSE is prioritised in the curriculum. Learners should also have access to safe health and reproductive services and counselling, be equipped to make informed decisions, and have access to contraception.

The contributing role of gender-based violence in learner pregnancy must also be acknowledged; schools and

communities must take measures that will protect girls and women from rape and sexual assault in any form, and also ensure that they obtain assistance where they are survivors of such violence.

Addressing learner pregnancy requires a multifaceted and holistic approach adopted by both schools and communities, and it should aim to equip learners with knowledge, provide access to important services, and protect them from violence in order to make sure that they finish their schooling.

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CASES

Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another 2014 (2) SA 228 (CC) (10 July 2013).

LEGISLATION, POLICY AND GUIDELINES

Children's Act 38 of 2005.

Constitution of the Republic of South Africa 1996.

Department of Basic Education 'DBE National Policy on HIV, STIs and TB for Learners, Educators, School Support Staff and Officials in Primary and Secondary Schools in South Africa', 2017.

Department of Basic Education 'Draft DBE National Policy on the Prevention and Management of Learner Pregnancy', 2018.

Department of Basic Education & Department of Health 'Integrated School Health Policy', 2012.

Department of Education 'Measures for the Prevention and the Management of Learner Pregnancy', 2007.

National Education Policy Act 27 of 1996.

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

South African Schools Act 84 of 1996.

Western Cape Education Department 'WCED Policy on Managing Learner Pregnancy in General Education and Training and Further Education and Training Institutions', 2003.

INTERNATIONAL AND REGIONAL INSTRUMENTS

African Youth Charter (AYC), 2006.

African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979.

Convention on the Rights of the Child (CRC), 1989.

International Covenant on Economic Social and Cultural Rights (ICESCR), 1966.

Ministerial Commitment On Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa (ESA), 2013.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003.