

EQUAL EDUCATION LAW CENTRE – SUBMISSION TO THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES TO INFORM THE LIST OF ISSUES PRIOR TO REPORTING TO THE GOVERNMENT OF SOUTH AFRICA WITH PARTICULAR REFERENCE TO INCLUSIVE EDUCATION.

General Comment: In the time since South Africa ratified the UN CRPD in 2007 without any exemptions, Education White Paper 6, the primary inclusive education policy adopted by the Minister of Basic Education in 2001, has not been reviewed to ensure compliance with article 24. Article 24 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.¹ 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.² 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.³

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 continue to fulfil a role in providing access to specialised education which is not available in under-resourced ordinary public schools. As will be shown below funding models that continue to fund special schools over inclusive mainstream schools perpetuate this segregated system. In addition, the conversion of existing special schools into resource centres able to provide support to neighbouring ordinary schools so that they in turn can accommodate learners with disabilities, has not taken place as planned, leaving the system of segregated schooling largely unchanged in over 20 years.

¹ Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of South Africa (2016) para 43(d).

² 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).

³ Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of South Africa (2018) para 41.

Issue	2022 EELC submission - LOIPR	Previous list of Issues (2018)	Concluding observations (2018)
Reasonable Accommodation	<p>The idea of reasonable accommodation has not been clearly articulated in our education system since 2018. This is problematic in that the concept cannot be properly and effectively applied without a clear articulation of what it means.</p> <p>White Paper 6 advocates for access to inclusive learning opportunities for persons with disabilities and it highlights the necessity of the provision of reasonable accommodation. The SIAS policy 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.</p> <p>The concept of reasonable accommodation as required by both the White Paper and the SIAS policy cannot be achieved without a clear articulation of what it means in our education system.</p> <p>Section 9 of Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) outlines the most important provision for learners with disabilities:</p> <p>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.</p>	<p>Equality and non-discrimination (art. 5)</p> <p>3. Please provide information about:</p> <p>(a) Measures taken by the State party to prevent and address multiple and intersectional discrimination faced by persons with disabilities, particularly women and girls with disabilities, persons with psychosocial and/or intellectual disabilities, persons with disabilities who are members of minority communities or of indigenous peoples, also called native Africans, and persons with albinism, and indicate whether and how the State party's legislation and public policies take account of their needs;</p> <p>(c) Measures taken to extend the application of reasonable accommodation across all sectors, and ensure that reasonable accommodation is provided by public and private actors in relation to all the rights of persons with disabilities. Please also indicate whether the denial of reasonable accommodation is defined as a form of discrimination on the basis of disability and prohibited under domestic law;</p> <p>Education (art. 24)</p> <p>26. Please provide information about:</p> <p>(b) Measures adopted to ensure the provision of the right to reasonable accommodation in education,</p>	<p>8. The Committee notes with concern that:</p> <p>(a) An understanding of the concept of reasonable accommodation is limited among public authorities and the society at large and is therefore not adequately applied to persons with disabilities</p> <p>Committee recommends: (a) Take concrete measures to promote awareness about the concept of reasonable accommodation among the general public and the private sector, and ensure its application at all levels of government;</p> <p>(b) Adopt effective legislation and policies that will explicitly provide protection against multiple and intersectional forms of discrimination</p> <p>Education (art. 24)</p> <p>The Committee notes with concern:</p> <p>(d) The absence of effective measures to provide reasonable accommodation in the education system, including the absence of sufficient learning materials, especially in remote and rural areas, and of a reporting mechanism for parents and children with disabilities who are denied access to education or reasonable accommodation to ensure accountability.</p>

	<p>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.</p> <p>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’.⁴ A similar definition is included in the SIAS Policy.⁵</p> <p>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.</p> <p><i>Therefore, we request the government to show progress made in enacting legislation to clarify the meaning of:</i></p>	<p>to establish guidelines for schools, to make budget allocations for public schools to that end, to provide support for the families of children with disabilities and to ensure the development of teacher training programmes on inclusive education and methodologies;</p>	
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⁴ CRPD, article 2.

⁵ 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’.

