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INTRODUCTION

1. This is a joint submission made by Equal Education (“EE”) and the Equal Education Law Centre (“EELC”) on the KZN Draft Learner Transport Policy (“**Draft Policy**”) published for public comment by the Member of the Executive Council for the KwaZulu-Natal Department of Education (“**KZN DoE**”), Mr Kwazikwenkosi Mshengu on 16 April 2020.
 2. EE is a membership-based, democratic movement of learners, parents, teachers and community members advocating for the provision of both an equal and quality education in South Africa. The EELC is a public interest law centre that aims to advance the right to a basic education through various means, including legal assistance, research, advocacy, and strategic litigation.
 3. EE and EELC acknowledge the importance of this Draft Policy, and recognise the KZN DoE’s efforts in formulating a policy that attempts to address an issue of great complexity and size. However, we note our deep concern with many provisions contained herein, which dilute the effectiveness of this policy, and hinder its ability to ensure the equitable and sustainable provision of learner transport to learners in KZN. As such, we have provided comments in response to specific draft provisions in the table below, but also highlight our more general concerns.
 4. Our submission is structured as follows:
 - 4.1. First, we highlight serious and general concerns regarding the Draft Policy which impact fundamentally on its coherence and effectiveness.
 - 4.2. Second, we tabulate our provision-specific comments.
- It bears emphasis that both our general concerns and provision-specific comments must be taken into account as constituting our submission on the Draft Policy.

5. GENERAL CONCERNS REGARDING THE DRAFT POLICY

5.1. A lack of clear and determined time frames throughout the Draft Policy

EE and EELC note the numerous instances in the Draft Policy where either vague time frames are used to determine when obligations must be fulfilled, or where no time frames have been specified at all. For example, the Draft Policy states that officials in charge of learner transport must prepare a consolidated list of all learners requiring learner transport in each district, without specifying the time frame within which this undertaking must be completed. We have

highlighted these instances in the table below, with reference to specific clauses contained in the Draft Policy. However, as a general remark, EE and EELC submit that unspecified or vague time allocations within which obligations must be fulfilled may lead to inconsistent and severely delayed processes that negatively impact learners, and must be rectified.

5.2. The unclear and confusing delineation of roles and responsibilities between the KZN Department of Transport and KZN Department of Education

EE and EELC are concerned that the delineation of the roles and responsibilities of the KZN DoE and KZN Department of Transport (“KZN DoT”) remain wholly unclear and confusing in the Draft Policy. While it is stipulated in the Draft Policy that the KZN DoE is responsible for providing learners in public special schools with learner transport and that the KZN DoT has the responsibility of providing this service to learners in public ordinary schools, these responsibilities are incoherently and inconsistently applied throughout the Draft Policy, and in some instances conflated.

Firstly, clause 9 and clause 10 of the Draft Policy describe many of the responsibilities allocated to the KZN DoE and the KZN DoT in a very broad and superficial manner. In particular, the policy has omitted significant amounts of detail regarding how various processes will be carried out, and by when they will be completed. For example, the Draft Policy states that the KZN DoE is responsible for evaluating the impact of learner transport on teaching and learning, yet the Draft Policy provides no further information on how, or when, this will be completed.

Secondly, we note that certain roles and responsibilities have been duplicated between the KZN DoE and KZN DoT. For example, clause 9(1) (i) of the Draft Policy indicates that the KZN DoE is responsible for purchasing suitable vehicles for the provision of transport for learners with disabilities, while clause 10(1)(h) indicates that the KZN DoT is responsible for procuring vehicles in accordance with specifications received from the KZN DoE for learners with disabilities. Such duplication of roles may lead to confusion and result in an inefficient use of resources.

Thirdly, the Draft Policy states that the KZN DoT has certain responsibilities pertaining to learners attending public ordinary schools, but fails to allocate the same responsibilities to the KZN DoE in relation to public special schools. For example, clause 10(1)(d) of the Draft Policy states that the KZN DoT is responsible for budget control and administration in public ordinary schools. However, the Draft Policy does not allocate the same responsibility to the KZN DoE in relation to public special schools, therefore leaving it

unclear as to who is responsible for budget control and administration in these schools.

5.3. The provisioning of transport to learners with disabilities is narrowly limited to public special schools

The Draft Policy specifically accommodates learners with disabilities. However, the scheme of the policy only makes provision for learners with disabilities attending public special schools, and does not cater for learners with disabilities attending public ordinary schools. EE and EELC submit that this is a glaring omission, and a significant flaw in the Draft Policy that does not advance an inclusive education approach.

5.4. A failure to explain the application process that must be followed

EE and EELC note that the Draft Policy fails to explain the application process that a learner, parent, or guardian must follow when applying for learner transport. This includes information regarding how and when to apply, where to collect and hand in application forms, whether applications can be made online, or whether they are only available as hard copies, and to whom they must be given, amongst others. Such an omission leaves parents, guardians and learners uncertain of the application process, and may amount to the enforcement of inconsistent and arbitrary procedures.

5.5. The universal application of clauses 9-16, 21, 22, 24, and clauses 26-35 of the Draft Policy

Clauses 11 to 16 of the Draft Policy address issues such as the variation of contracts, the provision of transport in cases of emergency, payment models, payments to operators, the replacement of contracted vehicles by operators, route variations and trip exchanges. These clauses are contained in section 1 of the Draft Policy and, although this section may not necessarily be intended to limit the application of its provisions to public ordinary schools, the context and interpretation of this section implies that these clauses are only applicable to the transportation of learners attending public ordinary schools. EE and EELC are of the view that these provisions should be applied generally to the transportation of both

learners attending public special schools and public ordinary schools, and that their general application must be stated more clearly in the Draft Policy.

