

SELECT COMMITTEE ON EDUCATION AND TECHNOLOGY, SPORTS, ARTS AND CULTURE

WRITTEN SUBMISSION ON BASIC EDUCATION LAWS AMENDMENT BILL [B2B-2022]

TO: MR. E M NCHABELENG MP, CHAIRPERSON: SC ON EDUCATION AND TECHNOLOGY, SPORTS, ARTS AND CULTURE

ATTENTION: MS NOLUTHANDO SKAKA

Written submission on Basic Education Laws Amendment Bill [B2B-2022]			
To:	Mr. E M Nchabeleng MP, Chairperson: SC on Education and Technology, Sports, Arts and Culture		
Attention:	Ms Noluthando Skaka		
Matter: <i>(Title of Legislation)</i>	Basic Education Laws Amendment Bill [B2B-2022]		
Contact Person:	Ms Noluthando Skaka	Due date for comments:	19 January 2024
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Date of this submission	18 January 2024		

This is a written submission by the Western Cape Forum for Intellectual Disability on the **Basic Education Laws Amendment Bill [B2B-2022]**, accessible at <https://www.parliament.gov.za/bill/2300398> that was published by the Parliament of South Africa via the Select Committee on Education and Technology, Sports, Arts and Culture.

BACKGROUND

1. The Western Cape Forum for Intellectual Disability ('WCFID'/'the Forum'), www.wcfid.co.za welcomes this opportunity to make a submission to the Select Committee on Education and Technology, Sports, Arts and Culture on the Basic Education Laws Amendment Bill [B2B-2022] ('BELA Bill' or 'the Bill').
2. The Forum is a not-for-profit, non-governmental organisation (1971 -) that provides a support network for persons in the intellectual disability community, including training, research, resource development and advocacy.
3. The Forum is a membership-based organisation with +/- 200 members, including +/- 69 special care centres in the Western Cape and the Eastern Cape Cluster of Special Care Centres ('ECCSCC'), which represents 48 centres in the Eastern Cape
4. The Forum's interest in the BELA Bill is, in general, its silence on inclusive education and education for children with disabilities, and specifically its silence on the right to education of learners with severe to profound intellectual disability.

COMMENTS

Discrimination against children with disabilities in relation to their right to education

5. The Bill, in its current form, perpetuates and entrenches the practice of progressive access to basic education for children with disabilities, rather than the immediate, positive right enshrined in the Constitution.
6. The following sections of the Bill conceal the systemic policy and legal gaps and practice of refusing children with disabilities admission at public schools (or placing them on waiting lists). These sections, although directed at parents/caregivers, etc., place reciprocal obligations on the Minister and education officials. The Bill exposes the Minister and education officials to criminal charges for preventing a learner from attending school:

6.1. The Bill

To amend—

- the South African Schools Act, 1996, to insert and amend certain definitions; to provide that attendance of grade R is compulsory; to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory attendance from attending school, (Page 3)

6.2. Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005, section 4 of Act 31 of 2007 and section 4 of Act 15 of 2011

Section 1 of the South African Schools Act, 1996, is hereby amended—

- (a) by the insertion in subsection (1) before the definition of "Constitution" of the following definitions:

“‘basic education’ includes grade R to grade 12, as evidenced in the National Curriculum Statement;’

6.3. Amendment of section 3 of Act 84 of 1996

1. Section 3 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to 40 attend **[a] school, [from] starting from grade R on** the first *school day* of the year in which such *learner* reaches the age of **[seven] six years and not leaving school** until the last *school day* of the year in which such *learner* reaches the age of **[fifteen] 15 years or [the ninth] will complete grade nine**, whichever occurs first.”;

(b) by the substitution for subsection (6) of the following subsection: “(6)

Subject to *this Act* and any other applicable law—

(a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1)[,] is guilty of an offence and liable, on conviction, to a fine or to 50 imprisonment for a period not exceeding **[six] 12 months, or to both a fine and such imprisonment**; or