	<p>➤ <i>‘Reasonable practicability’, as contained in section 12(4) of the South African Schools Act and clause 22 of the Admission Policy, requires additional clarification.</i></p> <p>➤ <i>A comprehensive definition of ‘reasonable accommodation’ which must be adopted consistently across relevant legislation and policy.</i></p> <p><i>And finally, to provide a plan to:</i></p> <p><i>Comply with its duty under the PEPUA⁶ to ‘develop codes of practice ... in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation’.⁷ These guidelines should 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.</i></p>		
Lack of legislation to giving full effect to the right to inclusive education for all children with disabilities	Despite a constitutional guarantee of the right of everyone to a basic education, the current legislative and policy framework regulating the right to education for children with disabilities remains fragmented and outdated. Given that the 20 year implementation plan in White Paper 6 came to an end in 2021 and that many of the targets remain unmet, the need for clear legal entitlements created through legislation is more critical than ever before. Children with disabilities remain the most marginalised by our education system with no	<p>Education (art 24)</p> <p>26. Please provide information about:</p> <p>(a) Measures adopted by the State party with a view to recognizing the enforceable right to inclusive education and providing inclusive and high-quality education for children and adults with disabilities, including deaf and hard-of-hearing persons, at the national, provincial and local levels;</p>	<p>Children with disabilities (art. 7)</p> <p>12. The Committee is concerned about:</p> <p>(a) The lack of legislation to give full effect to the right to inclusive education for all children with disabilities, in line with general comment No. 4 (2016) on the right to inclusive education, and as outlined in the recommendations of the Committee on the Rights of the Child (CRC/C/ZAF/CO/2, paras. 43–45)</p>

⁶ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUA).

⁷ Ibid, section 25(1)(c)(iii).

	<p>guarantees of an inclusive, equitable and quality education within the general education system.</p> <p><i>We request the government to show progress on measures undertaken to enact legislation on inclusive education.</i></p>		<p>Committee recommends:</p> <p>(b) 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</p> <p>Education (Art 24)</p> <p>The Committee recommends that the State party, in line with general comment No. 4:</p> <p>(a) Adopt, implement and oversee inclusive education as the guiding principle of the education system and develop a comprehensive plan to extend it throughout its territory, in which children can stay in their local schools, not be removed from their families and live in hostels</p>
<p>Corporal punishment and abuse and neglect in schools and special school hostels</p>	<p>Reports of abuse and neglect continue to be raised regarding the care and education of children at specials schools and special school hostels. These have not been adequately addressed since the Committee’s concluding observations. Common problems include:</p> <ul style="list-style-type: none"> • Inadequate teaching and support staff • Inappropriate infrastructure • Poor living conditions and physical and emotional abuse of children in hostels 	<p>Children with disabilities (art. 7)</p> <p>(b) Measures adopted to protect children with disabilities, especially autistic children and children with psychosocial and/or intellectual disabilities, from exclusion, violence, abuse, corporal punishment and neglect by teachers and peers, including action to prevent the use of derogatory language about students with</p>	<p>Children with disabilities (art. 7)</p> <p>(b) The high number of reported cases of corporal punishment, violence, abuse, neglect and inequality involving children with disabilities, especially children with autism and children with psychosocial or intellectual disabilities, by teachers and peers. The Committee is further concerned about the reported cases of abuse of children</p>

	<ul style="list-style-type: none"> • Lack of access to learning and teaching resources and assistive devices • Chronic underfunding • Abuse, corporal punishment and neglect in special-school hostels <p><i>We therefore request that the government provide measures which are being taken to counter the problems identified in special schools and special school hostels, as well as its plans to urgently publish Regulations for special school hostels.</i></p>	<p>disabilities travelling on public transport in poor and in rural areas;</p>	<p>with disabilities at schools and school hostels, with teachers allegedly being the perpetrators in most cases; The Committee recommends:</p> <p>(a) In line with target 16.2 of the Sustainable Development Goals, develop, adopt and implement legislation and concrete measures to ensure that children with disabilities, including children with autism, albinism or psychosocial or intellectual disabilities, are adequately protected from violence and abuse, including corporal punishment, and that sanctions are imposed against perpetrators; and that the Children's Act is amended without delay to explicitly prohibit all forms of corporal punishment in all settings;</p> <p>(c) Adopt a time-bound plan of action to address the high levels of physical, sexual, verbal and emotional abuse in special education schools, including special education school hostels. This plan must include a monitoring framework and process with a comprehensive vetting procedure, including for criminal records, for all teachers and officials working with children before recruitment, and ensure that the National Register for Sex Offenders and National Child Protection Register be adequately maintained;</p> <p>Education (Art 24) Recommends:</p>
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			(d) Prepare 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.
High number of out-of-school learners	<p>Children with disabilities of school-going age remain out of school and are being denied their right to basic education. 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.⁸ 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.</p> <p>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</p>	<p>Education (art. 24)</p> <p>26. Please provide information about:</p> <p>(c) The number of cases of discrimination against children with disabilities in schools and the measures taken to ensure that children with disabilities currently out of education are enrolled in school, that they are treated with dignity and respect and that they are not denied admission to a school on account of their impairment.</p>	<p>Children with disabilities (art. 7)</p> <p>Concerned with: (c) The large number of children with disabilities, nearly 600,000, who are out of school or studying in specialized schools or classes, in particular children with psychosocial disabilities, and children with disabilities placed in centres for children or less regulated special service centres, all of which are based on long-term institutionalization, often located far from their families and communities, isolated and lacking properly trained staff.</p> <p>Education (art. 24)</p> <p>The Committee notes with concern:</p> <p>(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</p>

⁸ DBE, *Report on the Implementation of Education White Paper 6 on Inclusive Education: Overview for the Period 2013-2015* (2016) p. 21.

