



Promoting the right to education of children with disabilities

Position statement on the implementation of White Paper 6

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Drafted for the *Right to Education of Children with Disabilities Campaign (R2ECWD)*, by:

Action in Autism: *Liza Aziz*

Disability Studies, Department of Health and Rehabilitation Sciences, University of Cape Town: *Judith McKenzie and Brian Watermeyer*

Dullah Omar Institute, University of the Western Cape: *Samantha Waterhouse*

Inclusive Education South Africa: *Robyn Beere and Vanessa Japtha*

Section 27: *Tim Fish and Silomo Khumalo*

Odette Swift

Contacts: swaterhouse@uwc.ac.za; robyn@included.org.za; fish@section27.org.za

In addition to the authoring organisations, the following organisations have endorsed this document:

Chaeli Campaign

Down Syndrome South Africa

Equal Education Law Centre

Western Cape Forum for Intellectual Disability

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1. Introduction

The R2E CWD is a National Campaign established in December 2010. It is driven by 23 civil society organisations and alliances that collaborate on a voluntary basis to promote inclusive education and specifically the education rights of children with disabilities. This document has been drafted by a range of campaign members and circulated among membership for further comment and input.

The right to basic education is both a pressing moral concern and constitutional obligation placed squarely on the state. In the few cases dealing with the right of children with disabilities to education that have been taken to the courts, the courts have emphasised both the importance of the government's obligation to provide reasonable accommodations for children with disabilities at mainstream and full service schools and the obligation to provide for special schools in certain circumstances. Thus the state must provide a spectrum of settings for providing education to ensure that children with disabilities have their support needs identified, assessed and provided for in a range of educational settings.

The Campaign supports this position and is driven by a rights-based approach, taking the principle of the best interest of the child as its starting point. Further the Campaign aligns with the drive toward universal access to inclusive education and to reasonable accommodation for all children as outlined in the Draft White Paper on Disability Rights and the Convention on the Rights Of Persons with Disabilities.¹ As there is a wide range of barriers to learning and forms of disability, to realise inclusive education for all children, a wide range of solutions are essential. The Campaign's advocacy efforts seek to build an effective inclusive education system that addresses this range of barriers to learning and education.

The Government introduced White paper 6: *Special Needs Education, Building an Inclusive Education and Training System (WP6)* in 2001. Fourteen years on, we've seen very little progress towards inclusive education in South Africa. This failure to deliver is an unacceptable and extremely serious violation of the rights of hundreds of thousands of children and has serious, and too often tragic, consequences on their lives. The Department of Basic Education's (DBE) 2015 *Report on the Implementation of Education White Paper 6 on inclusive education: Overview for the Period 2013-2015* (the Progress Report), confirms this. The report demonstrates that in spite of small progress in certain areas, overall, education for children with disabilities and with other barriers to learning has not improved over the past fourteen years. The children worst affected, remain those who are black, poor or working class and/or living in rural areas.

The Progress Report appears to be a real attempt to understand the systemic limitations in departments' approaches to realising inclusive education. We welcome its frank assessment of the situation, and the overall analysis of the persistent barriers to progress on inclusive education. As such, we support the Progress Report's call for a "radically different approach ... to meet the needs of children and youth with disabilities".²

The levels of marginalisation of children with disabilities are unacceptable as are the associated levels of distress, frustration and anger that are felt by those children, their care-givers and the people tasked with providing their education and support. The findings of the Progress Report present a valuable opportunity to engage with the state to develop responses that have the potential to address this stagnating situation with increased urgency.

¹ Draft White Paper on Disability Rights and the Convention on the Rights Of Persons with Disabilities¹.

² Department of Basic Education. 2015. *Report on the Implementation of Education White Paper 6 on inclusive education: Overview for the Period 2013-2015*. (Progress Report) p71

All children have the right to education

- The legal framework

The right of all children to basic education is entrenched in the South African Constitution.³ This right includes children with disabilities and other barriers to learning. The right to equality is also very strongly expressed in the Constitution – this means that neither the state nor any person may discriminate against people on the basis of disability (or a number of other grounds, such as race and gender).⁴ Importantly it states that 'a child's best interests are of paramount importance in every matter concerning the child'.⁵

The South African government has ratified a range of international human rights treaties and is obliged to implement their provisions and report on progress. The Constitution requires that international law must be considered when interpreting the constitution,⁶ and more recently the Constitutional Court has specifically stated that the UN Convention on the Rights of Persons with Disabilities (UNCRPD) must be used when interpreting the constitutional rights of people with disabilities in South Africa. Article 24 of the UNCRPD is most specific in regard to this right, requiring that governments ensure that children are not excluded from the general education system, including from accessing free and compulsory basic education on the basis of disability.⁷

The Constitutional and International law obligations create an emphatic legal obligation that children with disabilities in South Africa must enjoy full, equal and inclusive education.

