

LET IN

OR LEFT OUT?

A 20-YEAR REVIEW OF THE
REGULATORY FRAMEWORK FOR
INCLUSIVE EDUCATION
AND ITS IMPLEMENTATION
IN SOUTH AFRICA

This report has been drafted and published by the Equal Education Law Centre (“EELC”). The EELC is a public interest law centre with a team of activist lawyers and researchers working to advance the struggle for quality and equality in education through legal research, advocacy and strategic litigation.

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ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AGSA	Auditor-General of South Africa
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CSTL	Care and Support for Teaching and Learning
DBE	Department of Basic Education (National)
DBST	District-Based Support Teams
EELC	Equal Education Law Centre
EIG	Education Infrastructure Grant
FSS	Full-Service School
ICESCR	International Covenant on Social, Economic and Cultural Rights
HOD	Head of Department
ILST	Institutional Level Support Team
ISHP	Integrated School Health Programme
LSPID	Learners with Severe to Profound Intellectual Disability
LTSM	Learning and Teaching Support Material
MEC	Member of the Executive Council
NSFAS	National Student Financial Aid Scheme
NPNC	Non-Capital Non-Personnel
PED	Provincial Education Department
PES	Provincial Equitable Share
SBST	School Based Support Team
SDG	Sustainable Development Goal
SIAS	Screening, Identification, Assessment, and Support Policy
SSRC	Special School Resource Centre
TLDCIP	Teaching and Learning Development Capacity Improvement Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCED	Western Cape Education Department

Executive Summary

1. Introduction

Education White Paper 6: Special Needs Education – Building an Inclusive Education System (White Paper 6) formed part of a series of seven Education White Papers adopted after 1994 to reform South Africa’s education system. At the heart of this project was the desire to dismantle the old education bureaucracy and establish a unified education system.

The 20-year implementation plan outlined in White Paper 6 came to an end in 2021. The Equal Education Law Centre (EELC) has taken the initiative to review the regulatory framework for inclusive education, of which White Paper 6 formed the foundation. This report provides an analysis on the extent to which implementation of the regulatory framework took place over the 20-year period. The report then proposes recommendations for regulatory reform to ensure that the right to an inclusive, equitable, quality education for all, as enshrined in our Constitution and reflected in our international commitments, is enforced, promoted and protected.

2. International and regional obligation for an inclusive education system

South Africa has ratified a number of international and regional instruments which place obligations on the state to protect and promote the right to an inclusive basic education. These include the International Covenant on Social, Economic and Cultural Rights (ICESCR),¹ the United Nations Convention on the Rights of the Child (CRC),² the African Charter on the Rights and Welfare of the Child (ACRWC),³ and the UN Convention on the Rights of Persons with Disabilities (CRPD),⁴ all of which support the establishment of an inclusive education system.⁵

Furthermore, South Africa is guided by the calls to action in the UNESCO Salamanca Statement,⁶ the United Nations Sustainable Development Goals for 2030,⁷ and the consequent Incheon Declaration.⁸ **All are unequivocally clear on their overarching goal to ensure inclusive and equitable quality education for all.**

3. Findings and recommendations

3.1 What should the regulatory framework look like?

3.1.1 A review of Education White Paper 6 is not enough

A White Paper does not have the force of law since it merely reflects the official government policy position on a specific matter of public concern.⁹ In order to comply with the state’s constitutional and international obligations, the policy ideals as reflected in White Paper 6 need to be translated into law.¹⁰

1. UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <https://www.refworld.org/docid/3ae6b36c0.html>.

2. UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at <https://www.refworld.org/docid/3ae6b38f0.html>.

3. Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at <https://www.refworld.org/docid/3ae6b38c18.html>.

4. UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at <https://www.refworld.org/docid/45f973632.html>.

5. See General Comment No. 13 of the Committee on Social, Economic and Cultural Rights on the right to education and article 13 of the ICESCR. See also article 11 of the ACRWC, 23 of the CRC, and 24 of the CRPD.

6. UNESCO (1994) The Salamanca Statement and Framework for Action on Special Needs Education.

7. UN General Assembly, Transforming Our World: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, available at <https://www.refworld.org/docid/57b6e3e44.html>.

8. Education 2030: Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4: Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning (2016).

9. National Policy Development Framework (2020), available at <https://www.gov.za/documents/national-policy-development-framework-2020-2-dec-2020-0000>.

10. Financial and Fiscal Commission, ‘Financing and delivery of inclusive education’ Chapter 8, available at https://ffc.co.za/wp-content/uploads/2021/05/Chap8_Financing_and_delivery_of_inclusive_education.pdf.

Accordingly, this report does not recommend that White Paper 6 be revised or updated, or that a new White Paper be developed. Given the substantial reframing that would be required, amendments to White Paper 6 do not seem feasible in any event. However, should a decision to review White Paper 6 be taken by the government, this would need to be accompanied by a concurrent commitment to enact legislation timeously to give effect to revised policy provisions.

3.1.2 Legislation with clear legal entitlements is required

The current regulatory framework is fragmented and scattered across various statutes and policies. It is also often unclear. As a result, it fails to provide adequate funding, equitable access to schools for all learners, and essential support for learning.

We recommend that, in order to address these deficits adequately, legislation be enacted, or that the South African Schools Act be amended. Legislation is recommended as it has binding legal force and would contain a series of clear legal entitlements. It must also be costed, which would ensure that inclusive education is adequately budgeted for. The absence of allocated funding has seriously impeded implementation.

3.2 A fully costed, enforceable funding model for inclusive education must be finalised

Funding remains one of the greatest obstacles to the implementation of inclusive education. An analysis of current budgets reveals little to no evidence of funding dedicated to the expansion of inclusive education. Funding for inclusive education is conflated with funding for special schools. The Proposed National Norms for Resourcing Inclusive Education (NNRIE), drafted in 2018 as required under the Screening, Identification, Assessment, and Support Policy (SIAS), were approved only as guidelines and have not yet been finalised. The result is that still no dedicated funding exists for resourcing inclusive education in ordinary schools.

A funding model for inclusive education that is well suited to the South African context (economic and societal) **must be urgently finalised**. Most importantly, there must be budgetary transparency. Allocations to the expansion of inclusive education separate from special school budgets must be made clear in provincial budgets. In addition, adequate accountability and monitoring of budgeting and expenditure relating to inclusive education are critical to ensure success.

3.3 Admission laws and policies must be reviewed and clarified to promote access

In order to realise the right to education at its most fundamental level, all children require access to school. Clear and consistent rules and procedures relating to admission to both ordinary and special schools must be developed in order to facilitate access to education. Provisions pertaining to admissions are currently dispersed across the South African Schools Act, SIAS, the Admission Policy, Guidelines for Special Schools and various provincial policies and circulars. These laws and policies must be reviewed and aligned for clarity and to promote ease of access.

In addition, clear directives must be provided to provinces around the management of unplaced learners so as to eliminate waiting lists.

3.4 Reasonable accommodation and the obligation to support learner needs

- 'Reasonable practicability', as contained in section 12(4) of the South African Schools Act and clause 22 of the Admission Policy, requires additional clarification.
- A comprehensive definition of 'reasonable accommodation' must be adopted consistently across relevant legislation and policy. The state must comply with its duty under the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)¹¹ to 'develop codes of practice ... in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation'.¹² These guidelines should

11. Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).

12. Ibid, section 25(1)(c)(iii).

include education-specific guidance to schools and parents outlining the scope of reasonable accommodation as well as the duty to provide such accommodation in ordinary schools.

3.5 Special schools and special-school resource centres to be supported

White Paper 6 envisaged the phased conversion of special schools to resource centres that provide professional support to neighbourhood schools and which are integrated into district-based support teams. Maintaining or perpetuating a system of segregated education, even for the purposes of converting special schools to special-school resources centres, is incompatible with full inclusion as articulated in the CRPD. However, the reality in the South African education context, as is the case in many other countries, is that special schools fulfil an important role in providing access to specialised education which is not available in under-resourced ordinary public schools.

This report finds that there is sound rationale behind the envisaged role of special schools as resource centres as an important step towards achieving greater inclusivity in our school system. Utilising specialised resources beyond the special school itself to strengthen the ability of surrounding ordinary schools to include children with disabilities would reduce the high referral rate of children to special schools.

However, the Department of Basic Education (DBE) indicated that, after 20 years, only 142 out of a target of 300 special schools had been converted. In addition, no evidence exists as to the qualitative functioning of these resource centres.

With regard to the strengthening of existing special schools, this report finds that many special schools, particularly those in rural areas or serving under-resourced communities, remain dilapidated, unsafe and entirely inadequate to serve the needs of the learners they accommodate.

This report therefore makes the following recommendations with regard to strengthening existing special schools and facilitating their conversion into resource centres:

- The conversion of existing special schools into well-functioning resource centres should be finalised. In districts with no or limited special school resource centres, the district office must be resourced to provide these services.
- Urgent priority must be given to bringing poorly resourced and dilapidated special schools up to standard in order for them to fulfil this resource-centre function.
- A qualitative audit must be conducted of the functioning of special school resource centres according to the criteria laid out in the Guidelines to Provide Quality Education and Support in Special School Resource Centres to Support Inclusive Education, 2014.
- A moratorium should be placed on the building of further special schools until such time as all existing special schools are brought up to standard and are functioning as resource centres.

3.6 The term “Full-service schools” should be abandoned in favour of all ordinary schools becoming inclusive schools

White Paper 6 made provision for the incremental designation of ordinary schools as full-service schools (FSS). FSS were intended to serve as examples of good practice and to ‘chart the way for all schools to ultimately become inclusive institutions’.¹³ The target set by White Paper 6, that of establishing 500 FSS (representing 3.6 per cent of all ordinary public schools), was far too low to realise this aim. Despite reports of the government’s having exceeded this number, the effectiveness of these schools in achieving their intended outcomes has come into question.

In 2019, the Auditor-General of South Africa issued a report detailing the findings of an audit conducted at FSS across the country. The audit looked at a number of indicators aligned to the FSS Guidelines to assess their functioning, and found that the majority of FSS across all provinces were not functioning as they should. The

13. Education White Paper 6: Special Needs Education – Building an Inclusive Education System (2001) p. 8.

report stated that 77 per cent of education districts were not sufficiently resourced and/or did not properly plan to support FSS, and that 79 per cent of schools lacked adequate resourcing in terms of infrastructure, assistive equipment and funding.

This report recommends that the term “Full-service schools” should be abandoned. Existing designated FSS should continue to function as inclusive ordinary schools and all ordinary schools should be supported to function as inclusive schools, as was originally envisaged.

3.7 Skills development for inclusive teaching and learning to be prioritised

White Paper 6 recognised the critical role that educators play in ensuring that all children are participating meaningfully and achieving success in learning. Despite some progress made, the targets set for teacher training in both White Paper 6 and SIAS have not been met.

The following urgent steps need to be prioritised:

- All teacher training must include a compulsory core module encompassing an understanding of broad inclusive education principles as well as inclusive pedagogy.
- Compulsory, regular in-service training must be provided to all teachers on aspects of inclusive classroom teaching and the SIAS Policy.
- There must be consistent monitoring of skills acquisition of teachers.
- A 12-month induction with sufficient content on inclusive classroom practice must be provided to all new teachers.

3.8 Support structures to be strengthened

District-Based Support Teams (DBSTs)

DBSTs have the potential to play a crucial role in identifying, coordinating and providing support to schools within an inclusive education system. Although there has been significant progress in the establishment of these teams, several challenges in implementation have been reported. Whilst the composition of the DBST should comprise a broad range of district officials, in most cases the DBST is understood to be comprised only of district officials from the Inclusive Education Directorate. This is exacerbated by the fact that the district director often does not take on a leadership role in the DBST. Members of the DBST have also reported that a lack of resources inhibits their ability to perform their support role efficiently.

As such, it is recommended that:

- there must be adequate funding and resourcing of DBSTs;
- effective monitoring and accountability mechanisms must be put in place to assess appropriate composition and functioning of DBSTs; and
- the district director must be held accountable for the leadership and management of DBSTs.

School-Based Support Teams (SBSTs)

The current policy requirement that every school have an SBST plays an important role in the ability of ordinary schools to function as inclusive schools. As a support structure at institutional level, the SBST is essential in ensuring that a coordinated basket of support services is available at schools and that the support needs of the school, teachers and learners are identified and planned for.

However, some significant implementation challenges have been reported. The 2018/19 Auditor-General’s report found that ‘78% of School Based Support Teams at full-service schools audited were not established and/or did not adequately function to ensure that inclusive education is planned, implemented, recorded and reported’.¹⁴ Challenges to the effective functioning of SBSTs include infrequent meetings and limited understanding of the extent of their role. The lack of funding to allow at least the SBST Coordinator time to fulfil his or her duties is a significant impediment.

14. Parliamentary Monitoring Group (PMG), ‘Auditor-General’s briefing to the Portfolio Committee on Basic Education on the Budgetary review and Recommendations Report: PFMA 2018–19’, available at https://static.pmg.org.za/191008AGSA_Presentation.pdf

The following remedies are recommended:

- Large schools should establish more than one SBST. The recommendation is for one SBST per phase.
- Guidance for SBSTs should be provided in the regulatory framework.
- SBST members should receive regular, comprehensive in-service training.
- Reduced teaching time for the SBST Coordinator must be provided for and costed.
- The time commitment of members of the SBST must be taken into consideration in the overall allocation of their duties.
- There should be regular, detailed monitoring and reporting on the functioning of SBSTs.

3.9 Children and youth with disabilities outside of the school system must be identified and placed in school

Children with disabilities of schoolgoing age who remain out of school are being denied their right to basic education. Insufficient data collection has hampered efforts to collect accurate, disaggregated data on out-of-school children. DBE estimates have ranged from 40,000 to 600,000. This concern was echoed by the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations to South Africa in 2018.¹⁵

It is essential that:

- An adequate and time-bound plan is put in place to identify, mobilise and place out-of-school children into appropriate schools. This would require an assessment of each learner's needs to determine the support required at an ordinary school or, as a last resort, special school.
- This plan be costed and funded.
- Accurate, disaggregated data be made available. In this regard, we strongly endorse the recommendation made by the UN Committee on the Rights of the Child on the 2nd periodic report of South Africa in 2016. Without accurate, disaggregated data, effective planning for education for all within an inclusive education system cannot take place.

3.10 Inclusive education advocacy and information to be prioritised

Persistent misalignments in the understanding of inclusive education, as reported recently by the DBE,¹⁶ are perpetuated by the DBE's poor messaging around inclusive education.

We support the call from the DBE to 'develop and implement a rigorous information and advocacy programme on inclusive education as a mechanism for ensuring Education for All'.¹⁷ We further recommend that

- the 'rigorous information and advocacy programme' first be directed internally at the DBE at a national, provincial and district level; and
- this programme, which has been on the agenda since 2001, now be prioritised, planned, funded, implemented and monitored by the DBE.

3.11 Responsibility for inclusive education to be realigned within the DBE, and inter- departmental collaboration to be strengthened

It is imperative to point out that the responsibility for ensuring effective inclusive education cuts across all directorates and does not reside just in the Inclusive Education Directorate. It is also crucial to emphasise that inclusive education should not be conflated with special education or education for learners with disabilities. Inclusive education has a wider and broader meaning. It should be seen as radical change in mainstream education to accommodate the rights of all learners.¹⁸

15. The Committee's Concluding Observations are available at <https://digitallibrary.un.org/record/1650375?ln=en>.

16. DBE, Report to Parliament on the status of inclusive education (2019) slide 123. See also Slide 84 of DBE presentation to stakeholders on the status of inclusive education (September 2021).

17. DBE, Report to Parliament on the status of inclusive education (2019) slide 123.

18. C Forlin, 'Inclusive education in Australia ten years after Salamanca', *European Journal of Psychology of Education* 21(3) (2006) pp. 265-277.

Therefore, it is recommended that:

- every directorate should be given the responsibility of ensuring effective inclusive education within its department;
- reporting on inclusive education, including budgeting and expenditure, must be distinct or separate from reporting on special schools and funding for special schools; and
- the interdepartmental, multisectoral task teams envisaged in the CSTL framework should be mandated, implemented and monitored.

4. Conclusion

The tragic lack of political will to realise the vision of an inclusive education system in South Africa has resulted in two decades of learners being denied their right to quality, inclusive education. South African education laws and policies must be mindful of and responsive to the ever-changing societal and education needs of its citizens. We cannot allow another 20 years to go by with outdated policies that are not meeting our international human rights obligations or the needs of our children.

Chapter A:

Introduction and Methodology

1. Introduction

At the dawn of a new constitutional dispensation in 1994, the segregated and divided education system in South Africa was in urgent need of transformation. Education White Paper 6: Special Needs Education – Building an Inclusive Education System (White Paper 6) formed part of a series of seven Education White Papers adopted after 1994 to reform South Africa’s education system. At the heart of this project was the desire to dismantle the old education bureaucracy and establish a unified education system.

The 20-year implementation plan outlined in White Paper 6 came to an end in 2021. The Equal Education Law Centre (EELC) has taken the initiative to review the regulatory framework for inclusive education, of which White Paper 6 formed the foundation. This report provides an analysis on the extent to which implementation of the regulatory framework took place over the 20-year period. The report then proposes recommendations for regulatory reform to ensure that the right to an inclusive, equitable, quality education for all, as enshrined in our Constitution and reflected in our international commitments, is enforced, promoted and protected.

Throughout this report, the understanding of inclusive education employed by the EELC aligns with the widely accepted international position articulated in the Salamanca Statement: ‘[a]ll children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students.’¹⁹

This was understanding further entrenched by the Incheon Declaration, which was drafted by education leaders from 160 countries around the world, including South Africa, at the end of the World Education Forum in 2015:

We commit with a sense of urgency to a single, renewed education agenda that is holistic, ambitious and aspirational, leaving no one behind. This new vision is fully captured by the proposed SDG 4 ‘Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ and its corresponding targets.

Inclusion and equity in and through education is the cornerstone of a transformative education agenda, and we therefore commit to addressing all forms of exclusion and marginalization, disparities and inequalities in access, participation and learning outcomes. No education target should be considered met unless met by all. We therefore commit to making the necessary changes in education policies and focusing our efforts on the most disadvantaged, especially those with disabilities, to ensure that no one is left behind.’²⁰

At the 2019 International Forum on Inclusion and Equity in Education, held in Cali, Colombia, it was reiterated that when we speak of ‘education for all’, ‘all means ALL’. The Cali Commitment declaration views inclusion as ‘a transformative process that ensures full participation and access to quality learning opportunities for all children, young people and adults, respecting and valuing diversity, and eliminating all forms of discrimination in and through education’.²¹

19. UNESCO (n 6).

20. Education 2030 (n 8) p. 7

21. UNESCO, Commitment to Equity and Inclusion in Education, International Forum on Inclusion and Equity in Education, Cali, Colombia (2019).

Inclusion is fundamentally about ensuring access, permanence, quality learning and full participation and integration for all children, particularly learners from disadvantaged and poor societies, those with disabilities, those who are homeless, those who are workers, those living with HIV and AIDS, and other vulnerable children.²²

Bearing this in mind, the report takes a broad view of inclusive education, yet without losing focus on children with disabilities as a particularly marginalised group within the education system. We recognise the right of all children to access equitable, quality education in their school of choice and receive the support they need to reach their full and individual potential. We believe that no child should be discriminated against, whether on the basis of age, race, language, disability, sexual orientation, learning ability, or any other grounds. We note that, at times, the strong focus on learners with disabilities may appear to give the review a narrow disability focus. That is not the intention, but it is rather the consequence of a limited and outdated perspective of inclusive education in South Africa's laws, policies and subsequent practice.

2. Methodology and scope

To produce this report, the EELC conducted desktop research to review laws, policies, guidelines, government plans and reports as well as international and regional instruments. We reviewed a wide range of civil society reports, academic articles, academic theses and other research reports produced over the last decade.

In addition, we relied on the lived experiences of the learners and parents or caregivers who have approached the EELC through our law clinic over the last 9 years. These case studies – as well as our experiences of navigating the education system in order to find placement for learners and ensure their support in schools, and our interaction with district officials, provincial education departments and the national DBE through direct engagement and litigation – have also informed this report.

A few additional remarks:

- This report focuses on **basic education** and does not deal with early childhood development or higher education.
- Whilst all children have a right to education and **children with severe to profound intellectual disability (accommodated in special care centres) share this right equally**, we do not examine this area in detail due to the limited scope of this report.
- In so far as the provision of **assistive devices and technology** and adapted learning and teaching support material is concerned, we have addressed it broadly in the section on reasonable accommodation and, to some extent, in the section on curriculum. However, an extensive analysis of the provision of assistive devices and technology and adapted learning and teaching support material has not been included.
- While we have not dealt with **scholar transport** in this report, we recognise that the provision of scholar transport is an essential requirement for learners to access to education.
- As our expertise lie in **education law and policy**, the focus of this report is an analysis of the regulatory framework and its implementation in South Africa in so far as it relates to inclusive education.
- We do not consider ourselves to be experts in any one or more particular disability, and as such have refrained from in-depth analysis of the impact of the implementation of inclusive education on learners with any specific disability. We recognise the expertise of colleagues in the disability sector, who are much better placed to provide insights into the lived realities of learners. Our hope is that this report will provide the impetus and platform for other organisations with particular expertise in different types of disabilities, or who represent other marginalised groups of learners, in particular LGBTI learners, to **research and share their own findings in order to contribute to rich conversations and inclusive solutions**.

22. P du Plessis, 'Legislation and policies: Progress towards the right to inclusive education', *De Jure* 46(1) (2013) pp. 76-92.

Chapter B: Regional and International Obligations

1. Introduction

This chapter discusses the obligations placed on South Africa by various international and regional instruments that protect and promote the right to an inclusive basic education. The aim of this chapter is to set out the standard of protection created under international law in order to gauge, in subsequent chapters, the extent to which South Africa has met its obligations.

Section 39(1)(b) of the Constitution makes it clear that South Africa has a duty to take its obligations under international law seriously. It states that courts 'must consider international law' when interpreting the Bill of Rights.²³ In addition, section 233 requires the court to 'prefer any reasonable interpretation ... that is consistent with international law over any alternative interpretation that is inconsistent with international law'.²⁴

2. International and regional instruments binding on South Africa

2.1 International Covenant on Social, Economic and Cultural Rights

The ICESCR affirms the right of every person to education. It expands the scope of the right by stating that 'education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms'.²⁵

The Committee on Economic, Social and Cultural Rights developed General Comment 13 on the Right to Education in order to expand on the nature and importance of the right. It describes education as an empowerment right:

*Education is both a right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.*²⁶

23. Constitution of the Republic of South Africa of 1996.

24. *Kaunda v President of the Republic of South Africa and Others* (2) 2004 (10) BCLR 1009 (CC), para 33.

25. Article 13(1) of ICESCR.

26. General Comment No. 13 (n 5) para 1.

In unpacking the right to education in this way, the ICESCR reinforces that education should respond to a diversity of needs, otherwise vulnerability remains entrenched and marginalised groups are unable to enjoy the economic, social and cultural benefits which an education offers.

In addition to expanding on the nature and importance of the right, General Comment 13 states that education in all its forms and levels, must demonstrate four interrelated and essential features (also known as the four A's): availability, accessibility, acceptability and adaptability.²⁷

- **'Availability'** encompasses the provision of sufficient and adequate schools, infrastructure and teachers who are trained and able to support the delivery of education.²⁸
- **'Accessibility'** has three dimensions: non-discrimination, physical and economic. Physical accessibility requires designs that do not create physical and architectural barriers and are within a reasonable distance. Economic accessibility means that education must be affordable to all. Accessibility, as seen through the lens of non-discrimination, means that education must be accessible to all, including the most vulnerable, in law and fact.²⁹
- **'Acceptability'** means that the form and substance of education, including curricula and teaching methods, must be relevant, culturally appropriate and of good quality.³⁰
- Finally, **'adaptability'** means education must be adaptable to the changing needs of society and communities and respond to the needs of students within their diverse social and cultural settings.³¹ In the context of inclusion, this should, for example, take into account and be responsive to sexual orientation and gender identity (as well as be responsive to other groups who are marginalised in education).

It is important to see the above principles together with the Committee's 2018 Concluding Observations to South Africa, which recommended that South Africa ensure that **inclusive education is a guiding principle in all education plans and programmes.**³²

2.2 United Nations Convention on the Rights of the Child

The CRC, in article 2, prohibits discrimination on the grounds of race, colour, gender, language, religion, ethnicity, disability or any other status. This includes children who are discriminated against when seeking access to school.³³

Article 23(1) focuses on the rights of children with disabilities and demands their maximum inclusion when the right to education is being implemented. In line with this, **General Comment No. 9 of the Committee on the Rights of the Child** states that children with disabilities have the same right to education as all other children, and shall enjoy this right without any discrimination and on the basis of equal opportunity.³⁴ Article 28 of the CRC outlines the rights of children to education. Article 28(1) provides that State Parties must recognise the right of the child to education and take specific action 'with a view to achieving this right progressively and on the basis of equal opportunity'.

2.3 African Charter on the Rights and Welfare of the Child

The ACRWC was developed in order to adapt the rights in the CRC to suit an African context.³⁵ Article 3 prohibits discrimination on a range of grounds including race, sex, birth, social origin and other status. Article 11 confirms the right of every child to education, while article 11(3)(e) places obligations on State Parties to take appropriate measures to achieve the full realisation of the right, with special measures being taken for female, gifted and disadvantaged children, to ensure equal access to education.

27. Ibid, para 6.

28. Ibid, para 6(a).

29. Ibid, para 6(b).

30. Ibid, para 6(c).

31. Ibid, para 6(b).

32. Committee on Economic, Social and Cultural Rights, Concluding observations on the Initial Report of South Africa (November 2018), para 73(a).

33. Committee on the Rights of the Child, General Comment No. 1 (2001) CRC/GC/2001/1, para 10.

34. Committee on the Rights of the Child, General Comment No. 9: The Rights of Children with Disabilities, CRC/C/GC/2007/9, para 62.

The **Concluding Observations issued to South Africa in 2006 by the African Committee of Experts on the Rights and Welfare of the Child** recommend that all necessary measures must be taken to ensure the realisation of inclusive education³⁶ – supporting a conclusion that the right to education as articulated in the ACERWC is the right to an inclusive education.

The **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities** in Africa (2018) further develops and protects the right to an inclusive education for learners with disabilities in article 16 by recognising the right of every person with a disability to education on an equal basis with others. It obliges State Parties to take measures to ensure that inclusive education and skills training for persons with disabilities is fully realised.

2.4 United Nations Convention on the Rights of Persons with Disabilities

South Africa ratified the CRPD in 2007. Article 24 affirms the right of persons with disabilities to inclusive education, while General Comment 4 of the Committee on the Rights of Persons with Disabilities provide extensive guidance to states on how to implement the obligations of this right.

The CRPD is underpinned by the twin notions of equality and anti-discrimination.³⁷ Article 5 is devoted to equality and non-discrimination. Article 5(3) states that '[i]n order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided'. Article 5(4) goes on to provide that '[s]pecific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention'.

The inclusion in the CRPD of a duty to take steps to ensure the provision of 'reasonable accommodation' and the achievement of 'de facto' equality is in recognition of the systemic disadvantage – at the very least, in the form of social structures and practices – that persons with disabilities face. The duties to reasonably accommodate persons with disabilities, and to achieve their de facto equality, entail, respectively, a positive state obligation to accommodate the differences in persons with disabilities, and a positive state obligation to implement measures to achieve substantive equality.

Article 2 goes further and states that discrimination includes the denial of reasonable accommodation: 'discrimination on the basis of disability' means:

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with all others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Thus, a denial of reasonable accommodation expressly constitutes discrimination.

Article 24(1) of the CRPD deals with education. It recognises the right of persons with disabilities, including children with disabilities, to education on the basis of non-discrimination and equal opportunity. It provides, furthermore, that State Parties shall ensure an inclusive education system at all levels.

Article 24(2) sets out the obligations State Parties have to ensure that the right to education is realised. Article 24(2)(a) and (b) calls for an inclusive education system and for systemic changes to be effected to ensure such inclusivity.³⁸ Essentially, this calls for the transformation of the education system into an inclusive education system.³⁹ Article 24(2)(a) of the CRPD states that no student can be excluded from general education on the basis of disability. This includes the refusal of admission into ordinary schools.

36. African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Concluding Observations on the Republic of South Africa's Initial Report on the Status of Implementation of the ACERWC (2006) para 53.

37. J Sin-Hang Ngai, 'The UN Convention on the Rights of Persons with Disabilities: Challenges for the Hong Kong way of equality', *Hong Kong Journal of Legal Studies* 3 (2009) pp. 79–113 at 99.

38. General Comment 4 expands on what inclusion entails: it is a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision of providing all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.

39. T Hodgson 'The right to inclusive education in South Africa: Recreating disability apartheid through failed inclusion policies', *South African Law Journal* 135(3) (2018) p. 477.

Articles 24(2)(c) and (e) call for individualised support to be provided with an inclusive education system. These two articles deal with the needs of specific individuals within the envisaged inclusive education system, specifically the right to ‘reasonable accommodation of the individual’s requirement’ the right to ‘effective individualized support measures’. Reasonable accommodation is defined in article 2 of the CRPD as the

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Hodgson argues that the wording of the Committee on the Rights of Person with Disabilities elaborates on the article by stating that it ‘emphasizes the need to provide individualized education plans that can identify the reasonable accommodations and specific support required by individual students’.⁴⁰

Article 24(2)(d) calls for generalised support to be provided with an inclusive education system. This must be read with General Comment No. 4, which states that the ‘entire education system must be accessible’.⁴¹ This would include facilitating access to services and facilities to children with a variety and range of disabilities, as opposed to providing individualised support for just one child’s specific needs.⁴²

Article 24 recognises the right of persons with disabilities to education on the basis of non-discrimination and equal opportunity

3. Persuasive documents

3.1 Salamanca Statement

Recognising the need for inclusive education, 92 countries and 25 international organisations gathered at a conference in Salamanca, Spain, in 1994 in order to further the objective of ‘Education for All’ by considering the fundamental policy shifts required to promote inclusive education. The conference adopted the **Salamanca Statement and Framework for Action on Special Needs Education**, which assert that education systems should be designed to take into account a wide diversity of needs and that children with special educational needs must have access to regular schools that should accommodate them. It calls on all states to give the highest policy and budgetary priority to improve their education systems to enable them to include all children. It also calls on states to adopt, as a matter of law or policy, the principle of inclusive education and enrol all children in ‘regular’ schools unless there are compelling reasons to do otherwise.

3.2 UN Sustainable Development Goals and Incheon Declaration

3.2.1 UN Sustainable Development Goals

In 2015, the 193 United Nations member states adopted the **2030 Agenda for Sustainable Development**. Education is a central theme throughout the 2030 Agenda, which includes a stand-alone education goal as well as education-related targets within seven of the 17 Sustainable Development Goals (SDGs). The 2030 Agenda recognises that inclusion and equity in and through education is the cornerstone of a transformative education agenda, and that states therefore should commit to addressing all forms of exclusion, marginalisation, and disparities in access, participation and learning outcomes. It also declares that that no education target should be considered met unless met by all.⁴³

In particular, SDG 4, the stand-alone education goal, aims to ‘**ensure inclusive and equitable quality education and promote lifelong learning opportunities for all**’ by 2030. It has three underlying principles, the first of which is directly relevant to this report: **to ensure universal equal access to inclusive and equitable, quality, free and compulsory education and learning**. SDG 4 is broken down into ten targets to guide countries along a transformative path to a sustainable education agenda.⁴⁴ Target 4.5 seeks to ensure equal access to all levels

40. Ibid, p. 489.

41. Ibid, p. 479.

42. Ibid, p. 482.

43. Education 2030 (n 8) p. 7.

44. Ibid, p. 21

of education and vocational training for the vulnerable (including persons with disabilities, indigenous peoples, and children in vulnerable situations) by 2030.⁴⁵ More specifically, it seeks to ensure that all people, including vulnerable groups that require particular attention, have access to inclusive, equitable quality education and lifelong learning opportunities.

