



Learner Pregnancy in Schools: Some Comparative Examples

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1. Introduction

We have been asked to help provide some background research to inform EELC's response to The DBE Draft National Policy on the Prevention and Management of Learner Pregnancy in Schools. We were specifically asked to provide some comparative examples of laws in other jurisdictions concerning sex education and the rights of pregnant learners in order to get a sense of 'international best practice'. In the short time available, we have not been in a position to do a comprehensive survey. Instead, we have provided relevant information from the laws of the UK, the US, and Namibia, as well as several international reports, which have elements of best practice which could be useful for EELC. We have also included an analysis of separate schooling for pregnant learners, based on evidence from the US and New Zealand. We have provided relevant links and have placed the relevant documents in a Dropbox folder for you to access. Given the brief time we have had available to do the research, we recommend that you follow up the original documents for more detailed information.

We were asked specifically to consider the following issues:

1. Access to sexual education and sexual reproductive health services before and after pregnancy:
 - a. when, and at what stage should learners be provided with access to comprehensive sexual education;
 - b. should the nature and degree of access be determined by the age of the learner or whether the learner is in primary or secondary school;
 - c. when, and at what stage should learners be provided with access to sexual and reproductive health services, such as access to condoms or other means of protecting against unwanted pregnancy or terminating pregnancy; and
 - d. should the nature and degree of access be determined by the age of the learner or whether the learner is in primary or secondary school;
2. What mechanisms of accommodation should be available to retain pregnant learners in the education system and in order to mitigate the impact of pregnancy on the education of the learner before and after pregnancy.

2. Age of Sex Education

According to the **UNESCO Guidance on Comprehensive Sexuality Education**,¹ sex education should begin early to be effective in transforming sexual and gender norms and protecting the health and safety of young people. UNESCO provides detailed advice on how to teach each proposed topic for different age groups. For example, the learning objectives for 5 to 8 year olds include understanding that pregnancy occurs when an egg and sperm unite in the uterus (*knowledge*) and encouraging students to 'express how they feel about the changes that a woman's body undergoes during pregnancy (*skill*)'. For 9 to 12 years old, the aim is to appreciate how the menstrual cycle works (*attitudinal*). The 12 to 15 years old are meant to learn the difference between reproduction and sexual feelings (*knowledge*) and how to prevent unintended pregnancies (*skill*). The last age group is designed to ensure that students should grasp the challenges of infertility (*knowledge*) and develop empathy for those struggling to conceive (*attitudinal*). UNESCO explains that sex education is a continual process that should start at an early stage and is meant to be 'responsive to changing needs and capabilities of children as they grow'. This is also reflected in the **UNESCO Report on Early and Unintended Pregnancy & the Education Sector**, which recommends that curriculum-based comprehensive sexuality education must be delivered in schools both prior to and after puberty to prevent early and unintended pregnancies.²

The **UN Population Fund (UNFPA) Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender** recommends providing Comprehensive Sexuality Education (CSE) in both formal and informal sectors and across age groupings, starting from primary school age and level.³ It recommends both in-school and out-of-school programmes. This includes CSE as part of the formal curriculum, but the report acknowledges that some countries' education systems may lack necessary resources, including teacher expertise and materials.⁴

In the **UK**, sex education classes are not currently compulsory for pupils at primary schools. Sex education is part of the basic curriculum for all pupils aged 11 at every maintained school.⁵ It is possible for parents to opt their children out of all parts of sex education apart from those which are scientific and biological. Academies and independent schools usually provide basic sex education too, but are not obliged to. However, this is about to change. New

¹ UNESCO et al, 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach' Revised Edition (UNESCO, 2018).

² UNESCO et al, 'Early and unintended pregnancy & the education sector: Evidence Review and Recommendations' (UNESCO, 2018).

³ *ibid* 9.

⁴ *ibid* 26.

⁵ DfEE 00116/2000, Sex and Relationships Education Guidance, July 2000, paras 1.12-1.16.

regulations made by the Secretary of State under Section 34 of the Children and Social Work Act 2017, which came into force on 1/4/2018, provide that primary school children must be taught the important of healthy relationships, and secondary school children must be taught about relationships and sex. This applies regardless of the kind of school.

In **the US**, states have primary responsibility for public schooling and give local school districts a considerable degree of autonomy, which includes significant control over the provision of sex education.⁶ There are considerable differences across states in the regulation of the content of sex education and whether sex education is compulsory.⁷ The Future of Sex Education Initiative ('FoSE') attempts to address these discrepancies by developing the National Sexuality Education Standards ('NSES').⁸ The NSES seek to provide 'clear, consistent and straightforward guidance on the *essential minimum, core content* for sexuality education that is developmentally and age-appropriate for students in grades K-12 [...] to address the inconsistent implementation of sexuality education nationwide and the limited time allocated to teaching the topic.'⁹ The NSES set out specific performance indicators for grades 2, 5, 8 and 12. By the end of grade 8, for example, students should be equipped with medically accurate information about contraception and abstinence; be aware of pregnancy-related support options; have developed their sexual health decision-making skills including on issues relating to consent and contraception; and have attained self-management skills on correctly using a condom.¹⁰ Grade 12 outcomes are more advanced, focusing on the skills and resources needed to become a parent and access prenatal care services.¹¹

In **Namibia**, the strategies to prevent pregnancy amongst learners include sexual education, 'about the benefits of abstinence, the risks of engaging in sexual activity at a young age, appropriate use of contraception and the right of both male and female learners to free and informed choice in respect of sexual matters.' It should be noted that the stress on abstinence is not endorsed at international level. Both UNESCO and UNFPA are clear that children need to be given all the knowledge and allowed to make their own choices about sex. The 'Education Sector Policy for the Prevention and

⁶ Kelli S Hall et al, 'The State of Sex Education in the United States' (2016) 58 Journal of Adolescent Health 595; Laura Duberstein Lindberg, Isaac Maddow-Zimet and Heather Boonstra, 'Changes in Adolescents' Receipt of Sex Education, 2006-2013' (2016) 58 Journal of Adolescent Health 621, 626.

⁷ 'Sex and HIV Education' (Guttmacher Institute, 14 March 2016) <<https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education>> accessed 23 April 2018.

⁸ 'National Sexuality Education Standards: Core Content and Skills, K-12' (Future of Sex Education Initiative 2012) (emphasis in original).

⁹ *ibid* 6.

¹⁰ *ibid* 27-28.

¹¹ *ibid* 28-29.

Management of Learner Pregnancy,¹² approved by the Cabinet in 2009, requires that learners should receive age-appropriate reproductive and sexual health information on a regular basis, beginning with informal education on child abuse and protective measures from Grade 1, and formal education on child abuse and sexuality from Grade 5 onwards.

The above has been confined to learners at school. The **UNESCO Report on Early and Unintended Pregnancy & the Education Sector** also recommends the development of programmes to provide CSE for out of school adolescents. These adolescents are one of the most at-risk groups globally. The report mentions two South African organisations: Lifeline and Rape Crisis carrying out these functions in the area of HIV.