	<p>reason for being out of school was their disability.⁹ 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.¹⁰</p> <p>Without accurate, disaggregated data, effective planning for education for all within an inclusive education system cannot take place and has not.</p> <p><i>The government is required to provide an update on a plan of action for 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. Further, government needs to provide details on progress in collecting accurate, disability-disaggregated data needs as articulated above.</i></p>		<p>inclusive education, and the lack of safety in school hostels.</p>
Barriers to access	<p>White Paper 6 describes an inclusive education and training system as a system which: is about maximising the participation of all learners in the culture and the curricula of educational institutions and identifying and mitigating barriers to learning. ‘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:</p>	<p>Education (art. 24)</p> <p>26. Please provide information about:</p> <p>(c) The number of cases of discrimination against children with disabilities in schools and the measures taken to ensure that children with disabilities currently out of education are enrolled in school, that they are treated with dignity and respect and that they are</p>	<p>Education (art. 24)</p> <p>The Committee notes with concern:</p> <p>(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</p>

⁹ DBE, *General Household Survey Focus on Schooling 2018* (2019), available at <https://bit.ly/3v7VNR0>.

¹⁰ Human Rights Watch, *Complicit in Exclusion: South Africa’s Failure to Guarantee an Inclusive Education for Children with Disabilities* (2015) p. 74.

	<ul style="list-style-type: none"> • 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. • The pace of teaching and the time available to complete the curriculum. • The learning materials and equipment that is used. • How learning is assessed. <p>We note that the most important way of addressing barriers arising from the curriculum is to make sure that the process of learning and teaching is <i>flexible enough to accommodate different learning needs and styles.</i></p> <p><i>Therefore, we request that the government provides information on the progress which it has made to make curricula more flexible across all bands of education so that it is accessible to all learners, irrespective of their learning needs.</i></p>	not denied admission to a school on account of their impairment.	<p>attendance of children with disabilities at regular and inclusive schools;</p> <p>Recommends:</p> <p>(c) Establish an effective and permanent programme for training teachers in inclusive education, including learning sign language, Braille and Easy Read skills;</p>
Early identification and intervention	<p>Early identification is absolutely critical to ensure access to early intervention services to support optimal development. More often than not disabilities are identified through access to health services or whilst young children are included in ECD Centres. It is essential that information as to the child's learning and developmental needs be transferred seamlessly and that referrals for assessment can occur easily.</p> <p>In South Africa, despite the recommendation of the CRC Committee to "Improve inter-sectoral coordination to provide integrated services to children with disabilities and their families and caregivers", the lack of effective</p>		<p>Recommends: (d) Develop and adopt effective implementation plans for prevention and early intervention programmes in communities to enable early identification of and support for children and adults with disabilities in family and community settings with adequate budget allocations, including training and continuous professional development of care workers and parents of children with disabilities, increased public awareness-raising programmes to understand the importance</p>

	<p>integration and coordination of service across different departments remains a significant challenge.</p> <p><i>We therefore request the government to provide a progress report on the measures taken to develop and adopt effective integrated services to enable early identification and intervention.</i></p>		of family and community-based provisions instead of institutionalization.
Lack of budgetary allocations for the promotion of inclusive education	<p>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.</p> <p>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 also hinders 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.</p> <p><i>We request that the government provides details as to the finalisation of a funding model for inclusive education that is well suited to the South African context (economic and societal).</i></p>		<p>Education (art. 24)</p> <p>The Committee notes with concern:</p> <p>(c) The lack of information on budgetary allocations for the promotion of inclusive education...</p> <p>The Committee recommends that the State party, in line with general comment No. 4:</p> <p>(b) Intensify efforts at allocating sufficient financial and human resources for reasonable accommodations that will enable children with disabilities, including children with intellectual disabilities or autism and those who are deaf or hard of hearing, to receive inclusive and quality education...</p>
Statistics and data collection	<p>Without accurate disaggregated data on the number of children with disabilities in schools and on the number of children with disabilities that are out of school, effective planning for education for all within an inclusive education system cannot and does not take place.</p>		<p>Education (art. 24)</p> <p>40. The Committee notes with concern: ...and the absence of systematic data collection, disaggregated by sex and type of impairment, on the number of children with</p>