3.2.2. Incheon Declaration

The roadmap to achieve SDG4 and its targets is contained in the Education 2030 Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4. Adopted in November 2015 at Incheon, Republic of Korea, and commonly referred to as the Incheon Declaration, it represents the commitment of the education community to SDG4-Education 2030 and the 2030 Agenda for Sustainable Development.

The Incheon Declaration's vision is to transform lives through education. Furthermore, it recognises that inclusion and equity is the cornerstone of a transformative education agenda, and it therefore commits to addressing all forms of exclusion and marginalisation. Importantly, as does SDG 4, it states that 'no education target should be considered met unless it is met by all'.⁴⁶ Throughout the Incheon Declaration and its Framework for Action, there is also a strong emphasis on gender equality.

'Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'

The Framework for Action contains indicative strategies for each target set out in SDG 4. The indicative strategies for target 4.5 are of particular relevance. Two that are important to highlight are, first, ensuring that education policies, sector plans and their budgeting guarantee the principles of non-discrimination and equality in and through education, and develop and implement urgent targeted strategies for vulnerable and excluded groups; and, secondly, ensuring use of multiple sources of data and information, including from education management information systems and relevant school and household surveys, to facilitate the monitoring of social exclusion in education.

The indicative strategies provide further guidance on education management systems by stating that the World Inequality Database on Education is an example of how such information could be made available to enable decision-makers to take action and collect better-quality data on children with disabilities by cataloguing different disabilities and impairments and assessing their levels of severity. Indicators should be developed and data gathered to build an evidence base capable of informing programming and policy.

4. Conclusion

The international framework discussed in this chapter sets out the obligations placed on the South African government in regard to an inclusive education system. The instruments make it clear – some implicitly through non-discrimination clauses, others explicitly through mention of the right to an inclusive education – that there is a duty both to ensure that an effective inclusive education system is in place and to remove barriers to education for all children.

45. Ibid, p. 21.

46. Ibid, p 7.

Chapter C:

Overview of the Current Legislative and Policy Framework

1. Introduction

Against the backdrop of an apartheid education system characterised by entrenched discriminatory attitudes and segregatory practices, South Africa's Constitution recognises the right to compulsory basic education as a fundamental human right of every person in the country. Chapter 9 of the South African government's National Development Plan 2030 states that

to overcome our Apartheid legacy it is essential that everyone has access to services of a consistently high standard regardless of who they are and where they live. This will require that specific consideration be given to the most vulnerable children – those who are living in poverty or with disabilities.⁴⁷

In line with efforts to achieve this, Education White Paper 6 'outlined government's new policies for a single, unsegregated education system for all learners, including those with disabilities, in the hopes that inclusive education would provide [the ...] "cornerstone of an integrated and caring society"'.⁴⁸

To ensure that equitable, quality, inclusive education is afforded to every child in South Africa, including historically marginalised and vulnerable learners, **a clear, consistent and comprehensive regulatory framework** needs to be in place. As Walton notes:

Although the existence of policy does not guarantee practice, policies do regulate practice and provide guidelines and direction for practice. Importantly, policies can help to ensure consistency in practice in a school and so contribute to school wide inclusive practices that would be the experience of all learners, irrespective of class, subject or teacher.⁴⁹

The framework should outline **clear legal entitlements and detailed plans on how these entitlements are to be realised.**

The aim of this chapter is to provide an overview of the existing regulatory framework for an inclusive education system in South Africa. In this chapter we will not analyse the extent to which this framework complies with international standards, nor will we discuss the implementation of these key documents – this will be done in the next chapter.

The table below summarises the legislation, policies, guidelines and other documents which comprise the regulatory framework giving effect to the right to an equitable, quality and inclusive basic education in South Africa.

47. National Development Plan 2030: Our Future, Make It Work, p. 264.

48. D Donohue & J Bornman, 'The challenges of realising inclusive education in South Africa' South African Journal of Education 34(2) (2014).

49. E Walton & N Nel, 'What counts as inclusion?' Africa Education Review 9(1) (2012) pp. 1–26.

OVERVIEW OF CURRENT REGULATORY FRAMEWORK FOR INCLUSIVE EDUCATION IN SOUTH AFRICA

Type of document	Title	Description
LEGISLATION	Constitution of the Republic of South Africa Act 108 of 1996	S 28: Entrenches children's rights S 29: Entrenches the right to basic education Associated rights: right to dignity, equality, nutrition, family life, best interests of the child
	National Education Policy Act 27 of 1996	The National Education Policy Act authorises the Minister of Basic Education to determine national laws and policies that, among others, advance and protect the fundamental rights of all persons, and ensure that no person is denied the opportunity to an education.
	South African Schools Act 84 of 1996 (Schools Act)	The Schools Act was enacted to give effect to a transformed basic education system that serves all learners, in particular previously disadvantaged, marginalised and vulnerable groups. One of the many things the Act regulates is the admission of all learners to school.
	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)	PEPUDA was enacted to give effect to section 9 of the Constitution and is applicable in education to prevent unfair discrimination and hate speech and to provide restorative remedies in instances where learners have been discriminated against. The principle of 'reasonable accommodation' is listed in PEPUDA among the factors which ought to be considered when determining the fairness or unfairness of discrimination. In its illustrative list of unfair practices in certain sectors, PEPUDA lists the following examples in respect of education: '(a) Unfairly excluding learners from educational institutions, including learners with special needs

		<p>(b) Unfairly withholding scholarships, bursaries, or any other form of assistance from learners of particular groups identified by the prohibited grounds.</p> <p>(c) The failure to reasonably and practicably accommodate diversity in education. (our emphasis)'</p>
<p>REGULATIONS</p>	<p>Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure</p>	<p>The regulations set out requirements to ensure safe and adequate school buildings and spaces. It includes the requirement that all new schools should comply with the principles of universal design, meaning they should be intentionally designed with all potential users in mind.</p>
<p>POLICY</p>	<p>Admission Policy for Ordinary Public Schools</p>	<p>The National Admission Policy, read with the Schools Act, regulates the admission of all learners, including learners with 'special education needs', to ordinary public schools.</p>
	<p>Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System (2001)</p>	<p>White Paper 6 sets out the constitutional vision of an inclusive and equitable basic education system in South Africa. The Policy provides the framework, details a funding strategy, and outlines the key strategies and drivers, for establishing an inclusive education and training system in South Africa.</p>
	<p>Screening, Identification, Assessment and Support Policy (SIAS) (2014)</p>	<p>SIAS provides a framework to standardise procedures for the identification and assessment of learners who require additional support, and gives guidance on how to provide that support through the management of teaching and learning.</p>
	<p>National Development Plan 2030</p>	<p>The National Development Plan is a long-term plan to eliminate poverty and reduce inequality by 2030. It envisages an inclusive education system by 2030 that 'enables everyone to participate effectively in a free society'.</p>

	White Paper on the Rights of Persons with Disabilities (2015)	The aim of the White Paper is to affirm the human rights of persons with disabilities and move closer to a fully inclusive society for all. In Pillar 4 it specifically advocates for access to inclusive learning opportunities for persons with disabilities.
GUIDELINES	Guidelines For Full-Service/ Inclusive Schools, 2010	These outline the role and functioning of Full-Service schools and the responsibilities of role-players in supporting inclusive schools.
	Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres, 2014	These set out the role of special schools as resource centres, which includes collaboration with district-based support teams to provide support to full-service and ordinary schools.
	Conceptual and Operational Guidelines for the Implementation of Inclusive Education: District-Based Support Teams (2005)	The Guidelines provide a practical framework and set of strategies to assist in the establishment and strengthening of district-based support teams.
	National Guidelines for Resourcing Inclusive Education (Draft, 2018)	These provide guidance on the equitable and efficient provision, distribution and use of infrastructure, personnel and non-personnel non-capital funding for an inclusive education system. The Guidelines motivate for the development of an integrated and holistic approach that does not separate support- provisioning for special and ordinary schools from that for districts.
	Guidelines for Responding to Learner Diversity in the Classroom, Grade R-12 (CAPS)	These provide guidance on inclusive classroom pedagogy, including curriculum adaptation and differentiated instruction and assessment.

	Care and Support for Teaching and Learning (CSTL) Programme	The CSTL Programme is a Southern African Development Community (SADC) initiative aimed at preventing and mitigating factors that negatively impact on the enrolment, retention, performance and progression of vulnerable learners in schools by addressing barriers to learning and teaching.
CASE LAW	<i>Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another</i> 2011 5 SA 87 (WCC)	This case confirmed the right to education for children with severe to profound intellectual disability and placed an obligation on the Department of Basic Education to provide for their education needs. The case highlighted the rights of learners with severe to profound intellectual disability to dignity and equality.
	<i>Equal Education, Infrastructure Crisis Committee of Mwezeni Senior Primary School, and Infrastructure Crisis Committee of Mkanzini Junior Secondary School v Minister for Basic Education & Others</i> Case No. 81/2012, in the Eastern Cape High Court, Bhishe	The Court ordered the Minister of Basic Education to publish norms and standards for school infrastructure as part of realising the right to education, equality and dignity. The Minister published Norms and Standards for School Infrastructure in November 2013. Regulation 6 of the Norms states that all schools must adhere to the principles of universal design and that schools for learners with 'special education needs' must comply with requirements related to the nature of the specialised support programme offered at the school, as well as the level of support required at that particular school.
	<i>Lettie Hazel Oortman v Thomas Aquinas Private School</i> [2013] ADY 19	The Equality Court ruled that the school had a duty to take all, not just some, reasonable steps to accommodate the learner.

	<p><i>South African National Council for the Blind v Minister of Basic Education Case No. 72622/17</i></p>	<p>In this case a settlement agreement was reached, first, that braille users have a right to prescribed textbooks and learner-teacher-support material, and secondly, that the Department of Education was to ensure braille users had access to textbooks and learner-teacher-support material.</p>
	<p><i>Equal Education and Others v Minister of Basic Education 2021 (1) SA 198 (GP)</i></p>	<p>In this matter, the court held that the Department of Basic Education has a duty to provide basic nutrition in terms of section 29(1) of the Constitution, and that by ceasing the National School Nutrition Programme during lockdown when learners were learning away from school, the Minister of Basic Education was in breach of that duty. The judgment affirms that the right to nutrition and education are interdependent and unqualified.</p>
	<p><i>Equal Education v MEC KwaZulu Natal & Others 3662/17P</i></p>	<p>In this case, a transport policy was approved which prioritised learners with disabilities.</p>
	<p><i>Mphela v Manamela & Others Case No.1 /2016</i></p>	<p>In this landmark ruling it was held that LGBTQI learners, in particular transgender learners, have the right to be protected against discrimination and hate speech.</p>

Table 1: Overview of the regulatory framework for inclusive education in South Africa

2. The Constitution of South Africa

Several rights in the Bill of Rights in the Constitution of South Africa of 1996 (the Constitution) are implicated when considering the regulatory framework for an inclusive education system. These include the right to a basic education,⁵⁰ equality,⁵¹ the right to have one's dignity respected and protected,⁵² and the right of children to have their best interests considered of paramount importance in every matter concerning them.⁵³

2.1 The right to basic education

Section 29(1)(a) of the Constitution provides that **everyone** has the right to education, including adult basic education. The right has both a positive and negative dimension,⁵⁴ which means that the state must take positive steps to provide basic education for every person and must ensure that the right of each person is enjoyed freely without any interference and/or obstruction.⁵⁵ The right to basic education is **unqualified and immediately**

50. Section 29(1)(a) of the Constitution.

51. Section 9 of the Constitution.

52. Section 10 of the Constitution.

53. Section 28(2) of the Constitution.

54. *Governing Body of the Juma Masjid Primary School v Essay NO 2011 (8) BCLR 761 (CC)* at para 58.

55. *Ex Parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 3 SA 165 (CC) para 9 referring to s 32(a) of the interim Constitution (Constitution of the Republic of South Africa Act 200 of 1993); *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 5 SA 87 (WCC) 90.

realisable, and is not subject to the same limitations as are other socio-economic rights, such as ‘reasonable legislative measures’, nor is it contingent on the availability of resources.⁵⁶ This means that the right is unqualified, provides ‘an immediate entitlement to its fulfilment’, and grants children an immediate claim against the state for the provision of basic education.⁵⁷

2.2 The right to equality

The right to equality demands that everyone is equal before the law and has the right to equal protection and benefit of the law. Substantive equality requires one to treat equals equally and those who are unequal, differently – provided that the basis of differentiating between the two categories of persons is relevant to the purpose served by the distinction.⁵⁸ Boezaart uses as an example children with disabilities:

[C]hildren with disabilities are not to be treated the same as children without disabilities. However, differentiating between those with and those without disabilities must fully accommodate the needs of each category. In the education context this means that one has to provide education to children with disabilities that conforms with the demands of human dignity and the special needs of these children.⁵⁹

The right to equality includes equality of access, resources and opportunities.⁶⁰ Equal access to education is denied when the language of learning and teaching is inappropriate, when the curriculum is inflexible, built environments are unsafe or inaccessible, support services are inadequate, and legislation is inadequate or non-existent.⁶¹ Protection against discrimination based on culture, language, social groups or individual differences is an inalienable human right that must be respected and fostered by the education system.⁶²

2.3 The right to human dignity

Human dignity has been described as ‘the touchstone of the new political order [in South Africa] and ... fundamental to the new Constitution’.⁶³ Dignity is both a fundamental principle underlying human rights and a right in itself. All children have the right to have their human dignity respected. This is the right to be considered as a complete human individual with inherent worth.⁶⁴ Often children, including LGBTQI learners and learners with disabilities, are at the greatest risk of being treated without dignity by our education system.

2.4 The best interests of the child

Section 28(2) of the Constitution states that ‘[a] child’s best interests are of paramount importance in every matter concerning the child’. It is undeniable that the ‘best interests’ principle and a child’s right to education are closely interlinked.⁶⁵ A good education will always be in the best interests of the child as it empowers him or her; likewise, if a child’s best interests are disregarded in the educational context, the child’s education will suffer. Therefore, the promotion and full application of the child’s best interests in the educational sphere is crucial to the full development of the child.⁶⁶

56. Juma Masjid Primary School v Essay NO 2011 8 BCLR 761 (CC) at para 37.

57. Ibid, para 37.

58. T Boezaart ‘A constitutional perspective on the rights of children with disabilities in an educational context’ (2012) 27 SAPL pp. 455–472.

59. Ibid, 460.

60. Ibid.

61. Ibid.

62. UNESCO (n 6).

63. S v Makwanyane 1995 6 BCLR 778 (CC) para 329.

64. Boezaart (n 59) p. 459.

65. Susan Coetzee & Riana Mienie ‘The “best interests of a child” standard in education: An overview of South African case law’ (2014) 29 SAPL p. 91.

66. Ibid.

3. Legislation

3.1 National Education Policy Act 27 of 1996

The **National Education Policy Act 27 of 1996 (NEPA)** was adopted together with other laws and policies to give effect to the right to basic education. Its preamble states that *'it is necessary to adopt legislation to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights'*.⁶⁷ NEPA authorises the DBE to adopt a policy directed towards

- a. the advancement and protection of the fundamental rights of every person ... to basic education and equal access to education institutions.
- b. enabling the education system to contribute to the full personal development of each learner...
- c. achieving equitable education opportunities and the redress of past inequality in education provision ...
- d. endeavouring to ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability.⁶⁸

To give effect to this, the South African Schools Act 84 of 1996 (the Schools Act) and other key policies have been promulgated (these will be discussed below).

3.2 South African Schools Act 84 of 1996

The Schools Act was enacted to give effect to a transformed basic education system that serves all learners, in particular previously disadvantaged, marginalised and vulnerable groups. The preamble of the Schools Act addresses the need for a *new* national education system for schools that will redress the injustices of the past in education. It also repeats the fundamental constitutional values of equality and the combatting of unfair discrimination.⁶⁹ The Schools Act regulates the admission of all learners to school and assigns various roles and responsibilities to key role-players – such as the Member of the Executive Council (MEC), the Head of Department (HOD), the education districts, the school governing bodies (SGB), and parents – to ensure that all learners are enrolled in a suitable school.⁷⁰

Section 5(1)A A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

All learners of compulsory schoolgoing age (between the ages of 7 and 15, or Grade 9, whichever occurs first) must attend school.⁷¹ Section 3(2) stipulates that the Minister of Basic Education must determine the ages of compulsory attendance at school for learners with special education needs, but this has not yet been done.

The MEC must ensure that there are enough school places so that every child who lives in his or her province can attend school.⁷² Importantly, if an MEC is unable to comply with this statutory obligation due to a lack of capacity, he or she must take steps to remedy such lack of capacity as soon as possible and must make an annual report to the Minister on the progress made in doing so.⁷³

The Schools Act also places an obligation on a public school to admit learners and serve their educational requirements without unfairly discriminating in any way.⁷⁴ This means that the Schools Act mandates all public schools to be inclusive and serve the educational requirements of all learners.

67. NEPA, preamble.

68. NEPA, section 4(a)–(d).

69. Preamble of the Schools Act.

70. Section 3 of the Schools Act.

71. Section 3(1) of the Schools Act.

72. Section 3(3) of the Schools Act.

73. Section 3(4) of the Schools Act.

74. Section 5(1) of the Schools Act.

4. Policies

4.1 Admission Policy for Ordinary Public Schools

The **Admission Policy for Ordinary Public Schools** (Admission Policy), in clauses 22 to 25, regulates the admission of learners with special education needs to ordinary schools. Clause 22 states that 'the rights and wishes of learners with special education needs must be taken into account at the admission of the learner to an ordinary public school'.

4.2 Education White Paper 6

Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System Education (White Paper 6) was adopted by the DBE in 2001 to give effect to the constitutional vision of an inclusive and equitable basic education system in South Africa, one premised on the right of every child to receive an education on an equal basis with his or her peers. White Paper 6 is crucial for understanding the intention behind the inclusive education framework in South Africa. It provides the framework, details a funding strategy, and outlines the key strategies and drivers, for establishing an inclusive education and training system. White Paper 6 envisages the implementation of an inclusive education system within a period of 20 years. The 20-year period is broken down into three phases, each with its own steps: short-term, medium-term and long-term steps.

White Paper 6 describes an inclusive education and training system as a system which:

- acknowledges that all children and youth can learn, and that all children and youth need support;
- is accepting and respectful of the fact that all learners are different in some way and have differing learning needs that are equally valuable and an ordinary part of human experience;
- is about enabling education structures, systems and learning methodologies to meet the needs of all learners;
- acknowledges and respects differences between learners, whether due to age, gender, ethnicity, language, class, disability or HIV status;
- is about changing attitudes, behaviour, teaching methodologies, curricula and the environment to meet the needs of all learners; and
- is about maximising the participation of all learners in the culture and the curricula of educational institutions and identifying and mitigating barriers to learning.⁷⁵

White Paper 6 expresses an intention to ensure that learners are appropriately accommodated in schools through a flexible curriculum and assessment policy, particularly given that curricula and assessments pose especially significant barriers to learning for children.

4.3 Screening, Identification, Assessment and Support Policy

The DBE's revised **Screening, Identification, Assessment and Support Policy** (SIAS) of 2014 provides a framework for standardising the procedures to identify, assess and provide the necessary support for all learners who require and are entitled to additional support to enhance their participation, achievement and inclusion in school. It develops standard procedures to identify, assess and provide programmes for learners who require additional support, and also gives guidance on how to provide that support through the management of teaching and learning. This policy is a key document when it comes to the transformation of the basic education system, and gives flesh to some of the key strategies contained in White Paper 6.

The main organising principle upon which the SIAS Policy is based is that every child has the right to a basic education and support within his or her local community. The policy requires that every learner has the right to reasonable accommodation in an inclusive setting. It echoes White Paper 6 by requiring a shift from the system in which learners are referred to a specialised setting other than the schools nearest to their homes.

⁷⁵ Education White Paper 6 (n 13) p. 16.

The SIAS Policy also shifts away from ‘individual learner disability as the driving organiser for support provision to that the range, nature and level of support programmes, services, personnel and resources that will be made available for special and ordinary schools to increase learner participation in the learning process’.⁷⁶ This range of support services and programmes may be made available at site level, for example at a special school, or at nodal sites such as resource centres.

SIAS rates the level of identified support required as low, moderate or high, depending on the frequency, scope, availability and cost of the additional support service, programme or specialised learning and teaching support material (LTSM).⁷⁷

- In regard to low levels of support, most curriculum adjustments and accommodations for assessment are relatively inexpensive and should be funded from the school’s budget. These would include, for example, a teacher adjusting his or her teaching strategy so that content is presented in class in a more accessible way.
- A moderate level of support refers to adjustments that require more planning and potentially involve more role-players, such as curriculum and assessment advisors, as well as greater oversight and monitoring by school-based support teams. This might include more frequent specialist support.
- High levels of support entail complex and ongoing adjustments to the regular curriculum programme, the implementation of a differentiated curriculum, the provision of assessment accommodations and concessions, and frequent access to specialised support and therapeutic services.⁷⁸

Highly specialised support resources, personnel, programmes and facilities for groups of learners who require access to the same support programme or resources on a high-frequency basis can be provided at site level, such as in special schools or specialised settings attached to ordinary schools.

Specialised support resources, personnel programmes and facilities that are needed on a lower-frequency basis are holistic and teacher-focused, more portable, and require less operational and organisational planning will be provided at circuit or district level so as to be accessed by learners at ordinary schools. Examples of these resources, programmes and facilities include learning support, remedial education, assistive devices, counselling, rehabilitation, and therapeutic services.⁷⁹

Most importantly of all, SIAS reiterates that placing a learner in a specialised setting in order for him or her to access support provisions is a **last resort** and should not be seen as permanent.⁸⁰

4.4 White Paper on the Rights of Persons with Disabilities

The aim of the **White Paper on the Rights of Persons with Disabilities** (2015) is to affirm the human rights of persons with disabilities and move closer to a fully inclusive society for all. It takes its cue from the Constitution and from international instruments such as CRPD. The White Paper intends to accelerate transformation and redress in regard to full inclusion, integration and equality for persons with disabilities.⁸¹ The intent is for the White Paper to be developed into legislation.

Pillar 4 of the White Paper is aimed at ‘Promoting and Supporting the Empowerment of Children, Women, Youth and Persons with disabilities’. Here, the White Paper states that **‘exclusion from education reflects a complex, progressive and sustained social process of being excluded’**.⁸² It notes that children and adults with disabilities tend to have less access to education at any level in comparison to their peers without any disabilities, and goes on to state: ‘The correlations for both children and adults between low educational outcomes and having a disability is often stronger than the correlations between low educational outcome and other characteristics such as gender, rural residence, and low economic status.’⁸³

76. SIAS, p. 18.

77. Ibid, p. 19.

78. Ibid, pp. 19–21.

79. Ibid, p. 17.

80. Ibid.

81. White Paper on the Rights of Persons with Disabilities, pp. 39–40.

82. Ibid, p. 83.

83. Ibid.

The White Paper advocates for **access to inclusive learning opportunities for persons with disabilities**. It highlights the necessity of the provision of reasonable accommodation; support for persons with disabilities within the general education system; and effective individualised support measures. **These should all be consistent with the goal of achieving full inclusion** and enabling persons with disabilities to learn life and social development skills so as to facilitate their full, equal participation in education and as members of the community.⁸⁴

5. Guidelines

5.1 Guidelines for Special Schools Resource Centres

The **Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres** (SSRC Guidelines) were first developed in 2005 and then revised in 2014. The SSRC Guidelines outline the minimum standards that are required for any special school to function adequately and provide quality education, care and support to learners enrolled in these schools. In addition, the SSRC guidelines set out the criteria for a functional 'special school resource centre'.

5.2 Guidelines for District-Based Support Teams

These national guidelines provide a practical framework for strategies to assist in the establishment and strengthening of district-based support teams (DBSTs). They focus on how historically fragmented support provided to schools can be better coordinated so that a more holistic and integrated approach to support could be realised. This includes developing a framework of 'collaboration', or teamwork, whereby different support providers plan and work together to address local needs and challenges in a comprehensive way.

According to these guidelines, the core purpose of DBSTs is to foster the development of effective teaching and learning, primarily by identifying and addressing barriers to learning at all levels of the system. Key functions that support this purpose include:

- The development and *ongoing support of local institutional-level support teams* in schools. In this regard, the key focus areas of these teams are:
 - supporting the capacity-building of schools/education institutions;
 - identifying and prioritising learning needs and barriers to learning in their local contexts;
 - identifying the support needed to address these challenges, and pursuing them within a strategic planning and management framework; and
 - ongoing monitoring and evaluation of all of the above.
- *Linking* these institutions with formal and informal support systems in the surrounding community so that these needs and barriers can be addressed.
- Providing *indirect* support to learners by supporting educators and school management, with the focus being on curriculum and institutional development, to ensure that the teaching and learning framework and environment are responsive to the full range of learning needs.
- Providing *direct* learning support to learners where necessary and possible if institutional-level support teams are unable to respond to particular learning needs.⁸⁵

84. Ibid, pp. 83–84.

85. Conceptual and Operational Guidelines for the Implementation of Inclusive Education: District-Based Support Teams (2005) pp. 21–22.

5.3 Guidelines for Full-Service Schools

In 2010, the DBE published revised **Guidelines for Full-Service/Inclusive Schools** (FSS Guidelines) which define full-service schools as ‘first and foremost mainstream educational institutions that provide quality education to all learners by supplying the full range of learning needs in an equitable manner’.⁸⁶ Full-service schools are ordinary public schools and intended to provide low-intensive and moderate support to learners, whilst progressively building capacity for full inclusivity.⁸⁷

‘Full-service schools are ‘first and foremost mainstream educational institutions that provide quality education to all learners by supplying the full range of learning needs in an equitable manner.’

Full-service schools were intended to be aspirational public ordinary schools. Starting with 30 pilot schools, the aim was to expand to 500 schools by 2021 and ultimately see system-wide application of the model to all ordinary schools. The pilot schools were meant to serve as examples of good practice and ‘[to] chart the way for all schools to ultimately become inclusive institutions’.⁸⁸

Among other things, full-service schools are intended to:

- achieve access, equity and social justice in education;
- promote a sense of belonging so that all learners, staff and families experience a sense of worth in the learning community; and
- have the capacity to respond to diversity by providing appropriate education for individual needs of learners, irrespective of disability or differences in learning style or pace, or social difficulties experienced.⁸⁹

5.4 Draft National Guidelines for Resourcing Inclusive Education

Initially drafted as National Norms for Resourcing Inclusive Education, these were approved only as guidelines. The Guidelines set out the funding strategy for an inclusive education system as a whole, and provide guidance on the provision, distribution and use of infrastructure, personnel and non-personnel non-capital funding for an inclusive education. The Guidelines motivate for the development of an integrated and holistic approach that does not separate support provisioning of special and ordinary schools from that of districts.

5.5 Guidelines for Responding to Learner Diversity

The **Guidelines for Responding to Learner Diversity in the Classroom through Curriculum and Assessment Policy Statements** (2011) aim to provide teachers, principals, subject advisors, administrators, school governors and other personnel with the strategies and parameters to respond to learner diversity in the classroom through curriculum. The Guidelines can be seen as a critical and integral component of all National Curriculum Statement (NCS) training initiatives. Of great importance is the fact that the Guidelines have been developed to facilitate and support curriculum differentiation in the classroom.

6. Regulations

6.1 Norms and standards for school infrastructure

The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure seek to ensure that there is compliance in the design and construction of new schools and additions, alternations and improvements to schools, as well as to provide for timeframes within which school infrastructure backlogs must be eradicated. The Norms provide for universal access, and therefore require schools to adhere to the requirements and principles of universal design. The Norms also list guidelines for a minimum universal design requirement.⁹⁰

86. Guidelines for Full-Service/Inclusive Schools (2010) p. 7.

87. Ibid.

88. Education White Paper 6 (n 13) pp. 5–8.

89. Ibid, p. 7.

90. South African Schools Act 84 of 1996, Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (2013).

6.2 Care and Support for Teaching and Learning

The Care and Support for Teaching Learning (CSTL) Framework is a Southern African Development Community (SADC) initiative that was adopted by education ministers in 2008. Its goal is to realise the education rights of all children, including those who are most vulnerable, by having schools become inclusive centres of learning, care and support. The Framework intends to prevent and mitigate factors that have a negative impact on the enrolment, retention, performance and progression of vulnerable learners in schools by addressing barriers to learning and teaching.

The CSTL Framework identifies ten areas of priority care-and-support intervention which are seen as key in addressing systemic, societal and intrinsic barriers to education:

- a rights-based, socially inclusive and cohesive school;
- nutritional support;
- health promotion;
- infrastructure, water and sanitation;
- social welfare services;
- psychosocial support;
- safety and protection;
- curriculum support;
- co-curricular support; and
- material financial support.



The CSTL National Support Pack recommends the establishment of task teams at national and provincial level to facilitate implementation of the Framework. SBSTs and DBSTs are the responsible structures at the local level of support provision.

Figure 1: Education mandate for care and support

Source: DBE, Handbook for the Provision of an Integrated Package of Care and Support for Learners in South African Schools, p. 12

7. Case law

Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another 2011 5 SA 87 (WCC)

The Western Cape Forum for Intellectual Disability (WCFID), a non-governmental organisation (NGO) which provided care for children with intellectual disabilities in the Western Cape, brought an application before the Western Cape High Court challenging the constitutionality of state education policy in respect of the non-provision of schools as well as unfavourable financial support for children who were classified as having 'severe or profound intellectual disabilities'.

The Court found that the state's policy infringed the rights of severely disabled children to education, equality, dignity and protection from neglect and degradation. **It held that there was no justification for failing to provide the children with a basic education and for not allowing them to attend special or other schools.** The Court ordered the state to take reasonable measures, including interim steps, to ensure that all children with severe and profound disabilities in the province have access to affordable and quality basic education. The state

was also ordered to avail adequate funds to organisations that provide education for severely and profoundly intellectually disabled children in the Western Cape at special care centres.

Lettie Hazel Oortman v Thomas Aquinas Private School [2013] ADY 19

In this case, court proceedings were brought against a private school on behalf of a parent whose daughter was a learner at the school and who was a wheelchair user. Despite the fact that the school had taken some steps to reasonably accommodate her, such as making sure her classes were on the ground floor and that she had access to the tuck shop, many of the other school facilities were not fully accessible to her. She also faced discriminatory attitudinal barriers from some teachers. Moreover, she sought additional reasonable accommodation, including infrastructural changes, access to a toilet and wash basin, and attitudinal changes among staff who were required to assist and support her daughter.

The Equality Court ruled that **'[s]everal praiseworthy steps were taken by [the school] to accommodate Chelsea, but unfortunately not all reasonable steps were taken** to remove obstacles to enable her to have access to the classes, toilet and washbasin'.

South African National Council for the Blind v Minister of Basic Education Case No.72622/17

SECTION27 acted on behalf of the South African National Council for the Blind, the National Braille Authority, and the school governing bodies of schools for visually impaired learners. The case was brought after years of unsuccessful advocacy for the adequate provision of braille textbooks for all learners requiring them. It was argued on behalf of the applicants that every learner has the right to receive his or her prescribed textbooks and learning and teaching support materials for every learning area at the commencement of each academic year.

After six years of persistent engagement with the Minister of Basic Education, a settlement agreement was made an order of court, one which declared that **the non-delivery of braille textbooks and learning and teaching support material was a violation of the rights to basic education, equality and dignity** of blind learners. The court also issued a structural interdict to compel the DBE and the provinces to create a sustainable plan for the production and delivery of braille textbooks and learning and teaching support material.