(b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending **[a] school[,]** is guilty of an offence and liable, on conviction, to a fine or to 55 imprisonment for a period not exceeding **[six] 12 months, or to both a fine and such imprisonment.**”

7. The Basic Education Laws Amendment Bill [B2B-2022] is silent on the systemic exclusion of learners with disabilities from public schools, and in particular, those who attend special care centres for learners with disabilities. These centres are NGOs or NGO-managed and accommodate learners with disabilities who are systematically excluded from schools because of their disabilities, in contravention of the Constitution of South Africa and the South African Schools Act. This silence undermines the rights of these learners to care, protection, dignity, equality, non-discrimination and education.
8. The Bill is silent about the relief ordered by the court (Case18678/2007)¹ more than 11 years ago on 11 November 2010. The order was brought in terms of, inter alia, Section 29 of the Constitution of South Africa (the right to education), against the Government of South Africa and the Government of the Western Cape.
9. The Department of Basic Education (DBE) excludes an estimated 200 000 - 597 953² learners with disabilities from the public school system (DBE 2016). The Western Cape Forum for Intellectual Disability (WCFID) represents special care centres that accommodate some of these marginalised learners who have severe to profound intellectual disability (SPID)¹. Learners with SPID generally have an IQ below 34 and associated impairments of adaptive functioning. Many learners with SPID have additional disabilities and are considered to have multiple and complex disabilities.
10. Children with severe to profound intellectual disability are systemically excluded from public schools in violation of:

¹ <http://www.saflii.info/za/cases/ZAWCHC/2010/544.html>

² <https://static.pmg.org.za/160308overview.pdf>

- 10.1. the Constitution of South Africa³ [Section 29] ('the Constitution');
Education
29. (1) Everyone has the right—
(a) to a basic education, including adult basic education; and
- 10.2. the South African Schools Act⁴ [Chapter 2] ('SASA')
Compulsory attendance
- 3 (2) The Minister must, by notice in the Government Gazette, determine the ages of compulsory attendance at school for learners with special education needs.
(3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2).
Admission to public schools
- 5 (1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way
- 10.3. The Promotion of Equality and Prevention of Unfair Discrimination Act⁵ [Chapter 2] ('PEPUDA'), etc.
Prevention, Prohibition and Elimination of Unfair Discrimination, Hate Speech and Harassment
Prohibition of Unfair Discrimination on Ground of Disability
9. Subject to section 6, no person may unfairly discriminate against any person on the ground of disability, including—
(a) Denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society; [...]
(c) Failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

The BELA Bill: A missed opportunity to legislate and fund inclusive education and education for children with disabilities

11. **DBE has had over 20 years** since it gazetted *White Paper 6 on Special Needs Education: Building an inclusive education and training system*⁶, to remedy the systemic violation of the right to education for children with disabilities by promulgating legislation to promote inclusive education and education for children with disabilities. As the Finance and Fiscal Commission notes:

Generally, **the policy process is complete once a policy is translated into legislation** and the relevant department then drafts various guidelines/regulations to give further effect to legislation. DBE has published a series of guidelines, policies and manuals to facilitate and promote the implementation of the white paper (**Figure 1 zero regulations for inclusive education and education for children with disabilities**). However, **a vital step is missing in the policy process which is the translation of policy into legislation**. This then renders the various departmental "regulations" as mere guidelines without legal force.⁷ (Finance and Fiscal Commission (FFC): Technical Report. 2021 – 2022)

³ <https://www.justice.gov.za/legislation/constitution/pdf.html>

⁴ https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf

⁵ <https://www.justice.gov.za/legislation/acts/2000-004.pdf>

⁶ https://www.gov.za/sites/default/files/gcis_document/201409/educ61.pdf

⁷ https://www.ffc.co.za/files/ugd/b8806a_21c7041f53844443a8e7e592952fd40f.pdf

Table 35: Overview of policy, legislation and departmental regulations guiding the delivery of social welfare services