Similarly, clause 21, which addresses internal appeals, clause 22 which addresses circulars, directives, implementation procedures and standard operating procedures, clause 24 which addresses an emergency evacuation plan, and clauses 26 to 35 of the Draft Policy, which address aspects of management systems, logbooks, loads on vehicles, cooperation of officials and employees to promote efficiency in the operation of vehicles, the roadworthiness of vehicles, safediving, the safe custody of vehicles, the garaging and parking of vehicles, and the display of registration plates and licensing discs on state vehicles, are also clauses that should be applied generally to all relevant role players, and should not be limited to those concerned with the transportation of learners from public special schools, as is implied by the structure of the document. EE and EELC therefore highlight the need for a section in the Draft Policy that clearly indicates those provisions that are of general application.

5.6. The problematic identification of beneficiaries attending public special schools

The Draft Policy does not provide sufficiently clear eligibility criteria for learners attending public special schools, but rather creates a position where each school applies its own method of prioritisation in terms of very broad guidelines that may lead to extreme inconsistency and uncertainty. EE and EELC therefore highlight the need for greater clarity concerning the criteria used to identify learners with disabilities at both public special schools and public ordinary schools who qualify for learner transport while recognising the need for some school-level discretion to accommodate for exceptional or specific circumstances.

5.7. Availability of financial resources

While EE and EELC recognise that there may be budgetary constraints in the immediate future, implementing authorities cannot use this excuse indefinitely and not provide learner transport to all learners who qualify. The Draft Policy treats these funding shortages as inevitable, and does not make

an attempt to provide a long-term plan to acquire the funding necessary to ensure that all qualifying learners are able to access the service in the long term. EE and EELC recommend that the Draft Policy include a concrete, long-term, and sustainable plan that ensures that funding does not become a hindrance to learners who qualify for scholar transport benefitting from this service.

5.8. Alternative modes of transport

Although clause 10(1)(i) of the Draft Policy states that the KZN DoT will be responsible for procuring and distributing non-motorised transport in collaboration with the KZN DoE, the Draft Policy fails to oblige the KZN DoE and KZN DoT to consider alternative modes of transport in their determination of learner transport provisioning. Section 3.8.1 of the National Learner Transport Policy states that implementing authorities must promote the use of all modes of transport available to learners, including cycling and walking. EE and EELC therefore urge that the Draft Policy specifically require alternative modes of transport to be considered.

5.9. Wrong classification of nearest appropriate school

EE and EELC note that the Draft Policy, as per the National Learner Transport Policy, states that learner transport will be subsidised to the nearest appropriate school. The Draft Policy further states that learners attending a school of parental choice shall not be entitled to learner transport. We are concerned about the “school of parental choice” being excluded from dedicated subsidised transport services. It must be borne in mind that often these ‘choices’ are made in circumstances where the learner has not been admitted to the nearest school, the nearest school does not offer instruction in the language appropriate to that learner, or it does not offer the subjects which the learner wishes to take. We therefore recommend that when the Draft Policy distinguishes between “school of need” and “school of choice”, it include a broad definition of “school of need” which allows learners to attend *“a school which offers quality education and instruction in a language with which the learner is comfortable, and offers subjects which the learner requires to pursue his or her chosen career.”*

6. PROVISION-SPECIFIC COMMENTS

TABLE OF COMMENTS			
Section	Clause (and, if applicable, sub-clause) of Draft Policy	EE/EELC Comments	EE/EELC Recommendations
Introductory Section	1 - Definitions	<p>In the Draft Policy, “Head: Education” and “Head: Transport” are defined respectively as “Head: KZN DOE” and “Head: KZN DOT.” This designation is unclear.</p> <p>EE and EELC are concerned that the definition of the term “learner” is too broad for the purposes of the Draft Policy.</p> <p>The current definition of “learner transport” creates the impression that learners with disabilities are a separate group to learners in general. This is not correct since learners with disabilities are included in the general category of all learners attending Grade R to Grade 12.</p> <p>The definition of “learners with disabilities” is not included in the Draft Policy, although the term is used throughout the Draft Policy as noted, for example, in clause 9.1(h).</p> <p>EE and EELC are concerned that the term “needy learner” has the potential for stigmatisation, and should be amended.</p>	<p>EE and EELC recommend that the definition of “Head of Department: Education” be stated as “Head: KwaZulu-Natal Department of Education,” while the definition of “Head of Department: Transport” be stated as “Head: KwaZulu-Natal Department of Transport”.</p> <p>We recommend that the definition of “learner” specifically apply to learners in public schools.</p> <p>We recommend further that the reference to “including learners with disabilities” should be removed from the definition of “Learner transport,” as it does not serve a specific purpose. Alternatively, the phrase can be amended to “learners with disabilities of all ages.”</p> <p>In an earlier version of the Draft Policy, the phrase “learners with disabilities” was defined as “learners whose mobility is restricted by physical or mental disability on a temporary or permanent basis, and includes the very young, the blind or partially sighted and the deaf or hard of hearing.” EE and EELC recommend that this definition be included in the current version of the Draft Policy.</p> <p>Furthermore, the use of the term “learners with special needs” used in clause 23 should be removed and replaced with “learners with disabilities.”</p>

