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# **“Character Standard” or Sex Discrimination? *Students’ Exclusion from National Honor Society Called a Violation of Title IX***

**Gabrielle Morgan†**

At first glance, the picture is baffling. Why would two intelligent, talented, and involved high school juniors be denied admission into the National Honors Society, despite meeting every material criterion? Upon closer inspection, however, the reason for their exclusion becomes depressingly clear. Chasity Glass and Somer Chipman both committed the cardinal sin of becoming pregnant out of wedlock, the so-called “scarlet P.”<sup>1</sup> For their mistakes, they were denied an honor they had clearly earned.

Has American society stayed so rigidly moralistic? Do we still whisper about unwed mothers, still bundle them off to the countryside to endure their pregnancies in secret and in silence? Surely some of the advances the civil rights and women’s movements have made in the last century should have altered these anachronistic social rules. The American Civil Liberties Union (ACLU) certainly thinks so. On behalf of Chasity, Somer, and their parents, the ACLU sued the Grant County School District (GCS D) for violating Title IX of the Education Amendments of 1972.<sup>2</sup> If the school board is, as alleged, excluding the girls because of their pregnancies, then they are discriminating on the basis of sex, since no boy can or will ever be denied admission because of *his* pregnancy.

## **THE NATIONAL HONOR SOCIETY**

The National Honor Society (NHS) describes itself as “the nation’s premier organization established to recognize outstanding high school students.”<sup>3</sup> The NHS was founded in 1921 by the National Association of Secondary School Principals (NASSP), and has worked ever since to rec-

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1. Marilyn Gardner, *The Scarlet Letter Gets Sadly Updated*, CHRISTIAN SCI. MONITOR, Aug. 28, 1998, at B8.

2. 20 U.S.C. § 1681 (1994).

3. National Honor Society (NHS) and Junior Honor Society (NJHS), *Education Leaders in Middle and High Schools: Introduction* (visited Feb. 1, 1999) <[http://www.nassp.org/dsa/dsa\\_frm.htm](http://www.nassp.org/dsa/dsa_frm.htm)>.

ognize and honor high achievement by high school students.<sup>4</sup> Its mission as an organization and an honors society is “to create enthusiasm for scholarship, to stimulate a desire to render service, to promote leadership, and to develop character in the students of secondary schools.”<sup>5</sup> In keeping with these goals, to qualify for membership students must demonstrate excellence in four areas: scholarship, leadership, service, and character.<sup>6</sup> While the NHS National Constitution sets forth the general membership requirements, local chapters are permitted to add their own criteria, as long as their requirements are no less stringent than the national standards. Each chapter must establish a faculty council for member selection.<sup>7</sup>

The scholarship criterion is the only objective area, and is based on a student’s cumulative grade point average (GPA). Nationally, the minimum GPA is 3.0 on a 4.0 scale; the Grant County High School (GCHS) chapter has set its minimum GPA at 3.5.<sup>8</sup> The service requirement is designed to measure the student’s commitment to working with and for others. “Actions undertaken by the student which are done with or on behalf of others without any direct financial . . . compensation” are considered under the service area.<sup>9</sup> In evaluating a student’s leadership capabilities, the membership committee considers a student’s extracurricular and co-curricular activities, including offices held and depth of involvement. In establishing the character criterion, the NHS recommends using its model of the “Six Pillars of Character,” which are respect, responsibility, trustworthiness, fairness, caring, and citizenship.<sup>10</sup>

The NHS acknowledges that local chapters may consider pregnancy under the character criterion. The NHS does note, however, that federal law forbids denial of membership based on pregnancy.<sup>11</sup> In its handbook the NHS national office stipulates that such consideration is only permitted if “evidence of paternity is similarly regarded.”<sup>12</sup>

Membership in the NHS provides more than just another item on a student’s resume. NHS members may apply for one of 250 scholarships,

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4. *See id.*

5. National Honor Society (NHS) and Junior Honor Society (NJHS), *Education Leaders in Middle and High Schools: History of the Organization* (visited Feb. 3, 1999) <[http://www.nassp.org/dsa/dsa\\_frm.htm](http://www.nassp.org/dsa/dsa_frm.htm)>.