2. Children with disabilities have the right to education NOW!

The right to equality in the Constitution must go beyond the words on paper to be achieved as a lived experience. The right to basic education is considered so important that the Constitutional Court has described it as being "unqualified" and "immediately realisable". This is a higher standard than is required from government regarding its provision of housing, healthcare or food – all of which must be "progressively realised" – or realised over a period of time.

The state must take proactive and urgent steps to ensure that high quality and equal education is made available to children with disabilities. Now. It must do everything within its power to 'immediately' make these rights a reality for *all* children with disabilities. Different measures are required depending on the nature and severity of a child's disability. The right to 'substantive equality' means that the DBE must increase its efforts to ensure that poor, rural black children with disabilities – who constitute the majority of children with disabilities in South Africa and who have experienced greater historical and current neglect by the state – enjoy drastically improved learning conditions.

As retired Constitutional Court judge, Justice Yacoob, himself a blind person has noted, some children with disabilities do come through the system successfully, however they are the exception and seldom because of the DBE's efforts, but in spite of them.⁸ Mostly, successes are due to their own significant efforts; and the resources, time and dedication of parents, caregivers and individual teachers or school principals. They are not an indication of adequate systemic interventions for inclusive education. The state must ensure that the education system provides for a poor black girl with a disability from a rural area, with average academic ability, to be empowered to thrive in and be integrated into society.

³ Act 108 of 1996 *ibid* section 29(1)(a)

⁴ The Constitution of the Republic of South Africa. Act 108 of 1996. Section 9

⁵ Act 108 of 1996 *ibid* section 28(2)

⁶ Act 108 of 1996 *ibid*, section 39(1)(b)

⁷ UN CRPD Article 2

⁸ SECTION27 "Left in the Dark: Failure to Provide Access to Quality Education to Blind and Partially Sighted Learners in South Africa" (2015) accessible at <http://section27.org.za/wp-content/uploads/2015/11/S27-left-in-the-dark-2015-accessible.pdf>.

3. The South African government has committed to investing in inclusive education.

White paper 6: Special Needs Education, Building an Inclusive Education and Training System (WP6), released by the DBE in 2001, is aimed at giving meaning to these obligations in South Africa. Its purpose is to address the consequences of apartheid 'special needs education' which resulted in only a small percentage of learners with disabilities (most of whom were white) receiving specialised education and support, and the failure of the education system to provide for the diverse needs of learners. WP6 promotes full inclusion and seeks to ensure that all children can '*develop and extend their potential and participate as equal members of society.*'

WP6 shifts away from categorising disability to considering the different levels of support that are required for different children to succeed.⁹ The 2014 Strategy for screening, identification and support (SIAS) provides the tools to realise the social model described in WP6. It provides for the identification of support needs of children and on the basis of this seeks their placement in the most appropriate educational setting. The policy envisages a spectrum of learning settings (ordinary, full-service and special schools/resource schools), depending on the capacity required to meet the child's identified support needs. It aims to increase access to ordinary schools for children experiencing barriers to learning and to enable special schools to function as resource centres. Recognising the goal of full inclusion in society, special schools are meant to only cater for children with the highest support needs.

WP6 recognises that, essential to achieving these goals is that management, staff and governing bodies must be oriented to the inclusive model, that classroom educators are the primary resource needed to realise an inclusive system, and that district and school-based support teams must be established to enable the system. It also sets a target of establishing 500 full-service schools at primary school level by 2021 and expresses that over time, all ordinary schools should become full-service schools.

4. Effective inclusive education needs political leadership, resources and good data.

The Progress Report notes that one of the significant reasons for the weak progress over the past 14 years is because WP6 is poorly understood across the education system.¹⁰ This is in spite of the fact that the 2001 WP6 includes orientation of education stakeholders as one of its goals. Although the DBE recognises this fundamental gap in the implementation strategy, analysis of the DBE's 2015/2016 annual performance plan and the five-year strategic plans shows that neither of these documents makes any reference to a plan to align schools, educators, SGBs, principals or provincial and national departments to the policy.