<p>Introductory Section</p>	<p>4(5) & 4(6) - Purpose, Scope, and Implementation</p>	<p>The Draft Policy states that “The KZN DoT shall be responsible for the provision of dedicated subsidised learner transport services for learners attending public schools. The KZN DoE shall be responsible for the provision of learner transport services for learners attending public special schools.” EE and EELC are concerned about this division of responsibilities between the departments, because the remainder of the Draft Policy does not articulate this division clearly, and there are instances of blatant overlap and/or contradictions. For example, the KZN DoE seems to be involved in learner transport provisioning in public ordinary schools, when this clause states that only the KZN DoT is responsible for this particular form of learner transport provision.</p>	<p>EE and EELC recommend that these sub-clauses be amended to adequately and clearly stipulate the separate responsibilities of the KZN DoE and DoT. The departments’ respective responsibilities should not overlap or contradict one another at any point. All instances of such overlap and contradiction must be amended in keeping with the specified responsibilities of each department in this particular clause.</p>
<p>1</p>	<p>6(2) - Learners Attending Public Schools</p>	<p>Clause 6(2) of the Draft Policy states that a learner who travels a minimum distance of 3 kilometres to the nearest appropriate school qualifies for learner transport.</p> <p>In addition, clause 6(1) of the Draft Policy indicates that implementing departments must be guided by the criteria set out in the National Learner Transport Policy, which states, amongst others, that priority must be given to learners with disabilities, taking into consideration the nature of the disability, and primary school learners who walk long distances to schools, especially in rural areas.</p> <p>Although the Draft Policy aims to prioritise primary school learners who walk long distances to school, especially in rural areas, EE and EELC note that the current phrasing of this criteria fails to take into account that primary school learners of different ages have varied capabilities, and that very young learners should not be subject to the same criteria as older learners. As such, the Draft</p>	<p>EE and EELC recommend that the criteria be further refined to accommodate very young learners and take cognizance of learners with disabilities and the functional mobility issues they may experience.</p>

		<p>Policy fails to specifically address instances where very young learners experience difficulties when walking less than 3kms to their nearest appropriate schools.</p> <p>For example, a learner in Grade R may experience similar, or worse, difficulties walking 2,5 kms to school as a grade 4 learner would while walking 3kms to school.</p>	
<p>1</p>	<p>6(3) - Learners Attending Public Schools</p>	<p>The Draft Policy states, “If, as a consequence of budgetary constraints, the implementing authorities are unable to provide all learners who qualify for learner transport with transport, the Head: Education shall on the advice of the Director: Learner Transport prioritise learners in each district in keeping with the intent and purpose of the KZN Learner Transport Policy.” However, it is unclear how learners in each district will be prioritised. EE and EELC are concerned that the ambiguity of this particular clause lends itself to broad discretionary powers which will lead to arbitrary decision-making.</p> <p>As aforementioned, EE and EELC are concerned about the stated responsibilities of the Head: Education, seeing as the KZN DoT is responsible for the provision of scholar transport to public ordinary schools.</p> <p>Furthermore, it is unclear whether the Director: Learner Transport is appointed under the KZN DoT or the KZN DoE.</p>	<p>EE and EELC recommend the addition of more concrete criteria to ensure the Draft Policy does not leave room for vagueness or subjectivity.</p> <p>EE and EELC also recommend the clarification of the Head: Education’s responsibility to provide scholar transport to ordinary public schools.</p> <p>Additionally, EE and EELC request that additional information be provided regarding the role of the Director: Learner Transport. Particularly, the Draft Policy must state whether this role falls under the KZN DoT or the KZN DoE.</p> <p>Lastly, EE and EELC recommend the insertion of wording that obliges the continuous review of a plan that will eventually meet all learner transport needs for learners who qualify. In other words, while implementing authorities may not be able to immediately provide transport to all learners who qualify, they must come up with a plan to improve upon that in the future.</p>

<p>1</p>	<p>6(4) - Learners Attending Public Schools</p>	<p>This sub-clause states, “The KZN DOE shall act consistently and with transparency and to this end it shall ensure inter alia that school Principals are regularly informed of the prioritisation criteria under the KZN Learner Transport Policy.”</p> <p>EELC are unclear as to what the phrase “with transparency” means in this context. In addition, the Draft Policy does not clarify what the “prioritisation criteria” is, how the process of prioritisation will take place, and whether crucial information, such as the type of terrain learners have to traverse, whether a child comes from a child-headed household, or whether a household is able to afford public transport, if public transport is available, will be taken into account.</p>	<p>EE and EELC recommend that the phrase “with transparency” be elaborated upon to sufficiently explain how school Principals will be informed about the prioritisation criteria. Additionally, we request that this prioritisation criteria be clearly stated.</p>
<p>1</p>	<p>7(1) - Identification of Beneficiaries Attending Public Schools</p>	<p>EE and EELC are concerned with this clause, as it states that SGB consultation is necessary to determine which learners qualify for learner transport at public ordinary schools. While SGBs’ involvement allows for a more consultative process, EE and EELC are concerned that many SGBs are under-capacitated. Many SGBs cannot provide this kind of support to learners, and their inclusion in the decision-making process can create a policy that disempowers learners that attend public schools governed by under-capacitated SGBs.</p>	<p>EE and EELC recommend that the Draft Policy clearly outline how learners who qualify for learner transport will be identified, rather than leaving this matter to the SGBs’ discretion. Additionally, we recommend the replacement of the phrase “after consultation with the SGB” with the phrase “in accordance with the criteria set out in this Policy.”</p>
<p>1</p>	<p>7(2) - Identification of Beneficiaries Attending Public Schools</p>	<p>Clause 7(2) states that the district director shall - “(a) scrutinise the list to satisfy himself/herself that the learners reflected thereon qualify for learner transport.” EE and EELC believe it is important that district directors determine that learners qualify for scholar transport as per the criteria set in this Draft Policy, rather than arbitrarily.</p>	<p>EE and EELC recommend that clause 7(2)(a) be amended as follows: “scrutinise the list to satisfy himself/herself that the learners reflected thereon qualify for learner transport as per the criteria set out in the KZN Learner Transport Policy 2020.”</p>