Equal Education, Infrastructure Crisis Committee of Mwezeni Senior Primary School, and Infrastructure Crisis Committee of Mkanzini Junior Secondary School v Minister for Basic Education & Others; Case No. 81/2012 in the Eastern Cape High Court, Bhisho

This case was brought by Equal Education and sought to ensure the promulgation of the Regulations Relating to the Minimum Uniform Norms and Standards for Public School Infrastructure. The Norms, which were eventually promulgated as a result of the case, set infrastructural standards that all public schools must meet, as well as the timelines within which such infrastructure must be provided to schools.

Clause 6 of the Norms states that all schools must adhere to the principles of universal design and that schools for learners with 'special education needs' must comply with the requirements related to the nature of the specialised support programme offered at the school, as well as the level of support required at that particular school.

Equal Education and Others v Minister of Basic Education 2021(1) SA 198 (GP)

This case was brought by Equal Education and the school governing bodies of Vhulaudzi Secondary School and Mashao High School against the Minister for Basic Education and the MECs of eight provinces. The applicants sought a declaration that the respondents had breached their duties in discontinuing the National School Nutrition Programme (NSNP) feeding scheme during school closures imposed in response to COVID-19. It also sought an order that the NSNP should be implemented without delay for all qualifying learners.

The court handed down both a declaratory and supervisory order, ordering the DBE to roll out the NSNP to all eligible children without delay and regardless of whether learners had returned to school. The judgment confirms that the child's rights to basic education (section 29(1)(a) of the Constitution) and to basic nutrition (section 28(1)(a)) are unqualified and immediately realisable.

Importantly, **the judgment also affirms that nutrition – alongside school infrastructure, textbooks and scholar transport – is a central component of the right to basic education, and that basic nutrition and basic education are thus interdependent.**

Equal Education v MEC KwaZulu Natal Case No. 3662/17P

This case was brought by Equal Education against the MEC for Education in KwaZulu-Natal (KZN) and several others on behalf of learners in 12 schools in the area of Nquthu in KZN who had to travel on foot for several kilometres to school and back. It was argued that the learners' right to a basic education was violated through a failure to provide governmentally assisted transport to the learners in the 12 schools. The court ruled that **providing transport was part of the realisation of the right to a basic education**, and thus required that respondents institute a policy for the provision of transport to schools for learners throughout KZN province.

Mphela v Manamela Case No. 1/2016

This case was brought by a transgender learner who was discriminated against by her teacher (the respondent). The teacher had instructed other learners to corner the complainant and feel her genitals in order to confirm her gender. The complainant argued that the respondent's actions were discriminatory, humiliating and demeaning. The Equality Court found in favour of the complainant and held that it was a **clear case of unfair discrimination and harassment based on the complainant's gender.**

As can be seen in this chapter, the regulatory framework for inclusive education in South Africa is dispersed across several key laws and policies and further expounded in a number of guidelines. As will be shown in the following chapter, this fragmented and often contradictory framework has had a significant impact on the slow, incremental implementation of inclusive education in South Africa.

Chapter D:

An Analysis of the Regulatory Framework for Inclusive Education and its Implementation in South Africa

1. Introduction

This chapter provides an analysis of the national regulatory framework and assesses whether it is capable of meeting the obligations set out in the Constitution and within South Africa's international and regional obligations. The chapter examines not only the regulatory framework itself but also its implementation over the past 20 years, the aim thereof being to gauge the extent to which challenges in implementation could be addressed through recommended regulatory reform.

Before looking at various inclusive education policies, we begin with an analysis of the regulatory framework in so far as it relates to school admission – the latter is an important means to achieving inclusive education.

2. Admission to and support for learning in school

South Africa's regulatory framework should provide clear guidance on admission to school for learners in order to ensure access to education for all children. However, inconsistent laws and policies hamper this critical aspect of inclusive education. Procedural uncertainty, poor implementation, and discriminatory admission practices perpetuate the exclusion of many children from the schooling system. The EELC, through cases referred to its law clinic, has received numerous complaints of discriminatory admission practices in schools. For example, schools make use of language policies to perpetuate racial exclusivity and cite lack of infrastructure as a ground to exclude learners with disabilities.

'Procedural uncertainty, poor implementation, and discriminatory admission practices perpetuate the exclusion of many children from the schooling system.'

In regard to children with disabilities, White Paper 6 called for admission policies to be revised 'so that learners who can be accommodated outside of special schools and specialised settings can be accommodated within designated full-service or other schools and settings'.⁹¹ Despite this, the current regulatory framework remains unclear on how learners with disabilities are to be admitted to schools.

The important statutes, policies and guidelines pertaining to admission and attendance at school for learners with disabilities or other 'special education needs' are set out below.

91. Education White Paper 6 (n 13) p. 27.

2.1 Protection against discrimination on admission

Section 5 of the Schools Act deals with the admission of learners into school. Section 5(1) prohibits unfair discrimination in admission practices, stating that '[a] public school must admit learners and serve their educational requirements without unfairly discriminating in any way'. It is clear from section 5(1) that all learners **must be admitted to school** and **cannot be unfairly discriminated** against.

PEPUDA supports section 5(1) of the Schools Act by providing protection to learners who face discrimination on grounds such as race, religion, nationality, disability, sexual orientation and gender identity and expression. Section 9 of PEPUDA, read together with section 5(1) of the Schools Act, clearly imposes an obligation on public schools to admit learners without unfairly discriminating against them. No learners may be refused admission to a school because of their disability or on any other discriminatory grounds.

If an application for admission to school is rejected, the HOD must inform the parent in writing of such refusal as well as the reasons. (In practice, the HOD's function is fulfilled by school principals.) The written reasons serve as a potential safeguard against arbitrary decision-making and unfair discrimination. In practice, many children are simply refused admission to an ordinary school without the provision of written reasons. At other times, schools state that the refusal was due to over-subscription or another reason rather than due to the learner's disability. As a result, children often remain out of school for long periods while trying to gain access to alternative ordinary or special schools. Additional oversight over and above the provision of written reasons may be necessary.

Furthermore, **SIAS requires a holistic assessment of learners and advocates a shift away from determining admission to a school or to support on the basis of standardised tests only.**⁹² *Cassim No/MEC Gauteng Department of Social Development*⁹³ builds on this by holding that admission cannot be 'conditional' on a learner's first successfully rehabilitating from substance dependency and overcoming behavioural disorders and other conditions. Rather, a learner must be admitted even when facing various mental and physical health challenges. The case dealt with a learner who was admitted to a special school on the condition that her behavioural disorder and addiction to substances were dealt with prior to her entry. The court held that

[t]he conditional admission is against the core principles of the Screening, Identification, Assessment and Support (SIAS) policy, approved by the Ministry of Education. The SIAS Policy is designed to address the barriers to learning and development. It recognises that learners are faced with numerous challenges emanating from classroom, home and community or a result of health conditions or disability. The main focus is that all the support must be given to the learner to facilitate access to education without predicaments.

The SIAS Policy goes on to add that '[n]o child may be refused admission to an ordinary school on the basis of decisions taken through this policy without recourse to a process of appeal'.

2.2 The rights and wishes of parents and learners

Section 5(6) demands that '[i]n determining the placement of a learner with special education needs, the Head of Department and principal **must take into account the rights and wishes of the parents of such learner**. This means that a parent's wishes must be considered either at the initial admission of the learner to school, or when the learner is moving between schools. Clause 22 of the Admission Policy, however, states that 'the rights and wishes of **learners** with special education needs must be taken into account at the admission of the learner to **an ordinary public school**'. A consideration of the learner's wishes is in line with the Children's Act – which requires that children be involved in decisions which affect them⁹⁵ – as well as with international standards.⁹⁶

92. SIAS, p. 14.

93. Cassim No/MEC Gauteng Department of Social Development Case No 2477/2020.

94. *Ibid*, para 16.

95. Children's Act 38 of 2005, s 10 (child participation).

96. See article 12 of the CRC: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

The central role of parents and learners in the process of admission to school and support provision is also clearly laid out in the SIAS Policy. This aligns with international human rights standards, and marks an important shift away from a situation in which professional medical assessment is the sole or dominant criterion in decision-making on school placement. The Schools Act and the Admission Policy should be aligned with best practice.

Furthermore, clause 22 refers to a consideration of a learner's wishes 'at the admission of the learner to an ordinary public school', whereas section 5(6) speaks to the placement of a learner more broadly. This should be aligned.

2.3 'Special education needs'

Both the Schools Act and the Admissions Policy make use of the term 'special education needs' but neither of them defines it. This creates uncertainty. Presumably, the term includes learners with disabilities, but it should also include any learner for whom reasonable accommodation must be made or for whom specific support needs arise and must be met. This would ensure, for example, that LGBTQI learners who may require gender-neutral toilets or other facilities are equally protected and accommodated.

2.4 Reasonable accommodation and the obligation to support learner needs

2.4.1 Reasonable practicability

Section 12(4) of the Schools Act states that '[t]he Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners'. This places an obligation on the MEC to ensure that adequate provision is made to **support the learning needs** of learners **once they have been admitted to ordinary schools**.

Section 12(5) places a further obligation on the MEC to take **all reasonable measures** to ensure that physical facilities at public schools are accessible to disabled persons. Clause 22 of the Admissions Policy contains similar provisions:

The South African Schools Act, 1996 requires ordinary public schools to admit learners with special education needs, where this is reasonably practical. Schools are encouraged to make the necessary arrangements, as far as practically possible, to make their facilities accessible to such learners.

The most notable difference between clause 22 and section 12(4) of the Schools Act (and one which causes considerable confusion) is that clause 22 gives the impression that schools have a **discretion** to *admit* learners with special education needs where this is reasonably practicable. **This is incorrect** – the Schools Act and other provisions of the Admission Policy make it clear that learners with special education needs **must first be admitted**. Section 12(4) of the Schools Act deals with the *provision of* (and not admission to) education and education support services to learners with special needs. Clauses 24 and 25 of the Admission Policy also support this. Accordingly, clause 22 of the Admission Policy must be amended in order to ensure that it is clear that the reasonable practicability determination of support needs happens after the learner's admission to school.

An additional concern is that it is unclear how 'reasonable practicability', as referred to in 12(4), is determined. As a result, some guidance may be required to ensure that it does not focus only on what is reasonably practicable for the school, but rather that it is learner-centred and adheres to the inclusive principle of bringing support to the child and taking the child to the support. This would promote the inclusion and support of learners in ordinary schools and reduce the high referral rate of learners to full-service or special schools.

Of concern in clause 22 is the use of the word 'encouraged' in the sentence 'encouraged to make the necessary arrangements, as far as practically possible'. This waters down the requirement within the Schools Act that learners 'must', where reasonably practicable, provide education for learners with special education needs at

ordinary public schools. It is also not in line with section 12(5) of the Schools Act, which states that the MEC ‘must’ take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons. The word ‘encouraged’ in the Admission Policy must therefore be brought in line with the Schools Act and changed to ‘must’. Furthermore, the use of the word ‘encouraged’ is not in line with the duty to provide reasonable accommodation contained in PEPUDA, SIAS and international human rights law standards.

2.4.2 Reasonable accommodation

Section 9 of PEPUDA outlines the most important provision for learners with disabilities:

Subject to section 6 no person may unfairly discriminate against any person on the ground of disability, including (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.

It can be argued that section 9(1) of PEPUDA provides a positive obligation to, at a bare minimum, eliminate obstacles to inclusion in an ordinary school and to reasonably accommodate learners. It is therefore not enough simply to admit a learner with disabilities into a school and believe that unfair discrimination has been circumvented: **a school must also reasonably accommodate the learner.**

The difficulty that arises when learners attempt to assert their right to reasonable accommodation is that neither PEPUDA nor the Schools Act define the meaning of this right. The CRPD provides us with some guidance, defining reasonable accommodation as the ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment on an equal basis with others of all human rights and fundamental freedoms’.⁹⁷ A similar definition is included in the SIAS Policy.⁹⁸

The Equality Court in the *Oortman* case⁹⁹ makes it clear that schools **must make every reasonable effort to accommodate** the varied needs of learners. In addition, in *MEC for Education: KwaZulu Natal and Others v Pillay*,¹⁰⁰ which involved the right of a learner to wear a nose stud as an expression of her religion, provides some guidance. The Constitutional Court referred to the Canadian Supreme Court, which stated that ‘more than mere negligible effort is required to satisfy the duty to accommodate’.¹⁰¹ The Constitutional Court endorsed this approach as more in line with the spirit of our constitutional project.

In measuring what constitutes ‘reasonable accommodation’, meaningful participation and achievement in learning must be enabled through the accommodations which are put in place.

Whilst SIAS states that ‘the teacher must screen all children at admission’ and that the admission form can be used to gather relevant information, it is not clear whether a determination of support needs and the provision of the support itself can be put in place prior to admission. The Admission Policy appears to support the view that support needs are determined after admission. This has to be made clear, as there are some accommodations that would need to be in place from the outset, for example wheelchair ramps or adapted LTSM.

Whilst the CRPD and existing jurisprudence are helpful in giving content to the phrase ‘reasonable accommodation’, a clear definition – consistent across policies, with guidance as to how reasonable accommodation can be achieved in schools and who is responsible for funding and providing it – is needed. The next chapter provides recommendations in this regard.

97. CRPD, article 2.

98. SIAS defines ‘reasonable accommodation’ as ‘necessary and appropriate modification and adjustments not imposing a disproportionate and undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

99. See a summary of the facts and judgment in Chapter C section 8.2 Lettie Hazel Oortman v Thomas Aquinas Private School [2013] ADY 19.

100. MEC for Education: KwaZulu Natal and Others v Pillay 2008 (1) SA 474 (CC)

101. Ibid, para 76.

2.5 Referral and placement of a learner from one school to another

Once a child is admitted to a school and it is subsequently determined that it is not reasonably practicable to support him or her at that school, clauses 23, 24 and 25 of the Admission Policy regulate the process of referral of a learner to another public school:

- **Clause 23:** 'Where the necessary support which would facilitate the integration of a learner in a particular educational context cannot be provided, the principal of the school must refer the application for admission to the Head of Department to have the learner admitted to a suitable public school in that province or to a school in another province.'
- **Clause 24:** 'Before the Head of Department refers a learner as contemplated in paragraph 23, the Head of Department must arrange for consultation with parents, educators and other support personnel concerned. These consultations must form part of the assessment of the learner before the learner is referred to another public school. This process should be handled as a matter of urgency to facilitate the admission of a learner as soon as possible to ensure that the learner is not prejudiced in receiving appropriate education.'
- **Clause 25:** 'Assessment and consultation relating to a change of placement must be carried out by a team based at the school in consultation with parents, educators and other relevant support personnel. The Head of Department of the province concerned must approve the placement.'

Clauses 23 and 24 envisage that the process of referral is handled by the HOD, which is contradictory to the provision in SIAS that the referral is handled by the DBST. It is also in contrast with the Special School Guidelines, which require the DBST to ratify a decision to place a learner in a special school. Accordingly, coherence between SIAS, the Admission Policy and the Special School Guidelines must be achieved.

It should also be noted that the Admission Policy uses the word 'integration' in clause 23, whereas 'inclusion' is presumably what is meant by the term.

Of additional concern is that it is unclear what would happen if a special school declined an application from the DBST, or places the learner on a waiting list. In the EELC's experience, learners are often removed from ordinary school whilst the application for placement at a special school is pending. As a result, these learners may remain out of school for indefinite periods. The regulatory framework is silent on this issue.

With regard to the **admission of learners into ordinary versus special schools**, SIAS makes it very clear that the organising principle is that 'every child should have the right to receive quality basic education and support within his or her local community'. The SIAS Policy aligns with the principles of inclusive education as set out in international law inasmuch as it provides that 'every learner has a right to receive reasonable accommodation in an inclusive setting'. The Policy advocates a shift from a system where learners are referred to special schools rather than attending a school nearest to their home. In fact, SIAS goes as far as to state that 'placement of a learner in a specialised setting to access support provisions is a **last resort** and should also **not be seen as permanent** [emphases added]' and that 'review processes to consider reintegration into an ordinary school should continually be conducted'.¹⁰²

'Every child should have the right to receive quality basic education and support within his or her local community'.

Both the SIAS Policy and the Special School Guidelines provide that special schools must admit **only** learners who require **high levels of support that cannot be provided by the district at an ordinary school**. This aligns with section 5(1) of the Schools Act, which provides that ordinary schools **must admit learners** without discriminating against them. A learner's support needs must therefore be determined in terms of the SIAS Policy, and only then

102. SIAS, p. 16.

may a learner be considered for placement in a special school. This must take place in consultation with the parent or caregiver. This aligns with clause 24 of the Admission Policy, which states that consultations and assessment must occur prior to referral to another public school.

2.6 Lack of clarity about procedures for direct application for admission to a special school

Many special schools admit children in their pre-primary years in recognition of the importance of early intervention. For example, language acquisition by deaf children from as young an age as possible greatly improves their long-term education outcomes. There are also instances where direct placement in a special school is appropriate for learners with severe or complex disabilities requiring high-intensity, high-frequency specialised support. There is, however, no clarity in the Schools Act, Admission policy or SIAS regarding the admission procedures or pathways in such cases.

School of Skills

Classified as special schools, Schools of Skills offer technical occupational subjects to learners over a four-year period as an alternative to an academic high school. The aim is for learners to exit the School of Skills with a practical qualification (at NQF Level 1) with which to enter the job market. Good progress has been made by the DBE in developing the curriculum for technical occupational subjects and rolling it out in Schools of Skills – by 2020, workbooks and teacher guides had been completed for 21 subjects.¹⁰³ However, given that there are only 75 Schools of Skills in the country and that they have a combined capacity of about 31,000,¹⁰⁴ there is a shortage of places relative to the demand for them.

Through its law clinic, the EELC has received an increasing number of cases of learners who have been informed that they should consider a School of Skills as they will not pass Grade 7 and cope in a high school. Learners who have repeated two or more years of primary school can be considered for placement in a School of Skills. However, instead of referring these learners to the district to facilitate placement, primary schools progress learners out of Grade 7, and consequently out of the school, and then leave it to parents to apply directly. These learners are then effectively out of the education system, and the onus is on parents to go from pillar to post to secure school placement for their children. Most of these learners are either close to the end of compulsory schoolgoing age or have already turned 15. Once they turn 15, they are then excluded from school as being over-age.

3. Education White Paper 6

Education White Paper 6 was introduced in the previous chapter. In this section, we analyse the extent to which key strategies outlined in it in 2001 have contributed to the success or not of reaching the goal of an inclusive education system over the 20-year implementation plan. We also examine the extent to which White Paper 6 measures up to the inclusive education standards contained in international law. The purpose of this analysis is to draw out important learnings that should be incorporated in future policy development. In the next chapter, we will make recommendations for regulatory reform to align with international law, taking into account the challenges experienced over the last 20 years.

103. DBE presentation of an update on inclusive education to the Parliamentary Portfolio Committee of Basic Education (2020) slides 51–53.

104. Ibid, slide 54.

White Paper 6 outlined the following six key strategies for establishing an inclusive education and training system:

- 1** The qualitative improvement of special schools for the learners that they serve and their phased conversion to resource centres that provide professional support to neighbourhood schools and which are integrated into district-based support teams.
- 2** The mobilisation of the approximately 280,000 disabled children and youth outside of the school system.
- 3** Within mainstream schooling, the designation and conversion of approximately 500 out of 20,000 primary schools to full-service schools, beginning with the 30 school districts that are part of the national District Development Programme.
- 4** Within mainstream education, the general orientation and introduction of management, governing bodies and professional staff to the inclusion model, and the targeting of early identification of disabilities and intervention in the foundation phase.
- 5** The establishment of district-based support teams to provide a coordinated professional support service that draws on expertise in further and higher education and local communities. This support service targets special schools and specialised settings, as well as designated full-service and other primary schools and educational institutions, beginning with 30 school districts.
- 6** The implementation of a national advocacy and information programme in support of the inclusion model, with the focus placed on the roles, responsibilities and rights of all learning institutions, educators, parents and local communities, as well as on focal programmes and their progress.¹⁰⁵

Below is an analysis of both the strategies and their implementation over the last 20 years.

3.1 The mobilisation of disabled children and youth outside of the school system

As outlined above, one of the key strategies White Paper 6 identifies for establishing an inclusive education system is the mobilisation of out-of-school children with disabilities and youth of schoolgoing age. At the time that White Paper 6 was published, it was estimated that about 280,000 children with disabilities were 'unaccounted' for in the school system. White Paper 6 states that some of those children 'may be' in mainstream schools, where their needs are not being catered for, but that in reality the majority of them are probably not in the school system at all.

3.1.1 Analysis of the strategy to mobilise children with disabilities

The mobilisation of out-of-school learners is correctly acknowledged as a highly important goal, given that more than a quarter of a million children were, at the time of publication of White Paper 6, not enjoying their right to education.

However, White Paper 6 lacks critical detail on the following:

1. It does not expand on how it intends to identify and mobilise out-of-school learners in order to place them in school, other than to say that 'sustained information, advocacy and mobilisation will need to be undertaken'.
2. White Paper 6 makes little mention of exactly how and where it plans to place out-of-school learners once identified. It does state that:

[t]o accommodate these children and youth of school-going age, we will, in collaboration with the provincial departments of education, designate and then convert, as a first step, primary schools to full-service schools, beginning in those school districts that form part of the national schools district development programme ... In this manner, we will expand provision and access to disabled learners within neighbourhood schools alongside their non-disabled peers.¹⁰⁶

105. Education White Paper 6 (n 13) pp. 7–8.

106. Education White Paper 6 (n 13) p. 30.

Given the large number of out-of-school children cited in White Paper 6, this incremental plan of converting ordinary schools into full-service schools to accommodate them has proven wholly inadequate. With a target of only 500 full-service schools, 560 children with disabilities would have had to be included in each school!

3. Furthermore, White Paper 6 lacks information on how it plans to support these learners once they are placed into school. Aside from the strategies of curriculum adaptation and teacher training, very little detail or guidance is given on how they would be integrated into schooling. Many, if not the majority, of out-of-school learners who would be mobilised into the school system will have spent many years out of school. They will require additional support based on the number of years they spent out of school and their specific learning needs.
4. White Paper 6 acknowledges that expanding access and provision of education to 280,000 learners with disabilities will require considerable resources, in particular, staffing – which in turn has funding implications. However, no detailed funding plan and consequent funding allocation has been developed or specifically allocated in order to make the achievement of this goal possible.

These gaps will be discussed in greater detail below when we consider at the implementation of the strategy to mobilise out-of-school learners.

3.1.2 Inconsistencies in data on out-of-school learners with disabilities

Since the publication of White Paper 6, there have been many inconsistencies in the reported and estimated numbers of children with disabilities who remain out of school. A DBE report on the implementation of White Paper 6 for the period of 2013 to 2015 estimated that 597,953 children were out of school.¹⁰⁷ South Africa's 2014 country report to the Committee on the Rights of Persons with Disabilities notes a similarly high estimate of out-of-school learners with disabilities. That report states that, based on the DBE's own calculations as well as Statistics South Africa's 2010 General Household Survey data, 480,036 children were estimated to be out of school.

Other reports provide lower estimations of the numbers of out-of-school children. The DBE's General Household Survey Focus on Schooling 2018 estimates that 100,000 children between the ages of 7 to 15 are out of school – 24.5 per cent of these children state that the primary reason for being out of school was their disability.¹⁰⁸ This equates to approximately 24,500 out-of-school children with disabilities between the ages of 7 to 15. However, many civil society organisations believe the higher numbers described above to be more accurate.¹⁰⁹

These wide variances in data demonstrate a dire need for thorough, scientifically gathered disability-disaggregated data. South Africa's 2014 country report to the Committee on the Rights of Persons with Disabilities states that '[t]he lack of adequate, reliable, relevant and recent information on the nature and prevalence of disability in South Africa remains a challenge'.¹¹⁰ The report notes that these data challenges also 'come to the fore in the analysis of statistical data relating to education'.¹¹¹ In spite of this acknowledgement, and in spite of the government's obligations under article 31 of the CRPD (in particular the obligation to collect data that is fit for the purposes of education planning and provision for children with disabilities), no accurate data is available. This is reflected in the lack of proper planning and budgeting for the inclusion of out-of-school children.

3.1.3 Implementing the strategy of mobilising out-of-school learners

Whether the number of out-of-school learners with disabilities is 24,000 or 597,000, there must be a *plan* to action the mobilisation of out-of-school children, one that, among other things, addresses how out-of-school children are to be identified, where they are to be placed, how they are to be placed, what catch-up and support they will be given, and how their placement will be funded.

107. DBE, Report on the Implementation of Education White Paper 6 on Inclusive Education: Overview for the Period 2013-2015 (2016) p. 21.

108. DBE, General Household Survey Focus on Schooling 2018 (2019), available at <https://bit.ly/3v7VNR0>.

109. Human Rights Watch, Complicit in Exclusion: South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities (2015) p. 74.

110. Baseline Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa (2013) para 1.

111. *Ibid*, para 204.

As mentioned, White Paper 6 provides little detail in this regard. However, the May 2015 Report on the Implementation of White Paper 6 provides some detail. The DBE has established a protocol with the Department of Social Development and the South African Social Security Agency to ensure that all children aged 5 to 18 who have identification numbers and who receive grants are in school. This interdepartmental collaboration may go some way towards improving the identification of out-of-school learners. The reported plan, however, does not detail how and where learners will be placed, or how support will be provided to them or funding sources. What the DBE does note, however, is this:

If the current trend of building new special schools to accommodate learners with disabilities continues, 3500 new special schools will have to be built (with 250 learners per school). Because this is not feasible, a radically different approach needs to be followed to meet the needs of children and youth with disabilities in an inclusive education system.¹¹²

3.2. Converting special schools to special school resource centres

White Paper 6 identified the qualitative improvement of special schools as one of the six key strategies for establishing an inclusive education system. It noted that particular attention would be paid to raising the overall quality of education services that special schools provide to their existing learner base. In addition, White Paper 6 planned for the phased conversion of special schools into special school resource centres (SSRC).¹¹³ SSRCs should provide resources, expertise and support, in curriculum, assessment and instruction, to designated full-service and ordinary schools as part of the DBST.

White Paper 6 also required that a qualitative and quantitative audit of the 380 special schools which existed at the time would be completed, with a view to improving the quality of their services.¹¹⁴

3.2.1 Analysis of the envisaged concept of special school resource centres

At the time, the rationale for envisaging the new role for special schools arose from a recognition of an already burdened general education system characterised by high learner–educator ratios and limited financial resources. According to White Paper 6, ‘Expanding access and provision to disabled children and youth of school-going age that are currently out of school implies a steep increase in demands placed on these professionals.’ Given the inability of the education system to produce adequately trained teachers and professionals in the short term, ‘progress towards the inclusive education and training system will be dependent heavily on more effective usage of current skills in the “special needs” sector’.¹¹⁵

White Paper 6 was published prior to the CRPD and, in the time since South Africa ratified it in 2007 without any exemptions, has not been reviewed to ensure compliance with article 24. Article 24 of the CRPD clearly provides for the inclusion of persons with disabilities in the **general education system**. The CRPD calls for the removal of any discriminatory legislative or regulatory provisions that limit the inclusion of learners on the basis of their impairment or its degree. Maintaining or perpetuating a system of segregated education, even for the purposes of converting special schools to special school resources centres, is incompatible with full inclusion as articulated in the CRPD.

The **Committee on the Rights of the Child, in its 2016 Concluding Observations to South Africa**, stated that it was concerned with the large number of children with disabilities attending specialised schools and recommended that South Africa ensure compulsory education for children with disabilities in mainstream schools.¹¹⁶ The ACERWC, in its 2019 recommendations to South Africa, also states that the country needs to ensure that children with disabilities are able to access free basic education in mainstream schools.¹¹⁷ The **2018 recommendations from the Committee on the Rights of Persons with Disabilities** echo the sentiments of the Committee on the Rights of the Child and the ACERWC.¹¹⁸

112. DBE (2016) (n 108) pp. 70–71.

113. White Paper 6 (n 13) p. 20.

114. Ibid, p. 47.

115. Ibid, p. 37.

116. Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of South Africa (2016) para 43(d).

117. ACERWC, Concluding Observations and Recommendations to the Government of the Republic of South Africa on Its First Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child (2019) para 27(b).

118. Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of South Africa (2018) para 41.

For as long as special schools exist, full inclusion in the manner that the CRPD envisages can never be achieved. However, the reality in the South African education context, as is the case in many other countries, is that special schools fulfil an important role in providing access to specialised education which is not available in under-resourced ordinary public schools. Learners requiring high-frequency, intensive daily specialised support consequently should be placed in a well-resourced and -functioning special school.

However, as an important step towards achieving greater inclusivity in our school system, the rationale behind the envisaged new role of special schools as resource centres is sound. Utilising specialised resources beyond the special school itself to strengthen surrounding ordinary schools to facilitate the inclusion of children with disabilities has merit.

Sadly, given the great historical unequal distribution of special schools in the country, this rationale is inherently flawed, as resources cannot be accessed equitably and thus remain serving primarily urban, well-resourced communities. Even with the addition of 55 public special schools during the last 20 years, the distribution appears largely unchanged, as seen in Figure 2.

DISTRIBUTION OF SPECIAL SCHOOLS

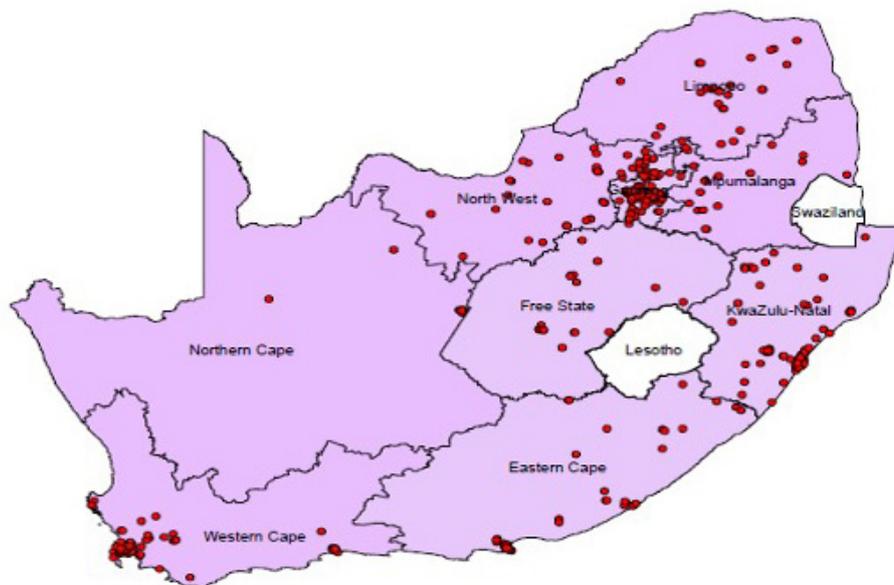


Figure 2: Distribution of special schools

Source: DBE, Report on update of progress of inclusive education (September 2021)

3.2.2 Progress in implementing SSRs and strengthened special schools

The Conceptual and Operational Guidelines for the Implementation of Inclusive Education: Special Schools as Resource Centres (2005) and the Guidelines to Provide Quality Education and Support in Special School Resource Centres to Support Inclusive Education (2014) (SSRC Guidelines) provide guidance on the proposed role of special schools as resource centres. In some instances, the guidelines appear to contradict White Paper 6. For example, White Paper 6 categorised special schools according to levels of support and not categories of disabilities.¹¹⁹ This was later contradicted in the SSRC Guidelines and SIAS. SIAS organises special schools according to 'area of specialisation'. Instead of reviewing a White Paper that was fast becoming outdated, guidelines and other documents to operationalise the policy, such as SIAS, were produced. These contradictions have resulted in confusion.