	<p>Unfortunately, since government's previous reporting to the CRPD no more accurate data is available. Wide variances in data demonstrate a dire need for thorough, scientifically gathered disability-disaggregated data.</p> <p><i>As mentioned above, we therefore request the government to provide an update on progress made to collect accurate and systematic disaggregated data, on the number of children with disabilities that are out of school.</i></p>		<p>disabilities mainstreamed into regular and inclusive school environments and the enrolment and dropout rates of children with disabilities in both mainstream and special schools;</p> <p>Committee recommends: (b)...including engaging in systematic data collection, disaggregated by sex and type of impairment, on the number of children mainstreamed into regular and inclusive schools and the dropout rates;</p> <p>Statistics and data collection (art. 31)</p> <p>50. The Committee is concerned about the lack of accurate and comprehensive data on persons with disabilities in all sectors of the State party, and is further concerned about the non-inclusion of disability concerns in the monitoring indicators for the implementation of the Sustainable Development Goals, and the absence of information on statistical data and its dissemination to persons with disabilities in all accessible formats.</p> <p>The Committee recommends:</p> <p>(a) Consult meaningfully with persons with disabilities and their representative organizations to create a system for the collection of up-to-date disaggregated appropriate data on persons with disabilities;</p>
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DBST & SBST	<p>Effective support structures at both a school and district level are essential components in ensuring support for inclusive education is available to mainstream schools. Despite policy obligations and guidelines in place detailing how these structures should function, research shows implementation is extremely poor.</p> <p>District Based Support Teams (DBST): 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’.¹¹</p> <p>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.¹² 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’.¹³</p> <p>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.¹⁴</p> <p>The incorrect composition of the DBST and lack of leadership by the District Director have been cited as barriers to effective functioning. 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</p> <p style="padding-left: 40px;">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.¹⁵</p> <p><i>Therefore, we request the government to provide details of a plan to improve the composition, capacity development, funding, leadership and functioning of the DBST and how it intends to monitor this.</i></p>
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¹¹ PMG (n 14).

¹² Makhalemele & Nel (n 150).

¹³ Deghaye (n 146) p. 33.

¹⁴ Hayes (n 157).

¹⁵ DBE (2016) (n 108) p. 71.

	<p>School Based Support Teams (SBST): 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.</p> <p>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’.¹⁶ Challenges to the effective functioning of SBSTs include infrequent meetings and limited understanding of the extent of their role, lack of support from the DBST, lack of skills and training, and an overburdened workload.</p> <p><i>The government is requested to provide details of a comprehensive plan on oversight and monitoring of school-based support teams aimed at ensuring they are serving the purposes for which they were intended.</i></p>
SSRC & FSS	<p>Full-Service Schools: In 2019, the Auditor-General of South Africa issued a damning 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 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.</p> <p>As a result of this the DBE issued a circular on the Temporary Suspension of the Designation of Full-service Schools, asking provinces to consider suspending the designation of FSS for three years to “ensure that those that have been designated are adequately capacitated to fulfil their roles and responsibilities....” FSS were intended to serve as examples of good practice and to “chart the way for all schools to ultimately become inclusive institutions”. The target set by White Paper 6 of establishing 500 FSS (representing 3,6% of all ordinary public schools) was far too low to realise this aim. Despite reports of government having exceeded this number, the effectiveness of these schools in achieving their intended outcomes has, as has been shown, come into question.</p> <p><i>The Government is requested to provide details as to how they intend to ensure all ordinary schools in South Africa function as inclusive schools, how they will be resourced to do so and when. A further 20-year plan will be unacceptable.</i></p>

¹⁶ 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

	<p>Special School Resource Centres:</p> <p>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 Have come to fulfil an important role in providing access to specialised education that is not available in under-resourced ordinary public schools.</p> <p>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.¹⁷ By 2020, the total number of special schools designated as special school resource centres had risen to only 142,¹⁸ 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.</p> <p>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.</p> <p>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</p> <p><i>Therefore, we request the government to provide qualitative data on the functioning of special schools as resource centres and plans on how the remaining special schools will be supported to fulfil this role.</i></p>
Government’s response to the impact of COVID-19 on the right to education for	<p>In an effort to curb the spread of the Covid-19 virus, schools were the first public institutions to be closed in March 2020. While there was extensive debate on the impact of the pandemic on children generally and the closure and reopening of schools, learners with disabilities have once again been left behind. Despite efforts by stakeholders at constructive engagement, the Department of Basic Education (DBE) failed to ensure that learners with disabilities were adequately supported during this time.</p>

¹⁷ Baseline Country Report (n 111) p. 43.