3. Access to Sexual and Reproductive Health Services

The **UNFPA guidance** recommends linking CSE to ensuring that young people have access to youth-friendly sexual health services.¹³ The report does not recommend specific ages in this regard. The **UNESCO Report on Early and Unintended Pregnancy & the Education Sector** makes three recommendations in this regard. Recommendation 6 recommends policies to build skills to delay sexual debut and increase correct and consistent use of condoms and other contraceptive methods as a critical important component of CSE. The evidence shows that CSE delays sexual debut, and even when young people are sexually active, the evidence strongly indicates that CSE leads to safer sex with the use of contraceptives, thus preventing the spread of sexually transmitted infections, as well as reducing EUP.

Recommendation 8 recommends the development of linkages between schools and health services as part of efforts to reduce early and unintended pregnancy (EUP) and to support pregnant and parenting adolescents. The evidence indicates strongly that schools that have links with health services are more effective at supporting pregnant and parenting learners, as well as reducing EUPs rather than those that do not. For instance, access to safe abortion is correlated to higher educational outcomes, as is access to contraception. This leads to the decrease of the probability of EUPs more generally.

Recommendation 9 also recommends the encouragement of school health services (SHS) that offer on-site contraception and counselling services as part of efforts to reduce early and unintended pregnancies, and antenatal care

¹² Education Sector Policy for the Prevention and Management of Learner Pregnancy <https://www.moe.gov.za/files/downloads/99b_Learner%20Pregnancy%20policy%20final%202010-10-18.pdf> accessed 23 April 2018

¹³ ibid 12.

to support pregnant and parenting adolescents and to reduce school drop-out. The evidence indicates that where schools provide contraceptive and health services, there is a reduction in EUPs. In addition, the provision of pre-natal care, as well as school clinics can lead to an increase in the attendance of pregnant learners, as well as reduce repeat pregnancies.

The **UK** ran a 10-year teenage pregnancy reduction programme from 1999. This targeted both boys and girls, and maintained support for girls even if they became pregnant. The strategy was framed around several themes, including better prevention for girls and boys, both by improving sex and relationships education (SRE) and access to contraception. Following a review which showed a decline in rates of teenage birth, but a lesser decline in rates of teenage conception, the final stage of the program placed greater focus on contraception than termination. This is widely hailed as a very successful public health strategy, which is worth examining in more detail.

In the **US**, the National Sexuality Education Standards ('NSES') performance indicators include, for grade 8, the identification of medically-accurate resources about pregnancy prevention and reproductive health care; awareness of pregnancy-related support options including safe surrender policies and prenatal care; and self-management skills on correctly using a condom.¹⁴ By the end of grade 12, students should also know the laws related to reproductive and sexual health services; and be able to compare and contrast the laws relating to pregnancy, adoption, abortion and parenting.¹⁵ The NSES performance indicators, which are included with the documents in the Dropbox folder, are well worth further detailed scrutiny.

The **Namibian** policy does not provide for access to sexual and reproductive health services prior to pregnancy, such as access to condoms or other means of protecting against unwanted pregnancy or terminating pregnancy.

4. Accommodating Pregnant Learners

In the **UK**, pupils enrolled at a school and who fall pregnant whilst studying are protected in law by the Equality Act 2010. Under Section 17 of the Equality Act 2010, it is unlawful discrimination to treat a woman unfavourably because of her pregnancy. Section 17 applies to women in the workplace, at school and in higher education. Vocational study is also protected. A pregnant pupil is expected to stay at school and complete her education until Year 11 in line with the standard compulsory requirement that applies to all children. The pregnant pupil is allowed a maximum of a 16 week break immediately before

¹⁴ *ibid* 27–28.

¹⁵ *ibid* 28-29.

and after the birth.¹⁶ Some councils offer 18 weeks. The pregnant pupil can return to school after giving birth. There is no obligation for schools to allow paternity leave for school age fathers.

Some local education authorities give guidance on accommodation of school age mothers once they return to school. For example, York City Council recommends that schools allow the young parent to attend medical appointments and young parents' support groups. It also recommends that schools support the student's choice to breastfeed. Schools should identify a private area to allow the student to express milk, and provide facilities to store milk during the day. She should be allowed to leave school to feed her baby at agreed times, if the childcare is close to the school. Young parents under the age of 20 are entitled to funding to pay for childcare places and associated travel through the 'Care to Learn' programme.

Namibia's 'Education Sector Policy for the Prevention and Management of Learner Pregnancy'¹⁷ permits pregnant learners to continue to attend school until four weeks before the expected due date of the child. After 26 weeks of pregnancy, a pregnant learner is required to provide a medical certificate confirming that it is safe for her to continue to attend school. In order to resume school, she is required to fulfil several further criteria, including who will care for the infant and confirming her own and the infant's well-being. The school must reserve her place at school for up to a year after the birth. Schools are obligated to provide support to pregnant learners and learner parents in the form of psychosocial support, educational support (through extra tutorials and course packs for missed schoolwork, and relaxed attendance requirements), and health and nutritional support.

In the **US**, Title IX of the Education Amendments of 1972 ('Title IX') aims to ensure pregnant and parenting students have an equal right to education. Regulations implementing Title IX prohibit discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.¹⁸ Schools are required to excuse absences that are due to pregnancy and related conditions, such as prenatal appointments, labour, delivery, and recovery, for as long as the student's doctor has deemed necessary.¹⁹ A doctor's note need only be submitted where the school requires this for leave of absence in respect of other temporary medical conditions. Similarly, a school cannot exclude a pregnant

¹⁶ NHS, 'Teenage Pregnancy Support' <<https://www.nhs.uk/conditions/pregnancy-and-baby/teenager-pregnant/#can-i-carry-on-with-my-education-while-im-pregnant>> accessed 23 April 2018..

¹⁷ Education Sector Policy for the Prevention and Management of Learner Pregnancy <https://www.moe.gov.na/files/downloads/99b_Learner%20Pregnancy%20policy%20final%202010-10-18.pdf> accessed 23 April 2018.

¹⁸ 34 CFR § 106.40(b)(1)

¹⁹ 34 CFR § 106.40(b)(5)

learner from continuing to participate in any educational or extracurricular activity, and may only require medical clearance for continued participation where this is enforced for other medical conditions. Title IX allows for separate educational programs to be offered to pregnant learners, but stipulates that they must be of comparable quality to the schooling for non-pregnant learners.²⁰ Furthermore, the choice to participate in separate programs must be voluntary – schools may not pressure pregnant learners to participate in them rather than staying in their current educational program.²¹

Upon her return, the student must be reinstated to the same academic and extracurricular status as before her leave began, which includes being given the opportunity to catch up any work she has missed.²² Schools are not legally mandated to make any special arrangements to support pregnant and parenting students, but the US Department of Education's guidance on Title IX states that 'when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.'²³ The Guidance also makes some recommendations for when the learner parent returns to school, for example as to the provision of child care and private rooms to breastfeed or pump milk during the school day.

Some jurisdictions, including New Zealand and the US, have provided separate schools or 'teen parent units' for pregnant students. While the Department of Basic Education has not made any submissions on the feasibility and constitutionality of these schools in the South African context, South Africa has had experience with them. Prior to its closure in December 2017, Hospital School Pretoria had a unit for pregnant learners. The school provided both primary and secondary education for pregnant learners referred from other schools in the Pretoria area. The school provided medical care, counselling and other forms of support and resources throughout the girls' pregnancies. While there is scarce information about the rationale for the closure of the school²⁴ or the legal basis upon which the school was founded, the EELC should consider making submissions about some of the human rights and equality implications of providing separate educational facilities for

²⁰ 34 CFR § 106.40(b)(3)

²¹ 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (n 9) 7.