Broad statement of government policy	Legislation	Departmental regulations or service standards
White Paper 6 on special needs education: Building an inclusive education and training system (2001)		<ul style="list-style-type: none"> • Draft national guidelines for resourcing an inclusive education system (2018) • Draft national norms and standards for resource distribution for an inclusive education system (2015) • Guidelines for special schools (2014) • Policy on screening, identification, assessment and support (SIAS) (2014) • The South African sign language: home language curriculum and assessment policy statement (SASL HL CAPS) for Grades R-12 (2014) • Guidelines for responding to learner diversity in the classroom through curriculum and assessment policy statements. • National curriculum statement (NCS). • Curriculum assessment policy statement (CAPS) Grades R – 12 (2011) • Guidelines for full service/inclusive schools (2010) • Guidelines for inclusive teaching and learning. • Education White Paper 6: Special needs education (2010) • Guidelines to ensure quality education and support in special schools and special school resource centres (2007) • Guidelines for district based support teams (2005) • Guidelines for inclusive learning programmes (2005) • Special schools as resource centres (2005)

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FIGURE 1 ZERO REGULATIONS FOR INCLUSIVE EDUCATION AND EDUCATION FOR CHILDREN WITH DISABILITIES

12. The Forum supports the Finance and Fiscal Commission’s conclusion about the lack of legislation and funding for inclusive education:

Twenty six years into democracy, special needs education remains a significant challenge in South Africa. Many of the primary research findings relate to contextual and systemic issues which have influenced **how inclusive education has been legislated**, funded and implemented in South Africa. These overall systemic challenges relating to policy development and implementation, **funding** and data greatly influence the inclusive education landscape, and feed into the issues relating directly to the main research questions.⁹

13. The Forum concurs with the Commission’s recommendation:

5.1.1 Implementation plan

⁸ https://www.ffc.co.za/files/ugd/b8806a_21c7041f53844443a8e7e592952fd40f.pdf

⁹ https://www.ffc.co.za/files/ugd/b8806a_21c7041f53844443a8e7e592952fd40f.pdf

Alongside finalising legislation to underpin the roll-out of inclusive education, the DBE should take the lead in developing a public sector detailed, time-bound and **costed implementation plan that promotes awareness of what inclusive education entails.¹⁰**

BELA Bill: Silent on amendments to resourcing and funding regulations to implement Case No 18678/2007¹¹

14. The Forum lobbied government for 13 years, on behalf of its affiliates, the special care centres, for the right to education (RTE) for children with severe to profound intellectual disability (SPID), with little progress, and eventually litigated successfully (Case No 18678/2007)¹².
15. The structured section of the court order compels government departments, and most notably DBE, to provide funding to these special care centres to enable children with intellectual disability to access their the right to education (and its components), at these centres.
16. DBE acknowledges¹³ that in order for them to implement the court order and fund these special care centres, they would have to amend several regulations related to funding and personnel. Yet, the BELA Bill is silent on these necessary legislative amendments.

The court order (Case No 18678/2007)¹⁴

17. The Forum obtained a court order (Case no: 18678/2007)¹⁵ (November 2010), instructing the Government of South Africa and the Government of the Western Cape Province to provide education of an adequate quality to all children with severe to profound intellectual disability at special care centres in the Western Cape:

[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 disabled 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;

¹⁰ https://www.ffc.co.za/files/ugd/b8806a_21c7041f53844443a8e7e592952fd40f.pdf

¹¹ <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>

¹² <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>

¹³ <https://www.education.gov.za/SPIDRoundtable.aspx>

¹⁴ <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>

¹⁵ <http://www.saflii.info/za/cases/ZAWCHC/2010/544.html>

- 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.