119. Education White Paper 6 (n 13) p. 10.

According to South Africa's Baseline Country Report to the United Nations on the Implementation of the CRPD (which was approved by Cabinet in 2013 – that is, 12 years after the publication of White Paper 6), only 95 special schools had been designated as SSRCs. The report acknowledges that there are major disparities in distribution of the SSRCs between provinces as well as between rural and urban areas. For example, the Eastern Cape had only three designated resource centres.¹²⁰ **By 2020, the total number of special schools designated as special school resource centres had risen to only 142,¹²¹** which indicates that in the eight years since the Country Report, only a further 47 schools had been designated as special school resource centres. Less than one-third of special schools have been designated and converted into special school resource centres, which reflects a poor percentage of conversions over a 20-year period. This number of 142 indicates a failure to meet even half of the target set by SIAS, namely converting 300 special schools into SSRCs by 2019.

This number of 142 indicates a failure to meet even half of the target set by SIAS, namely converting 300 special schools into SSRCs by 2019

Despite 142 special schools having been converted into resource centres, there is scant data on the level of functioning of these resource centres. There is little monitoring evidence from the DBE to demonstrate and evaluate how the SSRC criteria in the SSRC Guidelines have been met.

These criteria include:

- quality tuition to learners enrolled in the school;
- differentiation and adaptation of the national curriculum;
- adequately and appropriately trained staff to fulfil their role as a resource centre;
- utilisation of personnel to provide support to other schools; and
- functioning as a general resource centre that provides specialised equipment, e-learning facilities, and LTSM.¹²²

With the only available data being the number of special schools that have been converted to SSRCs, we are unable to accurately assess the implementation of this strategy in White Paper 6. Pending an audit or more qualitative data on resource centres, only anecdotal evidence exists. Some positive examples of best practice do exist in special schools that have been strengthened as resource centres. These should be documented and made widely available as a resource to other provinces and schools.

With regard to the goal of improved qualitative functioning of special schools, progress has been reportedly slow and often only as a result of litigation.¹²³

Conditions hindering improved qualitative functioning include:

- inadequate staff provisioning (educators, specialists and support staff);
- poor pre- and in-service training of educators;
- lack of resources (LTSM, assistive devices and technology);
- appalling hostel conditions;
- dilapidated infrastructure; and
- lack of support at district level.¹²⁴

Unfortunately, the failure to strengthen special schools adequately has resulted in limited advances in conversion into SSRCs. Recommendations to remedy this are made in the subsequent chapter.

120. Baseline Country Report (n 111) p. 43.

121. DBE report to Parliament (2021) (n 16).

122. Guidelines to Provide Quality Education and Support in Special School Resource Centres to Support Inclusive Education, (2014) pp. 20–23.

123. See South African National Council for the Blind v Minister of Basic Education; Equal Education v MEC for Education, Kwazulu-Natal; WC/FID case.

124. SAHRC, Investigative Report: North West School for the Deaf (January 2018). See also Human Rights Watch (n 110); D Budlender, Left in the Dark: Access to Education for Visually Impaired Learners in South Africa (2015) Annexure C, available at <https://bit.ly/36wC7w9>.

3.3 The designation and conversion of full-service schools

3.3.1 Analysis of the envisaged concept of full-service schools

The intention of White Paper with regard to the role of ordinary schools in an inclusive education system can be summarised in this extract:

The policy proposals described in the White Paper are aimed at developing an inclusive education and training system that will ensure that educational provision for learners with special needs is largely integrated over time into what are currently considered to be 'ordinary schools'.¹²⁵

As a means to achieve this, White Paper 6 made provision for the incremental designation of ordinary schools as full-service schools. Full-service schools, as noted previously in this report, were intended to be aspirational public ordinary schools – an initial 30 pilot schools were to increase in number to 500 by 2021, paving the way for all ordinary schools ultimately to become full-service schools. The pilot schools were intended to serve as examples of good practice and '[to] chart the way for all schools to ultimately become inclusive institutions'. White Paper 6 stipulated that the development of these schools should include the upgrading of physical infrastructure and the provision of 'necessary physical, material and human resources and professional development of staff so that they can accommodate the diverse range of learning needs.'¹²⁶

In order to provide further guidance as to the development and functioning of full-service schools, the DBE published guidelines in 2005 and revised Guidelines for Full-service/Inclusive Schools (FSS Guidelines) in 2010. The FSS Guidelines define full-service schools as **'first and foremost *mainstream* educational institutions that provide quality education to all learners by supplying the full range of learning needs in an equitable manner'**.¹²⁷ According to the guidelines, full-service schools are 'inclusive' schools and described as 'schools that have been enabled to include learners with disabilities and implement all possible measures to reasonably accommodate them'.¹²⁸

The FSS Guidelines also clearly state that **'[f]ull-service schools admit and are willing to support all learners from their locality according to the principle of natural proportion, irrespective of whether they have low, moderate or high-level support needs'**.¹²⁹

The rationale behind the pilot to strengthen ordinary schools so as to function as inclusive schools and provide a scalable model to be replicated across the system was laudable in principle. **An inclusive education system will not be achieved until ordinary schools are able to include all learners** in their catchment area and provide the necessary support for diverse learners to achieve their full learning potential.

However, the target of 500 schools in 20 years was **too low to achieve meaningful systemic change**. Even if the reported statistics of 848 designated full-service schools were to be used, this equates only to a conversion of 3.6 per cent of all ordinary public schools. This target did not reflect the urgency of the need for inclusive provision. Incremental change was the result of a lack of prioritisation or commitment.

Of even greater concern is the unforeseen consequence that full-service schools have come to be viewed as another type of 'special school'. In many instances they have been used as an alternative referral point for children with learning difficulties who are perceived by ordinary school teachers as challenging or problematic. A 2015 Report by the DBE on the status of inclusive education in South Africa noted:

There is concern about enrolment of more than 150 learners with disabilities in some [FSS] schools. This refutes the principle of natural proportion. Full-service schools should not be seen as a new type of special school that draw learners from far and wide.¹³⁰

125. Education White Paper 6 (n 13) p. 36.

126. *Ibid.*, p. 48.

127. Guidelines for Full-Service/Inclusive Schools (n 87) p. 7 (emphasis added).

128. *Ibid.*, p. 3.

129. *Ibid.*

130. DBE (2016) (n 108) p. 70.

Full-service schools should not be the referral point for learners from surrounding areas and further afield; they should fulfil the role of a resource to neighbouring schools to assist them in the inclusion of all learners in their own catchment area. Full-service schools were never meant to be another category of school, especially not another category of special school, but rather a model of how an ordinary school could become an inclusive school within an envisaged inclusive education system.

3.3.2 Analysis of implementation achieved since 2001

In addition to the conceptual challenges outlined above, full-service schools have experienced many difficulties hampering their functioning. These were exposed by the Auditor-General’s report on the functioning of full-service schools in 2019, which is summarised below.

In 2019 the **Auditor-General of South Africa** issued a report on an audit conducted at full-schools across the country. The audit looked at a number of indicators aligned to the FSS Guidelines in order to assess the functioning of designated full-service schools. It found that the majority of such schools across all provinces were not functioning as they should and that, after the FSS Guidelines were issued in 2010, the DBE did not develop a national strategy to coordinate the designation and establishment of full-service schools in a consistent and viable manner across the provinces.

Furthermore, the Auditor-General noted, Provincial Education Departments (PEDs) did not adequately guide the designation or conversion of full-service schools as was required. The report stated that 77 per cent of education districts were not sufficiently resourced and/or did not properly plan to support full-service schools, and that 79 per cent of schools lacked adequate resourcing in terms of infrastructure, assistive equipment and funding. It is clear from the report that shortcomings are experienced at all levels of the education system.

79 per cent of schools lacked adequate resourcing in terms of infrastructure, assistive equipment and funding

FULL SERVICE SCHOOLS

Summary of the key findings	EC	FS	GP	KZN	LP	MP	NW	NC	WC
The PED have not properly planned the roll-out of FSSs, including the resourcing and conversion of the FSSs	With findings								
The PED have not adequately guided and capacitated education districts and FSSs on the implementation of inclusive education at FSSs	With findings								
The PED did not effectively monitor and support inclusive education provisioning by the education districts	With findings								
The PED have not adequately reported on the functionality of FSSs in the province	With findings								
17 (77%) of education districts were not sufficiently resourced and / or did not properly plan to support FSSs	With findings								
14 (64%) of education districts did not adequately and timely guide and capacitate / train FSSs to provide inclusive education	With findings								
20y (91%) of education districts did not monitor and support FSSs' processes to support learners with moderate learning barriers	With findings								
20 (91%) of education districts have not appropriately reported on the establishment and implementation of inclusive education provisioning at FSSs	With findings								
69 (79%) of full-service schools did not have the necessary resources to create a safe and accessible environment for effective learning to take place	With findings								
60 (69%) of full-service schools had class sizes in excess of the norm of 40 learners per class and/or did not have inclusive education educators to provide additional support programmes	With findings								
68 (78%) of School-Based Support Teams (SBST's) at full service schools audited were not established and/or did not adequately function to ensure that inclusive education is planned, implemented, recorded and reported	With findings								
44 (51%) of SBST's and educators at full service schools did not receive adequate full service school and inclusive education training	With findings								
78 (90%) of full service schools did not adequately implement the required SIAS processes to screen learners, identify and assess learning barriers and provide the necessary support	With findings								

With no findings With findings

Figure 3: Full-service schools: Summary of key findings

Source: Parliamentary Monitoring Group (PMG), 'Auditor-General's briefing to the Portfolio Committee on Basic Education on the Budgetary review and Recommendations Report: PFMA 2018-19'

On 24 August 2019, in response to the Auditor-General's full report, the Director General for Basic Education issued a circular on the *Temporary Suspension of the Designation of Full-service Schools*, asking provinces to consider suspending the designation of full-service schools for three years to 'ensure that those that have been designated are adequately capacitated to fulfil their roles and responsibilities ...'.¹³¹ The circular also contained guidance for provinces on what should be done to ensure that the Auditor-General's recommendations for full-service schools are implemented.

Despite the 2018/19 Auditor-General's findings, **there are examples of full-service schools that have overcome the challenges of a lack of resources and support to become beacons of good inclusive practice.** In addition, many ordinary schools that are not necessarily designated as full-service schools have adopted the ethos, policies and practice of an inclusive school.

Key criteria for success at these schools include the following:

- the school community shares a good understanding of and belief in inclusive education and role of full-service schools;
- educators are skilled and equipped;
- SIAS processes are understood and practised;
- a functioning SBST exists;
- learner support is provided;
- access is available to a network of support service providers; and
- schools have good relationships with and support from DBSTs and SSRCS.

The criteria for effective functioning as an inclusive school, as mentioned above and laid out in the FSS Guidelines, are not criteria which can **only** be met by designated full-service schools but are the criteria according to which **all ordinary neighbourhood schools** should function in an inclusive education system and to which all our ordinary schools should strive.

3.4 Training of principals, school governing bodies and professional staff

White Paper 6 recognised the critical role that educators play in ensuring all children are participating meaningfully and achieving success in learning. In order to support teachers to fulfil this role, it set out the following short- to medium-term goal:

*We will require that all curriculum development, assessment and instructional development programmes make special efforts to address the learning and teaching requirements of the diverse range of learning needs and that they address barriers to learning that arise from language and the medium of learning and instruction; teaching style and pace; time frames for the completion of curricula; learning support materials and equipment; and assessment methods and techniques.*¹³⁴

Despite this clear goal, teachers, SMTs, SBSTs and DBSTs cite inadequate training and skills development to differentiate the curriculum and assessment, identify barriers to learning, and adapt the classroom environment as one of the most critical challenges facing the effective implementation of inclusive education in our ordinary schools.¹³⁵

Both pre- and in-service training have lacked sufficient inclusive pedagogical content. Engelbrecht and Green emphasise the impact that traditional biased attitudes to inclusion and diversity have had on teaching training:

*'Classroom educators will be our primary resource for achieving our goal of an inclusive education and training system. This means that educators will need to improve their skills and knowledge and develop new ones. Staff development at the school and district level will be critical to putting in place successful integrated educational practices.'*¹³³

131. DBE, Circular S4 of 2019, Temporary Suspension of the Designation of Full-Service Schools.

132. Guidelines for Full-Service/Inclusive Schools (n 87) p. 1.

133. Education White Paper 6 (n 13) p. 18.

134. *Ibid.*, p. 49.

135. SECTION27, Too Many Children Left Behind: Exclusion in the South African Inclusive Education System With a Focus on the Umkhanyakude District, KwaZulu-Natal (2016). See also McKenzie et al., Starting Where We Are: Situational Analysis of the Educational Needs of Learners with Severe to Profound Sensory or Intellectual Impairments in South Africa (2018); Walton & Nel (n 50).

The medical model of looking at diversity and difference seems to be ingrained in the curricula of teacher education programmes, with the result that teachers tend to look at learners through deficit lenses ... [T]eachers learn that certain learners have special needs which can only be met by special material, special teacher skills and in special segregated settings.¹³⁶

In 2016, funding from the European Union provided the impetus for the development of more in-depth inclusive education course materials to be offered in initial teacher education programmes at higher education institutions.¹³⁷ Course content included theoretical and practical inclusive pedagogy. In addition, specialised courses were developed to train educators in the inclusion of learners with different disabilities.¹³⁸

These courses were also developed for in-service teacher training. To bridge the gap between theoretical knowledge and the practical in-service realities of teaching in an inclusive classroom, a comprehensive 12-month new teacher inclusive induction programme was piloted in three provinces and used by the DBE in the development of induction materials.¹³⁹

In addition, as part of the EU-funded Teaching and Learning Development Capacity Improvement Programme, **Teaching Standards for Inclusive Teaching (beginner teachers)** were developed.¹⁴⁰ The purpose of the teaching standards is to inform initial teacher education. The goal was to align the South African Council of Educators (SACE) teacher standards to the inclusive teacher standards that were developed. One of the dilemmas in developing the teacher standards was concern about whether these should be apart from the more general professional teaching standards applicable to all teachers.¹⁴¹

In 2011, the DBE developed guidelines to support teachers to accommodate diversity in the classroom by differentiating teaching and the learning environment. The Guidelines for Responding to Learner Diversity in the Classroom, Grade R–12 form part of the National Curriculum Statement.

White Paper 6 required district-based support teams and institutional-level support teams to provide 'curriculum, assessment and instructional support in the form of illustrative learning programmes, learner support materials and equipment, assessment instruments and professional support for educators at special schools/resource centres and full-service and other educational institutions'.¹⁴²

White Paper 6 provided no further guidance as to how this goal could be achieved. It became apparent that it was unrealistic to expect DBSTS and SBSTs to provide curriculum, assessment and instructional support where no such resources were available.

The revised SIAS Policy in 2014 showed a renewed commitment to the training of teachers on the SIAS Policy. The most recent data, presented by the DBE to stakeholders on 7 September 2021, showed that to date 26,674 teachers had been trained on the implementation of the SIAS Policy. This equates to approximately one teacher per school, or 6.7 per cent of all public-school teachers (see Figure 4).

TRAINING ON THE SIAS POLICY

PROVINCES	TEACHERS TRAINED	GRADE R PRACTITIONERS TRAINED	OFFICIALS TRAINED
EC	864	358	430
FS	556	31	31
GP	4584	2325	331
KZN	1625	150	811
LP	675	5	150
MP	1500	0	20
NC	0	0	0
NW	324	0	0
WC	16 546	660	607
National	26 674	3529	2380

Figure 4: Numbers of teachers and officials trained on SIAS Policy

Source: DBE presentation to stakeholders on 7 September 2021 on the status of inclusive education

136. M Oswald & P Engelbrecht, 'Teacher education for inclusion', in P Engelbrecht & L Green (eds) *Responding to the Challenges of Inclusive Education in Southern Africa* (2018) p. 190.

137. See British Council, 'Teaching for all', available at <https://bit.ly/314zAa8>.

138. Teacher Empowerment for Disability Inclusion, available at <http://www.dhrs.uct.ac.za/dhrs/divisions/disability/edi>.

139. See <https://bit.ly/3sQJ2Yw>.

140. See <https://bit.ly/3LFMTA2>.

141. L Walton & E Rusnyak, 'Developing standards for inclusive teaching in South Africa: A dilemma analysis' *Southern African Review of Education with Education with Production*, 25(1) pp. 89–106.

142. Education White Paper 6 (n 13) p. 49.

Unfortunately, these figures fall far short of the targets set in the implementation plan of the SIAS Policy, which envisaged that all foundation phase teachers, managers, provincial and district officials, and 60,000 SBST members in 15,000 ordinary schools would be trained by 2019.¹⁴³

A recent analysis of data collected in the School Management Survey of 2017 showed the correlation between training and confidence to teach in an inclusive classroom. The report found that 'SBST coordinators, LSEN educators and deputy principals who have received training are more confident than their untrained peers'.¹⁴⁴

There is a **need to distinguish between orientation training and skills development**. Whilst a 2–5-day training session may be adequate to orientate teachers to the SIAS Policy, learning the skills to differentiate the curriculum or assessment requires in-depth, ongoing training and development. This level of skills development has not yet been achieved at a systemic level.

In addition to reporting on training on SIAS, the DBE reported on the numbers of teachers who had received training in specialised areas including braille, SASL and autism (see Figure 5). The DBE noted that a shift in focus in 2020/21 saw 9,608 teachers receiving training in other inclusive programmes, covering topics such as psychosocial support, accommodations and concessions, and the management of bullying.

TRAINING OF TEACHERS IN SPECIALISED AREAS

Braille	SASL	Autism	Other inclusive programmes.
34	46	87	9 608

Figure 5 Training of teachers in specialised areas

Source: DBE presentation to stakeholders on 7 September 2021 on the status of inclusive education

Whilst it is a positive step to see data on the training of educators in specialised areas, the numbers are still low. With reference to the training and orientation of principals and SGBs, as set out in White Paper 6, there is little data from the DBE to enable one to gauge the extent to which this has taken place.

3.5 The establishment of district-based support teams

3.5.1 Analysis of the concept of DBSTs as envisaged in White Paper 6

Established through White Paper 6 as one of the key strategies for improving support services in the education system, **DBSTs are responsible for providing a full range of education support services to the SBST and to the school**. The Conceptual and Operational Guidelines for the Implementation of Inclusive Education: District-Based Support Teams (DBST Guidelines) (2005) states that the primary function of the DBST is to 'assist education institutions to identify and address barriers to learning and promote effective teaching and learning'.¹⁴⁵ This includes classroom and organisational support, providing specialised learner and educator support, as well as curricular and institutional development (including management and governance) and administrative support.¹⁴⁶

The DBST Guidelines explain how, **historically, support provision to schools, where it was available, was fragmented and uncoordinated**. DBSTs offered an opportunity for improved coordination 'so that a more holistic and integrated approach to support can be realised'. This includes developing a 'framework of "collaboration", or teamwork, where the different support providers plan and work together to address local needs and challenges in a comprehensive way'.¹⁴⁷

143. SIAS, pp. 25–26.

144. N Deghaye, 'Disability support & accessibility in mainstream schools in South Africa' Research on Socioeconomic Policy (RESEP) Stellenbosch University (2021) p. 24.

145. Conceptual and Operational Guidelines (n 86) p. 6.

146. Ibid, p. 6.

147. Ibid, p. 10.

Conceptually, the importance of establishing district-level, multidisciplinary and multisectoral teams to provide coordinated, holistic, contextually relevant and integrated support to schools cannot be underestimated. Fragmented, haphazard and uncoordinated support provision, as was the case prior to White Paper 6, is clearly not desirable. What remains to be seen is whether or not DBSTs, as envisaged in White Paper 6 and further articulated in the DBST Guidelines, have been able to achieve their stated aims in the last 20 years.

3.5.2 Analysis of the progress in implementing DBSTs since 2001

There has been some implementation of DBSTs in many districts over the years. Most of the evidence of their functioning comes from individual research studies and ad hoc government reporting. Studies in various provinces and districts over the past 10 years suggest that district officials who identify as being part of the DBST largely understand their role and the necessity of the support they should provide to schools.¹⁴⁸ A comparative analysis of the 2011 and 2017 School Management Surveys shows that 65 per cent of SBSTs received support from the DBST in 2017. Despite provincial variance (see Figure 6), this is a significant improvement from 2011, when only 34 per cent of SBSTs received such support.¹⁴⁹

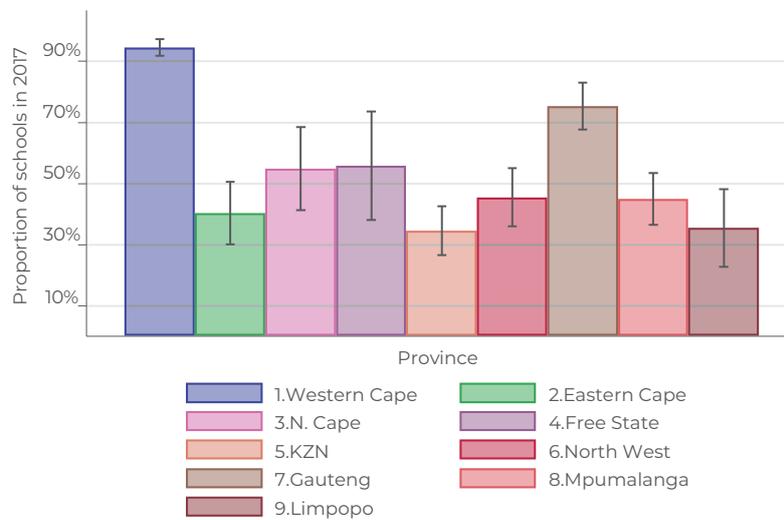


Figure 6: Proportion of schools visited by psychologists, therapists, members of the DBST, learning support officials or health officials in 2017, by province.

Source: N Deghaye, 'Disability support & accessibility in mainstream schools in South Africa' Research on Socioeconomic Policy (RESEP) Stellenbosch University (2021)

An independent review commissioned by the Gauteng Department of Education (GDE) in 2014 stated that 'Gauteng has shown commitment to the establishment and staffing of DBSTs'.¹⁵⁰ However, the report noted that 'the challenge in the years ahead for the GDE is to see the teams becoming fully functional and realising their mandates for learner and institutional support'.¹⁵¹

Many DBSTs across the country have reported significant challenges, as described below, in their ability to become fully functional and carry out their duties effectively. These challenges relate to leadership and composition, resources and infrastructure, and multidisciplinary skills and knowledge.

148. Thabo Makhalemele & Mirna Nel, 'Challenges experienced by district-based support teams in the execution of their functions in a specific South African province' International Journal of Inclusive Education (2015). See also Doreen Zulu, Experiences of District-Based Support Team with Regard to Screening Identification Assessment and Support (PhD thesis, UNISA: 2019).

149. Deghaye (n 146) p. 30.

150. Elizabeth Walton, 'Working towards education for all in Gauteng', in Twenty Years of Education Transformation in Gauteng 1994 to 2014: An Independent Review p. 222.

151. Ibid, pp. 223.

Leadership and composition

The composition of the DBST should be determined by, and must be responsive to, the needs of the district. DBSTs were envisaged as multidisciplinary, interdepartmental and multisectoral teams comprising:

- district officials (see below);
- special school resource centres;
- full-service schools;
- representatives from Organisations of and for Persons with Disabilities (OPDs), NGOs and community-based organisations (CBOs); and
- other government departments (Health and Social Development).¹⁵²

District officials on the DBST should include a combination of specialist learner and educator support personnel, including:

- psychologists, therapists, remedial/learning support teachers, special needs specialists and other health and welfare professionals;
- curriculum specialists;
- institutional/management development specialists; and
- administrative experts.¹⁵³

Within each district, the **district director is the head of the DBST and should provide leadership and management of the team.**

The DBST was envisaged as a holistic team. However, research shows that in most cases the DBST is understood to be comprised only of district officials from the Inclusive Education Directorate. This is exacerbated by the fact that the district director often does not take on a leadership role in the DBST. A KZN study found that the DBST is not effective because the district leadership and other stakeholders are not fully involved in implementation.¹⁵⁴ Findings from a 2015/16 study in Free State and North West provinces find that 'a recurring theme was that all sections of the district offices are not participating in the DBST as originally envisaged, and that the shortage of specialist staff members is hampering inclusive education service rendering seriously'.¹⁵⁵

This falls short of the original intention of coordinating district-level support to schools. The failure to bring on board officials from directorates outside of inclusive education perpetuates the marginalisation of the broader inclusive vision outlined in international and regional obligations as well as declared as stated government intent. The DBE 2015 report on inclusive education summed up the situation by stating that

*if the DBST is continued to be seen as existing only of the Inclusive Education Directorate and does not ensure transversal responsibility in delivering inclusive education mandates (including especially Curriculum, Education Management and Governance and other systems units), inclusive education can never be successfully implemented.*¹⁵⁶

Resources and infrastructure

In addition to the challenges around the composition of the DBST, significant deficits have been identified in relation to the availability of personnel, transport and other necessary resources. Insufficient human resources have been cited by schools and DBSTs as a significant contributor to the inability of DBSTs to perform their support role efficiently.¹⁵⁷ An analysis of the 2017 School Management Survey shows that only '47% of principals reported [that] their schools had received a visit from a psychologist, therapist, members of the district-based support team, learning support official or health official in 2017'.¹⁵⁸

152. Conceptual and Operational Guidelines (n 86) pp. 16–20.

153. Ibid, p. 18.

154. Zulu (n 150).

155. J Hayes, 'Educational and psycho-social service rendering by district-based support teams in two provinces of South Africa: Supporting inclusive education' Inclusion in Education: Perspectives on Inclusive Education in South Africa Journal (2018).

156. DBE (2016) (n 108) p. 71.

157. Makhalemele & Nel (n 150).

158. Deghaye (n 146) p. 33.

The ratio of specialised support staff at district level to the number of schools and individual learners they are required to service is far too high to translate into efficiency or efficacy, nor is it in line with international standards.¹⁵⁹ Research conducted in 2014 into the functioning of DBSTs in the Free State province found that:

human resources in education support services at the district level were deemed insufficient by over 61% of the respondents. One participant affirmed that: 'Human resources are inadequate because you may find that in one district there may be two social workers, two psychologists, and few learning support facilitators. Therefore, it becomes difficult for us to reach all learners from different schools'.¹⁶⁰

This has been compounded by insufficient transport and infrastructure for DBSTs to perform their support functions adequately. In the Free State study, '70% of the respondents affirmed that there was not enough transport available for DBST members to visit schools'.¹⁶¹ The ability to travel regularly to schools is a key requirement for the DBSTs to deliver effective support services.

Multidisciplinary skills and knowledge

In research conducted by Nel et al. (2014), teachers reported that they experienced the DBST as not being adequately skilled in assisting them or in supporting learners who experience barriers to learning in an inclusive education environment.¹⁶² In the same study, 65 per cent of DBST staff members indicated that they did not receive adequate training from the National DBE. This confirms that they did not feel adequately skilled to support schools.

'77% of the selected Inclusive Education directorates and DBST's at the education districts did not adequately support the educators and SBST'.

In consequence of all the challenges highlighted above, DBSTs remain unable to provide the support to schools and SBSTs which is essential for the effective implementation of policies such as White Paper 6 and SIAS. The 2018/19 Auditor-General's report revealed that '77% of the selected Inclusive Education directorates and DBST's at the education districts did not adequately support the educators and SBST'.¹⁶³

3.6 Institutional-level support teams / school-based support teams

3.6.1 Analysis of the concept of SBSTs as envisaged in White Paper 6

The SBST, known previously in White Paper 6 as the institutional-level support team (ILST), is responsible for engaging with the DBST and other support providers to identify and meet the support needs of the school. The primary function of SBSTs is to put in place coordinated learner and educator support services.¹⁶⁴

Their key responsibilities are:

- coordinating support for learners, educators, curriculum and school development;
- identifying institutional and individual support needs;
- developing strategies to address these needs;
- identifying and coordinating resources; and
- monitoring and evaluating support interventions.¹⁶⁵

SBSTs should comprise classroom and support teachers, support staff, heads of department, principals or deputy principals. The role of the school principal is to ensure that an SBST has been set up in the school and is functioning well.¹⁶⁶ The SBST coordinator plays a crucial role in functioning of the SBST. As with DBSTs, various

159. Hayes (n 157).

160. Makhalemele & Nel (n 150) p. 8.

161. Ibid.

162. MP Nel, NM Engelbrecht & D Tlale, 'South African teachers' views of collaboration in inclusive education' International Journal of Inclusive Education 18(9) (2014) pp. 903-917.

163. PMG (n 14).

164. Education White Paper 6 (n 13) p. 29.

165. SIAS, p. 30.

166. Guidelines for Full-Service/Inclusive Schools (n 87) p. 22.

other stakeholders can be brought in to assist an SBST. These stakeholders could include parents or caregivers, members of the DBST, teachers from other schools with relevant expertise, and members of the local community who can assist in addressing specific learner needs.

The **concept of a coordinated support structure at school level, as envisaged in White Paper 6 and as articulated further in SIAS and Full-Service School Guidelines, is essential to proper school functioning.** As will be demonstrated below, lessons learnt from challenges to implementation should be considered in a review of the regulatory framework.

3.6.2 Analysis of implementation of SBSTs since 2001

The EELC, through its own research and engagement with schools, has encountered some good examples of well-functioning SBSTs in ordinary schools across South Africa. Where SBSTs meet regularly, have undertaken a community-mapping exercise to develop a network of service providers, work effectively as a team, and make use of available resources, they are able to fulfil their proper function. A well-functioning SBST combined with a school-wide commitment to inclusion ensures that learners and teachers are able to thrive.

However, research highlights significant challenges in the optimal functioning of SBSTs. This was confirmed by the 2018/19 Auditor-General's report, which found that **'78% of School Based Support Teams at full-service schools audited were not established and/or did not adequately function to ensure that inclusive education is planned, implemented, recorded and reported'**.¹⁶⁷ Some of the implementation successes and challenges are highlighted in more detail below.

Role and purpose

The role of the SBST is seen in a very limited way by SBST members, educators and school leadership alike. Unfortunately, it is most often viewed solely as the pathway for referral to a special school. This negates the principles of inclusive education and fails to recognise the SBST's responsibility for coordinating broad support for teaching and learning. This includes support for learners who are progressed from one grade to the next without meeting the requirements for that grade and who require behavioural support, and health and social support for both teachers and learners.

Composition and leadership

Where the SBST is properly constituted, committed to collaboration and led well, positive outcomes are reported. In a Western Cape study, participants reported that:

*through their service in the School Based Support Team, they establish good relationships with other educators and parents. They claimed to have established a solid team and they worked together harmoniously. Through this practise, teachers indicated that they gained a better understanding of learners' needs and they could more easily identify learner's needs and support them.*¹⁶⁸

However, many schools seem unable to establish SBSTs with the correct composition. SBSTs seldom co-opt members outside of the school who have valuable expertise to offer. One study revealed that 'school-based support teams had little to no collaborative relationships with parents and other community members'.¹⁶⁹

*'Given the complex social problems learners experience in their communities, it would be dangerous to think that educators can address these problems without the guidance and support of experts that are trained in the area.'*¹⁷⁰

In addition, where the principal does not take the lead, as required, in the establishment and oversight of the functioning of the SBST, poor outcomes result. Participants in a Gauteng study said that 'principals cannot monitor the process of teachers support because of a lack and depth of knowledge regarding inclusive education'.¹⁷¹

167. PMG (n 14).

168. B Rulwa-Mnatwana, School-Based Support Teams' Understandings and Experiences of Inclusive Education in the Western Cape (Masters thesis, UWC) (2014).

169. T Gaffney, School-Based Support Teams' Experiences of the Support That They Provide Within Their Schools (Masters thesis, Wits: 2015).