²² 34 CFR § 106.40(b)(5). See also 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (US Department of Education, Office for Civil Rights 2013) 10.

²³ 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (n 9) 9.

²⁴ M Lindeque, 'Pretoria Hospital School Will No Longer Accommodate Pregnant Pupils' Eye Witness News <<http://ewn.co.za/2017/08/14/pretoria-hospital-school-will-no-longer-accommodate-pregnant-pupils>> accessed 23 April 2018.

pregnant girls in case the Department of Basic Education considers this as an option in the future. Below we provide a short analysis of the existing evidence and some of the strengths and weaknesses of separate schools for pregnant students.

4. UNESCO Guidance on Comprehensive Sexuality Education

In January 2018, UNESCO released a comprehensive guide on sex education.²⁵ Sex education should not be exclusively focused on the mechanics of reproduction or the risks of STIs. It also needs to address 'factors such as beliefs, values, attitudes and skills' and include 'positive aspects such as love and relationships based on mutual respect and equality'. An integral component of comprehensive sex education is transforming sexual and gender norms and relationships from the breaking the stigma around menstruation to respecting different sexual orientations and understanding the nuances of consent. Sex education should be ground in human rights and develop learner's knowledge, skills and attitudes for positive sexuality and good sexual and reproductive health. Students should develop self-esteem, empathy, tolerance and respect for human rights and gender equality. The UNESCO report makes numerous recommendations on the delivery of sex education in the classroom. This section provides a brief summary of the report, highlighting key findings.

Developing the Curriculum

Sex education pursues overlapping aims. It should provide *knowledge*; help young people shape their *attitudes* of themselves, sexuality and the world; and develop *skills* such as communication, listening, refusal, decision-making negotiation, empathy and challenging stigma and stereotypes. UNESCO proposes eight topics for sex education:

- Relationship
- Values, rights, culture and sexuality
- Understanding Gender
- Violence and Staying Safe
- Skill for Health and Well-being
- The Human Body and Development
- Sexuality and Sexual Behaviour
- Sexual and Reproductive Health

²⁵ UNESCO et al, 'International Technical Guidance' (n 1).

These topics should be taught in an age-appropriate manner. The evidence indicates that to be effective in transforming sexual and gender norms and protecting the health and safety of young people sex education should begin early. UNESCO provides detailed advice on how to teach each proposed topic for different age groups. For example, on Human Body and Development the learning objectives for 5 to 8 year old include understanding that pregnancy is when an egg and sperm unite in the uterus (*knowledge*) and encouraging students to 'express how they feel about the changes that a woman's body undergoes during pregnancy (*skill*)'. For 9 to 12 years old, the aim is to appreciate how the menstrual cycle works (*attitudinal*). The 12 to 15 years old are meant to learn the difference between reproduction and sexual feelings (*knowledge*) and how to prevent unintended pregnancies (*skill*). The last age group is designed to ensure that students should grasp the challenges of infertility (*knowledge*) and develop empathy for those struggling to conceive (*attitudinal*). UNESCO explains that sex education is a continual process that should start at an early stage and is meant to be 'responsive to changing needs and capabilities of child as they grow'.

The UNESCO report contains detailed advice on curriculum content and we would strongly recommend it serve as a best practice guide.

Implementing the Curriculum

The curriculum should be developed and implemented in partnership with a variety of stakeholders. Experts in gender equality, human rights and health and in risky behaviours that young people engage in should be involved in design of learning objectives and teaching methods. Young people, parents and other community leaders should 'play an active role in organizing, piloting, implementing and improving the content of sexuality education.' This is imperative so that sex education speaks to the local realities and is culturally sensitive. Curriculum design should be tailored to sexual and reproductive health needs and behaviour of young people. It is also crucial to accurately assess the human, financial and time resources need to implement the curricula.

Teachers need to be trained and supported. UNESCO found that even when there is a well-developed curriculum 'teachers often avoid or minimize topics that they are uncomfortable with' or that are controversial. It recommends that teachers gain competency and comfort with the subject matter. Studies in Finland showed the students positive knowledge, attitude and skills on sex education was due to the 'motivation attitudes and skills of teachers, and the ability to employ participatory teaching techniques.'²⁶ The evidence indicates

²⁶ Osmo Kontula, 'The Evolution of sex education and students' sexual knowledge in Finland in 2000s' (2010) 10(4) Sex Education 373.

that sex education is more effective when students are ‘allowed to construct their own understanding of information by critically engaging with personal experiences and information.’

Objections to Sex Education

The report also includes a user friendly guide for dealing with common objections to sex education such as sex education will encourage students to engage in sexual activity. The empirical evidence indicates that curriculum based sex education:

- Delayed initiation of sexual intercourse
- Decreased frequency of sexual intercourse
- Decreased number of sexual partners
- Reduced risk taking
- Increased use of condoms Increased use of contraception

There also are short-term gains including knowledge of rights within intimate relationships and better communication between parents and children. UNESCO concludes that ‘sexuality education has positive effects, including increasing knowledge about different aspects of sexuality, behaviours and risks of pregnancy or HIV and other STIs.’

5. UNFPA Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender

The UNFPA has developed a report setting out operational guidance for comprehensive sexuality education (CSE). The guidance document is meant to guide UNFPA’s support to governance and other partners in designing, implementing and evaluating programmes for CSE.²⁷ The Guidance is based on scientific evidence, international human rights instruments and best technical standards.²⁸ The UNFPA defines CSE as

a right-based and gender-focused approach to approach to sexuality education, whether in school or out of school. CSE is curriculum-based education that aims to equip children and young people with the knowledge, skills, attitudes and values that will enable them to develop

²⁷ UNFPA, ‘Operational Guidance for Comprehensive Sexuality Education: A Focus on Gender and Human Rights’ (UNFPA, 2014) at 5.

²⁸ *ibid* 5-6.

a positive view of their sexuality, in the context of their emotional and social development.²⁹

The purposes of CSE according to the UNFPA are to enable children and young people to acquire accurate information about human sexuality, sexual and reproductive health and relevant human rights; to explore and nurture positive values and attitudes towards their sexual and reproductive health; and to develop life skills.³⁰

The UNFPA Guidance recommends both in-school and out-of-school programmes. This includes CSE as part of the formal curriculum, but the report acknowledges that some countries' education systems may lack necessary resources, including teacher expertise and materials.³¹ The Guidance recommends providing CSE in both formal and informal sectors and across age groupings, starting from primary school age and level.³²

The report emphasizes the importance of the content of curricula on CSE, noting that some countries still deliver abstinence-only programmes that fail to provide adequate information about contraception, despite evidence that this approach is ineffective.³³

The report recommends linking CSE to ensuring that young people have access to youth-friendly sexual health services.³⁴ The report does not recommend specific ages in this regard.

6. UNESCO Early and unintended pregnancy & the education sector: Evidence review and recommendations

As a part of the Global Education 2030 Agenda, UNESCO conducted an evidence review of early and unintended pregnancy in the education sector. Through this review, along with their partner organisations,³⁵ they published a series of recommendations on the role of the education sector in the prevention of early and unintended pregnancies, as well as in the realisation of the right to education for pregnant and parenting girls.³⁶ The report explores a number of different case studies in different jurisdictions.

²⁹ *ibid* 6.