The DBE has established an inclusive education directorate at National level, which we fully support. In addition there are staff appointed in directorates in all provinces, however the standards of expertise in these 'units' are varied across provinces for e.g. KZN DoE has an Inclusive Education Directorate as well as a Special Needs Directorate – duplicating the services and causing confusion in terms of reporting structures. Inclusive education directorates must be standardised and replicated across provincial departments.¹¹ Creating inclusive education directorates alone is not enough to drive transformation, they can

⁹ Children requiring low levels of support should be accommodated in ordinary schools and the educators trained to respond to their learning needs; children requiring moderate levels of support should attend full-service schools which must be equipped and supported by the department to provide for a wider range of learning needs. Children with high or intensive support needs are to be accommodated in special schools, which must also serve as resource centres for ordinary and full service schools.

¹⁰ Progress Report. P6

¹¹ Progress Report p45

provide leadership and direction, but it's essential that inclusive education goals be integrated across a range of directorates. Directorates for provincial interventions and monitoring, curriculum implementation, and ECD for example must all make inclusive education one of their key performance goals. Furthermore, national to provincial integration as well as collaboration with other state departments and civil society are essential. Analysis of departmental documents such as annual reports, annual performance plans and the five-year strategic plan clearly shows that inclusive education is not integrated, but rather treated as an isolated, add-on issue.

It is extremely concerning that although inclusive education is mentioned in the department's planning documents, no concrete deliverables are in place. For example, the NDBE's 2015/2016 Annual Performance Plan includes a statement showing intent to implement some projects towards inclusive education, yet these are not included in the strategic objectives or performance indicators listed under Programme 2.¹²

To give meaning to the goals of WP6, achieving inclusive education must be prominently included in the performance indicators across directorates at national and provincial level.

Funding, norms and standards for inclusive education

The department's vision of and obligation to Inclusive education cannot be realised without a commitment of resources and budgets for that purpose. Despite this, lack of resources remains a critical and urgent issue. Ordinary, full-service and special schools are significantly underfunded and generally under-resourced to meet the need. This is in spite of White Paper 6 envisioning the creation of a conditional grant from national government for non-personnel funding for the implementation of inclusive education, which has never been instated. The capacity for district offices to provide support to regular schools is also not budgeted for. The fact that special needs education has additional costs is not a sufficient reason to continue to violate children's entitlement to basic education. To date the poor funding committed nationally and across provinces has been a telling indicator of the failure of high-level commitment. The Progress Report highlights the negative impact that the inconsistencies in resourcing IE has had on progress, it indicates the significant disparities in allocations across provinces, including the complete lack of provisioning in some provinces.¹³

The Progress Report recognises the limitations of the current "child-based/input model" of resourcing, noting that it promotes the special school model and 'militates against' integrating learners in mainstream schools. The effect of this model on the continued reliance on special schools as the main setting to deliver inclusive education is clear in the financial information provided in the Progress Report.¹⁴ The Progress Report recommends a shift to a "resourced-based/output" model, which should have the effect of basing funding provision on the services required, rather than merely using formulas based on numbers of children.¹⁵ The DBEs 2014/2015 Annual Report reports that funding norms for inclusive education have been finalised,¹⁶ further the Progress Report points out that these apply to the entire inclusive education system and not special schools alone.

When taken at face value the development of the funding norms for inclusive education seem positive, however on inspection it is clear that they are extremely inadequate. The funding norms don't even begin to tackle the systemic reasons for the sluggish progress. They are limited as they only apply to Non Personnel Non Capital (NPNC) spending – meaning that they do not include personnel or infrastructure costs. Yet staff costs are particularly critical to inclusive education. The norms are also limited to equipment expenses that are less than R5000.¹⁷

¹² Department of Basic Education. Annual Performance Plan 2015-2016. Pp36-42

¹³ Progress Report p7

¹⁴ Progress Report p46

¹⁵ Progress Report, pp46-47

¹⁶ DBE Annual Report 2014/2015 p67

¹⁷ Progress Report p50

The Progress Report demonstrates the across the board failure to adequately integrate funding norms for inclusive education into the norms essential for the delivery of education more broadly. It explains that the current post provisioning and personnel resource allocation model results in the continued 'artificial segregation of learners'. Funding for infrastructure for inclusive education must be derived through the broader framework of the National Norms and Standards for School Funding.