6. *See* National Honor Society (NHS) and Junior Honor Society (NJHS), *Education Leaders in Middle and High Schools: Selection Criteria* (visited Feb. 3, 1999) <[http://www.nassp.org/dsa/dsa\\_frm.htm](http://www.nassp.org/dsa/dsa_frm.htm)>.

7. *See* National Honor Society (NHS) and Junior Honor Society (NJHS), *Education Leaders in Middle and High Schools: Membership in NHS* (visited Feb. 3, 1999) <[http://www.nassp.org/dsa/dsa\\_frm.htm](http://www.nassp.org/dsa/dsa_frm.htm)>.

8. *See* American Civil Liberties Union, *ACLU in the Courts: Chipman v. Grant County School District* (visited Feb. 3, 1999) <[http://www.aclu.org/court/chipman\\_comp.html](http://www.aclu.org/court/chipman_comp.html)>.

9. *See id.*

10. *See id.*

11. *See id.*

12. *Id.*

attend the National Conference, and attend special National Leadership Camps.<sup>13</sup> Designed to "enhance a student's academic and career prospects,"<sup>14</sup> NHS membership provides students with opportunities to further develop their leadership capabilities.

### CHASITY GLASS AND SOMER CHIPMAN

Chasity Glass, 17, describes herself as having "a love of learning and a habit of forming and maintaining a high set of goals and standards for [herself]."<sup>15</sup> Throughout her three years at GCHS, Chasity has been highly involved in academics and extracurricular organizations. Her GPA is between 3.6 and 3.7 and she has received the United States Foreign Language Award.<sup>16</sup> Chasity is a skilled flautist and has participated in several prestigious ensembles and contests. Extremely active in marching band and Colorguard since her freshman year, she served as Captain of the Colorguard while a junior, an honor and responsibility normally given to a senior. She helped run a summer camp for new band members and won the United States National Band Award for the categories of both Marching and Concert Band during her junior year. She also volunteers with the Service Learning Program, working in the office of the Board of Education with the Assistant Superintendent. Chasity has received six nominations for Student of the Month, and was chosen for the honor in the Arts/Music category in February 1998. In addition, Chasity has worked part-time since her sophomore year.

Chasity lives with her fifteen-month-old daughter, Shelby, her mother, and her siblings. She shares child care responsibilities with Shelby's father. "Both before and after my pregnancy," Chasity said in a statement, "I have kept up with my scholastic endeavors and extracurricular efforts . . . I have taken responsibility for what I have done . . . I have continued to uphold my personal standards as well as the school's standards of academic excellence."<sup>17</sup>

Somer Chipman, also 17, believes that "[i]t is important that society understands that not all teen mothers are thoughtless and irresponsible."<sup>18</sup> Somer's GPA as she begins her senior year is 3.9, and she has

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13. *See id.*

14. *Id.*

15. American Civil Liberties Union, *ACLU Press Release: 08-06-98—Chipman v. Grant County School District: Statement of Chasity Glass* (visited Feb. 3, 1999) <<http://www.aclu.org/news/no80698b.html>> [hereinafter *Statement of Chasity Glass*].

16. *See id.*

17. *Id.*

18. American Civil Liberties Union, *ACLU Press Release: 08-06-98—Chipman v. Grant County School District: Statement of Somer Chipman* (visited Feb. 3, 1999) <<http://www.aclu.org/news/n080698c.html>>.

earned As in Advanced Placement English and Chemistry.<sup>19</sup> She has had several semesters of straight As and has received four nominations for Student of the Month. Somer's involvement in marching band, including Colorguard, Concert Band, and Pep Band, has spanned all three of her years at GCHS. Also an accomplished flautist, she was chosen to play first chair flute in Concert Band while only a sophomore. Somer works at school fundraising projects and with Brothers and Sisters in Christ to raise money for people in need of medical care. She has served as business manager of the GCHS media class, which publishes the school newspaper and produces a television program. In addition to her school activities, Somer travels twice a week to care for her elderly grandfather, an eighty-minute round trip journey. She has also held a part-time job since the second semester of her freshman year.