³⁰ *ibid*

³¹ *ibid* 26.

³² *ibid* 9.

³³ *ibid* 30.

³⁴ *ibid* 12.

³⁵ UNESCO's partners in education sector responses to early and unintended pregnancy include WHO, UNFPA, Population Council, IPPF, Ford Foundation and The Institute of Education, University College London.

³⁶ UNESCO, 'Early and Unintended Pregnancy' (n 2).

The report first provides an overview of a paper that was developed by UNESCO in 2014, for the global consultation on early and unintended pregnancy (“EUP”) that took place in Johannesburg.³⁷ The key determinants of EUP as identified in that paper were as follows : poverty and marginalisation on the basis of socio-economic factors; low levels of education; lack of access to reproductive health services. In addition, cultural norms and conservative societal structures exacerbated the lack of access to reproductive health services, as there was a failure of acknowledgement of sex before marriage.

The key consequences of EUP that emerged from the paper were as follows : first, there is a direct impact on the health of the adolescent mother. This includes maternal death; disability; sexually transmitted diseases and infections including HIV; unsafe abortions and complications arising therefrom. There are a number of psychosocial harms as well, such as depression and mental health issues, arising out of social stigma and ostracisation. Second, social and economic consequences include vulnerability to violence and poverty as a consequence of ostracisation, in that young girls are often forced to leave their family home. Third, educational consequences include parenting and pregnant girls often dropping out of school, thus leading to the lack of overall benefits of education. Alternatively, when they do stay in school, they are faced with discriminatory treatment as they are obliged to miss classes due to medical reasons, or may disengage with learning due to the stigma attached.

The report then goes on to highlight the link between education and EUP, by stating that “the education sector has a responsibility to support adolescents to fulfill their potential, regardless of their health, social or economic status, and irrespective of their gender. EUP jeopardizes educational attainment for girls and for this reason, the education sector has an obligation to learners who are pregnant and parenting to ensure that they can fulfil their right to continue their education.”³⁸ This describes the perspective upon which the report details its recommendations. A summary of the recommendations is available and can serve as a useful resource.³⁹

The recommendations were targeted at the education sector more generally as well as education ministries in particular. They addressed five key priority areas for action. They are first, the provision of universal access to quality education; second, the drafting and implementation of continuation and re-entry policies for pregnant and parenting learners; third, comprehensive sex and sexuality education for learners; fourth, the provision of access to school-

³⁷ Developing an Education Sector Response to Early Unintended Pregnancy (UNESCO, 2014).

³⁸ UNESCO ‘Early Unintended Pregnancy’ (n 2).

³⁹ UNESCO, ‘Early Unintended Pregnancy: Recommendations for the Education Sector’ <<http://unesdoc.unesco.org/images/0024/002484/248418e.pdf>> accessed 25 April 2018

based, on-site health and reproductive service, as well as external health services; fifth, an environment that is free from violence, and safe and supportive. In the subsequent section of the report, these priority areas are supplemented with an explanation as to the evidence that was found in order to arrive at these conclusions.

Under the first priority area (**provision of universal access to quality education**), the report details two recommendations:

Recommendation 1: Ensure universal access to quality education as a key strategy to prevent child marriage and promote gender equality

The first recommendation is based on evidence that shows that child marriage emerges due to gender inequality, and is one of the leading causes of EUP. Due to the lack of access to education, girls are often predisposed to living in poverty, dependent on their husbands. The evidence also indicated that education is one of the key influencers of girls' attitudes towards child marriage.

Recommendation 2: Start education, particularly for girls, as early as possible as it is a key intervention for reducing early and unintended pregnancies and child marriage

The evidence strongly indicated that an increase in girls' access to education is linked with an increase in their empowerment. As a consequence, girls who begin formal education earlier, have a reduced likelihood of EUP.

Under the second priority area (**continuation and re-entry policies for pregnant and parenting learners**), the report details one recommendation:

Recommendation 3: Develop, implement and monitor policies allowing pregnant and parenting girls to continue education

The evidence indicated that in a number of countries across the world, pregnant and parenting girls are forced to drop out of schools, or otherwise prevented from continuing with their education simply due to the fact of EUP. In certain countries, there are re-entry policies but they are often punitive and highly conditional. Thus, this recommendation targets the drafting and implementation of drop-out prevention programmes, which focus on realising the girls' right to education. This includes integrated child care support for instance, so that parenting adolescents may continue their education.

Under the third priority area (**comprehensive sexuality education**), the report details four recommendations:

Recommendation 4: Deliver curriculum-based CSE in schools prior to and after puberty to prevent early and unintended pregnancies

The evidence strongly suggests that the provision of CSE is effective in relation to the reduction of EUP. School-based CSE will ensure that pre-pubescent learners can understand imminent changes to their bodies and hormone production so that they are equipped to be able to deal with them. This leads to increased reproductive health and safe sex, with the use of contraception.

Recommendation 5: Introduce interventions to promote gender equality, address gender norms, roles and relationships, and engage men and boys to critically assess gender norms and normative behaviours in schools

The evidence indicates that involving boys and men in discussions surrounding sex and pregnancy, leads to a shift in the prevalent norms, as well as promotes gender equality. This ensures that there is a concerted effort at preventing sexual exploitation and abuse, as well as a clear indication of the importance of consent in relationships of a sexual nature while taking into account and challenging the existing power dynamics at play. The report refers to a South African case study that might be relevant ([OMC campaign, launched by the Sonke Gender Justice Network](#)).

Recommendation 6: Build skills to delay sexual debut and increase correct and consistent use of condoms and other contraceptive methods as a critical important component of CSE

The evidence shows that CSE delays sexual debut, and even when young people are sexually active, the evidence strongly indicates that CSE leads to safer sex with the use of contraceptives, thus preventing the spread of sexually transmitted infections, as well as reducing EUP.

Recommendation 7: Develop programmes to provide CSE for out-of-school adolescents in order to prevent EUP

Although there was no evidence that was found in relation to CSE for out-of-school adolescents and the prevention of EUP, out-of-school adolescents are one of the most at-risk groups globally. In addition to the existing exclusion that they experience, the lack of realisation of their right to education is concerning. Thus, finding a way to sensitise and reach out to out-of-school youth is critical, including in the areas of preventing EUP. The report mentions two South African organisations: Lifestage and Rape Crisis PMB carrying out these functions in the area of HIV.

Under the fourth priority area (**school health services and links to external health services**), the report details two recommendations:

Recommendation 8: Develop linkages between schools and health services as part of efforts to reduce EUP and support pregnant and parenting adolescents

The evidence indicates strongly that schools that have links with health services are more effective at supporting pregnant and parenting learners, as well as reducing EUPs rather than those that do not. For instance, access to safe abortion is correlated to higher educational outcomes, as is access to contraception. This leads to the decrease of the probability of EUPs more generally.

Recommendation 9: Encourage and support school health services that offer on-site contraception and counselling services as part of efforts to reduce early and unintended pregnancies, and antenatal care to support pregnant and parenting adolescents and to reduce school drop-out

The evidence indicates that where schools provide contraceptive and health services, there is a reduction in EUPs. In addition, the provision of pre-natal care, as well as school clinics can lead to an increase in the attendance of pregnant learners, as well as reduce repeat pregnancies.

