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Inclusivity of Diverse SOGIESC in South African Schools

The Women's Legal Centre (WLC) is representing a former learner at a public school in Cape Town in vindicating her rights as a transgender woman in accessing the right to an education free of prejudice and discrimination. The former learner is supported by her father and Triangle Project. An application has been launched in the Cape Town Equality Court in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("the Equality Act"). The Applicants (a transgender teen and her father) seek relief against her former High School and the Western Cape Department of Education.

This case seeks to challenge a discriminatory school policy and conduct by educators that sought to consistently deny a learner's right to equality, dignity, and education. This application seeks to have the school adopt more inclusive policies and processes that respect, protect and promote the rights of all learners within their full diversity.

Our matter involves LS, a transgender girl who was forced to leave her school in 2020 after having been denied the right to education in an environment free from discrimination. LS was denied the right to express her gender identity through her dress and physical appearance while at the school and while participating in school and extra-mural activities. Despite several interventions from her father and advice from expert professional psychologists, the school persisted in an approach that was against her best interest and actively sought to prevent her from expressing her gender and gender identity.

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The school policy relied on by the school and the conduct of its educators constituted direct and indirect discrimination under section 9(3) of the Constitution and section 8 of the Equality Act, as well as harassment under section 11 of the Equality Act. It also amounted to an infringement of LS's right to education, dignity and privacy.

The denial and violation of her right to express her gender identity had a detrimental impact on LS' mental health, well-being and negatively impacted her right to education. The school environment was not conducive to learning and was a place of fear, intimidation, bullying, blame and discomfort.

Dignity and equality are foundational values in our constitution. They are also values and rights which need to find expression in our society and places of learning. Inclusive and safe schooling environments for girls, women and persons with diverse sexual orientation, gender identity, gender expression and sex characteristics continue to be a concern for the WLC and Triangle Project as the constitutional rights to equality, dignity, bodily autonomy, education and privacy must be promoted, protected and enjoyed by all regardless of their gender identity, gender expression, sexual orientation or sex characteristics.

This matter, and its outcome, will have a fundamental effect on how the rights to equality, education and dignity are weighed and will in turn have important consequences for how those rights are applied to girls and other students in their diversity.