<p>1</p>	<p>7(3) - Identification of Beneficiaries Attending Public Schools</p>	<p>This clause makes reference to “officials in charge of learner transport,” yet it doesn’t explicitly state who those officials are. This concerns EE and EELC as it leaves room for ambiguity.</p>	<p>EE and EELC recommend that this clause be amended to explicitly outline who is meant by “officials in charge of learner transport.” If they are government officials, then the clause must state which departments they belong to.</p>
<p>1</p>	<p>7(5) & 7(6) - Identification of Beneficiaries Attending Public Schools</p>	<p>Clause 7(5) of the Draft Policy states that, “The Head: Education shall consider the applications together with the information provided and recommendations submitted to him/her. Where it is not possible to provide all eligible learners with learner transport the Head: Education shall have regard to the provisions of the National Policy as amplified by the KZN Learner Transport Policy in prioritising the learners. Clause 7(6) of the Draft Policy states that, “Where necessary, he/ she shall consult with the Head: Transport on the most effective and justifiable way of providing as many eligible learners with transport having regard to the budget allocated for the provision of such transport.” EE and EELC are particularly concerned about the vagueness of these two clauses. We note that the Draft Policy already prioritises learners in need, but there are no additional measures to prioritise learners in need when they are not able to receive transport, leaving the matter to the discretion of the Head: Education and Head: Transport. Moreover, similarly to clause 6(3), this clause does not include a concrete plan to ensure that, in the future, the Departments have the necessary funds to ensure that all learners who qualify are able to receive learner transport.</p>	<p>EE and EELC recommend that, for the purposes of transparency and accountability, more details be added to this clause. There must be a clear way forward for addressing the needs of eligible learners who are unable to receive transport due to budgetary constraints. In particular, this clause should include an emergency mechanism to unlock funding so that learners can be transported, rather than relying on the Head: Education and the Head: Transport to take action on their own. As aforementioned, the Head: Education and Head: Transport should be obliged to formulate a long-term plan to ensure that the KZN DoT and the KZN DoE can eventually accommodate all learners that qualify for learner transport. This is necessary to honor each learner’s right to an education.</p>

<p>1</p>	<p>7(7), 7(8), & 7(9) - Identification of Beneficiaries Attending Public Schools</p>	<p>These clauses state, “If the Head: Education does not approve learner transport to learners of a particular school, he/she shall inform the district director in writing of his/her decision and reasons for such decision. The district director shall convey the decision of the Head: Education together with the reasons to the school Principals concerned. The school Principals shall inform learners’ parents/guardians who applied for learner transport whether their applications were successful and in the case of those learners who were unsuccessful, inform the learners’ parents or guardians in writing why their applications were unsuccessful.” EE is concerned that these decision-making processes lack the necessary clear timeframes to ensure that actors can be held accountable.</p> <p>Additionally, there are seemingly superfluous steps in the communication process. EE and EELC are concerned about the presence of too many actors, which may make the process unnecessarily long and complicated.</p>	<p>EE and EELC recommend the insertion of clear timeframes within which parents are informed of the Head: Education’s decision. EE and EELC recommend that parents be informed of the Department’s decision within 14 days of applying for scholar transport.</p> <p>Additionally, EE and EELC urge the departments to consider a more direct method of informing parents of the Head: Education’s decision. More specifically, EE and EELC recommend that the Head: Education inform parents of the decision directly.</p>
<p>1</p>	<p>8 - Inclusion of New Learners Where Public Schools Have Existing Learner Transport</p>	<p>Clause 8 of the Draft Policy states that, where space becomes available on learner transport servicing an existing route, the school principal must inform learners and parents/ guardians of the criteria described in the National Learner Transport Policy, as well as the basis for prioritisation. Principals will then compile a list of learners that meet the criteria, discuss this list with the School Governing Body, and make recommendations to the District Director regarding those learners who should be provided with learner transport. However, as highlighted in previous clauses, the process of, and basis for, the prioritisation of learners is still unclear, and crucial aspects pertaining to a learners’ personal and financial circumstances do not appear to form part of this consideration.</p>	<p>Due to this lack of certainty, and the risk this creates of inconsistent and arbitrary decision-making, EE and EELC recommend that the Draft Policy be amended to explicitly outline the criteria which learners must meet in order to be included where schools have existing learner transport, as well as explain the process of prioritisation that will take place.</p>