Under the fifth priority area (**a safe and supportive learning environment**), the report details two recommendations:

Recommendation 10: Implement interventions to reduce stigma and discrimination against pregnant and parenting girls at school

There is not much evidence available in relation to effective interventions as there are very few policies that can directly be traced to change societal mindsets, due to its incremental nature. The evidence does, however, indicate that stigma against EUPs has a negative impact upon educational outcomes for pregnant and parenting learners. In addition, that stigmatising attitudes can contribute significantly to drop-outs.

The report goes on to provide a series of suggestions to ensure that support can be sustainable for EUPs. These include teacher training, community engagement, media for education and awareness, multi-sectoral responses, and monitoring and evaluation.⁴⁰ In conclusion, it stresses that supportive environments are the key to ensuring that EUPs are prevented and that the right to education is effectively realised.

7. Law and Policy in The UK

In the **UK**, sex education classes are *not* compulsory for pupils at *primary* schools. Sex education classes are compulsory for pupils at *secondary* schools since 1994.⁴¹ Sex education is part of the basic curriculum for all pupils aged 11 at every maintained school.⁴² The governing bodies of every maintained school must have a written policy on sex education.⁴³ Policies on sex education must be made available to parents. Academies and independent schools usually provide basic sex education too, but are not obliged to. This is going to change in the future, when regulations are made by the Secretary of State under Section 34 of the Children and Social Work Act 2017.

The current difference between academies and maintained schools, both of which are state funded, is set out in a useful table.⁴⁴

This provision came into force on 1/4/2018 and requires the regulations to provide that primary school children must be taught the importance of healthy relationships, and secondary school children must be taught about relationships and sex. This applies regardless of the kind of school. Sex

⁴⁰ UNESCO 'Early Unintended Pregnancy' (n 2) 32.

⁴¹ And now see the EA 2002, s 80.

⁴² DfEE 00116/2000, Sex and Relationships Education Guidance, July 2000, paras 1.12-1.16.

⁴³ DfEE 00116/2000, Sex and Relationships Education Guidance, July 2000, p 5.

⁴⁴ 'Sex and Relationships (SRE) for the 21st Century' (UK) <<https://www.pshe-association.org.uk/system/files/SRE%20for%20the%2021st%20Century%20-%20FINAL.pdf.pdf>> accessed 25 April 2018.

education in the UK is therefore currently undergoing something of a reform, and is in flux.

The Content

The Department of Education issued a Sex and Relationship Guidance (SRE) in 2000. The Guidance sets out that SRE should be taught within the Personal, Social and Health Education (PSHE) framework.⁴⁵ Moreover, science classes cannot include education about sexual *behaviour* in their syllabus and must be limited to covering only biological scientific facts.

The content of sex education must also have regard to 'moral considerations and the value of family life'.⁴⁶ It is clear that 'regard to moral considerations' has become a more complex issue in light of increased diversity.⁴⁷ The SRE Guidance provides that there should be no direct promotion of sexual orientation.⁴⁸ Sex education has always been a controversial topic. However, sex education is subject to new complexities because as the plurality of views on sex and sexual behaviour has increased, so has the potential for conflicts. Moreover, sex education should be contextualised within broader developments concerning the autonomy of children and their right to make their own decisions.

The Government has also endorsed supplementary guidance: SRE for the 21st Century.⁴⁹ This guidance provides that:

Sex and relationships education:

- is a partnership between home and school
- ensures children and young people's views are actively sought to influence lesson planning and teaching
- starts early and is relevant to pupils at each stage in their development and maturity
- is taught by people who are trained and confident in talking about issues such as healthy and unhealthy relationships, equality, pleasure, respect, abuse, sexuality, gender identity, sex and consent
- includes the acquisition of knowledge, the development of life skills and respectful attitudes and values
- has sufficient time to cover a wide range of topics, with a strong emphasis on relationships, consent, rights, responsibilities to others, negotiation and communication skills, and accessing services

⁴⁵ DfEE 00116/2000, Sex and Relationships Education Guidance, July 2000, 4.

⁴⁶ EA 1996, s 403.

⁴⁷ Neville Harris, *Education, Law and Diversity* (Hart 2007), pages 411-413.

⁴⁸ DfEE 00116/2000, Sex and Relationships Education Guidance, July 2000 [1.30].

⁴⁹ SRE Guidance (n 44).

- helps pupils understand on and offline safety, consent, violence and exploitation
- is both medically and factually correct and treats sex as a normal and pleasurable fact of life
- is inclusive of difference: gender identity, sexual orientation, disability, ethnicity, culture, age, faith or belief, or other life experience
- uses active learning methods, and is rigorously planned, assessed and evaluated
- helps pupils understand a range of views and beliefs about relationships and sex in society including some of the mixed messages about gender, sex and sexuality from different sources including the media
- teaches pupils about the law and their rights to confidentiality even if they are under 16, and is linked to school-based and community health services and organisations.
- promotes equality in relationships, recognises and challenges gender inequality and reflects girls' and boys' different experiences and needs

Exemptions

Parents have a right to seek an exemption from sex education on behalf of their children based on religious grounds. No exemptions may be granted for parts of the syllabus that pertain to the biological and scientific aspects of sexual education such as the *biological* differences between the sexes and reproduction.

Reform

Whilst the Department of Education Guidance of July 2000 remains applicable, a recent House of Commons paper points out that the SRE could be reformed. In 2017, the then Education Secretary, Justine Greening, announced that the 2000 Guidance was outdated and in need of reform.⁵⁰

Pregnancy at School

There is no specific statutory regime for pregnant learners. Most of the specific rules for pregnant learners are found in government guidance and individual school policies (which schools are required to publish).

⁵⁰ House of Commons Library 06103, Briefing Paper, Sex and Relationships Education in Schools (England) 9.

The United Kingdom ran a 10-year teenage pregnancy reduction programme from 1999. This is widely thought to have been a very successful public health strategy, which targeted both boys and girls, and maintained support for girls even if they became pregnant. The strategy was divided into three stages, with reviews at the end of each. At the first phase:

The strategy was framed around the following themes: joined up action at national and local level; better prevention for girls and boys -improving sex and relationships education (SRE) and access to contraception; a national communications campaign to reach young people and their parents; and coordinated support for young parents. A detailed plan set out the national actions for the government to establish and begin implementation of the strategy. Local reduction targets of the under-18 conception rate were agreed with each of the 150 local government areas. A resource team was established at national, regional, and local levels: the national Teenage Pregnancy Unit (Unit), Regional Teenage Pregnancy Coordinators (regional coordinators), and Local Teenage Pregnancy Coordinators (local coordinators). Each local government area appointed a Teenage Pregnancy Partnership Board (Board) to work with the local coordinator to develop and implement a local teenage pregnancy strategy, informed by guidance documents issued by the Unit. Funding was allocated to local areas, through a strategy implementation grant, and for national strategy activities. Both the resource team and funding were maintained throughout the 10-year program. An Independent Advisory Group on Teenage Pregnancy (Advisory Group) was appointed to monitor progress and advise ministers.⁵¹

The second phase followed a review which showed that success was varied across regions. Guidelines and more prescriptive targets were issued in response, as well as a self-assessment toolkit for local authorities. The third phase followed a review which showed a decline in rates of teenage birth, but a lesser decline in rates of teenage conception. The third stage therefore placed greater focus on contraception than termination.