170. Rulwa-Mnatwana (n 170).

171. JM Masango, The Roles of the Principal and the SBST in Supporting Teachers Teaching Inclusive Education (Masters thesis, Pretoria: 2013).

Frequency and agenda of meetings

Most reports indicate that SBSTs meet infrequently, often only once per term. Where SBSTs meet infrequently, their capacity to fulfil their role is severely limited. Often the SBST agenda simply deals with lists of identified learners for referral to the district for placement in full-service or special schools. Individual support plans (ISP) are seldom done, as envisaged in SIAS, and where they are done, they are less likely to be reviewed regularly, as required.¹⁷²

Where SBSTs meet more regularly, or at least every two weeks, far better outcomes are experienced. SBSTs have more time to plan and review ISPs properly, plan support for progressed learners, consider teacher-training needs, and identify and consult with external support providers and specialists.

ISP CALCULATIONS IN SCHOOLS

For example, in a school of 1,000 learners, assume a low 2 per cent of learners required an individual support plan (ISP). This would mean that 20 ISPs would need to be developed by the SBST, with each one taking roughly the length of a one meeting (1–2 hours). This would require at least 20 meetings per year if all the SBST did was develop these ISPs. Thus, a quarterly, or even monthly, meeting of one SBST in a school is insufficient to perform even this single task.

Workload

Teachers who serve on the SBST are expected to carry their full teaching load as well as SBST responsibilities. This can be particularly onerous for the SBST coordinator, who is tasked to plan SBST meeting agendas and coordinate the functioning of the SBST.

Compounding this is a lack of additional staff provisioning, particularly in full-service schools, which places an additional burden on SBST members. This was highlighted by SECTION27:

[I]n the Umkhanyakude District the failure to provide full-service schools with any additional educator staff to accommodate the fact that they cater for many learners with barriers to learning places further strain on teachers who are members of SBSTs.¹⁷⁴

*'It was evident that participating school-based support team members felt overwhelmed by the number of responsibilities they had in their daily job commitments.'*¹⁷³

The high number of referrals, and consequently increased workload for the SBST, is exacerbated by the fact that teachers often do not follow the SIAS procedures before referring learners to the SBST.

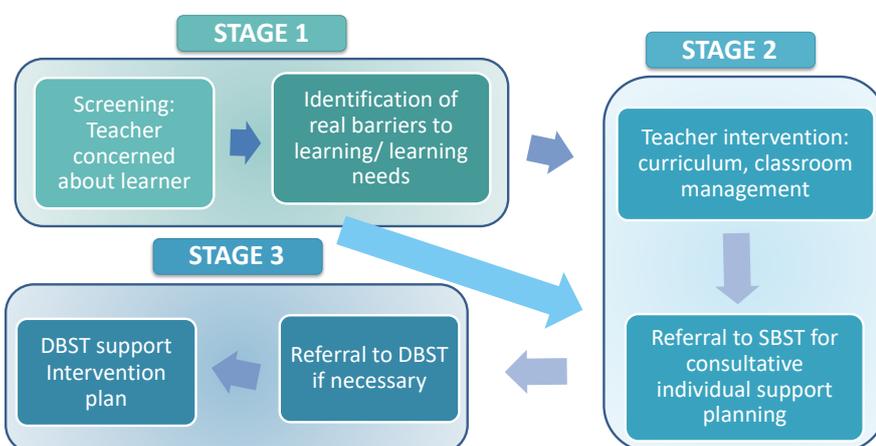


Figure 7: SIAS process of identification and support for learners

Source: Inclusive Education South Africa – The process for individual support planning as envisaged by SIAS

172. EELC interviews with SBST members in Western Cape schools (2020); see also SECTION27 (2016) (n 137).

173. Gaffney (n 171).

174. SECTION27 (n 137).

Rulwa-Mnatwana concludes as follows:

In terms of the increase in numbers that are referred to the School Based Support Teams, educators should be encouraged to address problems in their own classrooms and provide evidence of the intervention strategies they have employed. It is also recommended that School Based Support Teams in collaboration with District Support Teams must organise training sessions to address the needs of the educators and to build their capacities.¹⁷⁵

Skills and knowledge

It is self-evident that in order to function successfully as a member of the SBST, the educator needs an appropriate and sufficient skills base. A lack of training has been cited repeatedly as an obstacle to effective SBST functioning. The Western Cape study found that '[s]ome participants claimed that they were not adequately trained to implement IE [inclusive education]; as a result, they lacked the skills and knowledge of how to fully implement IE'.¹⁷⁶ This was confirmed by the 2018/19 Auditor-General's report, which showed that 51 per cent of SBST's and educators at full-service schools did not receive adequate full-service school and inclusive education training.

Skills development should include training specifically related to serving on an SBST, to inclusive pedagogy and to community outreach.

Support from the DBST

Many SBSTs feel unsupported by the DBST, resulting in high levels of frustration.¹⁷⁷ This seems to indicate, as shown above, that the DBST itself lacks the appropriate skills, knowledge and resources to support the SBST fully. Visits from the DBST can be infrequent, at times only once per year, resulting in the SBST's feeling unsupported and isolated.

Inconsistent in-service training of teachers and the SBST, along with unavailability of specialist support and other resources essential for inclusion and support of learners experiencing barriers to learning, impacts negatively on the SBST's ability to perform.

Monitoring and accountability

As revealed above in the 2018/19 Auditor-General's report, the vast majority of the audited full-service schools did not have functioning SBSTs. It is of particular concern given that full-service schools would be assumed to take the lead in this area. This raises serious questions about the functioning of SBSTs at ordinary primary and high schools. Unfortunately, no data is collected to monitor the **effective functioning** of SBSTs – the only data collected is on the **number of SBSTs that have been established at schools**. The lack of adequate reporting data makes monitoring, accountability and evaluation particularly difficult.

Even though all schools should have an SBST, there are fewer SBSTs reported in high schools than in primary schools. Considering the high dropout rate in high schools, the need for coordinated school-based support in high schools is equally as urgent.

The following quote from the Western Cape study conducted by Rulwa-Mnatwana provides an appropriate conclusion to this section of the report:

The School Based Support Teams' positive experiences suggest that they can make a difference in schools if appropriate support and continuing professional development are provided. The findings also revealed challenges that cannot be ignored if these teams are to provide effective support to learners and educators. The Education White Paper 6 (Department of Education, 2001) assumes that educators who serve in the School Based Support Teams would have expertise in learning support and counselling, however, the lived realities in the study reveal that educators in both contexts do not have the capacity to perform the stipulated functions.¹⁷⁸

175. Rulwa-Mnatwana (n 170).
176. Ibid.
177. Gaffney (n 171).
178. Rulwa-Mnatwana (n 170).

3.7 A national inclusive education advocacy and information programme

White Paper 6 acknowledges that public awareness, acceptance of inclusion, uncovering of negative stereotypes, advocating for unconditional acceptance, and winning support for the policies put forward in the White Paper are essential for the establishment of an inclusive education system. Therefore, **White Paper 6 prioritises the implementation of a national advocacy and information programme in support of the inclusion model.**¹⁷⁹

The advocacy programme or campaign had the short-term goal of communicating the policy proposals contained within White Paper 6, including the rights, responsibilities and obligations attached to the proposals. National actors and role-players such as learning institutions, parents and local communities were to be targeted. This was undoubtedly an important goal. If successfully implemented, an advocacy campaign which wins support for inclusive education not only ensures that duty-bearers have the knowledge, understanding and buy-in to comply with their obligations, but also lays the foundation for the transformation of the education system into an inclusive one.

However, there is little evidence to show that an advocacy campaign was developed or implemented. In their paper entitled, 'The challenges of realising inclusive education in South Africa', Bornman and Donohue reference a 2009 study conducted in KwaZulu-Natal which found no evidence of the programme having been employed in any way. The study further revealed that no formal guidelines for the execution of the information and advocacy programme even exist.¹⁸⁰

Whether or not a campaign was rolled out to some extent prior to 2003 (the deadline for the achievement of this goal as set out in the implementation plan of White Paper 6), what is clear is that it did not achieve its stated goal of ensuring a common understanding of the aims of transforming the education system into an inclusive one. This is evident from the DBE's repeated calls for the need for additional advocacy. The 2015 Report of the Implementation of Education White Paper 6 notes that various advocacy strategies still need to be developed and ends by stating that 'there needs to be a change in attitudes across the system and a commitment to moving towards an inclusive education system. This can only be achieved through large scale training and advocacy and monitoring impact of training.'¹⁸¹

The 2019 DBE progress report to Parliament on the status of education similarly does not report any progress. It states that misalignments persist in the understanding of inclusive education. The action pinpointed to remedy this was to 'develop and implement a rigorous information and advocacy programme on inclusive education as a mechanism for ensuring Education for All'.¹⁸² This sentiment was echoed in a September 2021 DBE report to stakeholders on the status of inclusive education.¹⁸³ **Thus, by 2021, at the end of the implementation plan of White Paper 6, one of its first key strategies, intended to be completed by 2003, had not been achieved.**

3.8 Funding an inclusive education system

Chapter 3 of White Paper 6 sets out the funding strategy to adequately resource successful implementation of inclusive education. The ultimate goal of White Paper 6 is to create an inclusive education system where 'educational provision for learners with special needs is largely integrated over time into what are currently considered to be "ordinary schools"'. It follows, therefore, that the funding strategy would shift resource allocation from special education to ordinary schools. White Paper 6 acknowledges the need for this, stating that 'the current system of provision is both cost-ineffective and excludes individuals with barriers to learning from the mainstream of educational provision'.¹⁸⁴

179. Education White Paper 6 (n 13) p. 23.

180. Donohue & Bornman (n 49) p. 11.

181. DBE (2016) (n 108) p. 73.

182. DBE report to Parliament (2021) (n 16) slide 123.

183. DBE presentation to stakeholders on the status of inclusive education (September 2021) slide 84.

184. Education White Paper 6 (n 13) p. 38.

White Paper 6 outlined conditional grants, reallocations in provincial budgets (including a revision of the current post-establishment model), and donor funds as the means by which inclusive education could be funded. The **SIAS Policy reiterated the need for adequate funding, including the finalisation of norms for funding inclusive education.** The chapter in this report dealing with funding will analyse in detail the extent to which this has been achieved. **The fact that, after 20 years, a comprehensive funding model is not in place is one of the most significant impediments to the implementation of inclusive education.** Perhaps Bornman and Donohue's suggestion that this could be intentional is worth considering. They state:

'The current system of provision is both cost-ineffective and excludes individuals with barriers to learning from the mainstream of educational provision'

It is difficult to envisage how significant transformations to the educational system in South Africa (e.g. mobilisation of out-of-school children with disabilities; infrastructure changes to schools) can be made without providing provincial departments with substantial increases in their short-term funding to help take these necessary first steps (Stofile, 2008; Wildeman & Nomdo, 2007). This ambiguity in financial means and departmental responsibilities may be intentional. Jansen (2001) suggests that some South African policies are enacted for their political symbolism rather than their practicality; thus, vague policies often get passed but no one is held accountable for their implementation.¹⁸⁵

3.9 Timeframes: 20-year implementation plan

The right to basic education, as articulated in section 29 of the Constitution of South Africa, is unqualified and immediately realisable. It is not subject to the same limitations as are other socio-economic rights, such as 'reasonable legislative measures', nor does it depend on the availability of resources. This means the right is unqualified, provides 'an immediate entitlement to its fulfilment', and children have an immediate claim against the state for the provision of basic education.¹⁸⁶ Juma Musjid Primary School v Essay NO 2011 8 BCLR 761 (CC) at para 37.

It is debatable whether the 20-year period for the implementation of White Paper 6 was realistic, unnecessarily long, or tantamount to a violation of the right to education for thousands of children who remain out of school. What is evident, however, is that for the most part the goals set out in White Paper 6 were not achieved in this 20-year period (see Table XX). In most cases there have been only incremental gains, while in some cases the goals themselves have become outdated.

With no regular short-term reviews having been built into the plan, no adequate assessment of implementation was made. In addition, the implementation plan necessitated strategies that took place in sequence. Without each phase being completed and evaluated, moving on to the next stage was premature and high-risk.

This has obstructed the systemic transformation of our education system as envisaged in White Paper 6, and has had tragic implications for thousands of children who should have been included and supported in our schools. For these learners, their immediately realisable right to education has been denied.

4. Accessible curricula, LTSM, assistive devices and technology

'One of the most significant barriers to learning for learners in special and "ordinary" schools is the curriculum. In this case, barriers to learning arise from different aspects of the curriculum, such as:

- The content (i.e. what is taught).
- The language or medium of instruction.
- How the classroom or lecture is organised and managed.
- The methods and processes used in teaching.

^{185.} Donohue & Bornman (n 49).

- The pace of teaching and the time available to complete the curriculum.
- The learning materials and equipment that is used.
- How learning is assessed.

The most important way of addressing barriers arising from the curriculum is to make sure that the process of learning and teaching is **flexible enough to accommodate different learning needs and styles**. The curriculum must therefore be made more flexible across all bands of education so that it is accessible to all learners, irrespective of their learning needs.¹⁸⁷

What was true 20 years ago remains one of the core tenets of an inclusive education system – a **flexible and adaptable curriculum** to ensure all children can learn. Whilst this report does not delve into detail about LTSM requirements for learners with different disabilities, we do make some brief comments here about developments relating to curriculum adaptation and the availability of LTSM and assistive devices and technology to support teaching and learning. Despite a slow start, the last decade has seen significant progress being made in the development of adapted curricula, with modifications made to CAPS and guidance provided to teachers on how to teach in an inclusive classroom.

Most notable are the following:

- » The South African Sign Language Curriculum
- » Differentiated CAPS Grade R-5 For Learners with Severe Intellectual Disability
- » Learning Programme for Children with Severe to Profound Intellectual Disability (Draft)
- » Technical Occupational Curriculum (School of skills) for 22 technical occupational subjects (pilot)
- » Guidelines for responding to learner diversity in the classroom through curriculum and assessment policy statements (2011).

The three-stream model

The technical occupational stream is being offered as part of the DBE's piloted Three-Stream Model. The objective is to offer learners alternative learning pathways apart from a purely academic route, as illustrated in Figure 8.

The technical occupational stream has been implemented primarily in Schools of Skills (SOS). Learners exit SOS after four years (at 18 years of age) with an NQF Level 1 or General Education Certificate (GEC). The GEC school-leaving qualification was gazetted for public comment in 2021 and is awaiting finalisation and approval through SAQA.

Teacher guides and workbooks are being finalised for all technical occupational subjects. The DBE has acknowledged the challenges facing the implementation of this model, most notably the lack of qualified teachers to teach these subjects and the lack of funding to equip schools with the workshops and materials to offer them.

FRAMEWORK FOR ARTICULATION

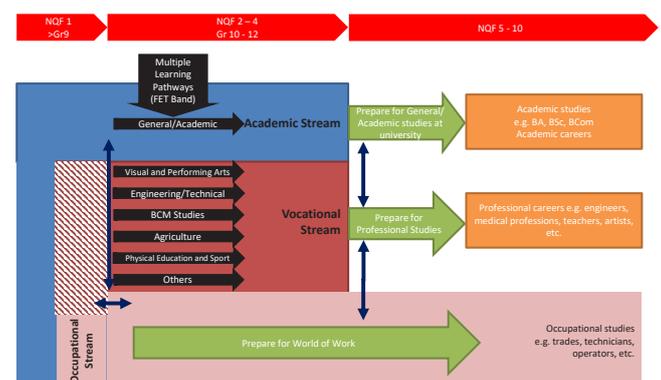


Figure 8: Framework for articulation

Source: DBE presentation to the Portfolio Committee on Basic Education (17 November 2020) slide 55

The situation with regard to the availability of **adequate and appropriate LTSM, assistive devices and technology** remains problematic. The draft guidelines for resourcing inclusive education includes an extensive list of ‘Assistive Devices for Reasonable Accommodation’ as Annexure 1. This list provides a useful guide to schools and districts of the range of assistive devices and technology which can be used to support teaching and learning across all disabilities. However, without adequate funding for reasonable accommodation, ordinary schools simply do not provide these unless at the expense of the parent. This is despite the fact that special school resource centres and district offices are mandated to assist.

South African National Council for the Blind v Minister of Basic Education

After years of advocacy to ensure the provision of braille textbooks to visually impaired learners in South African schools, the South African National Council for the Blind, the National Braille Authority, and the school governing bodies of schools for visually impaired learners, represented by SECTION27, initiated litigation against the DBE. A settlement agreement was eventually reached in 2017 and made an order of court.

The court order declared that the non-delivery of textbooks was a violation of blind learners’ rights to basic education, equality and dignity. A structural interdict, as part of the order, compelled the DBE and PEDs to create a sustainable plan for the production and delivery of braille textbooks.

The availability of textbooks for blind learners has improved as a result of the court order.

5. The Screening, Identification, Assessment and Support Policy

The DBE’s revised SIAS Policy was adopted in December 2014. Its purpose is to provide a ‘policy framework for the standardisation of the procedures to identify, assess and provide programmes for all learners who require additional support to enhance their participation and inclusion in school’.¹⁸⁸

The policy was born out of a recognition of the fact that ‘not all learners who experience barriers to learning, including those with disabilities, have access to appropriate support’. In view of this, SIAS is intended to ‘ensure a more rigorous and consistent process of practice in terms of admission, support and funding’.¹⁸⁹ The SIAS Policy applies to all schools in South Africa, that is, to both ordinary as well as special schools.

For more detail on the SIAS Policy, see Chapter C: An Overview of the Current Regulatory Framework

SIAS reinforces the important shift in thinking introduced in White Paper 6 away from the focus on deficits within the child to a human rights-based approach that acknowledges the attitudinal, societal and environmental barriers that hinder effective inclusion and learning.

5.1. Assessment of the SIAS Policy

Overall, the SIAS Policy is progressive and clearly articulates the inclusive rationale and principles that underpin it and their basis in national and international law. It sets out processes to guide the identification, assessment and support of individual learners, processes which can be applied in all school settings with support from district structures. It envisages system-wide application, which is critical for the transformation of the education system into an inclusive system.

188. SIAS, p. 10.

189. *Ibid.*, p. 12.

In addition to the Support Needs Assessment Forms, the SIAS Policy details important information describing the processes to be implemented, the level and nature of support provision, its resourcing and implementation implications, and the role and functions of different role-players. The SIAS Policy recognises the undisputable requirement of an appropriate funding model to ensure implementation.

SIAS NOTES THAT BARRIERS TO LEARNING AND DEVELOPMENT MAY INCLUDE:

- *factors that place learners at risk, for example, physical, emotional and sexual abuse, and political violence;*
- *HIV and AIDS and other chronic health conditions;*
- *attitudes;*
- *language and communication;*
- *inaccessible and unsafe structural environments;*
- *lack of parental recognition and involvement;*
- *disability;*
- *lack of human resource development strategies; and*
- *unavailability of accessible learning and teaching support materials and assistive technology.*

The implementation plan in SIAS set a target of strengthening 300 special schools as resource centres by 2019. As noted above, this has not been achieved. The reason these targets were set is because they are deemed to be prerequisite for a functioning inclusive education system. Without the necessary funding, support structures, skills and competence of educators, and specialised services at district level, the system does not function as it should to provide support to children who need it. Without adequate support, learners are, in turn, not able to participate meaningfully and achieve success in an inclusive education system.

SIAS assumes, as should be the case, that a learner is placed in a school first and then the process of identification and assessment of support needs can take place. However, as we have shown above, many learners are refused admission to ordinary schools based on their disability or particular learning need before any assessment is done by the school to consider whether support can reasonably be provided by the school or district.

It is unfortunate that many schools and teachers still view SIAS as a process for referring 'difficult-to-teach' learners, or learners experiencing barriers to learning, out of their school

5.2 Implementation of the SIAS Policy

The first phase of the five-year plan for implementing SIAS (2015–2016) stipulated the finalisation of funding and post-provisioning norms. As with funding under White Paper 6, this has not happened. The persistent lack of funding for the implementation of inclusive education in general and SIAS in particular is one of the most significant barriers to the effective implementation of inclusive education. Implementation without funding is simply not possible. It is also hindering the right to inclusive, equitable and quality education for hundreds of thousands of learners who require support in order to learn on an equal basis with their peers. More will be said about the funding of inclusive education in the chapter of this report dedicated to it.

The reason that the SIAS implementation plan prioritises the training of teachers is that, in order to implement the SIAS Policy effectively, it presupposes skilled educators who are able to differentiate the curriculum, assessment procedure and classroom environment to accommodate the diverse needs of learners. Without a basic level of inclusive pedagogical skill, implementation is challenging, especially given the limitations of educators' skill and knowledge in inclusive teaching (dealt with above). In this regard, the targets for teacher training set in the implementation plan have not been met, according to the DBE's latest reports.¹⁹⁰

'Inclusive education is not something which has to happen in addition to education transformation in South Africa. It is the means through which education transformation will be achieved'

– Tony Booth

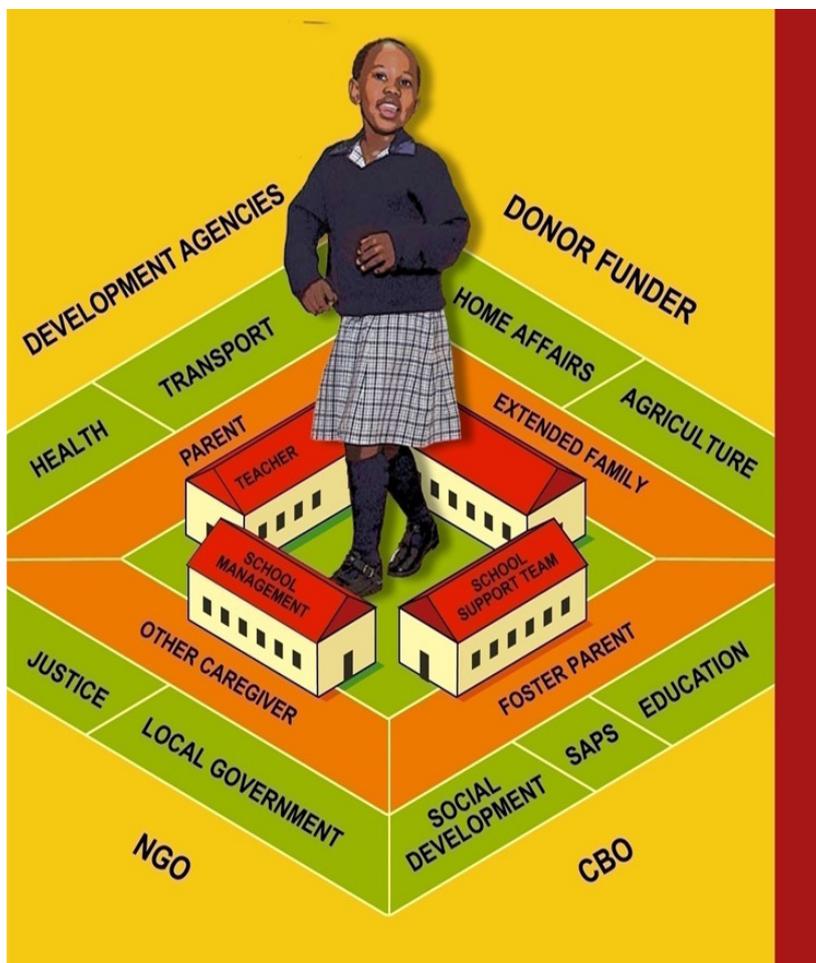
'It is unfortunate that many schools and teachers still view SIAS as a process for referring 'difficult-to-teach' learners, or learners experiencing barriers to learning, out of their school to a special school, rather than as a tool to coordinate support provision across a wide range of support needs.'

190. DBE report to Parliament (2021) (n 16).

to a special school, rather than as a tool to coordinate support provision across a wide range of support needs, including, for example, teacher training or counselling support for trauma. SIAS is viewed through the lens of an outdated medical model as a means to identify deficits within learners and refer such learners to a special school. The EELC has seldom seen individual support plans being developed for individual learners, nor have we seen records of in-classroom intervention plans from teachers before referring learners to the SBST. (It should be noted that there is a gap in SIAS in SNA 1 where no space is provided for a teacher to record the in-class intervention plan.)

It is the EELC's view that the SIAS Policy is an important policy guiding the practical realisation of an inclusive education system but that is not adequately implemented in the way it was intended. Implementation is also hindered by a lack of funding. As such, it is a missed opportunity for system-wide progress towards greater inclusion in our ordinary schools.

6. Care and Support for Teaching and Learning Framework



The Care and Support for Teaching and Learning Framework (CSTL) is a guiding and coordinating framework for the provision of support within schools. As previously noted, the vision of the CSTL Framework is that schools become inclusive centres of learning, care and support in order to ensure that all children, especially the most vulnerable, access quality education. CSTL is not a programme in and of itself; rather, it provides the overarching framework for schools to become hubs for the provision of care and support.

CSTL builds on existing initiatives such as the National School Nutrition Programme and the HIV and AIDS Life Skills Education Programme. It is to be used by a wide range of stakeholders, and offers a comprehensive, coordinated, multisectoral response to barriers to teaching and learning, including barriers such as poverty, mental health-related issues, ill health, nutrition and disability.

CSTL's 10 priority areas take into holistic account all aspects of a learner's home and

Figure 9: The Conceptual Framework of the Care and Support for Teaching and Learning Programme

Source: Department of Basic Education Handbook for the provision of an Integrated Package of Care and Support for Learners in South African Schools, 2014.

school environment (see Chapter C of this report). The CSTL introduces the National Support Pack, which is intended to operationalise the CSTL vision. It outlines the responsibilities of governmental, school and other stakeholders in relation to the priorities, and recommends the establishment of task teams at national and provincial level to facilitate implementation of the framework. Importantly, SBSTs and DBSTs are the responsible structures that form part of the local level of support provision.

Conceptually, the CTSL Framework is excellent. At its core, it is based on the recognition that certain vulnerable groups – children living in poverty, black children, children with disabilities, refugee, asylum-seeker and unaccompanied non-national children, girl children, and orphaned or abandoned children – face a higher risk of exclusion from education than other children. CSTL outlines the duty of schools and other stakeholders to mitigate against the health, social and other barriers vulnerable children face. The CSTL Framework supports children to learn optimally, reach their full potential, and break out of cycles of poverty. The aims of the CSTL Framework align with those of SIAS and White Paper 6, namely to overcome systemic barriers in order to support the full range of learning needs. This is important, considering the confusion that arises as a result of disjuncture between policies or statutes.

'The schooling system cannot pretend that its job is purely to teach because we are not teaching machines – we are teaching children who have to be cared for and supported in order for them to succeed.'
– Provincial education official (2010)

Whilst CSTL's conceptualisation is strong, it is a pity that there is little evidence of general systemic uptake. There is no system-wide acceptance of the value of the framework and its relevance across the entire system.

It should also be noted that whilst inclusion principles are at the heart of the CSTL Framework, responsibility for the Framework's implementation resides with the Social Cohesion Directorate as opposed to the Inclusive Education Directorate. The primary responsibility of the Inclusive Education Directorate remains that of special education, thus reinforcing the false perception that inclusive education is only about learners with disabilities. Inclusive education should be seen correctly as a much broader concept that applies to the way the entire education system is organised.

7. Integrated School Health Programme

The Integrated School Health Programme (ISHP) (2012) was developed to address the health needs of learners. The ISHP recognises the health barriers that children in South Africa face, such as poverty-related illness, various epidemics, and the mental-health impact of community and domestic violence. It aims to build on and strengthen existing school health services, and is, accordingly, implemented within the CSTL Framework and in tandem with related policies such as the National School Nutrition Programme and SIAS.

The ISHP's vision is the optimal health of learners and its goal is to address health-related barriers to learning so as to improve educational outcomes.¹⁹¹ It outlines what school health packages should contain as a minimum. These include:

- health education and promotion;
- learner assessment and screening;
- provision of onsite services;
- follow-up and referral where services cannot be provided at school;
- coordination and partnership with the health sector; and
- community and learner participation.

191. DOH, Integrated School Health Policy p. 10.

The ISHP also allocates roles and responsibilities. Importantly, it is the DBST that coordinates the ISHP at district level and the SBST implements the ISHP at school level. The SBST, acting in this capacity, must ensure that all components of the ISHP package are provided to all learners, manage any equipment provided to the school as part of the ISHP, and collect data on the ISHP as part of the monitoring and evaluation plan. In addition, the role of the SBST includes developing a schedule for learner assessments, managing the distribution and preparation of consent and assent forms and Road to Health Cards, and providing ongoing support to learners with long-term health conditions.¹⁹²

Furthermore, the ISHP recognises the value of interdepartmental responsibility in delivering targeted health interventions and removing health-related barriers to education. In this respect, it aligns with White Paper 6, CSTL and SIAS, which states that it 'is closely aligned to the Integrated School Health Policy to establish a seamless system of early identification and effective intervention to minimise learning breakdown and potential dropout'.¹⁹³

However, **interdepartmental collaboration has proven to be particularly challenging** in the South African context. There is evidence that the Integrated School Health Teams are failing due to lack of collaboration with the schooling system. Moreover, reports indicate very low screening coverage in schools across South Africa. In 2017, only 33 per cent of Grade 1s nationally were screened. There has also been significant provincial variance in these reported numbers, with the Western Cape at a high of 46 per cent and the Northern Cape with a low of 11 per cent.¹⁹⁴

8. Domestication of international law

In its concluding observations in 2018, the CRPD recommended that South Africa:

Enact legislation giving full effect to the right to inclusive education for all children with disabilities, as outlined in the recommendations of the Committee on the Rights of the Child (CRC/C/ZAF/CO/2, paras. 43–45), review the Education White Paper 6 — Special Needs Education: Building an Inclusive Education and Training System (2001) with a view to further developing a legal and policy framework for inclusive education, and the inclusion of children with disabilities into mainstream schools.

The South African Law Reform Commission (SALRC) has been tasked with investigating the domestication of the CRPD. An issue paper was produced and circulated for public comment in May 2021. This will assist in adopting legislation that protects the rights of persons with disabilities, including the right to inclusive education for children with disabilities, but because the CRPD focuses exclusively on the rights of persons with disabilities, further legislation is necessary to ensure the protection of all marginalised or vulnerable learners to access an inclusive education. Only when *all* children's rights to an inclusive education are protected will South Africa be giving effect to its obligations under international and regional instruments. It is the view of the EELC that in its current form the Schools Act does not adequately do this (see further analysis of the Schools Act above).

192. Ibid, p. 19.

193. SIAS, p. 10.

194. District Health Information System, reported in the District Health Barometer 2017/18.

9. Conclusion

The analysis presented in this chapter has revealed that the 20-year goal of establishing an inclusive education system in South Africa has not been achieved. This is further demonstrated in the table below, which summarises the targets set in both White Paper 6 and SIAS and indicates whether they have been achieved.

Like Donohue and Bornman, we assert that this is due in large part to gaps, inconsistencies, vagueness and fragmentation in the regulatory framework itself:

Although there are many school-level and cultural barriers to inclusion, the major factor hindering the implementation of inclusive policy is the lack of clarity (ambiguity) in Education White Paper 6 (Department of Education, 2001) regarding the means through which schools can meet the goals of inclusive education. It is not clear whether this ambiguity is intentional, but it has undoubtedly led to inaction by the stakeholders involved.¹⁹⁵

Poor policies in turn make for poor implementation, and this chapter has highlighted the many instances where this has proven to be the case. Throughout this chapter, the need for funding for inclusive education has been highlighted as a critical reason for the lack of progress made. This is supported by the views of Donohue and Bornman:

[W]e argue ... that the primary explanation for the lack of any significant movement on inclusive policy is the apparent lack of clarity in the policy, as well as issues pertaining to the poor implementation of this policy. This is reflected in the inadequate funding provided by the South African Department of Education to the provincial education departments, as well as the vague guidelines and ambiguous incentives and directives they provide to educators.¹⁹⁶

Given the significance of the lack of an adequate funding model for ensuring implementation, the next chapter will focus on the issue of funding for inclusive education.