Thus, in keeping with the trend, funding for inclusive education is dealt with inadequately and in the piecemeal fashion that has clearly not been working. It is unacceptable given the obviously high level of understanding of the systemic problems evident in the Progress Report, that the limited funding norms for inclusive education were developed as recently as the 2014/15 year.

Clearly overarching principles and obligations for funding all facets of inclusive education must be developed. These are best placed in legislation. In addition all DBE resource and provisioning norms must integrate inclusive education (from special schools, to inclusive ordinary schools) into the broader education funding frameworks.

The DBE must establish the process and the timeframes in which the funding model and integrated norms to ensure implementation of inclusive education at national and provincial levels will be finalised.

Alarmingly some schools themselves are not able to plan their services and costs as they are not informed in advance by provincial departments of the allocations that will be made to the school. Furthermore these allocations are subject to change from year to year with little communication or notification. Transparent and specific budgeting information in respect of the allocations to special, full service and ordinary public schools must be made regularly available to the public (not to mention schools) by the provincial departments and the DBE. Allocating sufficient funds is an essential element of the state's obligation to realise the right to basic education. Where schools have been allocated funding, they don't always utilise this to accommodate learners with high level care needs and those out of school learners for example in KZN, Special Needs Schools have been given tranches of R200 000 per annum for the past three consecutive years to accommodate out of school learners, however many schools are not utilising the funding for this.

Data

The data available is of poor quality, and thus the basis on which information is derived is unclear and its accuracy is questionable. Of serious concern is the DBE's lack of thorough, scientifically gathered data regarding disability, barriers to learning and the full inclusive education picture in South Africa. A fundamental problem is the lack of clarity and differences in how disability and barriers to learning are defined. Without data it is not possible to plan, allocate resources to, implement or monitor and adjust implementation. We commend the department for acknowledging the shortcomings of available data in the Progress Report, however the DBE continues to make key assessments without thorough, systematic research. In addition there is no systematic collection of 'client satisfaction data' to communicate the experiences of children and their care-givers in accessing education.

The attempt in the Progress Report to consider the numbers of children with disabilities in relation to all children enrolled in the education system doesn't begin to offer the information that is needed. This is due to the fundamental problems with the recording, categorising, and disaggregating the data. The information available makes it impossible to establish in which settings children with disabilities and other barriers are placed.

5. Overall progress on creating an inclusive education system

After 14 years, the progress on inclusive education has been exceedingly slow. This section considers the progress in relation to children with disabilities who are not in schools and progress in the different education settings envisaged in WP6.

Out of school children

There has been much debate on the accuracy of the extremely high numbers of children that are reportedly out of school. The Progress Report, expresses the view that the estimate of almost 600 000 children with disabilities out of school, is highly plausible. The lack of standardised definitions and accurate differentiated information results in the inconsistencies in reporting out of school learners. However even if it is half or a quarter of that figure, it is abundantly clear that the number of children with disabilities and other barriers to learning out of school is unacceptably high. Campaign members are regularly faced with the despair of families from across South African society that are unable to find place for their child in schools.

There are a range of reasons for this, including that special schools are full, often accommodating children with low or moderate levels of support needs (who should be in other learning settings), while children with specialised or high levels of support needs are placed on waiting lists. Ordinary schools are reluctant to even attempt to deal with children's medium to high support needs even when there is no alternative available.

Limited hostel space, linked to the great distances to special and full-service schools also means that where there are classroom spaces, children who have nowhere to live cannot access those classrooms. DeafSA indicate that in the Northern Cape for example there are 23 known cases of Deaf children out of school, this is firstly due to the fact that there is only one school in the province catering for signing Deaf children, However the greatest issue is not a lack of places available at the school, but that there is insufficient hostel accommodation as the children attending that school must find accommodation at the hostel for another LSEN school in the area.