The downward trend in UK teenage pregnancy has continued, even though the budgetary priorities of governments since 2010 meant that many of the supporting structures have been closed down.

⁵¹Hadley A, Chandra-Mouli V, Ingham R. 'Implementing the United Kingdom Government's 10-year teenage pregnancy strategy for England (1999 to 2010): applicable lessons for other countries' (2016) J Adolesc Health.

Equality Law

In addition, pupils enrolled at a school in the UK, and who fall pregnant whilst studying, are protected in law by the Equality Act 2010. Specifically, Section 17 of the Equality Act 2010 protects women in the workplace, at the school and in higher education. Vocational study is also protected. Therefore, a school cannot treat a pregnant woman unfavourably.

Mandatory Attendance

A pregnant pupil is expected to stay at school and complete her education until Year 11 in line with the standard compulsory requirement that applies to all children. Section 7 of the Education Act 1996 requires parents to take the responsibility to ensure that their child receives a suitable full time education at school or through alternative means, and makes no special exception for pregnant learners.

Maternity

The pregnant pupil is allowed a maximum of a 16 week break immediately before and after the birth.⁵² Some councils offer 18 weeks. The pregnant pupil can return to school after giving birth.

Safeguarding

Under the Children and Social Work Act 2017 all schools have a legal duty to safeguard children at their schools. This includes pregnant pupils.

Under the Sexual Offences Act 2003, a child under 13 years of age does not have legal capacity to consent to sexual activity and therefore *must always* be reported to Children's Social Care.

8. Law and Policy in the United States of America

The pregnancy rate for girls aged 15-19 has dropped to historic lows in the US: the birth rate in 2015 for this age group marks a 46% decline since 2007 and a 64% decline since 1991.⁵³ Paradoxically, this recent decline in pregnancy rates among adolescents and an increase in the rate of contraceptive usage have coincided with a decline in the provision of formal

⁵² NHS (n 16)

⁵³ Brady E Hamilton and T. Mathews, 'Continued Declines in Teen Births in the United States, 2015' (National Center for Health Statistics 2016) 259 2.

sex education in schools.⁵⁴ Nevertheless, pregnancy remains an oft-cited reason for young women leaving high school, with a Gates Foundation survey finding that only around a third of young mothers will receive a high school diploma or GED.⁵⁵ There are also discrepancies by race and ethnicity, with pregnancy rates remaining higher amongst Black and Hispanic adolescents.⁵⁶

The barriers to equal educational opportunity

While the pregnancy rate among adolescents has dropped, pregnant and parenting learners still face significant challenges in the American school system. Efforts to prevent adolescent pregnancy have too often 'failed to notice the difference between eradicating teen pregnancy and eradicating pregnant teens' in schools.⁵⁷ Expulsion is unlawful and increasingly rare, but the barriers to equal educational opportunity take a variety of invidious forms. A report done by the National Women's Legal Center identifies the following challenges faced by pregnant and parenting learners: an environment of discouragement; a lack of support; punitive policies especially in relation to absences; the need for special accommodations; the push towards unequal learning alternatives, off-site schools and GED classes; a lack of child care; transportation to school; stigma, harassment, bullying and violence; economic, housing and family instability; stress, insufficient time and the need to work; and poor mental health.⁵⁸

Title IX of the Education Amendments of 1972

The main piece of federal legislation that directly protects the rights of pregnant and parenting learners is Title IX of the Education Amendments of 1972 ('Title IX'), which prohibits discrimination on the basis of sex in schools that receive federal funding. Title IX aims to ensure pregnant and parenting students have an equal right to education, and its implementation regulations specifically prohibit discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of

⁵⁴ Kelli S Hall et al, 'The State of Sex Education in the United States' (2016) 58 Journal of Adolescent Health 595; Laura Duberstein Lindberg, Isaac Maddow-Zimet and Heather Boonstra, 'Changes in Adolescents' Receipt of Sex Education, 2006-2013' (2016) 58 Journal of Adolescent Health 621, 626.

⁵⁵ John M. Bridgeland, John J. Dilulio, Jr. & Karen Burke Morison, Bill & Melinda Gates Foundation, *The Silent Epidemic: Perspectives of High School Dropouts* (2006) 6, <<https://docs.gatesfoundation.org/documents/thesilentepidemic3-06final.pdf>> accessed 24 April 2018.

⁵⁶ Hamilton and Mathews (n 53) 2–3.

⁵⁷ Kendra Fershee, 'Hollow Promises for Pregnant Students: How the Regulations Governing Title IX Fail to Prevent Pregnancy Discrimination in School' (2009) 43 Indiana Law Review 79, 79.

⁵⁸ Kelli Garcia and Neena Chaudhry, 'Let Her Learn: Stopping School Pushout for Girls Who Are Pregnant or Parenting' (National Women's Law Center 2017).

these conditions.⁵⁹ Most importantly, schools are required to excuse absences that are due to pregnancy and related conditions, such as prenatal appointments, labour, delivery, and recovery, for as long as the student's doctor has deemed necessary.⁶⁰ Upon her return, the student must be reinstated to the same academic and extracurricular status as before her leave began, which includes being given the opportunity to catch up any work she has missed.⁶¹ A doctor's note need only be submitted where the school requires this for leave of absence in respect of other temporary medical conditions. Similarly, a school cannot exclude a pregnant learner from continuing to participate in any educational or extracurricular activity, and may only require medical clearance for continued participation where this is enforced for other medical conditions.

Title IX therefore uses 'temporary disability' as the comparator for discrimination on the ground of pregnancy in the school context:

'A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient [school] administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity'.⁶²

As already discussed, this prevents pregnant learners from being subject to different procedural requirements from those with temporary medical conditions in relation to school absences and continued participation. It also requires schools to provide the same special services to a pregnant learner that it provides to the comparator group. The Department of Education's guidance on Title IX states that 'when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.'⁶³

At the same time, however, this formal conception of equality means that schools need only make special provisions, such as home tutoring, for pregnant learners where they do the same for students for temporary medical conditions. They are not legally mandated to make any special arrangements to support pregnant and parenting students, but the US Department of

⁵⁹ 34 CFR § 106.40(b)(1)

⁶⁰ 34 CFR § 106.40(b)(5)

⁶¹ 34 CFR § 106.40(b)(5). See also 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (US Department of Education, Office for Civil Rights 2013) 10.

⁶² 34 CFR § 106.40(b)(4)

⁶³ 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (n 61) 9.

Education has made some recommendations in this regard, such as the provision of child care and private rooms to breastfeed or pump milk during the school day. Title IX allows for separate educational programs to be offered to pregnant learners, but stipulates that they must be of comparable quality to the schooling for non-pregnant learners.⁶⁴ Furthermore, the choice to participate in separate programs must be voluntary – schools may not pressure pregnant learners to participate in them rather than staying in their current educational program.⁶⁵ Separate educational programs for pregnant learners remain controversial, as is evident from the closure in 2007 of so-called ‘P-schools’ in New York City, which were started in the 1960s.⁶⁶

While Title IX most directly addresses the rights of pregnant and parenting learners, the US Constitution also provides important protections that have a bearing on school pregnancy policies. For instance, the First Amendment (free speech, which includes the right not to speak) raises confidentiality concerns about school notification policies that might inform parents or guardians of a learner’s pregnancy without her consent.⁶⁷ School practices of imposing compulsory pregnancy tests are in breach of the Fourth Amendment (search and seizure) and the Fourteenth Amendment (equal protection of the law).⁶⁸

Title IX enforcement and complaints process

Title IX provides some strong protections for pregnant and parenting learners, and has benefitted from the Department of Education’s recently updated guidance on its implementation.⁶⁹ Its implementation has been criticised, however, with academic research calling for improved regulation by the Department of Education’s Office for Civil Rights and better training of teachers and administrators, whose responses can be determinative of whether a pregnant learner decides to remain in school.⁷⁰ Furthermore, research has shown that students from low socio-economic backgrounds are

⁶⁴ 34 CFR § 106.40(b)(3)

⁶⁵ ‘Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972’ (n 9) 7.