<p>1</p>	<p>8(1) - Inclusion of New Learners Where Public Schools Have Existing Learner Transport</p>	<p>8(1)(a) states that when space becomes available, the school Principal “shall inform learners and their parents/guardians still requiring learner transport of the criteria under the KZN Learner Transport Policy and basis for prioritisation and request them to complete the necessary applications,” yet it is unclear what is meant by “basis for prioritisation”. Additionally, the timeframes in this entire section are also unclear.</p> <p>8(1)(c) states that consultation with the SGB is necessary in order for the Principal to make recommendations to the district director, and EELC is concerned about this particular clause, as it is unclear why this consultation with the SGB is necessary. As aforementioned, many SGBs are under-capacitated and cannot support learners in this process.</p>	<p>EE and EELC, as aforementioned, recommend that the Draft Policy elaborate on the basis for prioritisation. Additionally, we believe concrete timelines should be added to the process.</p> <p>Moreover, EE and EELC recommend that the Draft Policy remove the stipulation that consultation with SGB is necessary.</p>
<p>1</p>	<p>9(1) - Specific Responsibilities of the KZN DoE</p>	<p>Clause 9(1)(a) states that the KZN DOE shall “make such needs analysis as might reasonably be necessary for the provision of learner transport from time to time.” It is unclear why the KZN DoE only undertakes a needs analysis “as might be reasonably necessary” and “from time to time.” EE and EELC submit that this analysis should take place on a regular basis.</p> <p>Additionally, clause 9(1)(d) states that the KZN DoE must keep a database of information for each school. EE and EELC believe the database is lacking information on the routes driven for each school.</p>	<p>EE and EELC recommend that the KZN DoE conduct a learner transport needs analysis annually, and within the first quarter of each year, as this is the beginning of the school year.</p> <p>Additionally, we recommend that “routes driven” be included in the list of information that the KZN DoE must keep for each school in the province.</p>
<p>1</p>	<p>10(1)(c) - Specific Responsibilities of KZN DOT</p>	<p>The cross reference to listed clauses is incorrect and has not been amended from the initial draft policy.</p>	<p>EE and the EELC recommend amending the cross reference to paragraphs in this clause to paragraphs 11-16.</p>

<p>2</p>	<p>17(1) - Learners attending public special schools</p>	<p>Clause 17(1) gives a closed list of disabilities which would allow a learner to qualify for learner transport. Not only is the list limiting, but none of these disabilities are defined in the policy. Should a learner be attending a public special needs school, it is obvious that they do so because they have a disability. As such all learners attending these schools should qualify for learner transport.</p>	<p>EE and EELC recommend that section 17(1) of the Draft Policy be removed in its entirety, as all learners in public special schools should qualify for learner transport regardless of what form their disability is, alternatively that the Draft Policy expressly indicates that all learners with special needs qualify for learner transport.</p>
<p>2</p>	<p>17(2) - Learners attending public special schools</p>	<p>Clause 17(2) of the Draft Policy lists criteria to be applied in identifying and prioritising beneficiaries of learner transport attending public special schools. However, EE and EELC note firstly, that the criteria seems redundant in light of the process set out in clause 18 of the Draft Policy.</p> <p>Secondly, we note the arbitrariness of how beneficiaries attending public special schools are prioritised.</p> <p>Thirdly, we note that clause 17(2) of the Draft Policy is not providing eligibility criteria for learners in public special schools, but rather creating a position where each school applies its own “prioritisation” on very broad guidelines. This leads to possibilities of extreme inconsistency and uncertainty.</p> <p>EE and EELC submit that greater clarity needs to be provided in terms of the proposed eligibility criteria for learners with disabilities, which also gives recognition to the need for the exercise of school-level discretion to accommodate for exceptional or specific circumstances.</p>	<p>In order to include and make provision for learners with disabilities who attend public ordinary schools, EE and EELC recommend that the criteria for the prioritisation of learners with disabilities must be included in the criteria for public ordinary schools.</p> <p>The criteria for prioritisation set out in clause 17(2) do not take into consideration the unique needs of learners with disabilities, which needs are not only defined by the nature of their disabilities.</p> <p>Criteria which should be included are:</p> <ul style="list-style-type: none"> • The nature and extent of functional limitations; • The level and nature of support needs; • The socio-economic status of the family and ability to provide transport; • The Age of the learner; • Assistance or safety considerations; • Whether the learner could benefit from attending a public ordinary school close to the learner’s home in terms of the SIAS and Inclusive education policies. Families should be supported to access universally designed and accessible public transport.

2	18(1) - Identification of beneficiaries attending public special schools	Clause 18(1) of the Draft Policy refers to the Admissions Committee, and their role in assessing beneficiaries of learner transport in public special schools. EE and EELC note, however, that the composition of the Admissions Committee is not clearly explained in the Draft Policy	EE and EELC recommend that the Draft Policy be amended to describe the composition of the Admissions Committee, or make cross reference to the relevant legislation and policy. In addition, the process of identifying learners' transport needs must be done using the tools and procedures set out in the SIAS policy.
2	18(5) - Identification of beneficiaries attending public special schools	Clause 18(5) of the Draft Policy states that where it is not possible to provide every eligible learner with learner transport, the Head: Education shall have regard to the National Policy and the available budget in prioritising the learners. EE and EELC submit that while it may not be possible to provide every eligible learner with learner transport immediately, the Draft Policy should oblige the Head: Education to continue revising their plans so that all learners are eventually accommodated.	EE and EELC recommend that clause 18 of the Draft Policy be amended to include a provision obliging the Head: Education to continually revise its plans so as to ensure that all learners eligible for learner transport will be accommodated in the future. This clause should require the Head: Education to maintain a waiting list of eligible learners. The clause should furthermore require the Head: Education to reassess the department's plans together with this waiting list at set periodic intervals, and at each interval, provide reasons as to why a learner is still not being provided with transport
2	18 (2), (3), (4), (6), (7), and (8) - Identification of beneficiaries attending public special schools	Clause 18 describes the process to be followed when beneficiaries of learner transport attending public special schools are identified. Key role players including the Admissions Committee, Transport Committee, District Director, Head: Education and Principal are assigned particular tasks in this process. However, EE and EELC note that no clear time frames are included in these processes that will oblige these role players to complete activities within a particular period. This may lead to inconsistencies, and potentially severe delays negatively affecting learners in public special schools.	EE and EELC recommend that clear, specific, and reasonable time frames be included in the various steps outlined in clause 18 of the Draft Policy.