Somer had plans to marry Shawn Hurston on August 7, 1998, and they live together with their infant daughter Cheyenne.<sup>20</sup> In a statement Somer said that "[teen mothers] are individuals and deserve fair and equal treatment in our school careers and in the lives we choose thereafter."<sup>21</sup>

### THE EXCLUSION

Chasity became pregnant in August 1996 and gave birth in April 1997. Her pregnancy and her decision to keep Shelby were well-known to students, teachers, and administrators of the high school. Somer's pregnancy became generally known in November 1997, and her decision to carry the pregnancy to term was equally well-known in the GCHS community.<sup>22</sup>

On April 8, 1998, approximately thirty-three GCHS students were inducted into the school's local chapter of the NHS. None of the inducted students are known to have been pregnant or parenting students. Neither Chasity nor Somer were called to be inducted into the NHS, despite their expectations based on the membership requirements, and the two teenagers walked out of the ceremony in shock and humiliation. They were the only eligible students in the school who met the GPA requirement, but were not inducted.<sup>23</sup>

Somer's parents asked the principal of GCHS for an explanation of their daughter's exclusion. He at first pled ignorance, but later told the

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19. *See id.*

20. *See id.*

21. *Id.*

22. *See Chipman v. Grant County School District: Complaint for Declaratory, Injunctive, and Monetary Relief* (visited Jan. 20, 1999) <[http://www.aclu.org/court/chipman\\_comp.html](http://www.aclu.org/court/chipman_comp.html)> [hereinafter *Chipman Complaint*].

23. *See id.*

parents that they "had no right to know why Somer was not admitted."<sup>24</sup> It became clear to the students that their pregnant or parenting status had been a factor, if not the *only* factor, in their exclusion. Chasity, Somer, and their families pursued the matter with the Grant County School Board (GCSB), complaining of discrimination. On May 14, 1998, the GCSB's attorney reported at a public meeting that the girls' exclusion from the NHS was not discriminatory, and the superintendent of the Grant County Schools stated that the girls simply had not met the collective criteria for admission into the honors society.<sup>25</sup> Later, Sue Cassidy, one of the attorneys for the GCSB, told a reporter, "I am confident that the sex acts of the two students was [sic] not the sole criteria . . . I am also confident that if it was known that male students engaged in premarital sex, they would have been treated in the same manner as the two students."<sup>26</sup>

At no time did the admissions committee or the GCSB conduct surveys to discover whether any other students had engaged in premarital sex, whether any other girls had become pregnant, given birth, or had an abortion, or whether any boys had fathered or parented a child.<sup>27</sup>

### THE ACLU LAWSUIT

The ACLU lists several causes of action in its formal complaint in *Chipman v. Grant County School District*,<sup>28</sup> but its most persuasive allegation is that the GCSB violated Title IX. Before the government extended protection to pregnant and parenting students under Title IX, "teen pregnancy generally marked the end of a student's educational career."<sup>29</sup> But when Congress enacted Title IX of the Education Amendments in 1972, such traditional treatments as separate programs for pregnant students or outright expulsion became illegal. Title IX's intent to end sex discrimination in education is unmistakable: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."<sup>30</sup> Most specific to this instance, the Code of Federal Regulations section 106.40 states

24. Brenda Jones, *An Open Letter to the Editor* (visited Feb. 3, 1999) <<http://www.aclu.org/news/n080698d.html>>.

25. *See id.*

26. *Chipman Complaint*, *supra* note 22.

27. *See id.*

28. *See id.*

29. American Civil Liberties Union, *ACLU Press Release: 08-06-98—Chipman v. Grant County School District: ACLU Fact Sheet* (visited Feb. 8, 1999) <<http://www.aclu.org/news/n080698e.html>> [hereinafter *ACLU Fact Sheet*].

30. 34 C.F.R. § 106.40.

[a] recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex. . . . A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.<sup>31</sup>

Since GCHS receives federal funds, it is subject to Title IX regulation and enforcement. If Chasity and Somer's pregnant or parenting status caused their exclusion from the local chapter of the NHS, then GCHS violated Title IX.