Restrictive policies of special schools are another reason for the numbers of out of school children – for example some special schools deny access to children who are incontinent. The fact that special schools do not provide classes above grade nine level means that many children in these settings cannot complete matric due to the lack of options available after that point. In other cases age limits prevent children from completing their schooling, whereas the poor quality teaching and delays in the education system are frequently the reason why they are older than the policies allow them to be in those grades. For example failure of the system denied a girl from Queenstown her right to education. The child is hard of hearing, and failures of the department to provide her with adequate learning support meant that she struggled to hear and thus to learn in the school setting in which she was placed. She finally completed grade eight but had reached the age of 18 and therefore is considered too old to enter grade nine. Without grade nine she cannot access FET or TVET Colleges. Thus in spite of her intellectual capacity to learn, the failures of inclusive education have seriously affected her future prospects.

As a result of the historical, medical model most special schools 'specialise' in a form of disability, meaning that children with multiple disabilities may not be accommodated, for example an autistic child who is deaf, may not be accepted at some schools for Deaf or autistic children and where they are accepted there are seldom adapted services to ensure that they are taught in these settings.

The over-reliance on special schools, linked to entrenched systems to access these schools frequently contributes to the persistence of exclusion of certain children from the education system. For example an autistic child may not be able to access the special school closest to

his/her home because that's not the schools area of specialisation. In addition, placement in a special school requires assessment, however children who are not in mainstream schools wait extremely long periods (up to 2 years) before accessing that assessment. While the Department of Education Psychological Services is meant to conduct these assessments, in many cases they are conducted by the special schools, which at times insist on a parent employ expensive private psychologists that the school specifies, thus adding a further layer of gatekeeping to who accesses education. The SIAS tool is intended to shorten this waiting period, yet it is not having the impact that it should. Many schools are not utilising the SAIS tool at all. Finally access to transport is a simple but significant reason that children with disabilities are out of school.

The Progress Report indicates that the DBE, Department of Social Development and South African Social Security Agency have established a protocol intended to give updated information about children with disabilities in and out of school using grant collection processes. We support this development in principle, however depending on the specific methods used it could be problematic. School enrolment is a start but it is not a measure of school attendance. Gaining clarity on this is important.

Children out of school due to failures in the system is a serious human rights violation that cannot continue to be ignored, it must urgently be addressed with a comprehensive, practicable and actionable plan. We urge the DBE to establish a regular forum for government and civil society stakeholders working in the children's and disability sectors to engage in depth with the wide range of issues affecting access to schools. To attempt to address the issue in the absence of on-going collaboration and consultation is problematic.

The Progress Report acknowledges that **waiting lists** are a violation of the Schools Act and should not exist.¹⁸ Nevertheless the report notes that there are children on waiting lists for special schools in all provinces except the North West and in total there are 5 552 children on these lists (of which 1 111 are in KwaZulu-Natal).¹⁹ These children on waiting lists must be accommodated in ordinary schools with additional support whilst awaiting the outcomes of the referral process, however ordinary schools resist providing education to these children and frequently send them home to await placement in a special school. No child should be kept out of school due to being placed on a waiting list. The current status quo of children remaining out of school for long periods of time while on waiting lists is unacceptable, this is a matter that must be addressed with absolute urgency.

The spectrum of learning settings

In addition to violations resulting from children being out of school there are scores of children in school, but in the wrong learning programmes or not receiving the support required. In previous years the DBE has estimated that up to 27 000 learners in special schools could have been placed in mainstream settings.²⁰ Once again figures to establish the full extent of this are not available. Various Campaign members through providing services and support and/or through undertaking research in some settings have expressed outrage at the extent to which failures in capacity and infrastructure result in children in both special and ordinary schools not being given the opportunity to reach their full potential. DBE plans must show how all settings will be strengthened.

Special schools

The Progress Report indicates the increase by 158 from the 295 special schools in 2002 to a total number to 453 in 2014.²¹ The report cautions that the increase in learners enrolled in special schools does not translate into an increase in the quality of education that they receive - it may in fact have a negative effect on quality. This is consistent with the

¹⁸ Progress Report. P22.

¹⁹ Progress Report. PP21-22

²⁰ Right to Education of Children with Disabilities Fact Sheet 6 – Systemic barriers to inclusive education.

²¹ Progress Report p23 and p13

experiences and research of campaign members who too regularly observe special schools functioning as spaces to place learners without ensuring that teaching or learning can take place.