The Constitution guarantees the right of everyone to an equitable and inclusive education system. The legislation and policy framework that gives effect to this right is fragmented and does not translate into clear rights-based entitlements for the affected learners. White Paper 6 and the current regulatory framework have been insufficient for systemic transformation of the education system into an inclusive system. Outdated laws and policies urgently need to be reviewed to ensure that it gives effect to the constitutional right. Specific recommendations regarding the review of the regulatory framework are made in Chapter F.

195. Donohue & Bornman (n 49) p. 6.
196. Ibid, p. 3.
197. Baseline Country Report (n 111) p. 42.

Table 2: Summary of achievement of implementation targets in Education White Paper 6 and SIAS

TIMEFRAMES	POLICY	TARGET	ACHIEVED Y/N	COMMENTS
2001–2003	WP6	National advocacy and education programme	To some extent	In view of the repeated call for advocacy, it is clear this campaign did not achieve its purpose
2001–2003	WP6	Outreach programme to mobilise out-of-school children	No	The numbers of out-of-school children in fact have increased
2001–2003	WP6	Audit of special schools	Yes	Audit revealed '135 special schools badly neglected and dysfunctional ... a high incidence of learner abuse, buildings falling apart, ineffective teaching and little learning, no appropriate and meaningful support to learners' ¹⁹⁷
2001–2003	WP6	Orientation and introduction of staff, SGB and management to inclusive model	No	Whilst some members of staff and management have received this orientation, evidence suggests SGBs have not
2001–2003	WP6	Early identification and addressing of barriers to learning in foundation phase	No available data	It is not evident whether this has ever been monitored adequately
2004–2008	WP6	Transforming further and higher education institutions to recognise and address the needs of disabled learners		Report limited to analysis of basic education sector
2004–2008	WP6	Mobilisation of out-of-school disabled children and youth	No	The numbers of out-of-school children in fact have increased
2009–2021	WP6	Reach target of 380 special schools/ resource centres,	No	Only 142 special schools converted to SSRC
		500 full-service schools and	Yes (qualified)	848 designated FSS but Auditor-General's report indicates a high percentage are dysfunctional
		280,000 out-of-school children and youth placed	No	
2015–2016	SIAS	Establish SBSTs and DBSTs in all 86 districts, all special schools and 2000 full-service schools	To some extent	
2015–2016	SIAS	Consultation and collaboration with other government departments	To some extent	Challenges highlighted in report relating to the lack of interdepartmental collaboration
2015–2016	SIAS	Consultation with disability and children's rights stakeholders	Yes	

TIMEFRAMES	POLICY	TARGET	ACHIEVED Y/N	COMMENTS
2015–2016	SIAS	Advocacy and information campaigns	No	Still indicated as a need in 2021
2015–2016	SIAS	Finalisation of funding and post-provisioning norms	No	Guidelines only developed in 2018 and still awaiting finalisation
2015–2016	SIAS	Alignment of policy with integrated school health policy	To some extent	Implementation challenges reported
2015–2016	SIAS	Assessment of foundation-phase learners in full-service schools and of all learners in special schools	Inconclusive	No available data
2015–2016	SIAS	Inclusion of SIAS content in all initial teacher-education programmes	No	An EU-funded programme in 2016–2019 did go some way to achieve this, albeit after the targeted timeframes
2016–2017	SIAS	Monitoring establishment and functionality of SBSTs and DBSTs	No	Number of SBSTs monitored but not their functioning
2016–2018	SIAS	Expanding assistive devices, educational assistive devices resource centres	No	Only incremental gains made and largely in response to court orders
2017–2018	SIAS	Assessment of all learners admitted to special and full-service schools through the SIAS	No	Large provincial variance
2018–2019	SIAS	Monitoring the functioning of SBSTs and DBSTs	No	SBSTs are monitored only to the extent that they do exist but not in terms of their functioning
2015–2019	SIAS	Strengthening a total of 300 special schools as resource centres	No	Most recent data indicates only 142 special Schools converted to SSRC in total
2018–2019	SIAS	Expanding assistive devices and specialised equipment loan centres in provinces and districts	To some extent	Incremental gains made in some provinces; in most provinces the provision of assistive devices and specialised equipment is reported to be insufficient
2015–2019	SIAS	Training a total of 60,000 members of SBSTs in 15,000 ordinary schools	No	Most recent data indicates a total of only 26,674 teachers trained in SIAS
2016–2019	SIAS	Further expanding support services	To some extent	Hampered by lack of funding to resource district and circuit teams
2016–2019	SIAS	Provide outreach services to all schools	No	

Chapter E:

Funding of Inclusive Education in South Africa between 2001 and 2021

1. Introduction

The purpose of this chapter is to review of current and proposed funding of inclusive education in South Africa.

The chapter thus aims to:

- explain the budget channels and budgetary processes through which education funding flows (from national to provinces, and within provinces) and how these relate to inclusive education (section 3);
- estimate what South Africa is spending currently on inclusive education and discuss the continued prioritisation of special schools within the Programme 4 budget (section 4);
- review current funding policies for inclusive education in South Africa (section 5);
- identify the major funding models for inclusive education used successfully in other parts of the world, describe the incentive and disincentive effects, and assess the relevance of each model in the South African context (section 6);
- review proposed funding models of inclusive education in South Africa, taking into account their appropriateness, adequacy and deficits on the basis of recommendations in the literature (sections 7, 8 and 9); and
- make recommendations on reforms to the funding of inclusive education in South Africa, given the current fiscal constraints, implementation capability and performance of the basic education sector (section 10).

This study evaluates the funding of public-sector basic education (Grade R to 12). As with the rest of the report, the chapter takes a broad view of inclusive education, but without losing focus on children with disabilities as a particularly marginalised group within the education system. However, the strong focus of current funding on learners with disabilities may appear to give the review a narrow disability focus. That is not the intention. Policies in South Africa recognise, that for some learners, attendance at a special school might be in the child's best interest and that special schools will thus remain in place for those needing 'high-intensity and high-frequency support'.¹⁹⁸ This position is accepted as appropriate in this funding review. Special school funding must be sufficient to enable such schools to fulfil their expanded role as resource centres.

The data sources used, and methods followed, in assembling this review are discussed briefly in the next section.

198. DBE, National Guidelines for Resourcing an Inclusive Education System (Draft) (2018) p. 60.

2. Methodology

In estimating the total spend on inclusive education, this study replicates the approach taken by a previous study in 2015,¹⁹⁹ seeing as the funding of inclusive education has changed little since the year of that study. Budlender's 2015 findings were updated, however, using the Estimates of National Expenditure 2020 and Provincial Estimates of Revenue and Expenditure 2019/20 and 2020/21 (downloaded from Vulekamali). We also drew substantially from a review of funding for inclusive education conducted by the Fiscal and Financial Commission in 2020 as part of a submission it made to Treasury for the latter's preparation of the 2021/2022 national budget. In addition, we drew on informal discussion with staff from the Learners with Severe and Profound Intellectual Disability (LSPID) Programme at the DBE.

In reviewing current funding models, we focused on describing the 1998 Post-Provisioning Norms (PPN) and show that these remained unchanged until 2018. The recommended PPN and School Funding Norms in the 2018 Guidelines on Funding Inclusive Education are discussed, although we believe an updated version of these Guidelines is likely to be made public soon. An analysis of spending on learner transport and the Integrated School Health Programme has not been included, but these do need to be factored in since both of them impact on inclusive education.

Furthermore, a review was conducted of international literature on funding models for inclusive education. The literature review sought to identify the main kinds of funding systems that are used worldwide and the extent to which each system incentivises or disincentivises inclusion in ordinary schools. The review was conducted critically, with consideration constantly given to the relevance of the findings to the South African context and education system.

3. Budgetary channels and processes in basic education

In 2019, 6.5 per cent of South Africa's gross domestic product (GDP) was spent on education. This level of total funding to education exceeds the 4 to 6 per cent allocation recommended by the Education 2030 Framework for Action, and is commendable. Basic Education is funded using a decentralised model in which most spending decisions are made by the nine provinces. The DBE's centralised functions include curriculum, policy, support and monitoring, planning, information and assessment, and education enrichment services (including the National School Nutrition Programme).

3.1 Funding to provinces via the provincial equitable share

The main mechanism by which education budgets are allocated from national to provincial education departments is the provincial equitable share (PES). The PES is based on a formula is made up of six components, including the number of children aged 5 to 17 years, and the number enrolled in public ordinary schools in each province.²⁰⁰

COMPONENT	WEIGHTING	INDICATORS
Education	0.48	Size of school-aged population (5–17 years old); number of Grade R–12 learners enrolled in public ordinary schools
Health	0.27	Number of uninsured people in province (no medical insurance) Average number of visits to primary health-care clinics (DHIS)
Basic	0.16	Share of national population
Institutional	0.05	Equally shared across nine provinces
Poverty	0.09	Proportion of households in the province considered poor (in lowest 40% of household income nationally)
Economic output	0.01	Regional GDP

Source: EL Roos, 'Provincial equitable share allocations in South Africa' CoPS Working Paper No. G-298 (March 2020)

199. Budlender (n 125).

200. Financial and Fiscal Commission (n 10) pp. 84–86.

The PES is driven largely by the size of the population in each province. It includes some components intended to redistribute revenue between provinces to achieve greater equity between provincial outcomes (the size of the population not covered by medical insurance, and provincial poverty levels).²⁰¹

Table 3: Components of provincial equitable share

COMPONENT	WEIGHTING	INDICATORS
Education	0.48	Size of school-aged population (5–17 years old); number of Grade R–12 learners enrolled in public ordinary schools
Health	0.27	Number of uninsured people in province (no medical insurance) Average number of visits to primary health-care clinics (DHIS)
Basic	0.16	Share of national population
Institutional	0.05	Equally shared across nine provinces
Poverty	0.09	Proportion of households in the province considered poor (in lowest 40% of household income nationally)
Economic output	0.01	Regional GDP

Source: EL Roos, 'Provincial equitable share allocations in South Africa' CoPS Working Paper No. G-298 (March 2020)

In making allocations between departments, provinces largely use historical budgeting (making small adjustments to the previous year's budget) rather than budgeting from the bottom-up based on priorities in the province in the current period. This favours the status quo in budgeting processes. However, its impact on inclusive education, as will be shown below, favours continued funding to special schools over new funding for inclusive reforms.

3.2 Post-Provisioning Norms

Once funds reach the provincial Departments of Education (PEDs), the distribution of staffing between schools is determined by the PPN. Since teacher salaries make up approximately 79 per cent of the basic education budget,²⁰² the PPN is the most important tool in budget allocation within basic education.

Since 1998, the PPN has been used to determine the total number of posts allocated to a school, based on the weighted number of learners in that school. In ordinary schools, the weighted learner number is determined by a formula that takes quintile, grades offered at the school, and subjects offered (in Grades 10–12) into account.²⁰³ In special schools, learners are weighted according to the disability weightings shown in Table 4.²⁰⁴ Education therapists are allocated via a different process, one also determined by diagnosis of the learners enrolled in a special school. The norms for allocation of education therapists are determined by the ratios shown in the final column of Table 4.

LEARNER DISABILITY DOMAINS	LEARNER WEIGHT	NO. OF EDUCATION THERAPISTS PER LEARNER
Physically disabled	4	0.040
Blind		
Partially sighted	5	0.010
Deaf		
Hard of hearing	5	0.010
Severely mentally handicapped	3	0.010
Specifically learning disabled	3	0.033
Epileptic	3	0.020
Cerebral palsied	4	0.050
Severe behavioural problems	4	.
Autistic	6	0.033

Sources: Post-Provisioning Norms (1998) and Education therapist norms: Personnel Administrative Measures, 2003

201. EL Roos, 'Provincial equitable share allocations in South Africa' CoPS Working Paper No. G-298 (March 2020).

202. N Spaull, A Lilenstein & D Carel, 'The race between teacher wages and the budget: The case of South Africa 2008–2018' Research on Socioeconomic Policy (RESEP) Stellenbosch University (2020).

203. Deloitte Consulting, UNICEF & DBE, National Implementation of Post Provisioning: National Report (2013).

204. The 1998 norms do not specify that disability weightings are to be applied only in special schools. However, these norms were created before EWP6 and their implementation demonstrates that it was never the DBE's intention to apply the weights in all schools, despite the wording of the 1998 document.

Over the years, several amendments of the 1998 PPN have been proposed,²⁰⁵ but until 2018 none of these reforms addressed the issue of staff allocation to support learners with disabilities in ordinary or full-service schools, or the staffing of any of the disability support structures proposed in White Paper 6. In 2018, district staffing norms were gazetted. The amended national norms specify the minimum staffing requirement for district-based support teams and provide for the creation of these posts in every district. The norms are shown in column 2 in Table 5.

Table 5: Amended district staffing norms (2018)

ROLE	2018 DISTRICT NORMS	STAGGERED ALLOCATION FROM 2024 ONWARDS
CES: Inclusive education, specialised curriculum, psychosocial, health & learning support	1: district	0
Admin assistant	1: district	0
DCES: Senior education psychologist	1: district	1: district
DCES: Senior education counsellor	1: district	0
Admin assistant	0.5: 1 DCES	0
SES: Occupational therapist	1: 40,000 learners	1: district
SES: School social work services	1: 40,000 learners	1: district
SES: Education psychologist	1: 40,000 learners	1: district
SES: Education counsellor	1: 40,000 learners	0
CES = Chief education specialist		
DCES = Deputy chief education specialist		
SES = Senior education specialist		

The gazetted document describes the district norms as ‘aspirational’ norms that should be implemented ‘progressively’.²⁰⁶ Unlike the Minimum Norms and Standards for School Infrastructure (2013), these norms do not include a timeframe by which they should be fully implemented (despite the fact that they have much smaller financial ramifications than the infrastructure norms). Timelines presented to Parliament suggest that these posts will begin to be implemented in 2024 but be fully funded only by 2030.²⁰⁷ Analysis of material presented to Parliament suggests that the districts will, at best, be staffed at much lower levels, as shown in column 3, Table 5, beginning from 2024.

A new PPN for special schools, full-service schools and resource centres was proposed in the 2018 Guidelines for resourcing inclusive education and will be discussed in section 5. There is no change to the PPN for ordinary schools in the 2018 Guidelines. Since 2001, there has been no allocation through the PPN of additional teaching staff, teaching assistants or support staff to ordinary schools that have implemented inclusive education and which enrol learners with disabilities. Currently the PPN, the main tool for allocation of staffing in provinces, is not used to allocate staff to promote inclusive education to support learners experiencing barriers to learning in ordinary schools.

3.3 School funding norms

In addition to allocating staffing to schools, the provinces are responsible for distribution of funds to cover non-personnel non-capital (NPNC) costs in schools. In the context of inclusive education, NPNC costs would include the purchase of assistive devices and equipment (under R5,000), maintenance and repair of assistive devices and specialised equipment, transport costs not covered by the Department of Transport (fuel, insurance, vehicle maintenance), purchase or printing of adapted or accessible learning materials, and additional sanitation costs (such as disposal of medical waste).

205. The updated 2002 Post Distribution Model notes that norms for allocation of educator posts (teachers, therapists, and psychologists) to serve learners with disabilities (whom it acknowledges need additional support) must still be determined (Department of Education, 2002). The 2006 version of the Post Distribution Model notes that field-testing of the norms has occurred in certain districts, but goes on to state that norms are still being developed and that the status quo will remain in place in all other districts. A new PPN, proposed in 2008, does not consider disability weightings at all when allocating posts to ordinary schools. It is not clear whether the 2008 PPN was implemented. See Deloitte Consulting et al. (n 205).

206. DBE, South African Schools Act (84/1996): Amended National Norms and Standards for School Funding. Government Gazette, 632(41445) (2018) pp. 57–59.

207. DBE, Inclusive Education: Presentation to the Portfolio Committee on Basic Education (2020).

In the current School Funding Norms, Quintile 1 to 3 schools receive a much higher NPNC allocation per learner than Quintile 4 and 5 schools. The current School Funding Norms range from R254 to R1,466 per learner, as shown in the table in Appendix 3. Given that there is no mechanism for allocating additional NPNC to ordinary schools that accommodate learners requiring additional support, cross-subsidisation from the NPNC for other learners will be required to cover costs such as maintenance and repair of assistive devices. For example, the purchase of an assistive device for R4,500 (which would be expected to be covered from the school budget) would use the NPNC allocation for 17 learners in a Quintile 5 school and for three learners in a Quintile 1 to 3 school.

3.4 Conditional grants

Over and above the PES funding that goes to basic education, additional funding is allocated to provinces through conditional grants that have to be spent for the purpose for which they are earmarked. Six conditional grants were in operation in 2020/21, among them the School Infrastructure Backlogs Grant, Education Infrastructure Grant, the National School Nutrition Programme Grant (which funds school meals) and the Learners with Severe and Profound Intellectual Disabilities Grant.

School Infrastructure grants

School Infrastructure improvements to address physical accessibility would come from the School Infrastructure Backlogs Grant and the Education Infrastructure Grant. It is not clear what proportion of these conditional grants is currently allocated for upgrading special and full-service schools²⁰⁸ or improving physical accessibility in ordinary schools. It is not possible to determine what the DBE spent between 2001 and 2021 to improve the physical accessibility of ordinary schools.

Improving the physical accessibility of school buildings can be addressed by retrofitting existing inaccessible buildings and following universal design in all new construction. Adopting universal design is far more cost-effective than retrofitting existing buildings. The potential budgetary impact of implementing universal design in renovation of infrastructure is illustrated in the textbox below. In order to realise these savings, all projects which are funded by school infrastructure conditional grants must follow universal design. Compliance with universal design must be audited.

Universal design minimises the cost of providing physically accessible schools.

In 2017, 20 per cent of schools did not have suitable toilets, even for learners without disabilities.²⁰⁹ New ablutions blocks are needed in these schools. In Ethiopia, the cost of building accessible toilets following universal design has been shown to be 3 per cent higher than the cost of building inaccessible ones. If universal design is fully adopted when upgrading the sanitation infrastructure in these schools, it would ensure that a further 20 per cent of schools have disability-accessible toilets, potentially by increasing the budget by only 3 per cent.

Learners with Severe and Profound Intellectual Disabilities Grant

In 2017/18 the LSPID conditional grant (totalling R477 million) was introduced as a result of a 2010 court judgment on education access for this group of learners.²¹⁰ The first year's allocation, a conditional grant of R72 million, was substantially underspent (68.4 per cent spent), but this improved in 2018/19 (when 82.7 per cent of the allocated R158 million was spent). The Eastern Cape lagged behind other provinces, only spending 38.8 per cent of the grant in 2018/19. The grant is estimated to have increased to R256 million by 2021/22. A recent funding review has questioned whether this amount is adequate, given the assistive technologies that may be needed by this group of learners.²¹¹

209. Deghaye (n 146).

210. Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another 2011 5 SA 87 (WCC).

211. Financial and Fiscal Commission (n 10) pp. 84–86.

The LSPID conditional grant has led to the creation of itinerant therapy teams (specifically to serve LSPID). However, learners who fall outside the scope of the LSPID Programme do not benefit from these teams.²¹² This illustrates the inefficiencies that are created when small conditional grants are put in place in the absence of general funding for the rest of the system.

3.5 How flexible is funding in provinces?

South Africa has a decentralised education system in which funding and implementation decisions are taken predominantly by provinces, with the national DBE providing recommendations. The literature suggests that decentralised systems generally encourage effective inclusive education reforms, as they allow for greater funding flexibility and agility.²¹³ However, despite decentralisation to provincial level, PEDs have little flexibility in funding decisions because, as discussed above, salaries make up such a large proportion of total education expenditure. Most of the systems described by the European Agency as appropriate allow much greater room for decision-making at district level than is available in South Africa.

4. What is South Africa currently spending on inclusive education?

Overall, the structure of the national and provincial budgets makes it impossible to estimate what is being spent on inclusive education currently.²¹⁴ Provincial budgets are organised into seven programmes, as shown in Table 6. Provinces may include spending on inclusive education under Programme 2, or Programme 4, as shown by the examples in the table.²¹⁵ As a result, one simply cannot tell how much of the spending in Programme 4 directly supports special schools and how much supports the rollout of inclusive education. Infrastructure development could include spending on upgrades that incorporate universal design, and could include retrofitted improvements to physical accessibility in schools (as described in the box above). Programme 7 could cover the provision of reasonable accommodation in examinations (but does not cover these currently).

Overall, South Africa spent approximately 3.3 per cent of its education budget on Programme 4 in 2017/18, which supported 444 special schools and inclusive education (or at least some elements of it).²¹⁶ **Expenditure on Programme 4 has not been prioritised since 2001**, even though the number of special schools increased by 20 per cent. In 2000/01, when White Paper 6 was published, 2.8 per cent of the budget was allocated to support special schools; by the period 2010/11 to 2016/17, the percentage allocated to this programme was essentially unchanged (between 2.7 and 3 per cent).²¹⁷

It was estimated, using the UN Disability Index, that in 2011, 5.8 per cent of children in South Africa had a disability.²¹⁸ It is generally accepted that additional costs are involved in providing education to learners with disabilities, regardless of whether the child is educated in a special or inclusive school. Thus, an allocation of 3.3 per cent of the education budget to Programme 4 nationally is vastly inadequate if this Programme funds special schools and *most* of the country's inclusive education spending.

212. Sourced from informal discussions with LSPID programme staff.

213. European Agency for Special Needs and Inclusive Education, *Financing of Inclusive Education: Background Information Report* (2016) pp. 1–66.

214. Budlender (n 125). See also Financial and Fiscal Commission (n 10) pp. 84–86.

215. In the Western Cape, the number of learning-support teachers in ordinary schools and the number of ordinary schools supported by resource centres are used as indicators for Programme 4, which suggests that these elements are funded by that programme.

216. Financial and Fiscal Commission (n 10) pp. 84–86.

217. Budlender (n 125).

218. Statistics South Africa, *South African Census 2011, 10% sample [dataset]*. DataFirst (2015), available at <https://doi.org/https://doi.org/10.25828/vjy1-tz66>. According to this index, children whose caregivers report that they have a lot of difficulty in functioning in, or are completely unable to function in, at least one domain, or have some difficulty functioning in two or more domains, are considered to have a disability.

Table 6: Programmes within provincial education budgets

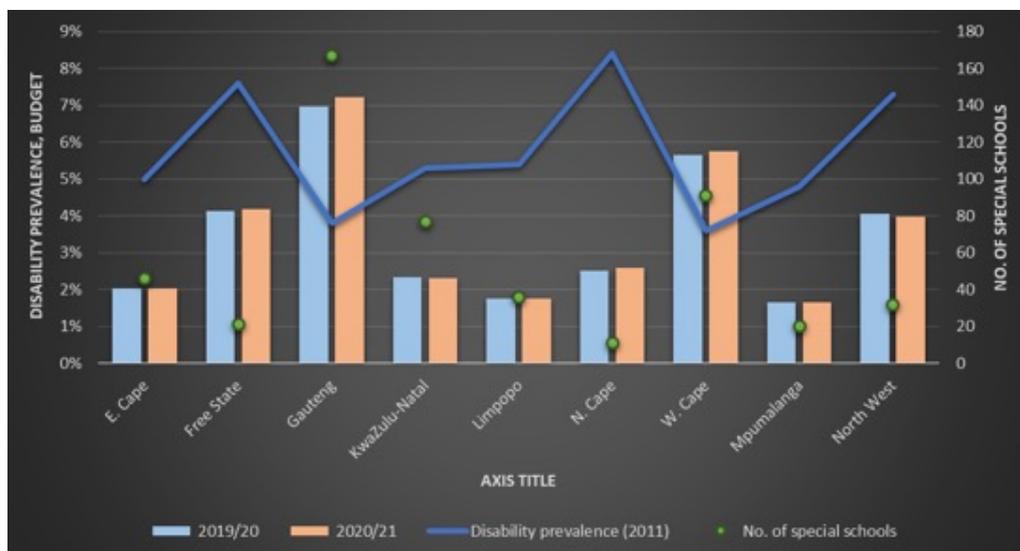
PROGRAMME	ELEMENTS OF INCLUSIVE EDUCATION MENTIONED IN 2020/21 PROVINCIAL BUDGETS	EXAMPLES OF ALLOCATION IN 2020/21
1. Administration		
2. Public Ordinary Schools	Provision of public ordinary education from Gr 1–12 in accordance with Schools Act and White Paper 6 on Inclusive Education (e-learning is included)	KwaZulu-Natal: Inclusive education training for teachers in ordinary schools.
3. Independent School Subsidies		
4. Public Special School Education	Provision of compulsory public education in accordance with Schools Act and White Paper 6 on Inclusive Education (includes e-learning and inclusive education)	Western Cape: Spending on SIAS training; early identification in ordinary schools by learning support teachers; strengthening of full-service schools; provision of assistive devices; and environmental access in ordinary schools
5. Early Childhood Development		
6. Infrastructure Development	Covers all types of schools	
7. Examination & Education-related Services	In addition to assessment and examinations, its includes HIV Life Skills Programme, Sanitary Dignity Programme, and school safety programmes*	

Source: 2020 Estimates of Provincial Revenue and Expenditure (Western Cape, KwaZulu-Natal), Annual Performance Plans 2020/21–2022/23 (WCED, KZN DoE, Free State DoE). NPNC = non-personnel, non-capital. *There is no clear allocation to reasonable accommodation for examinations in this budget.

Levels of funding to Programme 4 differ substantially by province. As Figure 10 shows, as little as 1.7 per cent of the basic education budget was allocated to Programme 4 in Mpumalanga and Limpopo in 2020/21, whereas the Western Cape and Gauteng allocated almost 6 per cent and 8 per cent, respectively. It is clear that the high percentage of the education budget allocated to Programme 4 in the Western Cape and Gauteng is driven by the large number of special schools in these provinces rather than by the prevalence of disability.²¹⁹

Figure 10 suggests that, if one excludes the Western Cape and Gauteng from the national calculations, much less than 3.3 per cent of the budget is being allocated to Programme 4.

Figure 10: Percentage of budget allocated to Programme 4, disability prevalence (%), and number of special schools, by province.



Source: Calculations based on expenditure data in Tabled Provincial Budgets (2019 Medium Term Expenditure Framework); disability prevalence data calculated from Census 2011 for children aged 7 to 18 years (Washington Group Short Set of Questions); number of special schools derived from DBE Presentation to Parliament (November 2020)

219. One needs to be cautious when looking at these provincial differences in funding and determining their implications for the funding of inclusive education, as there are differences in reporting (between Programme 2 or 4) by province.

NOTE: *The Department of Transport plays a role in funding learner transport, which has been guided by an inclusive policy since 2015. The Department of Health funds the Integrated School Health Programme – that latter includes vision, health, and hearing screening of Grade 1 learners, which is critical for improving access to assistive devices. These sources of funding have not been analysed.*

What is apparent is a **continued prioritisation of special schools in funding allocations**. From 2001 to 2016, the number of special schools increased from 380 to 444 (and the number of learners enrolled in special schools increased substantially). Given that overall funding changed very little from 2001 to 2016, this suggests that, if it is the case that most inclusive education spending goes towards Programme 4, **funding for inclusive education continues to be crowded out by funding to special schools**.

The impact of the current PPN on the allocation of professional support staff to special schools is shown in Table 7. The table indicates that R490 million was allocated in the 2020/21 budget to fund professional support staff in special schools, while **half of that amount** is allocated to funding staff in district teams who support a similar number of learners with disabilities in ordinary schools. This allocation clearly favours support for learners in special schools. The allocation to district teams is based on a phased-in approach to funding district-based support teams.

Table 7: Funding allocations 2020/21

	SPECIAL SCHOOLS	DISTRICT NORMS	DISTRICT STAFF BASED AT SPECIAL SCHOOLS
Professional support staff	R491 million	R216 million	R775 million
Learners served	In special schools	In ordinary schools	Ordinary and special
Number of learners served	133,055	121,461	254,516

Source: Calculated from data presented by DBE to Parliament (20 November 2020)

5. Review of funding policies for inclusive education

White Paper 6 outlined a broad funding strategy for implementing inclusive education in 2001, proposing that a conditional grant be established within five years to kickstart the process.

Since 2001, however, there has been little progress in realising a funding strategy for inclusive education:

- Other than the LSPID conditional grant in 2017, no conditional grant has been created.
- Norms and standards on school infrastructure were gazetted in 2013, specifying that all schools are to have at least one wheelchair-accessible toilet by 2030. This is funded out of existing conditional grants for infrastructure upgrades.
- Amended national norms and standards for district staffing were gazetted in 2018.²²⁰
- Guidelines for Resourcing an Inclusive Education System (2018) (Guidelines) were released for public comment. Originally meant as norms and standards, they have not yet been finalised.
- Salary levels under the Occupational-specific Dispensation for Education Therapists, Counsellors and Psychologists and conditions of service have been adjusted already to include, in line with SIAS, the provision of services to the district.²²¹

220. These are shown in Table 5.

221. DBE (2018) (n 200).

The responses listed above do not amount to a full funding strategy, and there are thus a number of gaps in them (as discussed in section 8).

The Guidelines for Resourcing an Inclusive Education System outline a proposed PPN and revised school funding norms as the major means of funding inclusive education strategies. They stipulate different school funding norms (for NPNC costs) and different educator allocations for special schools, resource centres, and full-service schools (described below).

Special schools

Special schools will be resourced to provide high-level support. Post allocations to special schools will no longer be linked to the disability mix of enrolled learners; instead, these will be based on the area of specialisation of the special school in question, as shown in Appendix Table 2. The weights are similar to those in the previous PPN (shown in Table 2), but will be used differently. Special schools will receive an annual infrastructure allocation and a much larger NPNC allocation per learner than other schools. All special schools will receive the same NPNC per learner. The proposed funding for special schools is in line with the SIAS Policy, but in conflict with White Paper 6 (as discussed earlier in Chapter E).

Resource centres

Special and full-service schools that act as resource centres will provide support to surrounding ordinary schools accommodating learners who need such support. Resource centres (whether they are special schools or full-service schools) will be allocated additional staff: one nurse for every 100 schools in the district and one additional deputy principal. It is hoped that this would improve collaboration with the ISHP (which is highlighted in Chapter E). For every 100 schools supported by the resource centre, the centre will be provided with two IT technicians and one occupational therapist, physiotherapist, and speech therapist. To be implemented, these staffing proposals must be converted urgently into staffing norms and have clearly defined implementation timeframes.

The proposed NPNC allocations for resource centres are very unclear.²²³ The NPNC allocation will depend on the number of schools supported, the main area of specialisation of the school, and whether it is a full-service or special school; alternatively, provinces may opt to allocate a fixed budget for resource centres, from which schools can apply for funds for NPNC costs. It is 20 years since the idea of resource centres was first mooted. NPNC allocations must be clearly defined and implemented. Until there is clarity, it is difficult to assess whether the proposed NPNC are adequate.

Full-service schools

According to the 2018 Guidelines, full-service schools will be resourced to provide moderate-level support to learners. This will be facilitated by a new PPN for full-service schools and a 10 per cent higher NPNC allocation to full-service schools.

Full-service schools will be allocated one additional Head of Department and one education counsellor post to assist them in fulfilling their expanded role. There is provision for one class assistant per phase (or per 50 learners with additional needs). The latest information by the government, however, suggests that funding for these posts will be made available, in a phased manner, only from 2024, with these posts being fully funded by 2030.²²⁴ In addition, the proposals have not yet been converted into staffing norms and remain guidelines only.