Education department response to the court order¹⁶: Conditional grant for learners with severe to profound intellectual disability

18. The Minister of Basic Education reported¹⁷ to Parliament (31 August 2017 - NW2247) that Treasury had provided a conditional MTEF grant of R477m (2017) in response to the court order (Case No 18678/2007). The Minister provided a framework for the distribution of the grant:

(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 learners' 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.

Grant for learners with SPID: a disproportionate response to need of learners and staff at centres

19. WCFID acknowledges the provision of a national conditional grant for the education of learners with SPID, which recognises that the court order, although limited in scope to the Western Cape, has implications for learners with SPID nationally.

¹⁶ <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>

¹⁷ <https://pmg.org.za/committee-question/6474/>

20. However, the Forum reiterates the questions raised by the Finance and Fiscal Commission with direct reference to this conditional grant: Overall, the existence of this conditional grant indicates commitment to fund special needs education. However, is the intervention proportional to the challenge [...]?¹⁸
21. The conditional grant excludes the majority of the requirements of the court order and ignores jurisprudence clarifying the components of education for which DBE and provincial education departments have the legal mandate, such as learner transport¹⁹; personnel/staff provisioning²⁰ and remuneration²¹; infrastructure²², etc. Learners are therefore materially excluded from access to education of an adequate quality.
22. In the grant's current form, learners and staff at special care centres benefit from only toolkits (LTSM) and 6 – 10 hours of the services of the education outreach (SPID) teams per quarter. Most do not have equitable access to, inter alia, adequate government-funded learner transport; teachers; appropriate facilities; adequate therapeutic services; per capita learner funding; adequate salaries for staff and access to the National School Nutrition Programme. In the Western Cape, centres have to rely on inadequate funding from the Departments of Social and Health, to fund 'education' for learners. Some centres are completely unfunded by government.
23. The Forum has made several submissions to parliamentary committees²³ recommending that parliament exercise their oversight mandate and hold DBE accountable for their failure to implement the Constitutional right to basic education (Section 29) and the structural interdict²⁴.
24. The Forum has had several engagements with the Department of Basic Education (DBE), in which DBE made commitments, including that the DBE-appointed commissions would, *inter alia*, 'review ... legislation and policies to strengthen service provisioning for C/LSPID'²⁵

Key contextual and systemic issues that contribute to the exclusion of learners with severe to profound intellectual disability

25. 'Overall systemic challenges relating to policy development and implementation, funding, human capital and data greatly influence the inclusive education landscape, and feed into the issues relating directly'²⁶ to the exclusion of children with severe to profound intellectual who are forced to attend NGO-managed, community-based special care centres.
26. The Forum's comments on the South African Law Reform Commission's (SALRC), Issue Paper on the Domestication of the United Nations Convention on the Rights of Persons with Disabilities²⁷, apply to the BELA Bill equally:

¹⁸ https://www.ffc.co.za/_files/ugd/b8806a_21c7041f53844443a8e7e592952fd40f.pdf

¹⁹ <http://www.saflii.org/za/cases/ZAECGHC/2015/67.html>

²⁰ <http://www.saflii.org/za/cases/ZAECGHC/2012/60.html>

²¹ <http://www.saflii.org/za/cases/ZAECGHC/2012/60.html>

²² <http://www.saflii.org/za/cases/ZAECBHC/2018/6.html>

²³ https://wcfid.co.za/wp-content/uploads/2021/05/ADVOCACY-UPLOADS-FOR-WEBSITE_updated_31-May-2021.pdf

²⁴ <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>

²⁵ <https://www.education.gov.za/SPIDRoundtable.aspx>

²⁶ https://ffc.co.za/wp-content/uploads/2021/05/2021.22_Technical_Report.pdf

²⁷ <https://www.justice.gov.za/salrc/ipapers/ip39-prj148-UNCRPD.pdf>

The Forum submits²⁸ that 'the lives as lived and the injuries experienced by' children with intellectual disability in exercising their human, Constitutional and jurisprudential right to education is compromised by:

