EELC EQUAL EDUCATION LAW CENTRE

To: **Minister of Basic Education**

Ms Angie Motshekga

National Department of Basic Education

Personal Assistant to the Minister of Basic Education

Mr Steve Mabua

Per email: Mabua.S@dbe.gov.za

And to: **Mr Mathanzima Mweli**

Director General

Department of Basic Education

Per email: Mweli.M@dbe.gov.za

Personal Assistant to the Director General

Ms Nomathemba Tom

Per email: Tom.N@dbe.gov.za

And to: **Mr Jabulani Ngcobo**

Director: Inclusive Education

Department of Basic Education

Per email: Ngcobo.J@dbe.gov.za

5 June 2020

Dear Minister Motshekga,

LETTER OF DEMAND - HEALTH AND SAFETY MEASURES FOR LEARNERS WITH DISABILITIES AND THE PHASED RE-OPENING OF SPECIAL SCHOOLS, SPECIAL SCHOOL HOSTELS AND SPECIAL CARE CENTRES

1. We represent the Centre for Child Law ("CCL"). The CCL is a registered law clinic based at the Law Faculty at the University of Pretoria. The CCL works towards establishing and promoting the best interests of children through education, research, advocacy as well as litigation.

2. We would like to acknowledge the efforts made by the Department of Education ("DBE") and the Provincial Education Departments ("PEDs") during these unprecedented times, and we recognise the complexity surrounding the DBE's task of re-opening schools.

3. We also commend the DBE's Inclusive Education Directorate ("IED") for its willingness to regularly engage with NGOs, including Organisation for Persons with Disabilities ("OPDs") over the past month, to discuss the measures in place to support learners with disabilities during lockdown, as well as to discuss when schools reopen.

4. While we value our engagements with the IED, and remain committed to regularly engaging with the directorate over the next few months, and indeed beyond that, we are nonetheless deeply concerned that there are still no clear plans in place to ensure that special schools, special school hostels, and special care centres are adequately prepared to re-open as per the gazetted dates. More specifically, there are no clear plans to ensure that:

    4.1. health and safety measures for learners with disabilities in all public schools (including ordinary and full service schools) will be taken; and

    4.2. learners with disabilities who need to remain at home once schools re-open will be properly supported.

5. In an effort to obtain further clarity, we wrote to the Minister of Basic Education on 8 April 2020 and 14 May 2020, respectively, requesting specific information such as the plans and specific measures necessary to guide the re-opening of special schools, special

school hostels, and special care centres. The letters are attached for ease of reference marked **Annexure A** and **Annexure B,** respectively. To date, we have not received a response.

6. Nonetheless, on 19 May 2020, a meeting was convened between civil society organisations and the IED. At this meeting, the Department committed to setting up special task teams to develop protocols for the reopening of special schools each with a focus on a specific disability.

7. At that meeting, the task team for learners with severe to profound intellectual disabilities updated on the progress made to date and further undertook to achieve the following by 26 May 2020:

   7.1. A manual and a checklist that will be used to assist special care centres and children at home to be COVID-19 compliant;

   7.2. A list of suitable, relevant, and safe PPEs for children in the special care centres;

   7.3. A list of suitable PPEs for outreach team members that will be supporting special care centres and children at home;

   7.4. A list of suitable PPEs for caregivers and parents of children that will be supported from home; and

   7.5. Designing learning and support, as well therapeutic intervention, programmes.

   7.6. The DBE also committed to putting in place an implementation monitoring mechanism to track the effectiveness of these measures designed to meet the needs of learners with severe to profound intellectual disabilities in a COVID-19 learning environment.

8. A copy of the DBE's powerpoint presentation at this meeting which confirms these commitments is attached as **Annexure C**.

9. To the best of our knowledge, these measures have not been finalised.

10. Not even the directions gazetted by the Minister of Basic Education on Friday, 29 May 2020, as amended on 1 June 2020, provided any information about the specific measures required to ensure the health and safety of learners with disabilities returning to ordinary, full service and special schools, special schools hostels and special care centres.

11. As a result of this inaction, we, on behalf of several organisations of persons with disabilities, sent an email to DBE's IED director, Mr Jabulani Ncgobo on Friday 29 May 2020, requesting specific information regarding the finalisation of plans, procurement of appropriate PPE and the criteria for monitoring of readiness for the re-opening of special schools, special school hostels, and special care centres. A copy of this email is attached as **Annexure D**. On 30 May 2020, Mr Ncgobo responded by merely indicating that our query must be directed to the DBE's Director- General.