<p>2</p>	<p>18(9) -Identification of beneficiaries attending public special schools</p>	<p>Clause 18(9) of the Draft Policy obliges a parent or guardian of a learner with a disability to make the necessary arrangements to ensure that the learner has access to a pick-up point where transportation is accessible. EE and EELC submit that circumstances may exist where a parent or guardian is unable to make such arrangements and will require assistance. EE and EELC submit further that in such circumstances, the State is obliged to assist and support learners.</p>	<p>EE and EELC recommend that clause 18(9) of the Draft Policy be amended to provide that the State must provide support and assistance where parents or guardians of learners with disabilities are unable to make the necessary arrangements to ensure that learners can access pick-up points. Support could include the moving of pick-up points to a location that better suits a learner, the provision of transportation to collect learners from their homes, the provision of financial support that would enable parents/ guardians to arrange for private transportation to pick-up points. This list is not exhaustive, but merely provides some suggestions of what such support may entail.</p>
<p>2</p>	<p>19(2) and 19(3) - Inclusion of new learners where public special schools have existing learner transport</p>	<p>Clause 19(2) states that the "District Director shall as soon as reasonably possible, after receipt of the list, accept the recommendations or request the school Principals to make any adjustments if good cause exists." EE and EELC submit that such acceptance or requests cannot be subject to unclear time frames, which may potentially lead to severe delays. EE and EELC therefore recommend that District Directors be obliged to make such decisions within a specified time.</p> <p>Similarly, clause 19(3) of the Draft Policy states that school principals shall inform learners who applied for learner transport, or their parents, whether their applications are successful or not. However, clause 19(3) does not stipulate the time frames within which a school Principal must provide such information, which may lead to inconsistency and unnecessary delays in this process.</p> <p>In addition to this, clause 19(3), as well as clause 18(8) speaks to a Principal informing a learner as to whether their application for transport has been successful. This is not logical - the obligation should be to inform the parents or guardian of the learner.</p>	<p>EE and EELC recommend that clause 19(2) of the Draft Policy be amended to include clear and reasonable time frames within which a District Director must act.</p> <p>Similarly, EE and EELC recommend that clause 19(3) of the Draft Policy be amended to include clear and reasonable time frames within which a school Principal must inform a learner, or their parents, of the success or failure of their application for learner transport.</p> <p>EE and EELC recommend that clause 19(3) as well as clause 18(3) of the Draft Policy be amended so that a Principal must inform a learner's parents or guardian about the outcome of their transport application. In other words, the wording of the clause should mirror the wording of the relevant clauses under public ordinary schools, namely clauses 7(9) and 8(3).</p>

<p>2</p>	<p>20(1)(a) and (b) - Role of principals in public special schools</p>	<p>Clause 20(1)(a) merely states that a school Principal shall ensure that “a Transport Committee ... is formed as early as possible...”. As unspecified timeframes may result in severe delays,</p> <p>EE and EELC submit that clearer timeframes for the formation of the Transport Committee must be determined in the Draft Policy.</p> <p>In addition to this, the cross reference to other paragraphs in the Draft Policy is incorrect. It is currently incorrectly cited as paragraph 10.2 and should be 18.2.</p> <p>Similarly, clause 20(1)(b) states that a school Principal shall ensure that “information regarding the learners transportation needs are collated timeously to ensure that the KZN DOE can properly plan its transportation service”. Considering the importance of such collated information to the KZN DOE’s planning process, EE and EELC submit that clear timeframes be prescribed that will ensure that such information is made available, and provided as early as possible.</p>	<p>EE and EELC recommend that clause 20(1)(a) of the Draft Policy be amended to oblige the school Principal to form a Transport Committee within a specified time frame.</p> <p>EE and the EELC recommend amending the cross reference to another paragraph in the policy from 10.2 to 18.2.</p> <p>Similarly, EE and EELC recommend that clause 20(1)(b) of the Draft Policy be amended to specify clear time frames within which information regarding learners’ transportation needs are collated timeously.</p>
<p>2</p>	<p>21 (1) - Internal Appeal</p>	<p>Clause 21(1) of the Draft Policy provides that any learner aggrieved by the decision of the Head: Education may lodge a written appeal with the MEC for Education, to challenge such a decision. EE and EELC submit that a learner may not always have the capacity, or access to resources, to lodge a written appeal on their own behalf. We therefore submit that this clause be amended to provide that a learners’ parent or guardian is also able to lodge such an appeal.</p> <p>EE and EELC also note that clause 21(1) of the Draft Policy fails to clarify which decisions made by the Head: Education may be appealed. This vagueness may cause confusion in terms of when an appeal may be lodged.</p>	<p>EE and EELC recommend that clause 21(1) of the Draft Policy be amended to provide that a learners’ parent or guardian may also lodge a written appeal with the MEC for Education on behalf of a learner.</p> <p>In addition, EE and EELC recommend that clause 21(1) of the Draft Policy be amended to specify those decisions made by the Head: Education that may be appealed.</p> <p>Alternatively, clause 21(1) of the Draft Policy could potentially be amended to state that “Any decision by the Head: Education” may be appealed.</p>