Chasity and Somer's equal protection and substantive due process rights under the Fourteenth Amendment also provide a cause of action against the GCSB. The Equal Protection Clause has been interpreted to forbid intentional discrimination on the basis of sex without a "substantial" or "rational" relation to an "important" or "legitimate" governmental objective.<sup>32</sup> If the exclusion of pregnant or parenting female students has no relation to the school's objective in inducting students into the NHS using approved national standards, then the girls' equal protection rights have been violated.<sup>33</sup> The Due Process Clause of the Fourteenth Amendment has been interpreted to prevent, among other things, interference in an individual's "fundamental rights to privacy and autonomy in intimate matters involving family, sexuality, and the decision whether and when to bear and parent children."<sup>34</sup>

The ACLU's complaint lists two other causes of action rooted in Kentucky law. First, the ACLU cites the Kentucky Sex Equity in Education Act, which states that "[n]o person shall, on the basis of sex, be ex-

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31. *Id.*

32. *See, e.g.,* Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982) (sustaining male applicant's challenge to exclusion from state nursing school because no important governmental objective is served by having a women-only institution); Rostker v. Goldberg, 453 U.S. 57 (1981) (upholding law requiring draft registration for men but not women because of the important governmental objective of having a smoothly operating military); Michael M. v. Sup. Ct., 450 U.S. 464 (1981) (upholding statutory rape statute punishing male but not female offenders where the legislative objective is to prevent teen pregnancies); Craig v. Boren, 429 U.S. 190 (1976) (holding that gender distinction in drinking ages is not "substantially related" to achieving the government objective of traffic safety). More recent cases suggest that the Supreme Court may be applying an even higher level of scrutiny to gender classification cases. *See, e.g.,* United States v. Virginia Military Inst., 518 U.S. 515 (1996) (using "exceedingly persuasive justification" standard rather than "important governmental objective" standard); J.E.B. v. Alabama, 511 U.S. 127 (1994) (finding gender-based peremptory challenges unconstitutional under an "exceedingly persuasive justification" test); Hogan, 458 U.S. at 732 (invoking "exceedingly persuasive justification" language for the first time, while purportedly applying an "important governmental objective" test).

33. Under *Craig*, gender discrimination receives intermediate scrutiny to determine if a given classification is "substantially related" to the achievement of "important governmental objectives." 429 U.S. 190 (1976).

34. *Chipman Complaint, supra* note 22. *Roe v. Wade* established strict scrutiny as the standard for review of an invasion of the fundamental right to privacy, particularly for sexual relations and reproduction. 410 U.S. 113 (1973). *Planned Parenthood v. Casey* forbids "undue burdens" on a woman's right to choose to terminate her pregnancy. 505 U.S. 833 (1992).

cluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving state financial assistance."<sup>35</sup> The Act applies because GCHS receives state funds. Because the Kentucky statute tracks the language of Title IX, if the GCSB violated Title IX, it violated the Kentucky Sex Equity in Education Act as well. Secondly, the ACLU argues that the Kentucky Constitution forbids the government from exerting "[a]bsolute and arbitrary power"<sup>36</sup> over the lives of citizens.<sup>37</sup> This last cause of action, however, seems less applicable than the others, because it deals less explicitly with sex discrimination.

The ACLU believes *Chipman v. Grant County School District* to be of "national significance."<sup>38</sup> Similar cases have been litigated in the past. In *Pfeiffer v. Marion Center Area School District*, the appellate court upheld the trial court's finding of fact that Arlene Pfeiffer was dismissed from the NHS because of her premarital sexual activity, not her pregnancy.<sup>39</sup> However, the court remanded the case because the lower court excluded a male student's testimony that he became a member of the NHS despite his fathering a child.<sup>40</sup> In *Wort v. Vierling*, the court found that a student's dismissal from the NHS was due to her pregnancy and therefore violated Title IX.<sup>41</sup> In 1993, the ACLU's Women's Rights Project led a protest in Texas when three pregnant cheerleaders were dismissed from their high school's squad, but a fourth member who had had an abortion remained a member.<sup>42</sup> In that instance, no lawsuit was filed; the ACLU's letter to the school board resulted in the cheerleaders' reinstatement.<sup>43</sup>

The plaintiffs' likelihood for success in *Chipman v. Grant County School District* is excellent. On December 29, 1998, Judge William O. Bertelsman issued a preliminary injunction ordering the GCSB to admit Chasity and Somer into the NHS chapter for the remaining semester of their senior year. In his ruling, Judge Bertelsman wrote that "although the defendants argue that they are not basing their decision on pregnancy, but rather on non-marital sexual relations, the disparate impact on young women such as the plaintiffs is apparent."<sup>44</sup> The ruling notes that the GCHS committee made no attempt to ascertain the sexual history of all NHS candidates, relying only on the visual evidence of Chasity and

35. 1998 Ky. Rev. Stat. & R. Serv. 344.555 (Banks-Baldwin).