¹⁸ DBE report to Parliament (2021) (n 16).

<p>children with disabilities</p>	<p>As the initial lockdown period was underway discussions quickly shifted to ensuring at-home support for learners. In this respect, the DBE made minimal effort to ensure that learning support materials and lessons were made available to learners on their website, TV channels and radio. But a crucial consideration was evidently missing from this planning - any consideration at all that these materials needed to be accessible to learners with disabilities! As a result, most learners with disabilities were simply left without any support to continue learning at home – in spite of their arguably greater need for educational stability.</p> <p>As discussions shifted to the re-opening of schools, the DBE began publishing documents to provide guidance to schools, teachers and other officials on the measures to be put in place to contain the spread of the virus, including hygiene standards for schools and procedures to follow in schools to keep both learners and teachers safe. What was missing was any reference to learners with disabilities or special schools. Not a single document contained any additional or adjusted measures which may be necessary to ensure the safety of learners with disabilities and their specific support needs. It was only after sustained pressure by civil society organisations that the Department amended their Directions to include some provisions for learners with disabilities on 9 June 2020.</p> <p>As the re-opening date for Grade 7 and 12 drew closer, no guidelines were published by the DBE to assist special schools to prepare. In fact, the only three guidelines which were developed by the Department (for Blind and partially sighted learners, Deaf and Autistic learners) were only made available on the DBE website on the 25 June two weeks after the return of some learners with disabilities to schools. No additional guidelines were published relating to any other category of disability, leaving provinces and schools out on limb having to “fend for themselves” as one principal put it.</p> <p>As an example of the practical challenges faced, the DBE <i>Guidelines for Schools on Maintaining Hygiene during the COVID-19 Pandemic</i> makes reference to the provision of “Basic and Essential Hygiene and Sanitation Packs for each school”, but this basic pack did not take into account that schools for visually impaired learners would need additional sanitizer as learners rely on touch. Nor was any provision made for coveralls for staff who support learners with physical disabilities. As a result, many schools have had to resort to their own fundraising in order to pay for the additional PPE they urgently needed.</p> <p>Further issues arose in respect of special school hostels. Of the 501 special schools around the country, 179 are residential, and therefore accommodate a large numbers of learners who travel a long distance and live in the hostels. Special school principals and a range of other stakeholders repeatedly raised serious concerns about the lack of infrastructure capacity to manage the phased return of learners to schools. A school in Kwa-Zulu Natal reported their hostel ordinarily accommodated 360 learners, but in order to comply with social distancing measures they would only be able to take back 120 learners. Another school reported that learners ordinarily share beds – a problem in and of itself – and that the hostel would now only be able to allow two grades to return.</p> <p>The DBE provided no additional infrastructure capacity to special school hostels. Instead, the DBE recommended making do with what schools had and using weekly rotations. This completely defied logic as many learners often live up to 500 or 600 kms from the school, and for whom weekly transport</p>
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to and from school is simply not an option. In addition, the disruption to learning and routines for some learners utilizing this system would be detrimental to their mental and emotional well-being.

Civil society organisations were tirelessly attempting to engage with the DBE to assist them to meet their obligations and to comprehensively plan for the safe return to school or continued learning at home for the country's hundreds of thousands of learners with disabilities. Despite these efforts at constructive engagement, the DBE simply failed to ensure that learners with disabilities were adequately supported. Thus, as a last resort the Centre for Child Law represented by the Equal Education Law Centre filed an application to compel the Department to live up to its own motto of "No child left behind!". A settlement agreement was reached and made an order of court.

The EELC and CCL assisted the DBE in preparing and publishing amendments to the DBE COVID Directions aimed at the safe re-opening of schools; Guidelines for learners with physical disabilities, intellectual disabilities, epilepsy and severe to profound intellectual disabilities and the amendment of existing SOP's. The amendments make provision for adjusted and appropriate PPE to officials and learners, ensure the provision of educational and therapeutic support to learners with disabilities and provide for support to schools with infrastructure capacity in hostels. Monitoring of the implementation of the court order reveal that little progress has been made to improve infrastructure capacity. This has resulted in large numbers of learners remaining out-of-school and suffering significant learning losses. One class of Grade 12 learners at a special school had lost so much learning time that they had to forfeit writing their school leaving exams and postpone this for another year.

The government is requested to provide details on how the continued safety of learners with disabilities will be guaranteed going forward, catch up plans to recover learning losses, plans to improve implementation of inclusive education.