12. As we have indicated in our previous engagements with the DBE and the IE Directorate, the plans and protocols to address the specific needs of learners with disabilities should cover (but not be limited to), the following:

12.1. <u>The reopening of special schools, special school hostels and special care centres</u>

The DBE must urgently draft plans in consultation with experts in the relevant fields which set out in detail the minimum measures that must be put in place and maintained in special schools, special school hostels and special care centres, where these are different or in addition to the measures currently in place in the

Standard Operating Procedures and Directions. In particular, these plans must include measures relating to:

12.1.1. Infrastructure - This would include classrooms, therapy rooms, and all other facilities of special schools including special school hostels. These plans must include the provision of additional temporary facilities to add capacity where current facilities are not sufficient to ensure social distancing; and

12.1.2. Transport - The DBE must outline in their plans steps taken to ensure that social distancing can be maintained on school buses whilst ensuring all transport provided is suitable to learners with disabilities.

These plans must be made publicly available and distributed to all provinces, districts and schools.

12.2. The procurement and distribution of adjusted PPE to ensure the health and safety of learners with disabilities attending school

At present all special schools are being supplied with the standard hygiene packs for ordinary schools, which do not necessarily cater to the specific needs of learners with different disabilities. Furthermore, there are currently no guidelines available to provinces, districts or schools outlining the additional or adapted PPE that would be necessary to ensure learners, teachers, therapists and support staff are adequately protected. For example, for Deaf learners and learners who are hearing imparied, the provision of cloth masks, as provided for in the ordinary PPE to schools, is not appropriate as learners need to lip read and would require face shields / visors instead. In the case of learners who are blind and rely on touch, additional sanitizers are required for more regular surface and hand cleaning.

These plans must be applicable to learners with disabilities in all school settings - ordinary, full service, special schools and special school centres. These plans must be made publicly available and distributed to all provinces, districts and schools.

12.3. Monitoring the readiness of schools to reopen in accordance with the criteria established in above mentioned plans

The consortium commissioned by the DBE under the leadership of the National Education Collaboration Trust (NECT) must include monitoring and reporting on the readiness of special schools and special school hostels to reopen. The criteria that are used to monitor special schools and special school hostels must take into account the specific needs of the learners at that school as determined by the plans and protocols referenced above.

12.4. Guidelines for the ongoing support to learners remaining at home

It is acknowledged that there may well be learners with disabilities who have complex health issues and comorbidities for whom the return to school will not be possible. It is important that learners who need to, are supported in order for them to continue learning at home. This should apply equally to learners with disabilities. In addition to curriculum support, learners with disabilities may also require therapeutic, nutritional and psycho social support. Learners may also need certain assistive devices and technology to use while they are at home. Guidelines should include options for schools to consider ways of providing curriculum and other support for learners while they are at home using mixed-modes. For example: short video clips, hard copy learning packs, in-person therapy, online learning, and WhatsApp groups.

13. In developing the above-mentioned plans and protocols, the DBE must take into account the specific needs arising from the different disabilities catered for in ordinary, full service, special schools and special care centres. These may include, but are not limited to, visual impairment; hearing impairment; physical disabilities; neurological and neurodevelopmental impairments; intellectual disability; severe to profound intellectual disability; mental illness; and complex and multiple disabilities.

14. The DBE's delay in developing the requisite plans and protocols to ensure that special schools, special school hostels, and special care centres are adequately prepared to reopen, is unreasonable, and violates various rights of learners with disabilities, including the right to basic education, their right to dignity, safety and security and to have their best interests considered in all matters concerning them. Given the particular vulnerability of learners with disabilities and their increased risks in light of the COVID-19 pandemic, the DBE has a heightened responsibility to develop and implement specific plans over and above the standard health and safety protection measures necessary for children. The DBE has failed in their duty to do so.

15. These failures will have an immediate impact on learners in Grades 7 and 12 who are scheduled to return to school on Monday, 8 June 2020. These learners' health and safety will already be compromised from Monday if these necessary plans and protections are not in place. We therefore call on the Minister urgently to prepare the necessary plans and protocols referred to in paragraph 12 above and to make them available to our client, and all other affected organisations, during the course of next week (and by no later than Friday, 12 June 2020) in order for us to be able to comment on the plans and protocols so that they can be finalised and implemented without delay.

16. The plans and protocols required and referred to in paragraph 12 above must include at least the following:

    a. The finalised monitoring plan and criteria to be used to assess the readiness of special schools and special care centres to re-open;
    b. The finalised protocols for the reopening of special schools, hostels and special care centres;
    c. The publishing of these protocols and their distribution to all provinces and schools;
    d. Plans for the procurement and distribution of additional PPE for learners with disabilities;
    e. Detailed plans for additional capacity of special school hostels to ensure social distancing measures;

f. Plans to support learners with disabilities who will remain at home for the foreseeable future, including plans to provide therapeutic support, assistive devices, nutritional support, and curriculum materials; and

g. Detailed plans on how learners with disabilities who choose to return to school will be transported to and from school while adhering to the necessary health and safety precautions during the period of the COVID-19 pandemic.

17. Should we not receive the required plans and protocols to address the issues set out in paragraphs 16 a) to g) above by **Friday, 12 June 2020**, we are instructed to institute an urgent application for the necessary relief to ensure the health and safety of learners with disabilities.

Yours faithfully,

EQUAL EDUCATION LAW CENTRE (EELC)

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