- The Department of Basic Education's (DBE) and provincial education departments' (PED) disregard of their legislative mandate to provide education to ALL children in South Africa
- The inadequate and severely limited conditional grant for the education of learners with severe to profound intellectual disability, which the Basic Education Minister purports²⁹, is 'a response to the Forum's court order (Case no: 18678/2007)³⁰.
- A lack of political will
- DBE's incoherent, fragmented and sometimes contradictory policies and guidelines for inclusive education, and in particular with regard to funding and resourcing education for children with disabilities at special care centres
- A lack of clear regulations that define the coordination, departmental roles and responsibilities and funding mechanisms for the provision of education for children with intellectual disability at special care centres
- A lack of regulations to define the transition (time period; process, etc.), of children at these Centres to public schools.

CONCLUSION

27. The right to basic education is an immediate, Constitutional right and should be prioritised for children with disabilities.

28. The BELA Bill is silent about:

- The Constitutional, legal and jurisprudential mandate of the Department of Basic Education to provide education and its components to learners with disabilities, of compulsory school-going age, at special care centres³¹.
- The court order³² to provide funding to special care centres for children with severe to profound intellectual disability.
- The amendments that should be made to personnel, funding and resourcing legislation to enable equitable access to education for children with disabilities, in and out of public schools.

29. The Forum echoes the conclusion reached by the Finance and Fiscal Commission:

Twenty six years into democracy, special needs education [sic], remains a significant challenge in South Africa. Many of the primary research findings relate to contextual and

²⁸ https://drive.google.com/file/d/12M67uPRVr8HQ_ndNjTIOFbYZQ5UC6WKA/view

²⁹ <https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fpimg-assets.s3-website-eu-west-1.amazonaws.com%2FRNW2247-170831.docx>

³⁰ <http://www.saflii.info/za/cases/ZAWCHC/2010/544.html>

³¹ Many of these centres are registered with the Department of Social Development as NGOs and some receive funding from either the Department of Social Development or the Department of Health, or both. Some of these centres receive support from outreach teams funded by the Department of Basic Education using a conditional grant. Many special care centres are in private homes, RDP houses and some are even in shacks. Some do not have direct access to water and/or sanitation.

³² <http://www.saflii.org/za/cases/ZAECGHC/2015/67.html>

systemic issues which have influenced how inclusive education has been **legislated, funded and implemented** in South Africa. These overall systemic challenges relating to policy development and implementation, funding and data greatly influence the inclusive education landscape, and feed into the issues relating directly to the [exclusion of children with disabilities at schools].³³

30. The Forum concurs with the position of the Equal Education Law Centre:

In the education sector, there has been **a failure to comprehensively regulate inclusive education through binding legislation**. This has resulted in the resourcing and provisioning of inclusive education going unchecked, un-prioritised and unfunded.

RECOMMENDATIONS

31. The Forum recommends that the BELA Bill address the gaps in legislation raised in this submission:

- 31.1. Binding legislation to comprehensively regulate inclusive education *Figure 1 zero regulations for inclusive education and education for children with disabilities*
- 31.2. Binding legislation to fund and resource inclusive education and education for children with disabilities inside and outside the public school system

32. The Forum recommends that the BELA Bill include amendments that explicitly prohibit the exclusion of children from publicly funded education on the basis of disability; and enabling legislation that promotes and supports the adequate and appropriate funding and resourcing of inclusive education, and specifically:

- 32.1.1. Amend current legislation to allow it to fund and resource organisations such as special care centres that are in fact doing the work that the Constitution and the South African Schools Act demand, as described in the Implementation Matrix, White Paper on the Rights of Persons with Disabilities, until these learners are admitted at public schools. The funding and resource allocation should ensure learners access appropriate education of adequate quality, including all components of education. (Case no: 18678/2007). The legislation should require that the national and provincial education departments conclude Memoranda of Understanding/Agreement in consultation with stakeholders.
- 32.1.2. Amend current regulations to increase and expand the current conditional grant for the education of learners with severe to profound intellectual disability at special care centres to align with the education department's mandate to provide education to all learners in South Africa, so that learners and staff at centres have access to appropriate, adequate, accessible and acceptable education, of an adequate quality, including its components, such as:
 - Learner transport
 - Suitably trained and qualified teachers
 - Support staff (including class assistants/carers)
 - Remuneration for all centre staff
 - Therapeutic services
 - National School Nutrition Programme

