5 March 2018

**WRITTEN SUBMISSION**

**STANDING COMMITTEE ON APPROPRIATIONS**

**Case No 18678/2007, the High Court of South Africa (Western Cape High Court, Cape Town), 11 November 2010**

**RE: SCHOLAR TRANSPORT FOR LEARNERS WITH SEVERE AND PROFOUND INTELLECTUAL DISABILITY**

Learner Transport Meeting: Departments of Basic Education and Transport to discuss the challenges (implementation and funding) relating to learner transport in SA. 7 March 2018

**Submission by**

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The Western Cape Forum for Intellectual Disability (WCFID), was established in 1971 with a small group of parents, professionals and persons involved with persons with intellectual disability (ID). It has grown into a formally constituted NGO, with a membership of +/- 220 organisations and individual working with children and adults with ID in the Western Cape.

The WCFID is an umbrella body providing a support network to service providers in the field of ID in the Western Cape, through:

* Training and support
* Resources
* Advocacy
* Learning and networking opportunities

WCFID lobbied government for 13 years for the Right to Education (RTE) for Children with Severe and Profound Intellectual Disability (CSPID), with little progress, and eventually litigated, successfully.

On 11 November, 2010, the High Court of South Africa (Case No 18678/2007. GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, First Respondent; GOVERNMENT OF THE PROVINCE OF THE WESTERN CAPE, Second Respondent), ruled that:

[52] In the circumstances I conclude that the applicant is entitled to the relief sought and accordingly make the following orders:

1) It is declared that the respondents have failed to take reasonable measures to make provision for the educational needs of severely and profoundly intellectually disabled children in the Western Cape, in breach of the rights of those children to:

1.1 a basic education

1.2 protection from neglect or degradation

1.3 equality

1.4 human dignity

**2) The respondents are directed forthwith to take reasonable measures (including interim steps) in order to give effect to the said rights of severely and profoundly intellectually disable children** in the Western Cape, including (but not limited to):

2.1 ensuring that every child in the Western Cape who is severely and profoundly intellectually disabled has affordable access to a basic education of an adequate quality;

2.2 providing adequate funds to organizations which provide education for severely and profoundly intellectually disabled children in the Western Cape at special care centres, such as to enable them to:

2.2.1 have the use of adequate facilities for this purpose;

2.2.2 hire adequate staff for this purpose;

**2.3 providing appropriate transport for the children to and from such special care centres;**

2.4 enabling the staff of such special care centres to receive proper accreditation, training and remuneration; and

2.5 making provision for the training of persons to provide education for children who are severely and profoundly intellectually disabled.

Treasury provided a conditional MTEF grant of R477 million. The Minister of Basic Education provided an explanation for the distribution of the grant, in reply to a question by Mr SC Motau, (31 August 2017 - NW2247):

(1) (b) Provinces will distribute the grant in accordance with the following guidelines as stipulated in the Grant Framework:

* 13% for training of teachers and the 31 Outreach Teams;
* 11% for Learning and Teaching Support Materials, toolkits and equipment for centres and designated schools;
* 56% for compensation of itinerant teams and provincial co-ordinators; as well as
* 20% for administration including travel, vehicles, accommodation and subsistence.

 (2) (a) The Grant will be used to benefit learners in the following ways:

* To provide therapeutic and psycho-social intervention to learners and their families in targeted 186 schools and 280 care centres by appointing and training 155 specialised staff, who will provide the therapeutic intervention and procuring equipment as well as learning teaching support materials (LTSM) to be used by the staff;
* To track, provide learner-specific support and follow up on their progress by creating a comprehensive and reliable database of learners in the targeted schools and care centres;
* To provide quality education and support to learners by further developing the professional capacity, knowledge and skills of caregivers and teachers in the 280 care centres, 186 schools;
* To facilitate leaners’ access to various government services and other intervention programmes through working collaboratively with other government departments and non-governmental organisations (NGO); and
* To advocate for learners’ rights to access public-funded quality education through documenting and reporting on the Grant’s achievements. <https://pmg.org.za/committee-question/6474/>

**Concerns**

We wish to express our concern about the extent to which the current distribution of the MTEF conditional grant addresses the needs of learners with Severe and Profound Intellectual Disability and the obligations set out in the High Court judgement (Case No 18678/2007, 11 November 2010), namely:

Children with an IQ of under 35 are considered to be severely (IQ levels of 20 – 35) or profoundly (IQ levels of less than 20) intellectually disabled. Such children are not admitted to special schools or to any other state schools. The DBE’s inconsistent classification means that learners who have moderate to mild intellectual disabilities are classified as having severe intellectual disability. This leads to skewed statistics and representation of the status of service delivery for Learners with Severe and Profound Intellectual Disability.

Learners with severe and profound intellectual disability are generally refused admission to public schools. They attend Special Care Centres (NGOs) that are NOT subsidised by the DBE. Learners do not have access to the DBE per capita learner subsidy. **Parents have to pay attendance and transport fees to the NGOs**, which are burdened by the costs of providing educational services to their learners.

In terms of the judgement,

**2.3 providing appropriate transport for the children to and from such special care centres;**

The DBE does not provide transport or funding for transport for learners at Special Care Centres, which impacts learner attendance dramatically.

We note that the Human Science Research Council presentation ‘Access to Education and Learner Transport – A Rapid Appraisal’ (28 February 2018), to the Standing Committee on Appropriations, does not reflect the transport needs of, or services for, Learners with Severe and Profound Intellectual Disability, although it reflects that the Learner Transport Policy prioritises learners with disabilities. We agree that the lack of coordination and clear definition of roles and responsibilities of the Department of Transport and the Department of Education militates against the provision of adequate and appropriate provision of transport to learners.

We submit that The Right to Education for Learners with Severe and Profound Intellectual Disability remains compromised.

**Recommendations**

We wish to request that the Standing Committee on Appropriations includes the Department of Planning, Monitoring and Evaluation in the Presidency in further discussions about transport for learners generally, and specifically for the provision of transport for Learners with Severe and Profound Disability.

We urge the Standing Committee on Appropriations to obtain clarity from the Department of Basic Education and the Department of Transport about how and when they intend to take reasonable measures to make provision for the scholar transport needs of Children with Severe and Profound Intellectual Disability, in accordance with the High Court judgement (2010).

WCFID wishes to thank the Standing Committee on Appropriations for considering our submission. We are available to share any other information about the sector at our disposal, should the Committee wish to engage with us.