<p>2</p>	<p>21(2) Internal Appeal</p>	<p>Clause 21(2) of the Draft Policy indicates, among others, that the MEC for Education shall consider and decide the appeal within 30 days of receipt. EE and EELC note that it may be unreasonable for a learner to wait for a response for 30 days, considering that they may not be able to attend school for this period due to a lack of transport while the decision is pending.</p>	<p>EE and EELC recommend that clause 21(2) of the Draft Policy be amended to provide that the MEC consider and decide the appeal within 14 days of its receipt.</p>
<p>2</p>	<p>21 - Internal Appeal</p>	<p>Clause 21 of the Draft Policy requires a learner, who is aggrieved by a decision of the MEC, to exhaust an internal appeal process before challenging a decision in terms of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”).</p> <p>As noted above, learners may not have the capacity or resources to pursue an internal appeal directly on their own behalf. EE and EELC therefore submit that clause 21 of the Draft Policy be amended to provide that a learners’ parent, or guardian, may also be entitled to submit an internal appeal or challenge a decision in terms of PAJA.</p> <p>In addition, we note that the structure of the Draft Policy may imply that the appeal process established in clause 21(3) only applies to learners attending public special schools.</p>	<p>EE and EELC recommend that clause 21 of the Draft Policy be amended to make clear that a learner, or the learners’ parent or guardian, may lodge an internal appeal, or otherwise challenge a decision.</p> <p>In addition, we recommend that the Draft Policy state more clearly that the respective internal appeal process is available to all learners attending public schools.</p>
<p>2</p>	<p>22(1) - Circulars, directives, implementation procedure and standard operating procedures</p>	<p>EE and EELC note that clause 22(1) of the Draft Policy states that “implementing departments and authorities shall apply the Implementing Procedure attached hereto as an Appendix to give effect to the KZN Learner Transport Policy.” However, the Draft Policy does not include an Appendix titled “Implementing Procedure”.</p>	<p>EE and EELC recommend that references to the Appendix be rectified.</p>

2	23 - Job Descriptions: Drivers (1-5)	Clause 23(1)-(5) of the Draft Policy addresses requirements that must be met by drivers transporting learners with special needs. However, these requirements seem universal in nature, and EE and EELC are of the view that these crucial standards should apply equally to all drivers and not be limited to only those serving learners with special needs.	EE and EELC recommend that the content of clause 23 of the Draft Policy not only be limited to drivers transporting learners with special needs, but that clause 23 be applied to all drivers. This may be addressed by placing the contents of clause 23 in a general section which makes it clear that the contents of this clause apply to both public ordinary and public special schools.
2	23 (4)(a) - Job Descriptions: Driver	Clause 23(4)(a) of the Draft Policy merely states that drivers shall file regular reports as required by the School Transportation Supervisor. EE and EELC note the vagueness of this provision, which may lead to the arbitrary and inconsistent filing of reports. EE and EELC submit that the time frames within which these reports should be filed must be specific and clearly indicated, and could, for example, be required on a monthly or quarterly basis.	EE and EELC recommend that clause 23(4)(a) of the Draft Policy be amended to include a prescribed timeframe within which drivers should file reports. Such an amendment may prescribe that this be undertaken, for example, on a weekly, monthly, or quarterly basis.
2	23 (4)(i) - Job Descriptions: Driver	This clause incorrectly cites a cross reference to paragraph 12(5)(b) (ii) and (iii). This has been retained from the initial draft of the policy and has not been changed when the draft policy and annexure were combined. The cross reference should be to paragraph 24 (5)(b)(ii) and (iii).	EE and EELC recommend amending the cross reference from paragraph 12(5)(b)(ii) and (iii), to 24(5)(b)(ii) and (iii).
2	23(4)(m) - Job Descriptions: Driver	Clause 23(4)(m) of the Draft Policy only refers to the reporting of accidents. EE and EELC submit that this clause should be expanded to oblige drivers to also report on any other incidents that occur while transporting learners, including acts of violence, bullying, use of illegal substances, learners smoking, etc.	EE and EELC recommend that clause 23(4)(m) of the Draft Policy be amended to oblige drivers to report on all incidents including accidents, bullying, medical emergencies, etc, that occur while transporting learners.
2	23(6) - Job Description: Attendants	Clause 23(6) of the Draft Policy merely indicates that “No person shall serve as an attendant on a vehicle for learners with special needs unless he/she has met the requirements laid down by the KZN DOE and school administration.” It is unclear what these requirements may entail, and it is expected that these requirements would include that attendees be suitably trained to attend to the specific needs of the learners being transported.	EE and EELC recommend that the Draft Policy state the requirements for attendees, as established by the KZN DOE. In addition, it is recommended that the Draft Policy indicate where requirements established by a school administration may be accessed. Lastly, it is recommended that these requirements include that attendees be suitably trained to properly attend to the needs of special needs learners.