36. KY. CONST. § 2.

37. See *Chipman Complaint*, *supra* note 22.

38. Andrea Tortora, *ACLU Lobbies for Teen Mothers; Board Barred Girls from Honor Society*, CINCINNATI ENQUIRER, June 25, 1998, at A10.

39. 917 F.2d 779 (3rd Cir. 1990).

40. See *id.* at 780.

41. 778 F.2d 1233 (7th Cir. 1985).

42. See *ACLU Fact Sheet*, *supra* note 29.

43. See *id.*

44. American Civil Liberties Union, *ACLU in the Courts: Somer Chipman v. Grant Count[y] School District*, *et al.* (visited Feb. 8, 1999) <[http://www.aclu.org/court/chipmanvgrant\\_pi\\_order.html](http://www.aclu.org/court/chipmanvgrant_pi_order.html)>.

Somer's pregnancies.<sup>45</sup> Judge Bertelsman wrote that Chasity and Somer have a strong likelihood of winning the lawsuit under both disparate impact and disparate treatment theories of proving discrimination.<sup>46</sup> With this preliminary injunction, Somer and Chasity should be initiated into the GCHS chapter of the NHS,<sup>47</sup> and, therefore, be able to list the honor society on their resumes and college applications. The young women are "thrilled and excited" by this first victory, and the ACLU's next step is to seek a permanent injunction.<sup>48</sup>

### EVALUATION

According to Somer, Chasity, and the ACLU, the GCSB violated Title IX because it discriminated against them on the basis of sex. They believe they were excluded from the local chapter of the NHS because of Somer's pregnancy and Chasity's motherhood. They have been given no other reason for their rejection, and while it is true that membership in the NHS is a privilege, not a right, excluding two otherwise qualified students from membership because of their pregnant or parenting status is simply not legal.

Is the school board guilty of sex discrimination? According to their statements and their attorneys, certainly not. Although they have not been forthcoming about their decision, the GCSB appears to be asserting that it denied the girls admission because they engaged in premarital sex. Donald Ruberg, attorney for the Grant County Board of Education, said that "[g]iven the fact that character is one of the criteria, . . . the admissions committee did not feel that someone who had engaged in premarital sex should be held up as a role model."<sup>49</sup> The school board, then, claims that the issue is not pregnancy, but premarital sex; students who are sexually active before marriage have not shown sufficient character to meet the NHS criteria. The NHS Admissions Committee asserts that all students who engage in premarital sex, girls and boys alike, are excluded from membership in the NHS,<sup>50</sup> thus there is no sex discrimination and no Title IX violation.

The problem is that the admissions committee and the school board made no attempt to hold every candidate to this "no premarital sex"

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45. *See id.*

46. *See id.*

47. *See id.*

48. *See American Civil Liberties Union, ACLU Press Release: 12-30-98—Kentucky Court Says Teen Moms Must Be Admitted into National Honor Society* (visited Feb. 8, 1999) <<http://www.aclu.org/news/n123098a.html>>.

49. *Teen Mothers Sue School Board After Being Denied Honor Society Membership*, MINNEAPOLIS-ST. PAUL STAR-TRIB., Aug. 6, 1998, at 17A.

50. *See Gracie Bonds Staples, Boys and Girls Make Mistakes; Only Girls Pay*, FORT WORTH STAR-TELEGRAPH, Aug. 16, 1998, at 1.

standard. Though they claim that all students are evaluated under the same criteria, they did not survey or inquire into the sexual histories of the thirty-three students chosen for NHS membership.<sup>51</sup> They found only Somer and Chasity, two students whose sexual activity was made obvious by their pregnancies, to be deficient in character.