We agree with the position taken in the Progress Report that merely building new special schools is not the solution, and the recommendation that increasing the capacity of ordinary and full-service schools is an important investment.²² Increasing special schools, without also investing in other aspects of the inclusive education system promotes social exclusion and thus violates South Africa's obligation to implement the principle of inclusion as contained in the UNCRPD. The geographical realities, particularly in rural provinces, make this model the least beneficial to children as they must either spend an inordinate proportion of time on transport to and from school or, most frequently live in school hostels, isolated from families and their community context. Special schools must be reserved for learners with high support needs who will benefit most in these settings, the DBE focus in respect of special schools must be on addressing the quality of teaching and the standards of support.

It is unacceptable that large numbers of children with mild and moderate support needs are placed in special schools. In addition to unnecessarily limiting the spaces available for children with more intensive support needs; limited curriculum and with most offering only up to grade nine, many children with moderate or mild support needs in these schools are limited in subject choices and the potential for tertiary education.

Full service schools

The Progress Report indicates that departments have exceeded the target of 500 full service schools, with a reported 793 having been established.²³ Before celebrating this achievement two very sobering points must be considered. First is that there is no verification of the criteria and standards of these schools. Frequently schools are referred to as full service schools but functioning as ordinary schools with none of the infrastructure and support in place, it is clear that the functioning of these schools varies significantly. Analysis of the funds spent on converting ordinary schools to full service schools shows that the amount of money spent in some provinces does not make sense in terms of the numbers of full service schools they report. Campaign members note that full services schools uniformly report that the financial support provided to them to cater for learners' special learning needs is inadequate. Further the report shows a tendency to spend only on infrastructure without investing sufficiently in teacher skills and support. A spending pattern more appropriate to the improvement of public ordinary schools.

The second concern highlighted is that in some instances full service schools are becoming de-facto special schools with high percentages of children with disabilities enrolled but with none of the budget, support and infrastructure required. The Progress Report rightfully cautions against this.²⁴

The target of 500 full-service schools in a country with such large numbers of children with disabilities is extremely low. The 793 schools achieved represents just over 3% of the 24 000 ordinary public schools in the country, yet it is estimated that 40% of learners experience significant barriers to learning (including disabilities). We are of the view that investment into more and better quality full service schools is critical to achieving the model of inclusion envisaged.

Given the dire state of inclusive education, it is not enough to just count schools that have the label 'full service school' attached. Standards for these schools must be clearly established and used as the basis of assessment of achievement of the targets. Thus in

²² Progress Report p27

²³ Progress Report p17

²⁴ Progress Report p17 and pp70-71

addition to setting actionable targets for the number of full service schools, the standards of education provided by these must be regularly monitored.

Public ordinary schools

The development of ordinary schools to accommodate an increasingly wider range of learning needs is at the foundation of an inclusive education system. While this cannot be achieved overnight, we note with concern that the Progress Report shows an alarming drop of just over 45 000 learners with disabilities enrolled in ordinary schools. This includes the numbers of children with barriers to learning such as ADHD and dyslexia.²⁵ This is likely to be associated with the higher numbers enrolled in special schools (just under 50 000) and to some extent those counted at full service schools. Overall the trend is unacceptable due to the goals of inclusive education being greater inclusion, not greater segregation.

Children with low and moderate support needs for example, many with physical impairments or those with sensory impairments who have been provided with assistive devices and skills that would enable their inclusion, should be educated in public ordinary schools. The low numbers of full-service schools linked to the failures of ordinary schools to increase their capacity means that children must travel far or be separated from their families, often requiring rental accommodation with extended family members or even other families that live close to the full-service or special school. This is undoubtedly not in their best interest.

Targets must be set to ensure that public ordinary schools are able to provide teaching and learning to children with mild to moderate support needs. This includes addressing the infrastructural barriers as well as teacher skills.

6. Children with disabilities have a right to an adapted curriculum and support materials

One of the primary objectives of the schooling system in South Africa is to teach the prescribed curriculum to all learners. Beginning in 2012, the DBE began incrementally implementing the newly formed CAPS curriculum in public schools. A sincere attempt was made to include differentiation for barriers to learning within this curriculum change. This was tackled on three levels – firstly by entrenching the principle of inclusivity and catering for diversity in the CAPS, secondly by including strategies in the CAPS for each subject and thirdly by developing a manual on Guidelines on Responding to Diversity as an overarching guide to curriculum differentiation.