⁶⁶ Julie Bosman, ‘New York’s Schools for Pregnant Girls Will Close’ *The New York Times* (24 May 2007) <<https://www.nytimes.com/2007/05/24/education/24educ.html>> accessed 23 April 2018.

⁶⁷ Michelle Gough, ‘Parenting and Pregnant Students: An Evaluation of the Implementation of the Other Title IX’ (2011) 17 *Michigan Journal of Gender and Law* 211, 253.

⁶⁸ *ibid.*

⁶⁹ ‘Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972’ (n 9).

⁷⁰ Gough (n 67). See recommendations offered in Fershee (n 57) 115–116.

unlikely to enforce their legal rights,⁷¹ even though they are most likely to suffer harm from Title IX violations.⁷²

School districts are required to adopt complaints procedures for discrimination against pregnant learners, and must appoint a Title IX co-ordinator who is responsible for handling individual complaints and investigating any systemic problems that may arise during the review of such complaints.⁷³ A complaint of discrimination can be filed by the student herself or on her behalf by a parent, friend, teacher or other person, but must be done within 180 days of the alleged discrimination (or since the latest instance in the case of ongoing discrimination).⁷⁴ The complaints process is treated as confidential and a complainant may not be targeted for asserting their Title IX rights.⁷⁵ The National Women's Legal Center has developed a toolkit which outlines the complaints process in a clear and accessible manner, and provides sample letters of complaint to Title IX co-ordinator as a helpful resource.⁷⁶

Sex Education

There is a strongly binarized debate in the US about what approach to sex education is effective and appropriate: 'abstinence-only' versus 'comprehensive sex education'.⁷⁷ Federal policy from the late 1990s strongly favoured abstinence education programmes, with more than 1.5 billion dollars having been directed towards so-called 'Abstinence Only Until Marriage' ('AOUM') programmes between 1996 and 2010, but there has gradually been a shift towards more comprehensive sex education programs such as President Obama's Teen Pregnancy Prevention Initiative (TPPI).

A key challenge regarding the provision of sex education in the US is that states have primary responsibility for public schooling and give local school districts a considerable degree of autonomy, which includes significant control over the provision of sex education.⁷⁸ There are considerable differences

⁷¹ Richard Arum and Doreet Preiss, 'Still Judging School Discipline' in Joshua M Dunn and Martin R West (eds), *From Schoolhouse to Courthouse: The Judiciary's Role in American Education* (Brookings Institution Press 2009) 238.

⁷² Gough (n 67) 264.

⁷³ 'Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972' (n 9) 11–12.

⁷⁴ 'Pregnant and Parenting Students' Rights Toolkit' (National Women's Law Center 2016).

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ Nancy Kendall, *The Sex Education Debates* (University of Chicago Press 2012).

⁷⁸ Hall and others (n 6) 2.

across states in the regulation of the content of sex education and, even more fundamentally, whether sex education is compulsory.⁷⁹

The Future of Sex Education Initiative ('FoSE') attempts to address these discrepancies by developing the National Sexuality Education Standards ('NSES').⁸⁰ The NSES seek provide 'clear, consistent and straightforward guidance on the *essential minimum, core content* for sexuality education that is developmentally and age-appropriate for students in grades K-12 [...] to address the inconsistent implementation of sexuality education nationwide and the limited time allocated to teaching the topic.'⁸¹ The NSES set out specific performance indicators for grades 2, 5, 8 and 12. By the end of grade 8, for example, students should be equipped with medically accurate information about contraception and abstinence; be aware of pregnancy-related support options; have developed their sexual health decision-making skills including on issues relating to consent and contraception; and have attained self-management skills on correctly using a condom.⁸² Grade 12 outcomes are more advanced, focusing on the skills and resources needed to become a parent and access prenatal care services.⁸³

9. Law and Policy in Namibia

In 2009 Namibia's Cabinet approved the 'Education Sector Policy for the Prevention and Management of Learner Pregnancy'.⁸⁴ The policy aims to prevent learner pregnancies by focusing on sexual education, and to ensure the continued education of pregnant learners and learner parents when pregnancy does occur. Namibia ultimately aims to decrease the number of learner pregnancies and increase the number of learner-parents who complete their education. However, studies have shown that the policy has been inconsistently applied, with some schools complying with the policy but others insisting that pregnant learners leave as soon as they show signs of pregnancy.⁸⁵

⁷⁹ 'Sex and HIV Education' (*Guttmacher Institute*, 14 March 2016) <<https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education>> accessed 23 April 2018.

⁸⁰ 'National Sexuality Education Standards: Core Content and Skills, K-12' (Future of Sex Education Initiative 2012) (emphasis in original).

⁸¹ *ibid* 6.

⁸² *ibid* 27–28.

⁸³ *ibid* 28–29.

⁸⁴ Education Sector Policy for the Prevention and Management of Learner Pregnancy <https://www.moe.gov.na/files/downloads/99b_Learner%20Pregnancy%20policy%20final%202010-10-18.pdf> accessed 23 April 2018

⁸⁵ P Burton, L Leoschut and M Popovac, *Protecting the Flame: Overcoming Violence as a Barrier to Education in Namibia* (Monograph Series No 8, Centre for Justice and Crime Prevention 2011) <http://www.cjcp.org.za/uploads/2/7/8/4/27845461/monograph_8_-_protecting_the_flame_namibia.pdf> accessed 23 April 2018

This policy is applicable to all primary and secondary schools in Namibia, including government schools and government-subsidised private schools. Moreover, the policy calls on private schools not subsidised by the government to comply based on “moral and ethical obligations to consider the best interests of pregnant learners, learner-parents and the infants of learners”.

Prevention Strategies

The strategies to prevent pregnancy amongst learners include sexual education, “about the benefits of abstinence, the risks of engaging in sexual activity at a young age, appropriate use of contraception and the right of both male and female learners to free and informed choice in respect of sexual matters.” The policy requires that learners should receive age-appropriate reproductive and sexual health information on a regular basis, beginning with informal education on child abuse and protective measures from Grade 1, and formal education on child abuse and sexuality from Grade 5 onwards.

The policy requires gender-specific support and mentorship to be made available to students, and requires counselling services to be made available on reproductive health, sexual abuse and relationship issues. The policy places much emphasis on preventing sexual harassment and abuse in schools, especially for female learners. It also requires schools and hostels to organise after-school recreational activities for students in an alcohol free and safe environment.

The policy does not provide for access to sexual and reproductive health services prior to pregnancy, such as access to condoms or other means of protecting against unwanted pregnancy or terminating pregnancy.

Management Strategies

The policy provides for strategies to enable the continued education of pregnant learners and learner parents in case of pregnancy.