The likely consequences of the proposed additional 10 per cent of the total NPNC subsidy have been calculated and are shown in Table 8. No justification has been provided for the 10 per cent additional allocation, a number which seems arbitrary. The additional allocation to Quintile 4 and 5 full-service schools is particularly small and could easily be spent on meeting the needs of just one learner. In 2020, the additional NPNC allocation for full-service schools would cost the DBE R86 million per year. Compared to other initiatives within the DBE, this intervention

223. The guidelines state on p. 31 that the NPNC allocation is weighted according to the main area of specialisation of the school, with schools serving learners with vision or hearing impairment, or with multiple and complex needs, receiving the greatest weighting. This suggests that the allocation is delinked from individual learner diagnosis and based instead on the programme of support in place. However, the worked example uses the weighting for the area of specialisation and the proportion of learners covered by this programme of support. In this case, the funding remains input-based and linked to learner diagnosis.

224. DBE presentation to stakeholders on the status of inclusive education (September 2021).

has a small budgetary impact. Despite this, the DBE has informed Parliament that this funding for full-service schools would be implemented in a phased manner only from 2024 due to shortfalls in the total budget allocated to Programme 4. This is unacceptable given how small this allocation is within the broader Programme 4 budget.

Table 8: Total additional school allocation to full-service schools (with 800 learners)

NATIONAL QUINTILE	PER-LEARNER ALLOCATION (2020)	PROPOSED ADDITIONAL ALLOCATION (PER FULL-SERVICE SCHOOL)
NQ1-3	1,466	R117,280
NQ4	735	R58,800
NQ5	254	R20,320

Source: National target school allocations: Amended national norms and standards for school funding (2020). Government Gazette No. 43145. 27 March 2020. Full-service schools by quintile Master List 2016, Provincial lists of designated full-service schools, 2017. Number of full-service schools (2019): Parliamentary Monitoring Group, 2019. Calculated for a hypothetical school with 800 learners.

Under the 2018 Guidelines, each full-service school will receive a once-off infrastructure allocation to ensure they are universally accessible. Infrastructure upgrades have been effected already in some full-service schools, but major gaps in accessibility remain. By 2017, 48 per cent of full-service schools had wheelchair accessible toilets and 89 per cent had accessible front entrances.²²⁵ Full-service schools will receive a once-off equipment allocation. The types of equipment to be covered by it are not spelt out and must be costed to ensure these allocations are sufficient.

District-based support teams

No recommendation is made on the operational budgets for district-based support teams. The assumption seems to be that their operational costs will be absorbed by the district.

Ordinary schools

Ordinary schools will be expected to fund low-level support (for example, curriculum differentiation and adapted learning material) **from their existing budgets**. Ordinary schools that enrol learners requiring moderate- or high-level support will not be allocated additional teaching staff, teacher- or class-assistants or additional allocations to cover NPNC costs. Instead, these schools will have access to district-level support and services provided through the resource centre (for example, occasional specialist personnel support and access to assistive devices for learning). However, as outlined earlier, the DBE does not plan to staff the district teams fully until 2030.

The implications of the above proposals for NPNC allocations across institutions are shown in Table 9. Given that **no additional NPNC allocation is provided to ordinary schools** that accommodate learners requiring additional support, it is critical that resource centre budgets are set at appropriate levels to enable learner support. The demand for training, assistive devices, and adapted learning materials from ordinary schools that accommodate learners with disabilities is likely to be high. Budgets at resource centres must be large enough to allow travel to and meaningful support to all schools in their jurisdiction. At the very least, the NPNC allocation to resource centres must be disaggregated in DBE budgets to allow transparency.

Table 9: NPNC funding allocations 2020/21

	SPECIAL SCHOOLS	RESOURCE CENTRES	FULL-SERVICE SCHOOLS	ORDINARY SCHOOLS
Number of learners served	133,055	121,461	24,724	121,461
NPNC allocation to support inclusion	R933 million	?	R86 million *	R 0**
Number of schools	435	?	848	23,289
Per learner	R7,021	?	R3,478	0
Per school	R2.14 million	?	R101,000	0

Source: Calculated from data presented to Parliament, 7 September 2021. Full-service school enrolment, 2014 (Nuga-Deliwe, 2016) * Calculated from additional NPNC proposed in 2018 Guidelines, not finalised. See Appendix Table 2. ** no additional NPNC is allocated to provide additional services for learners with disabilities

225. N Deghaye, 'Measuring enrolment and support for children with disabilities at the school level' Stellenbosch University Department of Economics Working Paper Series (n. d.).

6. Key gaps in proposed funding guidelines

6.1 Funding for concessions and reasonable accommodation

According to the 2018 Guidelines, ordinary schools will need to fund accommodations for assessment (such as providing a scribe, reader or prompter for exams and assessments) out of their existing budgets. Each circuit or school requires a pool of available, trained scribes, prompters or readers to be used during assessments on an ad hoc basis and must be allocated funds to pay them. Currently, parents or caregivers are required to pay for these types of reasonable accommodation of their children in public ordinary schools.²²⁶

The situation will continue unless funding is specifically included in DBE budgets, preferably under Programme 7 (Examination & Education-related Services). Alternatively, this could be funded through the Expanded Public Works Programme, as such work may suit unemployed near-peers who have matriculated recently. What is clear is that the cost of providing the services must not be borne by parents.

6.2 Funding of adapted learning and teaching support materials

There is little mention of the funding of adapted and accessible learning materials in any recent policy documents. The long delays in producing DBE workbooks in large-print, high-contrast, braille, SASL, video or audio formats suggest that the DBE's Learning & Teaching Support Material Programme is not adequate.²²⁷ The creation of learning materials in multiple formats, that is, by commissioning new textbooks, is likely to be far more cost-effective than subsequent adaptation of existing inaccessible learning materials.

Amendments to copyright laws have been enacted elsewhere in the world, with a dramatic effect on availability of audio and electronic versions of books. In South Africa, a recent High court victory declared the a Copyright Act 98 of 1978 invalid and unconstitutional, insofar as it limits people with visual disabilities from accessing work under copyright, and called for a 'reading- in' of section 19(d) of the Copyright Amendment Bill [B 13B-2017] to the current Copyright Act as this would be, 'bringing the South African laws, so far as copyright is concerned, in line and harmonious with international law'.²²⁸ This would allow for easier access to copyrighted materials in order to adapt them for persons who are blind and visually impaired or other persons with print disabilities.

These legal changes may increase the cost of production of textbooks marginally, but could drastically reduce the budget required to reformat learning materials at individual schools.

6.3 Funding for assistive devices

Funding for assistive devices for learning does not seem to have received any serious consideration in the 2018 Guidelines. A list of possible assistive devices and specialised equipment is included in the 2018 Guidelines, with instructions to the provinces that they are to identify suppliers and keep a database of prices for these items. Progress has been made in defining these items, identifying preferred suppliers, and preparing a national tender process, but there is no clarity as to where funding would be sourced or how much funding would be made available to cover these items (which at times may be expensive).

6.4 Funding for personal assistance

The 2018 Guidelines mention provision of care workers to provide 'personal assistance to individual learners' with physical disabilities and learners with serious behavioural difficulties who require one-on-one assistance *and who are enrolled in full-service schools or special schools*. However, the Guidelines do not provide for employment of personal assistants in ordinary schools – currently, this expense is often borne by the families of children with disabilities.

226. Department of Social Development, Elements of the Financial and Economic Costs of Disability to Households in South Africa (2015).

227. The DBE has continued to fail to budget for provision of multiple formats. The DBE Annual Performance Plan 2020/21 indicates that no budget has been allocated to make existing workbooks and textbooks interactive or to digitise inclusive education materials. It identifies these as key risks for 2020/21.

228. Media statement by SECTION27, 'High Court declares Copyright Act unconstitutional!' (22 September 2021).

As such, the funding strategy must include equivalent funding for personal assistance in all types of schools. In 2019/20, the National Student Financial Aid Scheme (NSFAS) allocated up to R50,000 for personal assistance per qualifying student per year.²²⁹ It is bizarre and inequitable that personal assistance is funded at university level but not in ordinary schools. This is especially true for learners aged 16 to 18 years, who can receive this support in a TVET college but not in an inclusive school. The DBE should be able to learn from the Department of Higher Education and Training's experience in developing criteria for this type of support.

6.5 Screening and school health

Funding of the ISHP needs attention. As a first step, the investment needed for all provinces to reach the screening coverage achieved by the Western Cape, North West, and Limpopo should be estimated, and provincial departments of health encouraged to allocate the appropriate sums to the ISHP.

Screening targets are also exceptionally low in some provinces (for example, the Northern Cape aimed to screen 16 per cent of Grade 1 learners in 2017).²³⁰ Pressure must be exerted on provinces to set more ambitious screening targets.

Table 10: Grade 1 health screening coverage in 2017

	PROPORTION OF GRADE 1 LEARNERS SCREENED
Western Cape	0.46
Eastern Cape	0.26
Northern Cape	0.11
Free State	0.26
KwaZulu-Natal	0.25
North West	0.50
Gauteng	0.35
Mpumalanga	0.23
Limpopo	0.50
South Africa	0.33
Sample	52 districts

DHIS = District Health Information System

Source: District Health Information System, reported in the District Health Barometer 2017/18

6.6 Scope for rationalising specialist staff in special schools

The 2018 Guidelines, SIAS and White Paper 6 propose that specialists currently working in special schools (occupational, speech and language therapists, social workers, and so on) will be replaced incrementally by mid-level workers (counsellors, learning support teachers and therapy assistants) who provide weekly or daily therapy for learners in special schools. Specialists would supervise the therapy programmes in special schools, in addition to serving learners in the district.

However, the current number of specialist staff in special schools (occupational, speech and language therapists, social workers, and so on) is far from adequate.²³¹ This means there is very little scope for rationalising specialist personnel within special schools. The proposed strategy of task-shifting to mid-level workers would require the recruitment of approximately 2,000 therapy assistants. However, South Africa's tertiary institutions do not train therapy assistants. In the last 20 years, no agreement has been reached with professional councils on the definitions of these roles and their associated training needs.²³²

229. National Student Financial Aid Scheme, Annual Report 2019/20 (2020) pp. 1–174.

230. L Bamford, 'School health', in N Massyn, Y Pillay & A Padarath (eds) District Health Barometer 2017/18 (Health Systems Trust: 2019) pp. 121–137.

231. Financial and Fiscal Commission (n 10) pp. 84–86.

232. The DBE proposes recruiting general therapy assistants who can cover physiotherapy, occupational therapy, and speech and language therapy. Professional councils oppose this plan, arguing that this breadth cannot be covered in a two-year qualification. They propose the creation of several mid-level qualifications (such as occupational therapy assistants and physiotherapy assistants) which satisfy the demands of the National Health Insurance and the DBE. Tertiary institutions require a firm commitment on the number of assistants to be employed by the DBE before they can launch a new training programme.

When White Paper 6 was written in 2001, the average educator – learner ratio in special schools was 10:1. As shown in Appendix Table 3, this had increased to 12:1 by 2016, which indicates that staffing in special schools has not been strengthened in the period 2001 to 2016. Implementing the proposed 2018 PPN in special schools would require an increased allocation of teachers to special schools, as demonstrated in column 3 of Appendix Table 4. It seems that the 2018 Guidelines may finally be proposing the strengthened staffing of special schools that was promised in 2001.

6.6 Staffing norms for districts and circuit itinerant teams

The proposed phased introduction of funding for district norms is inappropriate. To wait a further 10 years to fill all the gazetted district posts is unacceptable. It appears that little effort has been made to find the fiscal space to fund these posts. They seem simply to have been labelled as unaffordable, without any assessment of the savings that could result elsewhere in the education budget.

Staffing norms have not been developed for itinerant (circuit-level) therapy teams. The 2018 Guidelines suggest that itinerant teams be made up of educational psychologists, social workers, occupational and speech and language therapists and a learning support coordinator, but do not recommend how many of each are needed per circuit. Staffing norms for these teams must be developed immediately, as itinerant teams are needed, together with district teams, to provide support for ordinary schools and meet the needs of children who are out-of-school in order to ease their transition into the schooling system. The levels of staffing should be sufficient to move South Africa from a situation where 47 per cent of schools receive at least one visit from a psychologist, therapist, DBST member or learning support education in the year to a situation where 100 per cent of schools receive this support.

6.7 Funding for capital costs

The Guidelines are particularly vague when it comes to infrastructure spending and the funding of other capital costs. There is no discussion of how capital items (vehicles, therapy equipment, testing kits) needed by districts and resource centres will be funded. This is especially important given the evidence (reported in Chapter E) on the lack of vehicles and other equipment currently available to district teams.

As noted in Chapter E, it would be ideal if infrastructure and learning materials were adapted *before* the enrolment of learners with disabilities into ordinary schools. Ideally, a fund should be created from which ordinary schools could apply *upon receiving an application* from a learner with a disability *for the next school year*. Upon application, the SIAS process should be initiated and an accommodation plan put in place for the next year. At this stage, the school should be able to submit plans to this fund so as to enable adjustments that fall outside the school budget.

6.8 Conversion of special schools to resource centres

While the Guidelines mention annual infrastructure allowances for special schools and discuss what infrastructure is needed in a resource centre, there is no discussion of the capital cost of conversion of special schools to resource centres, beyond a comment that ‘additional funding should be made available’.²³³ As shown in Chapter E, the DBE still needs to convert a further 158 special schools to reach its own 2019 target of 300 resource centres nationally. From its experience of converting 142 schools, the DBE must have a good idea of the capital cost of these conversions. This amount would surely exceed the annual infrastructure allowances at special schools. The availability of resource centres must match the provincial patterns of disability prevalence (shown in Figure 10). Unless concrete, budgeted plans are made for the conversion of the remaining resource centres, targets will continue to be missed.

6.9 National advocacy campaigns

There is no mention of what funding would be needed to conduct national advocacy campaigns aimed at attitude change among teachers, peers and communities towards children with disabilities.

233. DBE (2018) (n 200) p. 18.

7. Literature review: Models used to fund inclusive education

Recent research finds that the effectiveness of funding systems for inclusive education is very dependent on the context in an individual country.²³⁴ The historic context and aims of policy are also important. When South Africa introduced inclusive education, it had a small special school network that could not accommodate the majority of learners requiring additional support. Most high-income countries had a large network of special schools when they implemented inclusive education, and have sought to replace many of these schools with inclusive schools. South Africa has introduced inclusive education, while simultaneously expanding the special school system. This distinction needs to be considered when reviewing evidence from high-income settings.

The literature shows that **five models** could be used to fund inclusive education. Each model has its pros and cons and creates different incentives for the implementation of inclusive practices.²³⁵ Overall, the literature does not come to a clear conclusion as to what funding model is best. What is clear, however, is that **inclusive education will be successful only when an incentivising funding model is used.**

A useful example of this can be drawn from the experience in Ethiopia. A small school improvement grant (amounting to 2 per cent of total NPNC funding in a district) has been created to fund disability-inclusion improvements at school-level in Ethiopia (in 2014 to 2016). Districts were given flexibility in deciding how to use these funds – purchasing assistive devices, equipping a few schools each year, or spreading the funding over many schools in a district. The funds could not be used to entrench special schools. Ordinary schools could apply to have inclusive education projects funded, provided these were explained in their school improvement plans. This initiative has been hailed as successful.²³⁶

7.1 Input funding models

Input funding models (also known as per capita or needs-based funding) base funding on a measure of identified need.

The two main types of input funding models are:

- **Learner-based input funding**, where funding may be dependent on categories of learner need or types of disabilities, or on total number of targeted learners in a school; and
- **demographics-based input funding models**, where the number of learners with special education needs (or socio-economic disadvantage) in a province or district determines the level of funding allocated.

The 1998 PPN used in special schools in South Africa is an example of a **learner-based input funding model**, as the teaching posts allocated to a school depend on the number of learners in a school and their disability types. Some learner-based funding models allocate funding to the identified learner rather than to the school. These are often termed learner-bound budgets.

This system has been implemented in the Netherlands. It offers the parents and learner the choice of whether to use the learners' allocation to cover additional support in an ordinary school or to attend a special school. Such a system requires strict criteria as to who qualifies for budgets and uses medical diagnosis as the gateway. In the Netherlands it has proved difficult to control the expansion of numbers of learners eligible for learner-bound budgets.²³⁷ A system like this works well where there is adequate, equitable access to diagnosis. Interestingly, a learner-bound budget model is used by NSFAS to fund personal assistants and assistive technologies (up to R50,000 per student in 2019/20) for qualifying students with disabilities in universities and TVET colleges.²³⁸

234. S Ebersold & C Meijer, 'Financing inclusive education: Policy challenges, issues and trends', in C Forlin (ed) *Implementing Inclusive Education: Issues in Bridging the Policy-Practice Gap* (2016) pp. 37–62.

235. Ibid.

236. International Disability and Development Consortium (IDDC) & Light for the World, #CostingEquity: The Case for Disability-Responsive Education Financing (2017) pp. 1–72.

237. S J Pijl, 'Fighting segregation in special needs education in the Netherlands: The effects of different funding models' *Discourse: Studies in the Cultural Politics of Education* 37(4) (2016) pp. 553–562.

238. National Student Financial Aid Scheme (n 231).

In low- and middle-income countries, school enrolment data tends to underestimate disability prevalence.²³⁹ In South Africa, the reported rate of disability in schools is much lower than the disability prevalence estimates from the National Census or Household Surveys, suggesting that under-reporting is a problem in this country as well.²⁴⁰ As a result, learner-based funding models would lead to inadequate allocations for inclusive education in South Africa.

Learner-based funding models can also lead to inequitable allocations if pockets of better identification, and better record-keeping, exist in more functional (often wealthier) schools. This is particularly true if the funding model is based on diagnosis (such as the 1998 PPN model) and where access to diagnosis by a health professional is very poor in low-income areas. Thus, if a learner-based funding model were adopted for ordinary schools, it may be very difficult for Quintile 1–3 schools to record learners as ‘disabled’ and to claim additional teaching posts and funding.

In high-income countries, **learner-based input funding models** that allocate funds based on a diagnosis has led to inflated numbers of learners with the identified diagnoses, as schools attempt to access additional funding. This strategy is most likely to occur where funding systems attach different budgets to different categories of need at the learner level, such as in the 1998 PPN. For example, if the 1998 PPN were implemented in ordinary schools, it might incentivised enrolment of learners with highly-weighted disability types.

In high-income countries, learner-based funding that relies on diagnosis can result in particularly high bureaucratic costs.²⁴¹ In the Free State in South Africa, until 2014 large amounts of specialist time were allocated to verification of learner diagnoses, so that PPNs could be accurately calculated to distribute remedial teachers to the most appropriate schools. Given the very limited numbers of medical specialists and therapists, specialist time should be better spent on providing support and interventions, rather than on verifying existing diagnoses.

Some input funding models have attempted to overcome this by avoiding the use of individual learner diagnosis while still taking differences in need into account. For example, the SIAS Policy classifies learners into resource-based groups: those with high-level, moderate-level, and low-level additional support needs. The Organisation for Economic Co-operation and Development has developed three ‘**resource-based**’ learner categories: learners with disabilities, learners with difficulties, and learners with language barriers and socio-economic disadvantage.²⁴²

Demographics-based funding models are input funding models that do not link funding to individual diagnosis. Finland and Alberta (Canada) have both recently shifted from a learner-based funding system (based on diagnosis) to one driven by regional demographics. In Finland, funding is based on the prevalence of disability among children in different regions.²⁴³ In Alberta, allocation to districts is now based on demographic factors (presumably including the prevalence of disabilities) in different districts. Both these **demographics-based funding models** acknowledge that schools are not good at collecting disability statistics, and instead rely on data collected by national statistics bodies.

In South Africa, the main instrument for allocation of funding to provinces (the PES) is largely demographics-based. Disability prevalence does not currently form part of the PES. However, even if disability prevalence were introduced into the PES, there is no guarantee that additional funding would be allocated to inclusive education once funds reached the provinces. Provinces make their own decisions on how to divide the PES between education, health, and other competing departments. So, reforming the PES is not the ideal way to fund reforms for inclusive education. However, if national data on childhood disability can be accurately collected in the future, it could be used to allocate inclusive education funding across districts, which could avoid the inequalities in spending by provinces that are shown in Figure 10.

239. IDDC & Light for the World (n 238).

240. Deghaye (n. d.) (n 227). See also C Nuga-Deliwe, ‘Building an evidence base for inclusive education in South Africa: Focusing on learners with disabilities’ Research on Socioeconomic Policy (RESEP) Stellenbosch University (2016).

241. C Meijer, *Financing of Special Needs Education: A Seventeen-Country Study of the Relationship Between Financing for Special Needs Education and Inclusion* (European Agency for Development in Special Needs Education: 1999).

242. A Watkins, S Ebersold & A Lenart, ‘Data collection to inform international policy issues on inclusive education’, in C Forlin (ed) *Measuring Inclusive Education*, Vol. 3 (Emerald Books: 2014) pp. 53–74.

243. J Pulkkinen & M Jahnuksainen, ‘Finnish reform of the funding and provision of special education: The views of principals and municipal education administrators’ *Educational Review* 68(2) (2016) pp. 171–188.

7.2 Throughput funding models

In throughput models, funding is dependent on the function (or tasks) designated to an institution. The 2018 Guidelines introduce elements of a **throughput** model of funding. For example, resource centres and full-service schools are entitled to larger staff allocations and NPNC funding due to their roles (see above).

Throughput funding models are likely to **incentivise the provision of services, provided there is adequate monitoring and accountability**.²⁴⁴ Where monitoring is poor and there are few consequences for non-delivery of services, this funding system **can lead to inactivity**.

In general, monitoring of service-delivery and systems of accountability are poor in South Africa, as evidenced by the Auditor-General's report on the functioning of full-service schools. This does not bode well for adequate monitoring of whether resource centres or full-service schools provide the additional services required once they receive additional funding.

Research from Europe suggests throughput models work best in decentralised systems where districts have flexibility to allocate funds between schools. For example, a throughput model for learners with mild intellectual disability is applied at cluster level in the Netherlands (the equivalent of circuit level in South Africa). Initially, a fixed budget to support inclusion is split equally between special and regular schools in a cluster. The cluster is given flexibility to re-allocate funding between special and regular schools in order to best serve the learners. Delivery of services is agreed at the cluster level, and schools in the cluster are held responsible for supporting all students with these disabilities in area.²⁴⁵ This system has coincided with reduced enrolment in special schools for learners with mild intellectual disability and some increase in enrolments in ordinary schools.

Education districts and circuits in South Africa, by contrast, have very little flexibility in allocating funds and may not have the requisite skills to allocate funds effectively if that flexibility was provided. This does not create ideal conditions for an effective throughput model as described in the literature.

7.3 Output-based funding

In output-based models, funding is dependent on school outputs, as measured by learner performance (such as pass rates in standardised assessment, or measures of learning outcomes). This funding results in a **strong disincentive to enrol learners with disabilities or learning difficulties**, who are seen to impact negatively on grade progression rates or school completion rates. These systems can lead to strategic behaviour that is not in the best interest of the learner and result in special schools with lower numbers of learners receiving more funding.²⁴⁶

To counter this, some output-based models have linked higher ordinary school funding to low referral rates to special schools. Generally output funding is seen as inappropriate for inclusive education.

7.4 Equity-based (progressive) funding models

Equity-based funding models (also known as progressive funding models)²⁴⁷ aim to improve equity of *outcomes*. Progressive public funding allocates unequal funding across schools and learners, with higher levels of resources allocated to those who are most disadvantaged, in the hope of achieving more equitable learning outcomes. South Africa adopts progressive funding policies. The *health* and *poverty* components in the PES (described in Table 3) introduce a pro-poor allocation into provincial allocations. In basic education, the School Funding Norms also allocate funds progressively, giving a larger per-learner allocation to schools in poorly resourced areas. Pro-poor funding allocations need to be considered alongside any other allocations of funding for inclusive education.

244. European Agency for Special Needs and Inclusive Education (n 215).

245. Pijl (n 239).

246. European Agency for Special Needs and Inclusive Education (n 215).

247. In inclusive-education circles, these models are known as rights-based models. See European Agency for Special Needs and Inclusive Education (n 215).

7.5 Programme-driven budgets

A recent report recommends that funding be based on identified school needs (such as teacher training, funding community-based rehabilitation programmes, parents groups, and transforming special schools into resource centres).²⁴⁸

Analysis in this report has shown that budget allocations are driven substantially by the number of special schools in a province (see section 4). This is due partly to the use of historical budgeting in South Africa, which favours continued allocation of resource to existing structures (such as special schools) and then allocates what is left over to funding new, reformed structures (such as establishing district teams). Programme-driven (or bottom-up) budgeting, by contrast, starts by identifying medium-term priorities and then determines the activities and projects that need to be undertaken and the resource needed to achieve these. Thus, if creating district teams were identified as a priority, the budget for this reform would be moved ahead of (continued) special school staffing on the budget agenda.

8. Appropriateness of throughput funding models in South Africa

In summary, basic education in South Africa is funded following a decentralised approach, which uses input funding models (a combination of demographics-based allocation in the PES and learner-based allocation in the PPN and School Funding Norms). This is supplemented by conditional grants, which are purpose-specific. Pre-2018, there was no funding model in place for inclusive education: a diagnosis-based learner-funding model for special schools existed. The proposed changes to funding in the 2018 Guidelines will move South Africa towards throughput funding to some extent.

The literature and data in South Africa indicate that extending a diagnosis-based learner input model (such as that in the 1998 PPN) to ordinary schools is likely to result in a pro-wealthy allocation of disability funding, as Quintile 4 and 5 schools have better access to diagnosis. Allocating specified additional funding or resources to ordinary schools based on the number of learners with moderate- or high-level support needs is an alternative. This would fit well with the SIAS Policy but may be open to manipulation by schools. That is, schools would have a strong incentive to classify learners as having high-level needs in order to access additional NPNC funding if this were linked to the enrolment of a learner with high-level support needs.

As discussed above, throughput funding (funding based on role) is possibly more appropriate than learner-based funding. However, it would need to include progressive or pro-poor funding allocation in order to be equitable.

As a result of some key gaps in the funding policy, there are serious concerns that ordinary schools will not receive adequate funding to support learners with high-level support needs effectively. The risk is especially high if the DBE plans to phase in funding slowly for the new structures (district, resource centres, full-service schools).

Throughput funding must be accompanied by monitoring, as it does not incentivise reform once it has been received. The public sector's poor monitoring track record means there is a **risk of inactivity** when applying a throughput funding model. Far more regular auditing of resource centres and full-service schools would be essential to ensure that services are provided once designation has occurred.

The greatest risk with the proposed 2018 funding Guidelines lies in the delayed implementation timeframes. There are also key gaps in the Guidelines in their current form. A finalised version of the 2018 Guidelines has not yet been published. Guidelines are less binding than norms and standards, and provinces may decide which parts of the 2018 Guidelines to adopt. It is essential that a set of funding *norms and standards* is developed in the place of the Guidelines and that funding is committed *immediately*. The fact that the 2018 Guidelines were not adopted as norms and standards suggests a lack of commitment to the inclusive education *strategy* and its funding.

The key gaps in the existing funding policy are outlined in the next section. Our view is that the guidelines fall short of a funding strategy for the implementation of inclusive education. To date, no funding has been attached to inclusive education priorities, and there is little evidence of a serious attempt to identify fiscal space to fund these reforms.

9. What should South Africa be spending on inclusive education?

There is no international consensus as to how much additional funding is appropriate for implementing inclusive education. However, initially, implementing inclusive education requires substantial investment.²⁴⁹ This initial funding boost is required to establish and resource the institutional structures upon which inclusive education rests (such as district-based support teams and resource centres). This is echoed by Sibanda, who notes that policy-makers should not think of inclusive education implementation as a cost-saving exercise, as there are substantial costs at the onset.²⁵⁰ To cover these initial costs, White Paper 6 promised a conditional grant to kickstart reform, but this has not been forthcoming.

Indeed, apart from a conditional grant to support inclusion of children with severe to profound intellectual disability (compelled by a court order) and the development of norms for staffing of district-based support teams (which are to be partially implemented only from 2024), there has been no formal government funding for the expansion of inclusive education since 2001.²⁵¹

By the DBE's own estimates, funding to Programme 4 is currently inadequate. Information provided to Parliament in 2020 suggests that 'full implementation' of inclusive education²⁵² will cost R34 billion per year. However, the DBE reported that, in 2020, the cost of full implementation exceeded current spending by 3.4 times and left a shortfall of R24 billion per year. From these figures, one can deduce that, by the DBE's own calculations, implementation of the current inclusive education strategy requires 11 per cent (rather than 3.3 per cent) of the basic education budget.

10. Identifying fiscal space to fund inclusive education

Experts in the field have argued that departments which present clear, well-budgeted projects to treasuries and are able to identify the fiscal space from which projects can be budgeted are most likely to obtain additional funding. This section identifies some ways in which fiscal space could be created, even in the current climate of financial austerity.

These include:

- amending copyright laws to ensure all educational materials are available in multiple formats;
- employing readers, scribes or prompters through the Expanded Public Works Programme or the Youth Employment Fund; and
- ensuring that universal design is implemented in all school infrastructure projects.

Further fiscal space to fund inclusive education reforms could be created as follows:

- By reducing grade repetition. A recent study suggests that grade repetition absorbed up to 8 per cent of the basic education budget in 2018/2019. At least half of this repetition occurs in secondary school, where it leads to very small gains in test scores.²⁵³ Halving grade repetition could free up approximately 4 per cent of the budget to be re-allocated to inclusive education, and would mean fewer educators were needed in schools. This would create fiscal space, and free up skills, to hire teachers and other staff in districts, resource centres, itinerant teams, and full-service schools.

249. IDDC & Light for the World (n 238).

250. P Sibanda, 'The dynamics of the cost and funding of inclusive education in developing countries' *Scientifica Journal of Pure and Applied Sciences* 7(9) (2018).

251. Some donor funding has been provided (for example, EU funding for teacher training, and a USAID conditional grant that was used in four provinces).

252. It is very unclear what is included in this costing.

253. S van der Berg et al. 'The cost of repetition in South Africa' Stellenbosch Economic Working Papers WP13 (2019) pp. 1–74.

- By halting the building of new special schools and channelling these resources into ensuring that all construction in the education sector follows universal design. The average cost of building a new special school is R81 million.²⁵⁴ By contrast, if an additional R11 to R33 million²⁵⁵ were allocated to the Education Infrastructure Grant (EIG), universal design could be followed in all new school building and infrastructure improvement projects²⁵⁶ and more learners could be reached. For example, in 2020/21 the EIG targeted 31 new schools, and sanitation or water infrastructure improvement at 861 schools.²⁵⁷
- By taking advantage of the large cohort of educators who are due to retire in the next few years. This 'bubble' of retirements will reduce the wage bill (as younger teachers who replace them will be paid less). Some of these savings could be used to fund newly-created posts in district teams, itinerant teams, resource centres, and assistive devices centres.
- By recognising that supporting a learner enrolled in a local ordinary school is likely to be more cost-effective than providing hostel accommodation or long-distance specialised transport to special schools.
- By implementing the 2018 Guidelines and Learner Transport Policy, which would result in savings by reorganising transport services for learners with disabilities. The 2018 Guidelines propose that special transport be organised by the province or municipality with one integrated system covering special, full-service and ordinary schools. This has the potential to produce savings, as there is currently duplication in transport routes managed by individual special schools and between specialised accessible scholar transport and accessible municipal buses (especially in Metros).²⁵⁸
- By introducing efficiency gains in special school hostels, which lead to further savings. In 2020, R989 million was allocated to cover hostel accommodation for approximately 27,000 special school learners.²⁵⁹ The appropriateness of spending on hostel accommodation must be assessed, particularly in Metro areas where accessible public transport has shown some improvement in the last decade. Transport allowances, or integrated transport services, as noted above, are likely to be much more affordable. In addition, the increased enrolment of learners with disabilities in ordinary schools should reduce the need for learners to travel long distances and be accommodated in special school hostels.
- By reducing import duties on assistive devices. Research in Kenya has shown that high import tariffs and low local demand drive up prices for imported assistive devices.²⁶⁰ A very similar situation exists in South Africa. Reduced import tariffs levied on assistive devices for learning would reduce the costs borne by the DBE. A review of the current tariffs, and the expected impact of tariff reductions, would be needed to estimate the savings this reform could bring.