Whilst the attempt was made in the design of CAPS to recognise the fact that children with disabilities have the right to access curricula that are adapted to accommodate for their particular learning needs, the attempt is not always translated in implementation. Effective curriculum differentiation remains a barrier for many teachers. In both special and ordinary schools teachers express the need for more training in this area. As a result learners requiring a differentiated approach are disadvantaged. The failure to prepare teachers for tailoring the curriculum for children with disabilities has had a significant impact on their ability to teach them.

Teachers in ordinary schools report that monitoring and implementation of the curriculum is also inflexible. Learners with disabilities are often expected by district officials to complete the curriculum at the same pace with the same assessments, even where significant barriers to learning might make this impossible.

This is compounded by the lack of training of teachers in special schools in CAPS. The DBE therefore frankly acknowledges that “[t]here is a serious concern about the standard of curriculum delivery in special schools. There is evidence that many are simply day care

²⁵ Progress Report p13

centres with little attention being given to ensuring that learners have access to the National Curriculum Statement on an equal basis with all other learners in the system". It is essential that learners with disabilities have access to the same core curriculum as all learners. It is important to avoid the situation where some teachers make adaptations that completely drop certain elements of the curriculum. For example two organisations in the Campaign have indicated that there are some teachers who are not sufficiently fluent in SASL are reportedly dropping elements of the curriculum due to their low capability with SASL, of concern are indications that in these instances the Deaf children are labelled as slow learners when in fact it is the limitation of the educator. *Action in Autism* have similarly found that there are many cases of non-verbal or preverbal autistic learners who are assumed to have intellectual impairment because of their inability to communicate verbally. These children are then given a life skills programme and are not provided an augmentative and alternative means of communication.

These factors lie behind the very low numbers of children with disabilities who pass the National Senior Certificate Examinations and the fact that even fewer qualify for admission to tertiary education institutions.

Insufficient access to appropriately adapted Learner-Teacher Support Materials

Compounding the inadequacy of curriculum design and implementation, failure to produce appropriately adapted learner-teacher support materials increases challenges in curriculum delivery. For example, learners with print disabilities, including blind and low vision learners require adapted textbooks and workbooks. Presently, blind and low vision learners are uniformly not provided with the same access to textbooks and workbooks as are made available to sighted learners. As of the end of 2015, a full three years after the implementation of the CAPS curriculum has commenced delivery of Braille workbooks is still inconsistent and does not include all subject areas or volumes required.

Braille access for blind and low vision learners is only one consequence of the inadequate provision of adapted learner-teacher support materials. Learners with other print disabilities and physical and intellectual disabilities also require specially adapted core and supplementary learning materials which are insufficiently planned and budgeted for, thereby compromising curriculum access and delivery to children with disabilities. The introduction of the South African Sign Language (SASL) CAPS is an example of adaptation and has been a step in the right direction to acknowledge the education and language rights of Deaf learners. It is in the early days of implementation and should be carefully monitored. Current concerns relate to lack of leadership and provincial expertise has resulted in blatant discrepancies between schools and provinces. No subject specialists have been appointed and teachers who are unsure of what to do or what to teach have no recourse and are left to their own devices. The implementation of the Skills and Vocational Curriculum should similarly be monitored as to its effectiveness in providing an adapted curriculum for learners with moderate, severe and profound intellectual disabilities.

It is essential that learners with disabilities have access to the same essential curriculum as all learners, even where this includes adapted assessment as in the Skills and Vocational curriculum. However, every effort must be made to ensure that this curriculum is accessible to children with disabilities and that the necessary adaptation and differentiation is made to the classroom environment, the learning materials, subject content and assessment.

The Campaign feels that the diverse needs of children with disabilities have not been sufficiently understood and that teachers have not been sufficiently trained. We therefore recommend that specific training must be developed for teachers working with specific disabilities to ensure appropriately adapted delivery of CAPS curriculum for learners with specific impairments. This can be informed by the appointment of an expert team to explore the interface between the curriculum and adapted delivery for learners with specific impairments and develop the training.

These factors lie behind the very low numbers of children with disabilities who pass the National Senior Certificate Examinations and the fact that even fewer qualify for admission to tertiary education institutions.

7. Children with disabilities have a right to skilled teachers and specialist support staff

Most teachers, teaching children with disabilities and other barriers to learning remain admirably committed to providing quality education, despite the monumental challenges they face. The problems in delivering inclusive education are deepened by the Department's revelation that there are 231 vacancies in inclusive education directorates for the six provinces in which there is available information alone.²⁶

The challenges are made worse by a failure to establish post provisioning norms to ensure that schools across the spectrum are properly equipped with sufficiently qualified, trained teachers and support staff to provide inclusive education as planned.