Under the policy pregnant learners can continue to attend school until four weeks before the expected due date of the child. After 26 weeks of pregnancy, a pregnant learner is required to provide a medical certificate confirming that it is safe for her to continue to attend school. Once the learner stops attending school, she may continue her education, although the burden is placed on her to ensure she collects school assignments and returns completed work for assessment.

Pregnant learners are permitted to write examinations after they stop attending school due to their pregnancy. Moreover, reasonable adjustments may be made for a separate venue and invigilator if she does not feel comfortable writing her exams with other students. However, the additional

costs incurred in making these arrangements are to be borne by the learner and her family.

After the birth of the child, the pregnant learner is required to fulfil several criteria before she can resume attending school:

- a social worker (or the Principal if no social worker is readily available) is satisfied that the infant will be cared for by a responsible adult
- a health care provider provides a statement that the learner-parent is in a suitable state of health and wellbeing
- a health care provider provides a statement that the infant is in a suitable state of health and wellbeing;
- the learner-parent and her parents, primary caretaker or guardian provide a signed statement with an exposition on how the infant will be cared for and an undertaking to maintain open communication with the school.

A pregnant learner is permitted to take a longer leave of absence from school, to a maximum of one year after the delivery of her child. Her school is obligated to reserve her place during this period, but not beyond.

Schools are obligated to provide support to pregnant learners and learner parents in the form of psychosocial support, educational support (through extra tutorials and course packs for missed schoolwork, and relaxed attendance requirements), and health and nutritional support.

10. The Feasibility and Constitutional Implications of Providing Separate Education for Pregnant Learners

Some jurisdictions, including New Zealand and the US, have provided separate schools or 'teen parent units' for pregnant students. While the Department of Basic Education has not made any submissions on the feasibility and constitutionality of these schools in the South African context, South Africa has had experience with them. Prior to its closure in December 2017, Hospital School Pretoria had a unit for pregnant learners. The school provided both primary and secondary education for pregnant learners referred from other schools in the Pretoria area. The school provided medical care, counselling and other forms of support and resources throughout the girls' pregnancies. While there is scarce information about the rationale for the closure of the school⁸⁶ or the legal basis upon which the school was founded, the EELC should make submissions about some of the human rights and

⁸⁶ M Lindeque, 'Pretoria Hospital School Will No Longer Accommodate Pregnant Pupils' Eye Witness News <<http://ewn.co.za/2017/08/14/pretoria-hospital-school-will-no-longer-accommodate-pregnant-pupils>> accessed 23 April 2018.

equality implications of providing separate educational facilities for pregnant girls in case the Department of Basic Education considers this as an option in the future.

The rationale most commonly put forward to justify placing pregnant learners in separate schools or units is to enable them to have access to services such as medical care, child care, counselling and other support. In addition, these schools are said to provide a safe and prejudice free environment to learn during pregnancy and while parenting, allowing learners to escape the potential prejudice and stigma that they may face in 'mainstream' school.⁸⁷ Further, some empirical studies in the US have argued that students in these separate schools have better education and health outcomes compared to their peers who remain in the public-school system while pregnant or parenting.⁸⁸ More recently, a 2017 study in New Zealand found that pregnant learners in what they call 'Teen Parent Units' had better educational outcomes than similarly situated students not enrolled in these units.⁸⁹ Finding that, 'Overall...specialist school-based services designed to meet the needs of teenage mothers can reduce the school enrolment gap between teen women who give birth and those who do not. Additionally, these services can substantially raise the achievement levels of teen mothers who do enrol in school.'⁹⁰

At face value, these schools may seem like a good option. However, they have problematic implications for gender equality and could possibly violate constitutional rights. One of the disadvantages of providing separate schools is that it may perpetuate the stigma surrounding pregnancy as they 'other' pregnant learners. 'Othering' pregnant girls can be seen as an extension of the patriarchal discomfort that society has with the female body and pregnancy. In the context of it being mandatory, it could also be conceived as a form of punishment for pregnant girls. This segregation also perpetuates gendered norms about reproductive responsibility and child care as these schools often only provide for separate support and resources for the pregnant learner, allowing the father, who may also be a student to remain in the 'original' school. This was the case in Hospital School Pretoria.

From a human rights perspective, drawing on the Constitutional Court's decision in the Welkom High School case, these kinds of schools could be found to be unfairly discriminatory on the grounds of pregnancy as well as on

⁸⁷ Monica J. Stamm, 'A Skeleton in the Closet: Single-Sex School for Pregnant Girls' (1998) 98 Colum. L. Rev. 1203

⁸⁸ [//debsedstudies.org/teaching-for-two/](http://debsedstudies.org/teaching-for-two/)

⁸⁹ R Vaithianathan et al, 'Impact of School-Based Support on Educational Outcomes of Teen-Mothers: Evidence from New Zealand's "Teen Parent Units"' (2017) Working Paper. Ministry of Social Development.

⁹⁰ *ibid* 7.

the grounds of sex and gender.⁹¹ Furthermore, they would probably also violate the pregnant learner's constitutional rights to human dignity, privacy and bodily and psychological integrity.⁹² As for minor girls, these kinds of schools could be impugned on the basis that they violate s 28(2) of constitution, which guarantees that the child's best interests are of paramount importance in all matters concerning them. **It's important to mention that the distinction between the mandatory or compulsory nature of these schools may not change the constitutionality analysis, especially if a substantive view of equality and a more systematic and structural transformative approach was taken in the analysis of the impact these schools have on the human rights implicated.**

In the US, there has been a shift towards a closure of these schools.⁹³ While most of the closures appear to be related to a lack of funding, there are some who argue that the best approach to addressing the structural and systematic barriers to ensuring that pregnant learners remain in school, is to ensure that students are offered the same level of care and support that they would have access to if they were to attend a separate school for pregnant learners⁹⁴. This appears to be the model that the Department of Basic Education is endorsing. However, the EELC should attempt to get a clear commitment from the Department in this regard, lest another 'Hospital School Unit for Pregnant Girls' be opened.

What is clear is that, especially when looking at the model for 'Teen Parenting Units' in New Zealand, the success of these schools in retaining pregnant girls in the school system and in increasing their success in the system, is the provision of healthcare, counselling, child care financial and other forms of support and resources. Essentially, the success of students in these separate schools is more related to the provision of resources and services than the creation of a separate space in which these are provided.⁹⁵ Further, in the US context at least, these separate schools for pregnant girls have compromised on equal education in the context of quality as some are 'marked by abysmal test scores, poor attendance and inadequate facilities, and even some of their own administrators say they suspect that most of their students are pushed there by other schools because they are failing academically.'⁹⁶

⁹¹ *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* 2013 (9) BCLR 989 (CC) [114].

⁹² *ibid* [115].

⁹³ Bosman (n 66).

⁹⁴ Eliza Scruton and Emily Patton, 'Teaching for Two: Public Education and Pregnant Teens' (May 4 2017) Yale Education Studies <<http://debsedstudies.org/teaching-for-two/>> accessed 23 April 2018.

⁹⁵ *Ibid*.

⁹⁶ Bosman (n 66).

Nevertheless, the benefit of community and support that can exist in these separate schools cannot itself be replicated. Yet the hope is that through education and policies which are founded on equality and respect for girls, the continued integration of pregnant learners in schools will address the social stigma surrounding pregnancy without risking their health and education outcomes