11. Conclusion

The key weakness of the 2018 Guidelines is their **failure to provide any additional funding to ordinary schools** that are actively practising inclusive education. Ordinary schools will not receive the support they need from districts until 2030 if funding for the district norms is phased in as proposed. In addition, per-learner education spending is declining overall in South Africa.

Without funding for ordinary schools to accommodate learners with moderate- or high-level support needs, there will continue to be little incentive to include such learners. Learners with disabilities are likely to continue to be excluded or enrolled, but without any additional support. There is a high risk that parents will have to continue to absorb the substantial costs of providing additional support. This exacerbates inequalities, as learners' whose parents who are unable to pay for reasonable accommodation will be disadvantaged.

254. KZN Department of Education Budget Vote, 2021/21.

255. Research suggests that, where universal design is followed from project conception, the total construction cost of designing and building a wheelchair-accessible building is just 1 per cent higher than the cost of constructing an inaccessible one (World Bank et al., 2008; World Bank, 2005).

256. One to three per cent of the total EIG budget of R11 billion in 2021/22.

257. Education Budget Vote 16, 2020/21.

258. The Learner Transport Policy (2015) states that specialised transport should be provided by the DBE only where there are no accessible municipal or other transport routes.

259. PMG, 'Department of Basic Education progress report on inclusive education and special needs education' (2017).

260. IDDC & Light for the World (n 238).

Certainty on funding policy is urgently needed to enable implementation of inclusive education. Until new staffing norms for resource centres and full-service schools are published, neither of these can be allocated additional staff. The revised PPN 2022 must cover staffing for these structures, as well as ordinary schools.

Overall, the 2018 proposed funding model is better suited to the South African context than previous models. However, unless funding is provided to all ordinary schools for the inclusion and support of all learners in their catchment area, the practice of declining admission or referring learners with learning difficulties to special schools will continue.

The percentage allocated to 'special needs education' (in inclusive and special school settings) needs to be increased to more than 3 per cent of the education budget. The increased allocation should take recent estimates of disability prevalence into account as well as the costs of providing education to learners with additional support needs.

Further analysis will be needed to determine how much fiscal space can be created to implement inclusive education funding strategies.

Successful inclusive education reforms must follow a twin-track approach of implementing system-wide reforms and providing individual-level support (such as reasonable accommodation). System-level reform includes designing flexible curricula, with learning material available in multiple formats, physically accessible buildings, and an accessible school transport system. **Both system-level reforms and individual-level support must be funded** to allow inclusive education to be implemented.²⁶¹ The current funding system fails to fund individual-level support for learners in ordinary schools and adopts a phased and inadequate approach to funding system-level reforms. Inclusive education is unlikely to be implemented given the current and proposed funding strategy.

261. IDDC & Light for the World (n 238).

Chapter F: Recommendations

1. Introduction

This report has reviewed the regulatory framework on inclusive education in South Africa. It finds that this framework and its implementation are fragmented and unclear, and that they fail to meet international and regional human rights standards. Regulatory review and reform are long overdue, as Donohue and Bornman make clear in their call for urgent action:

The DBE needs to hold itself accountable for the implementation of a policy that it created, especially since inclusive policies are of little meaning and use unless they are implemented and enforced. As a top-down theoretical orientation to policy implementation suggests, progress can be made with inclusive policy in South Africa if procedures are clarified, directives are given, and the appropriate authorities assume responsibility and control of its implementation. Education White Paper 6 (Department of Education, 2001) was a monumental step forward in respect of the rights of people with disabilities in South Africa, but the policy will remain purely symbolic until real initiative and deliberate action are taken.²⁶²

Flowing from the analysis of the existing regulatory framework and its implementation, we make various recommendations for strengthening the framework and facilitating better implementation of inclusive education in South Africa.

2. What should the regulatory framework look like?

The Committee on Economic, Social and Cultural Rights stated in its 2018 Concluding Observations to South Africa that it is important to '[e]nsure that inclusive education is a guiding principle in all education plans and programmes'.²⁶³ With this in mind, all education laws and policies should be reviewed through an inclusive lens. The existing CSTL Framework, with its guiding principles and its excellent inclusive perspective, should be used for this review.

2.1 A review of Education White Paper 6 is not enough

Education White Paper 6 formed part of a series of seven education white papers adopted post-1994. At the heart of these was the desire to dismantle the old education bureaucracy and establish a unified education system. A white paper does not have any force of law since it merely reflects a government official policy position on a specific matter of public concern.²⁶⁴ Several provisions in the other education white papers were legislated, which was unfortunately not the case with White Paper 6.²⁶⁵

262. Donohue & Bornman (n 49).

263. Committee on Economic, Social and Cultural Rights (n 32) para 72(b).

264. National Policy Development Framework (n 9).

265. Financial and fiscal Commission (n 10).

This report does not recommend that White Paper 6 be revised, updated or that a new White Paper be developed. Given the substantial reframing that would be required, amendments to White Paper 6 do not seem feasible. White Paper 6 formed part of the DBE's broad intention in 2001 to establish an inclusive education system. Many of the provisions in White Paper 6 are outdated and no longer attainable. However, a review of the White Paper will not advance the transformation of the education system towards an inclusive one. A reviewed White Paper will remain a policy document, not bringing us any closer to the necessary legal entitlements and binding force of legislation. Should a decision to review White Paper 6 be taken by the government, this would need to be accompanied by a concurrent commitment to enact legislation to give effect to revised policy provisions.

2.2 Legislation with clear legal entitlements is required

White Paper 6 has not achieved the goal of transforming the South African education into an inclusive system. In all respects, the current regulatory framework fails to provide adequate funding, equitable access to schools for all learners, and essential support for learning.

In order to address these deficits adequately, we recommend that legislation be enacted or that the Schools Act be amended.

Legislation is recommended for the following reasons:

- » The CRPD requires State Parties to adopt appropriate legislative measures to achieve the implementation of the rights contained within the Convention. The Committee on the Rights of Persons with Disabilities specifically recommended that South Africa enact legislation that gives full effect to inclusive education for all children with disabilities.²⁶⁶
- » Legislation has **binding legal force** and will contain a series of **clear legal entitlements**. In the context of learners struggling to access their rights, legislation is preferred over the adoption of policy that is not legally binding. The Supreme Court of Appeal highlights that:

*laws, regulations and rules are legislative instruments, whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise, the separation between Legislature and Executive will disappear.*²⁶⁷
- » Legislation **must be costed**, which will have the effect that inclusive education will be adequately budgeted for. As demonstrated in previous chapters, the absence of allocated funding has seriously impeded implementation.
- » Legislation undergoes a **public participation process** which ensures that stakeholders and experts are able to make relevant inputs.
- » Consolidating rights and obligations in statute has the potential to resolve any incoherence that currently exists.

There are various ways to enact legislation, as recommended by this report. This can be achieved by means of a stand-alone statute, or amendments to the existing Schools Act. The advantages and disadvantages of these options are discussed below.

2.2.1 Inclusive Education Act

Drafting and enacting a new statute, such as an Inclusive Education Act, has certain benefits. It would be able to regulate the inclusive education system comprehensively. It would also consolidate the rights of learners and the roles and responsibilities of key role-players. South Africa would do well to look to examples from other countries where this has been achieved – for example, Portugal recently adopted a progressive single inclusive education law.²⁶⁸

266. Committee on the Rights of Persons with Disabilities (n 119) para 13(b).

267. Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd 2001 (4) SA 501 (SCA).

268. Annexure 5 provides some detail on Portuguese inclusive education legislation.

A new statute would have to be costed and funded so that inclusive education is comprehensively budgeted for. A benefit of budget allocation would be that PEDs have specific funding for inclusive education so as to enable ordinary schools to adequately include, accommodate and support learners experiencing barriers to learning. This would also enable critical support structures such as the SBST and DBST to fulfil their prescribed functions.

A disadvantage of stand-alone legislation is that it could take many years to be drafted and enacted. This would mean that learners' rights would remain unclear and un- or under-regulated. Furthermore, a stand-alone Act may have the effect of reinforcing the existing notion that inclusive education is a separate educational issue, as opposed to a comprehensive system that encompasses all learners – a notion that would contribute further to an already fragmented regulatory framework.

2.2.2 The South African Schools Act

The Schools Act is capable of adequately regulating the establishment and expansion of an inclusive education system. It can be strengthened to ensure clarity and coherence.

Revising and amending the Schools Act, as opposed to creating an entirely new and separate statute, has certain advantages. It supports legislative harmony, lessens fragmentation, and supports the guiding principles of inclusive education. It could take less time to revise and amend legislation than to create an entirely new statute.

A possible disadvantage of amendments to the Schools Act is that such amendments may not be as extensive as those in a stand-alone statute entirely devoted to inclusive education. To mitigate this, a new chapter could be added to the Schools Act to comprehensively regulate inclusive education. Furthermore, minor amendments relating to inclusive education in the Schools Act might not be funded to the same extent as they would be in a stand-alone statute.

Whichever route is chosen, the revised legislative framework must ensure the following:

- Legislation is costed and adequate funding for inclusive education is allocated.
- SBSTs, DBSTs and special school resource centres are regulated.
- Effective systems for disaggregated data collection are in place.
- Adequate monitoring and accountability mechanisms are established.
- Admissions processes to both ordinary and special schools are specifically detailed.
- Provision is made for access to adapted and appropriate curriculum and LTSM and accommodations for assessment.
- Transitional arrangements are included to facilitate the achievement of the goals of inclusive education where necessary. For example, the Act must make provision for all special schools to function as special school resource centres. It may include a provision for the HOD to report annually on plans to achieve this should not all special schools be converted at the time of the legislation's being enacted.
- The SIAS Policy is elevated to Regulations. This will ensure the allocation of funding and protect the right of every child to an inclusive, quality and equitable education.

Additional recommendations relating specifically to SIAS include the following:

- A revised implementation plan with new timeframes, more effective monitoring and accountability mechanisms should be put in place.
- A section should be provided in SNA 1 for a teacher to record initial in-class individual intervention plans. This is distinct from the individual support plan, as envisaged in SNA 2, and is an essential step in the support-provision pathway. This omission has led to much confusion and must be rectified.

Furthermore, *Special School Hostel* regulations should be published.

- In line with international law obligations, the recommendations made in this chapter promote as far as possible the inclusion and support of all learners in their local ordinary school. However, the role of special schools as resource centres has been acknowledged. Given the geographical distribution of special schools, it is also acknowledged that special school hostels will continue to accommodate learners requiring admission in special schools, particularly in rural areas.
- The appalling conditions in many special school hostels have been well documented by civil society and the South African Human Rights Commission as well as in the government's own reports. The CRPD Committee recommended that South Africa '[p]repare a time-bound plan of action to address the high levels of physical, sexual, verbal and emotional abuse, including bullying, in special schools, together with a monitoring framework, and review the provisions of the Children's Act on child and youth centres to ensure regulated and safe school environments, including school hostels'.²⁶⁹
- Despite a commitment to publish Regulations for special school hostels, this has not yet been done. Therefore, we strongly recommend the **urgent finalisation of these regulations** to ensure the safety, dignity and appropriate care and support for children with disabilities residing in special school hostels.

3. A fully costed, enforceable funding model for inclusive education must be prioritised

Funding remains one of the greatest obstacles to the implementation of inclusive education. A funding model for inclusive education that is well suited to the South African context (economic and societal) **must be urgently finalised**. Recommendations to this effect have been made in the chapter dedicated to funding. Most importantly, there must be budget transparency. Allocations to the expansion of inclusive education separate from special school budget must be made clear in provincial budgets. In addition, adequate accountability and monitoring of budgeting and expenditure relating to inclusive education is critical to ensure success.

The proposed framework must provide appropriate and adequate funding to ensure the provision of reasonable accommodation for learners in ordinary public schools. This aligns with the CRPD recommendation to 'intensify efforts at allocating sufficient financial and human resources for reasonable accommodations that will enable children with disabilities ... to receive inclusive and quality education',²⁷⁰ and the CRC recommendation to 'allocate sufficient technical, human and financial resources for inclusive education, including the funding necessary for guaranteeing the provision of reasonable accommodation'.²⁷¹

4. Admission laws and policies must be reviewed and clarified to promote access

In order to realise the right to education at the most fundamental level, all children require access to school. Clear and consistent rules and procedures relating to admission to school facilitate access to education. Provisions pertaining to admissions are currently dispersed across the Schools Act, SIAS, the Admission Policy, Guidelines for Special Schools, and various provincial policies and circulars. A number of inconsistencies between these laws and policies have been identified in the previous chapter. The laws and policies must be reviewed and aligned to avoid uncertainty and promote access.

269. Committee on the Rights of Persons with Disabilities (n 119) para 41(d).

270. Committee on the Rights of Persons with Disabilities (n 119) para 41(b).

271. Committee on the Rights of the Child (n 117) para 44(b).

More specifically, we recommend the following:

- The term 'special education needs', referred to in the Schools Act as well as in other laws and policies, requires clarification.
- Section 5(6) of the Schools Act and clause 22 of the Admissions Policy should be amended to require **both the parent's and learner's wishes** be taken into account with respect to admission **to an ordinary or special school**.
- Procedures for admitting children with high-level support needs into special schools must be clarified. Legislation and policies have to be consistent in regard to these procedures.
- Clear directives must be issued to provinces regarding the management of unplaced learners so as to eliminate all waiting lists.

5. Reasonable accommodation and the obligation to support learner needs

- 'Reasonable practicability', as contained in section 12(4) of the Schools Act and clause 22 of the Admission Policy, requires clarification. In particular:
 - Currently, the provisions contradict one another in that section 12(4) of the Schools Act states that the determination of reasonable practicability is made once a learner has been admitted into a school, whereas clause 22 of the Admissions Policy appears to state that it is made prior to admitting a learner into a school. Section 12(4) is correct. To make a determination of what is reasonably practicable, an assessment as to the learner's support needs must take place after a learner has been admitted to a school. Therefore, clarity across the Schools Act, the Admission Policy and SIAS is required.
 - The exact scope of the determination must be clarified.
 - The duties of the MEC, HODs, DBSTs and principals in this regard must be clarified.
- A comprehensive definition of 'reasonable accommodation' must be applied consistently across relevant legislation and policy. The state must comply with its duty under PEPUA to 'develop codes of practice ... in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation'. These guidelines should include education-sector specific guidance to schools and parents outlining the scope of reasonable accommodation, as well as the duty to provide such accommodation in ordinary schools.

6. Special schools and special school resource centres to be supported

The effective functioning of special school resource centres will facilitate the inclusion and support of learners in ordinary schools and reduce the high referral rate of children to special schools. The sooner special schools can be seen as resource centres and not only as schools, the sooner emphasis can be placed on ordinary schools' capacity to function as inclusive schools.

- Existing special schools must all be converted into functioning resource centres. In districts where there are no or limited special school resource centres, the district office must be resourced to provide these services. Equitable distribution of resources must be prioritised to districts with no resource centres.
- Effective monitoring mechanisms must be in place to monitor not only the number of resource centres but their functioning.
- Urgent priority must be given to bring poorly resourced and dilapidated special schools up to standard in order for them to fulfil this resource-centre function.
- A qualitative audit must be conducted of the functioning of special school resource centres according to criteria laid out in guidelines. Findings from the audit should inform planning and allocation of resources to

achieve the goal of converting all special schools to resource centres.

- A moratorium should be placed on the building of further special schools until such time as all existing special schools are brought up to standard and are functioning as resource centres. In the event that a special school is considered after this, justification must be provided for why a special school is required over equipping ordinary schools to function as inclusive schools.
- Research should be carried out to document best practices in both resource centres and inclusive ordinary schools/full-service schools to inform replication.

7. Abandon the term “full-service schools”, in favour of all ordinary schools becoming inclusive schools

Given the Attorney-General’s damning report, the value of continuing with the concept of full-service schools needs to be seriously reconsidered. It is evident that the vast majority of the designated 848 full-service schools are not functioning as planned. In addition, with only 3.6 per cent of all ordinary schools being designated as full-service schools in 20 years, systemic transformation has not and will not take place. The perception of full-service schools as secondary ‘special schools’ has hindered rather than helped the development of an inclusive education system.

As such, we recommend the following:

- The term “full-service school” should be abandoned.
- Existing designated full-service schools should continue to function as inclusive ordinary schools.
- All ordinary schools should be supported to function as inclusive schools, as was envisaged.
- Ordinary schools should receive appropriate support from circuit and district teams as well as special school resource centres.

8. Skills development for inclusive teaching and learning to be prioritised

The targets set for teacher training in both White Paper 6 and SIAS have not been met. Inclusive skills development is a critical component to ensure all children can learn in ordinary schools.

The following urgent recommendations thus need to be prioritised:

- » All teacher training must include a compulsory core module encompassing an understanding of broad inclusive education principles as well as inclusive pedagogy.
- » There must be regular compulsory in-service training for all teachers on aspects of inclusive classroom teaching and the SIAS Policy. This can be achieved through compulsory courses for Continuous Professional Teacher Development points.
- » Teachers’ skills acquisition must be monitored.
- » All new teachers must undergo a 12-month induction with sufficient content on inclusive classroom practice.

These recommendations are in line with the CRPD’s recommendation that South Africa ‘[e]stablish an effective and permanent programme for training teachers in inclusive education ...’²⁷²

272. Committee on the Rights of Persons with Disabilities (n 119) para 41(c).

9. Support structures to be strengthened

9.1 District-based support teams

It has been noted that DBSTs have the potential to play a crucial role in identifying, coordinating and providing support to schools within an inclusive education system.

Therefore, it is recommended that:

- there must be adequate funding and resourcing of DBSTs;
- there must be effective monitoring and accountability mechanisms to assess appropriate composition and functioning of DBSTs; and
- the district director must be held accountable for leadership and management of DBSTs.

9.2 School-based support teams

The current policy requirement that every school have an SBST plays an important role in the conversion of ordinary schools into inclusive schools. This type of system-wide practice is essential if we are to transform our education system into an inclusive one. However, as shown in the analysis, significant challenges need to be addressed by future laws and policies.

Our recommendations are:

- Large schools should establish more than one SBST. The recommendation is for one SBST per phase.
- Guidance for SBSTs should be provided in the regulatory framework. This should deal with, among other things, roles and responsibilities, frequency of meetings, record-keeping, agenda- setting, and accessing support.
- SBST members should undergo regular, comprehensive in-service training.
- Reduced teaching time for the SBST Coordinator must be provided for and costed.
- The time commitment of members of the SBST must be taken into consideration in the overall allocation of their working hours.
- There must be regular, detailed monitoring and reporting on the functioning of SBSTs.

10. Out-of-school children and youth with disabilities must be identified and placed

Children with disabilities of schoolgoing age who remain out of school are being denied their right to basic education. This concern was echoed by the CRPD in its concluding observations to South Africa, where it noted the following with concern:

(a) The high number of students with disabilities, including girls with disabilities, those with intellectual disabilities or autism and those who are deaf or hard of hearing, who still remain largely outside the school system, the continuing growth in special education schools as opposed to inclusive education, and the lack of safety in school hostels;

*(b) Barriers against students with disabilities to access mainstream schools, including discrimination in admissions to school, long distances, poor transportation, a lack of teachers trained in inclusive education, sign language, Braille and Easy Read, a lack of accessible curricula, and negative societal attitudes against the attendance of children with disabilities at regular and inclusive schools.*²⁷³

273. Committee on the Rights of Persons with Disabilities (n 119) para 40.

It is essential that:

- An adequate and time-bound plan is put in place to identify, mobilise and place out-of-school children into appropriate schools. This would require an assessment of each learner's needs to determine support required at an ordinary school or, as a last resort, special schools. This cannot be achieved by placing all learners in special schools.
- This plan be costed and funded.
- Accurate, disaggregated data be made available. In this regard, we strongly endorse the recommendation made by the CRC to South Africa that it '[s]trengthen systematic and comprehensive collection of disaggregated data on children with disabilities and utilize the outcome for making the policy response more evidence-based and adapted'.²⁷⁴ Without accurate, disaggregated data, effective planning for education for all within an inclusive education system cannot take place and has not.

11. Prioritise inclusive education advocacy and information

The persistent misalignments in the understanding of inclusive education, as reported by the DBE,²⁷⁵ are perpetuated by the DBE in that the Inclusive Education Directorate is responsible only for special education. Recommendations as to the positioning of inclusive education within the DBE are made below. However, we support the call from the DBE to 'develop and implement a rigorous information and advocacy programme on inclusive education as a mechanism for ensuring Education for All'.²⁷⁶

We further recommend the following:

- The 'rigorous information and advocacy programme' should first be directed internally at the DBE at a national, provincial and district level.
- This programme, which has been on the agenda since 2001, must now be prioritised, planned and funded, and its implementation monitored by the DBE.

12. Responsibility for inclusive education to be realigned within the DBE and interdepartmental collaboration strengthened

It is imperative to point out that the responsibility for ensuring effective inclusive education cuts across all directorates and does not just reside in the Inclusive Education Directorate or the Social Cohesion Directorate. It is also crucial to emphasise that inclusive education should not be conflated with special education or learners with disabilities. Inclusive education has a broader and wider meaning. Inclusive education should be treated as a radical change in mainstream education in order to accommodate the rights of all learners.²⁷⁷

Therefore, the following are recommended:

- Every directorate must be given the responsibility of ensuring effective inclusive education within its department.
- Reporting on inclusive education, including budgeting and expenditure, must be distinct or separate from reporting on special schools and funding for special schools.
- The interdepartmental, multisectoral task teams envisaged in the CSTL framework should be mandated, implemented and monitored.

274. Committee on the Rights of the Child (n 273) para 42(a).

275. DBE report to Parliament (2021) (n 16) slide 123.

276. Ibid.

277. Forlin (n 18) pp. 265–277.

13. Conclusion

The tragic lack of political will to realise the vision of an inclusive education in South Africa has resulted in two decades of learners being denied their right to quality inclusive education. As Donohue and Bornman note, 'Symbolic policies tend to garner attention when they are first passed but ultimately do not come to light; this same pattern is observed in the implementation of inclusive policy.'²⁷⁸

Education laws and policies must be mindful of and responsive to the ever-changing societal and education needs of its citizens. We cannot allow another 20 years to go by with archaic and outdated policies that are not meeting the needs of our children or our international human rights obligations.

Undoubtedly, South Africa's commitment to systemic transformation needs to be taken seriously if we are to achieve implementation of inclusive education. The devastating consequences of policies and legislation that have failed in their implementation are evident in our education system. There is no more time to waste – we can no longer pay lip-service to inclusive education.

278. Donohue & Bornman (n 49).

Appendices

Appendix 1: Modelled cost per learner of ensuring universal design in school sanitation in Education Infrastructure Grants (2020–2021)

	2020/21	ALLOCATION IN DBE BUDGET: 2020/21
No. schools provided with sanitation facilities per year	691	R1.7 billion
No. of schools provided with water	125	
Total schools affected	816	
Estimated costs of ensuring accessibility in all these projects	R17 million ²⁷⁹	
Number of learners reached (modelled) ²⁸⁰	408,000	
Number of learners with disabilities reached (modelled) ²⁸¹	4,080	
Building cost per learner with disabilities	R4,167	

Source: Basic Education Budget Vote 16, 2020/21.

Appendix 2 Post-provisioning norms for special schools (2018)

DOMAIN OF SPECIALISATION OF SPECIAL SCHOOL	LEVEL OF SUPPORT	LEARNER WEIGHTS
Motor & Physical rehabilitation		4
Communication		Cross-cutting
Vision		5
Hearing		5
Learning & cognition		3
Neurological & neuro-developmental	High	6
Neurological & neuro-developmental	Moderate	3
Specialised Behavioural & social skills, health & mental health Programme		5
Health (including mental health)		Cross-cutting
Skills & vocational		2.5
Multiple & complex needs		Cross-cutting

Source: Guidelines on Resourcing an Inclusive Education System (draft for public comment, 2018)

Appendix 3: Total additional school allocation to full-service schools (FSS)

ALLOCATIONS PER SCHOOL					TOTAL ADDITIONAL FUNDING	
National school wealth quintile						
	Per learner allocation (2020)	FSS by quintile	Additional allocation (per FSS)	No. of FSS	Total	%
Allocation (2018 Guidelines)						
Q1-3	1,466	0.80	R117,280	675	R79,164,938	91.0
Q4	735	0.14	R58,800	115	R6,781,286	7.8
Q5	254	0.06	R20,320	51	R1,033,882	1.2
				841	R86,980,106	100.0
Equal allocation to all full-service schools (set at Q1-3 levels)						
All quintiles	1,466	1	R117,280	841	R98,632,480	100.0

Source: National target school allocations: Amended National Norms and Standards for School Funding (2020). Government Gazette No. 43145 (27 March 2020). Full-service schools by quintile Master List 2016, Provincial lists of designated full-service schools, 2017. Number of full-service schools (2019): Parliamentary Monitoring Group (2019). Quintile data is available only for 841/848 full-service schools. Assumes average school enrolls 800 learners. Additional funding is calculated by applying the additional 10 per cent NPNC allocation suggested in the Draft Guidelines (2018).

Appendix Table 4: Current and proposed learner to educator ratios in special schools, by province

	LER IN SPECIAL SCHOOLS (2016)	IMPLIED DISABILITY-WEIGHTED
LER (2018 Guidelines)		
Western Cape	10.9	32.7
Eastern Cape	9.7	29.1
Northern Cape	9.8	29.4
Free State	11.7	35.1
KwaZulu-Natal	18.6	55.8
North West	11.3	33.9
Gauteng	12.0	36.0
Mpumalanga	10.0	30.0
Limpopo	12.4	37.2
National	12.0	36.0

Source: Calculated from data in Financial and Fiscal Commission (n 10). LER = learner educator ratios.

Appendix 5

Portugal

Social context

According to the 2011 census, persons with disabilities constitute 1 million, or approximately 10 per cent, of the 10.5 million people in Portugal.

Political context

Portugal is a representative democratic state, where power is shared amongst four bodies, namely, the President of the Republic, the government, the Assembly of the Republic, and the courts. It is also a European Union (EU) member, and in line with EU regulations, the government's National Secretary of Rehabilitation was established to represent persons with disabilities.

Educational context

The Portuguese Education System is organised in three sequential levels, namely, pre-primary, basic, and secondary education. The education system includes public as well as private schooling. State-run schools are free of charge, while private school tuition is refunded by the state in part or fully when state-run schools in the area are filled to capacity.

Secondary education accommodates learners in years 10 to 12 (ages 15 to 17). Here, after the nine years of basic schooling, the Portuguese General Education system branches into three different secondary programmes, namely, a higher-education-oriented (general secondary programmes), a work-oriented (technological secondary programmes), and an artistic-oriented programme.²⁸²

The development of the regulatory framework for inclusive education

With regard to inclusive education, the development of the regulatory framework in Portugal has been strongly influenced by current international inclusive education policies and frameworks. Between 1986 and 2009, various inclusive education policies were developed that focused on including learners with disabilities in mainstream schools. Provision for learners with disabilities in special schools was, however, still very much in evidence.

In 1986, the Basic Education Law No. 48 of 1986 stated that 'special education' was part of mainstream education and depending on the 'level of specific education needs', learners with disabilities would either attend a mainstream or segregated special school.²⁸³

In 1991, Decree Law No. 319 of 1991 (DL 319/1991) was published. This law refers directly to global inclusive education recommendations concerning the access of learners with disabilities to the mainstream educational system. It also institutes the right of learners with 'special educational needs' (SEN) to be educated in mainstream schools and classes.²⁸⁴ Here the term 'a school for all' was adopted and it was mentioned that learners with SEN should be included. It specifically mentions the importance of accommodating learners with SEN in the least restrictive environment.

Decree Law No. 3 of 2008 (DL 03/2008) was significantly influenced by UNESCO's Salamanca Statement, departing from SEN to an acknowledgment that inclusive local community schools are the way to achieve educational equity. Schools were no longer able to exclude a learner with disabilities and were required to respond to the individual needs of all learners. It also called for the establishment of learning support centres within each school.²⁸⁵ Many special schools were converted into resource centres where they provided specialised support through partnerships with mainstream schools.

In 2009, Portugal ratified the *CRPD*, including the Optional Protocol. According to Anastasiou et al., the Ministry of Education (MoE) endeavoured to comply with article 24 of the *CRPD* and, later, with the concluding observations of the *CRPD* Committee (2016).²⁸⁶ These recommendations necessitated the promotion of, and investment in, inclusive education for all learners with disabilities.²⁸⁷ The *CRPD* Committee highlighted that no exceptions or deviations should be made, especially for learners who are deaf, blind, deaf-blind, and visually impaired, students, as well as for learners with autism.²⁸⁸

One of the most striking observations from the Committee was in response to Portugal in 2016 where, in noting that Portugal had established 'model schools' for deaf, blind, deafblind and visually impaired students, as well as for autistic students, it stated that this was 'a form of discrimination'²⁸⁹ (Portugal 2016). As a result of the *CRPD* Committee's recommendations, DL 03/2008 was repealed and the new Decree-Law No. 54 of 2018 (The DL 45/2018) was adopted by the Portugal government.²⁹⁰

The DL 45/2018 aimed to develop inclusive schools. It made specific reference to global inclusive education documents including UNESCO's 'Policy guidelines on inclusion in education'²⁹¹ as its definition of inclusive education, as well as being aligned to the *CRPD* and the Lisbon Declaration on Educational Equity,²⁹² which aimed to achieve the UN SDGs. The Decree-Law focuses on learner diversity, highlights learner individual characteristics, Education for All (EFA), and Universal Design for Learning (UDL).²⁹³

The document is the first in Portugal to propose a three-tiered approach of learner support and inclusion, namely, universal, selective and additional, with each level having corresponding target groups and responses.²⁹⁴ These include learning support centres within mainstream schools; inclusion resource centres that support learners with specific needs in settings outside mainstream schools (some were previous special schools) and partner and collaborate with mainstream schools; and, finally, specialised units based within some mainstream schools accommodating learners on the autistic spectrum and those who were deafblind.²⁹⁵

Although there is consensus that inclusion should be a basic principle of education for learners with disabilities, the notion of inclusion is vaguely defined and a spirit of sameness in education for learners with disabilities dominates, according to Anastasiou et al. This vague language entails a very narrow understanding of the concept of 'an inclusive education system' as defined in the first paragraph of article 24 of the *CRPD*. Although DL 45/2018 recognises that all learners with disabilities have the right to receive quality education, educational success 'cannot be achieved without appropriate special education services, a network of programs, and continuum of placements designed for students with certain special educational needs that promote optimal learning and social inclusion'.²⁹⁶

Funding arrangements

The management and funding of public education in Portugal, via an allocation of the state budget, historically has been the responsibility of the Ministry of Education. However, recently the funding has been progressively decentralised, with schools and municipalities becoming more involved. Here, municipalities are funded by the Ministry of Finance and by their own revenues generated by local taxes. The total budget for education covers all learners, with some specific funding for learners with disabilities.

Regarding the implementation of inclusive education, by 2016 Portugal has spent EUR 200 million on specialist teacher support. Of this, EUR 7million was used for school-level specialised technicians, while more than EUR 500,000 a year was used to operate 25 Information and Communication Technology Resource Centres for Special Education. In addition, the Ministry of Education allocates funds to support the partnerships between Resource Centres for Inclusion and the mainstream with an annual amount of more than EUR 10 million.²⁹⁸



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