³³ https://ffc.co.za/wp-content/uploads/2021/05/2021.22_Technical_Report.pdf

- Facilities or infrastructure

33. The Forum's recommendations to the South African Law Reform Commission on the domestication of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), apply to the BELA Bill equally:

33.1. The Forum supports disability-specific regulations that are framed around the White Paper on the Rights of Persons with Disabilities (2015), taking into account the gaps, contradictions and inconsistencies in current law. The Act and associated regulations would have to comprehensively:

- (a) Cover all disability-related Constitutional rights: equality and no unfair discrimination (section 9), dignity (section 10), and all relevant further rights in the Bill of Rights (sections 10 – 35)
- (b) Give effect to the Constitutional rights of persons with disabilities to equality and no unfair discrimination, dignity, and all the relevant further rights in the Bill of Rights, focusing on their influence on disability rights
- (c) Amend existing legislation to delete provisions that are unfair barriers / unfairly discriminate on the ground of disability, and to enact new provisions aligned to CRPD and Constitutional obligations

33.2. In addition, these regulations should include:

- (a) provisions for the Constitutional right to education for children with disabilities within, and outside of, public schools
- (b) provisions for the accelerated placement of children with disabilities in public schools (South African Schools Act³⁴)
- (c) provisions for the education of children with disabilities at special care centres (NGOs), because they are refused admission at public schools
- (d) provisions that clearly define the legal mandate and primary role of the Department of Basic Education and provincial education departments to provide education, and its components, to learners with disabilities; and the supportive role of other departments according to their legal mandates
- (e) provisions that regulate and define the department and/or entity responsible for the planning, coordination, integration and monitoring of the Department of Basic Education and other government departments in provision of education to children with disabilities, both within and outside of public and independent schools.
- (f) provisions that address and clarify the concurrent functions of the national and provincial education departments in the implementation of their mandate
- (g) provisions for the regulating, funding and resourcing of special care centres to provide education of an adequate quality for children with disabilities (including, regulations for funds for the hiring of adequate staff and infrastructure; provision of safe, appropriate, accessible learner transport; training and accreditation of staff at special care centres)
- (h) the amendment of the DBE and PED's finance regulations that currently prohibit the funding of NGOs
- (i) the revision and amendment of, *inter alia*,

³⁴ https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf

- the Personnel Administrative Measure (PAM)³⁵, to include class assistants or carers at special care centres
 - the Norms and Standards for School Funding³⁶ to include funding for special care centres
 - provisions for the transition of children from special care centres to public schools and the concurrent funding, resourcing and support for special care centres to fulfil their right to education of an adequate quality, during the transition process
 - provisions for the regulation; registration; licencing; monitoring funding and resourcing of special care centres as primarily centres of learning, education and development for children with disabilities
34. We strongly recommend that amendments to the current Draft be made in consultation with children; learners; parents; civil society organisations; disability rights organisations and education rights organisations.
35. We recommend that the BELA Bill be underpinned by a just, reasonable and rational, developmental and asset-based approach.
36. Children with disabilities and those with compounded vulnerability should be included in these distributive decisions and budgets.

The Western Cape Forum for Intellectual Disability wishes to thank the the Select Committee on Education and Technology, Sports, Arts and Culture of the National Council of Provinces, for considering its written submission on the Basic Education Laws Amendment Bill.

³⁵ https://www.gov.za/sites/default/files/gcis_document/201602/39684gon170.pdf

³⁶ https://www.gov.za/sites/default/files/gcis_document/201409/29179.pdf