2	23(7) - Job Description: Attendants	Reference to “paragraph 11.3 above” is incorrect.	EE and EELC recommend that this reference be changed to “paragraph 23(3) above”.
2	23(8) - Job Description: Attendants	The Draft Policy fails to clarify both the role of the “School Transportation Supervisor”, and the State departmental official who should fill this position (for example, a DoT official, DoE official, or school staff member).	EE and EELC recommend that the role of the “School Transportation Supervisor”, as well as the designated official to fill this position, be clearly defined in the Draft Policy.
2	23(10) - Job Description: Attendants	Clause 23(10) of the Draft Policy fails to oblige attendants to report on any incidents that may occur on a vehicle transporting learners with special needs, such as accidents, emergencies, bullying, etc.	EE and EELC recommend that clause 23(10) of the Draft Policy be amended to include a provision obliging attendants to report back on any incidents that occur while attending on a vehicle transporting learners with special needs.
2	23(10)(d) - Job Description: Attendants	Clause 23(1)(d) of the Draft Policy utilises incorrect terminology to the extent that it refers to students who are “medically challenged”.	EE and EELC recommend that clause 21(1)(d) be amended to state the following: “monitor all students with specific medical needs”.
2	24- Emergency Evacuation Plan	Clause 24 of the Draft Policy describes the steps that must be taken in the event of an emergency. EE and EELC note that the structure of the Draft Policy implies that this Emergency Evacuation Plan is only limited to learners in special schools. It is noted further that section 1 of the Draft Policy, which addresses aspects of transporting learners from public ordinary schools, does not contain such a plan. An evacuation plan should not be limited to the transportation of learners with special needs, but should apply equally to the transportation of learners from public ordinary schools.	EE and EELC recommend that an emergency evacuation plan be applicable to all learners attending a public school, and that its application to all learners be more clearly expressed in the Draft Policy. This may entail including the contents of clause 24 in a general section which makes it clear that the contents of this clause apply to both public ordinary and public special schools.

2	26(3)(b)- Framework	<p>Clause 26(3)(b) of the Draft Policy contains clauses that should apply to all vehicles transporting learners, and should not be limited to only those vehicles transporting learners with special needs.</p> <p>In addition, no clarity is provided on the role and function of a “transport office”, and which State department is responsible for it.</p>	<p>EE and EELC recommend that the contents of clause 26(3) (b) be applicable to any vehicle transporting learners (as opposed to only being applicable to vehicles transporting learners with special needs). This may entail including the contents of clause 26(3)(b) in a general section which makes it clear that the content of this clause applies to both public ordinary and public special schools.</p> <p>In addition, EE and EELC recommend that the Draft Policy be amended to include a definition of the “transport office”, that clearly explains the role and function of this office, and the State department responsible for it.</p>
2	30 - Cooperation of Officials and Employees to Promote Efficiency in the Operation of Vehicles	<p>EE and EELC note that the Draft Policy provides no information regarding how often vehicles should be inspected by KZN DoE officials.</p>	<p>EE and EELC recommend that clause 30 of the Draft Policy be amended to include time frames within which vehicles should be regularly inspected.</p>
2	34 - Garaging and Parking of Vehicles	<p>EE and EELC note the duplication of certain aspects regarding the parking and garaging of vehicles in clause 34 and clause 26(4) of the Draft Policy. While clause 26(4) does provide additional detail as to the ways in which a vehicle should be secured if parked overnight, both clause 34 and 26(4) address sites where vehicles should be parked.</p>	<p>EE and EELC recommend that the distinction between clause 34 and 26(4) be made clearer in the Draft Policy, alternatively, that these two clauses be merged to avoid confusion or duplication.</p>
3	37 - Monthly Operational Meeting	<p>While EE and EELC support the approach that monthly operational meetings must be held, clause 37 of the Draft Policy fails to indicate which role players should attend these meetings. In addition, clause 37(f) does not clarify which role players must make recommendations to the Programme Management Committee, how often these should be made, and the process to be followed when doing so.</p>	<p>EE and EELC recommend that the Draft Policy be amended so as to specifically indicate which role players are to attend monthly operational meetings, which role players are expected to make recommendations to the Programme Management Committee, and what the process is when doing so.</p>

3	40 (7) - Planning	Clause 40(7) of the Draft Policy appears to contradict clause 42(3) by stating that the KZN DoT and DoE shall review the state of learner transport at least every three years, and introduce further plans at an interval of five years at a time. As reiterated below, EE and EELC support the view that the state of learner transport, as well as the finalised policy, be reviewed every three years. However, it is unclear what additional activities would be included at five year intervals, and why these cannot be undertaken within three year intervals to coincide with the review process.	EE and EELC support the view that the state of learner transport, as well as the finalised policy, be reviewed every three years. However, we recommend that references to the introduction of further plans for an interval of five years at a time be removed from the Draft Policy.
3	41 - Cooperation of Civil Society	Clause 41 of the Draft Policy entitles the KZN Provincial Government to engage with civil society to procure funding for learner transport (subject to the approval of the National Government). However, national and provincial governments are responsible for the raising of funds towards learner transport, and the basis for including civil society within this context is unclear. In addition, further clarification must be provided as to the meaning of “procuring funding”, and what this entails.	Due to the uncertainty regarding the meaning and scope of this provision, EE and EELC recommend that this clause be removed in its entirety. Alternatively, that further clarification be provided on the role civil society would be expected to play within this context, and the meaning of “procuring funding”.
3	42(3) - Implementation Date, Review and Revisions	Clause 42(3) states that the Draft Policy shall be reviewed by the KZN DoE and DoT as and when the need arises, provided that it shall be reviewed at least every five years from the effective date. EE and EELC note the numerous systemic changes imposed by the Draft Policy, and highlight the need to review this policy within a period shorter than five (5) years.	EE and EELC recommend that this clause be amended to state that the Draft Policy be reviewed by the KZN DoE and DoT as and when the need arises, provided that it shall be reviewed at least every three years from the effective date.