Because boys cannot get pregnant, no visible signs of their premarital sexual activity exist for the admissions committee to notice. Unless the boys choose to inform the high school community, their NHS eligibility is protected. The school board's claimed policy of not honoring sexually active students with NHS membership will not detect those students who have engaged in such activity but have not gotten pregnant or fathered a child, or who have aborted a pregnancy. Many teenagers, in fact, are sexually active; according to the Alan Guttmacher Institute, "[f]ifty-six percent of young women and 73 percent of young men today have had intercourse by age 18."<sup>52</sup> It seems reasonable that students at GCHS will have similar levels and patterns of sexual experience. But under the standards of the GCHS NHS chapter, not only will many sexually active girls escape censure, *no* sexually active boys will be penalized, which *amounts to sex discrimination*. The only students whose premarital sexual activity will be detected are the ones who get pregnant and the only ones who can get pregnant are girls.

The school board's assertions of good faith may be genuine. Perhaps they do mean to censure premarital sex because it is a sign of low moral character. Arguments against an abstinence requirement aside, the school board and the GCHS chapter of the NHS are entitled to hold candidates to the standard of character they create. They are not, however, entitled to discriminate against students on the basis of sex while doing so. The intention of the membership committee may have been to punish sexually active teens, but the effect was to discriminate against two pregnant or parenting young women. The GCSB's exclusion of Chasity and Somer from the local chapter of the NHS was therefore discriminatory on the basis of sex.

In any event, the GCSB might want to reconsider its definition of "character." One editorial writer demands, "[w]ho can argue that teen-age mothers who not only remain in school but excel lack character?"<sup>53</sup> After all, Chasity and Somer have achieved several of their most impressive academic and social successes during and after their pregnancies. The ACLU condemns any behavior that penalizes teenage mothers, stating that "graduation represents their best hope of lifelong success."<sup>54</sup> Chasity

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51. See *Chipman Complaint*, *supra* note 22.

52. *Honor Society Wrong: Pregnancy Shouldn't Disqualify*, SYRACUSE HERALD-J., Aug. 7, 1998, at A10.

53. Staples, *supra* note 50, at 1.

54. *ACLU Fact Sheet*, *supra* note 29.

and Somer deserve credit and commendation for exceeding the expectation that any teen mother is doomed to failure.

Shouldn't character be measured by more than one outdated standard? As one commentator sensibly writes, "Both [girls] accepted responsibility for their mistakes and chose to live with the lifelong consequences . . . In those few cases where teen mothers are able to stay in school and achieve top grades despite such difficult odds, credit seems well-deserved."<sup>55</sup> It makes sense. The NHS Six Pillars of Character—respect, responsibility, trustworthiness, fairness, caring, and citizenship—make no mention of premarital sexual activity. In fact, Somer and Chasity have exemplified the qualities the NHS lists through their willingness to take responsibility for their pregnancies while maintaining their high standards of academics and activities.

Support for Chasity and Somer's admission into the NHS is not an endorsement for teen pregnancy. Chasity herself wants to work with teens as a reverse role model, telling young women about the difficulties and demands of teen motherhood.<sup>56</sup> To recognize Somer and Chasity for the challenges they have overcome and the goals they have accomplished is not to suggest that teen pregnancy is not a pervasive social problem requiring a solution. But to deny Somer and Chasity membership in the NHS, which they have earned, is to return to an anachronistic sexual double standard. The GCSB excluded Chasity Glass and Somer Chipman from their chapter of NHS because Chasity was a mother and Somer was pregnant. No other student was denied membership because of premarital sexual activity; only the girls whose sexual history was physically evident were punished. The GCSB discriminated against Chasity and Somer on the basis of sex, and thus violated Title IX. The school board's gender-specific standard cannot be allowed to stand. With the preliminary injunction already in place, the process of reversing this illegal and shameful discrimination has begun. If all goes as it should, the preliminary injunction will become permanent, and Chasity and Somer can fully enjoy the honors they have earned.

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55. *Honoring Teen Moms? In this Tough Call, Give Credit for True Character*, Sacramento Bee, Aug. 11, 1998, at B6.

56. *See Statement of Chasity Glass, supra* note 15.