Post Provisioning Norms do not allow schools to be sufficiently staffed

Post provisioning norms for educators to address the learning needs of children with disabilities, allow for weighted learner-teacher ratios for special schools. These ratios are, however, often not complied with and many children at special schools sit in classes that are twice or three times the size of the recommended learner-teacher ratios.

In addition, the teacher-learner ratio at full service schools is not weighted in accordance with these weighted ratios and is instead calculated as if the school was a mainstream school. This is a serious problem for full service schools, where learners with disabilities should be attending AND learning in classes alongside all other learners.

Furthermore, special schools require additional specialist support staff that do not appear on the staff establishments of the majority of provincial departments of education. These include trained class assistants, house-mothers, occupational therapists, nurses, social workers and psychologists as well as disability specific specialist positions which are not catered for at many schools.

Inadequate training and support provided to teachers and support staff

The inadequacy of the post provisioning methods is exacerbated by a failure to appoint teachers and support staff with the specialist knowledge or training required to teach children with specific disabilities and barriers to learning. This is endemic within the South African education system.

There is a clear need for teachers to develop specialised skills related to specific impairment. Currently in South Africa there is only specialised professional training available to teachers of the deaf. There are no professional qualifications for teaching children with intellectual disability, visual impairment, autism or with severe and complex support needs. The need for specialisation is also undermined by a tendency in some of the newer schools to enrol children with a range of impairments without ensuring that the teachers are able to teach the children. For example, only 10 of the 22 schools for visually impaired learners in South Africa accommodate learners with visual impairments, thus at some schools teachers are required to teach visually impaired learners in one year and Deaf learners in the next, or in other cases, to teach Deaf and visually impaired learners in the same class. These require very different sets of specialised teaching skills, which it is unlikely that one teacher has developed. This lack of expertise can and does result in learners not acquiring the alternative

²⁶ Progress Report. P43, table 39

means of communication that they need as a foundation for all further learning and has dire consequences.

It is commonplace for teachers with no expertise in or knowledge of education for children with disabilities to be deployed to special and full-service schools. For example, the majority of teachers who teach at special schools for visually impaired learners cannot read both contracted and uncontracted Braille. They are therefore below the level of Braille literacy that is required of a grade 4 learner. In addition, DeafSA estimate that only 20% of teachers of the Deaf are fluent in SASL yet this is the medium in which they are teaching the curriculum.

The limited training provided by the DBE, means that it is up to schools to equip the teachers with the skills they need, however too often the school management is also not well versed in the learning needs of the learners. Failing that teachers are left to learn the essential skills 'on the job' with serious consequences.

Some of these crucial skills are also necessary for support staff such as class assistants and housemothers. Untrained, volunteer, housemothers often dispense vital medication to children. Class assistants, who are not provided with training, seldom have any teaching qualifications or experience and in many cases have not even completed their own national senior certificate exams. Of serious concern is that many untrained auxiliary staff members can employ punitive measures that are considered violent and unconstitutional. School management are responsible for employing auxiliary staff members like housemothers and in many cases they fail to conduct the necessary background security checks, putting children with disability at greater risk of abuse. Schools also report to various Campaign members that in many cases class assistants and housemothers can only be paid at the salary level of "general workers" if at all, the lack of or limited resourcing clearly affects the quality of staff that are employed.²⁷

8. Children with disabilities have the right to free basic education.

The fundamental challenges to accessing inclusive education are compounded by substantial economic, physical and emotional barriers to access to appropriate schools faced by care-givers and parents of children with disabilities. Two major examples of the economic barriers are requirements for school fees and the cost of transport related to the distance from schools.

School fees for children with disabilities must fall!

Despite claims of the provision of free education in South Africa, families of children with disabilities are burdened both by school fees and by additional costs associated with their education. Given the rates of poverty and income inequality, the majority of families cannot afford these costs even when they are considered low. As a result of these fees some children with disabilities are excluded from accessing their right to education.

The requirement that learners at some special schools should pay school fees is unacceptable. Although some special schools, which are categorised as fee-paying schools are located in relatively wealthy suburbs and urban centres, those who attend these schools are largely from poor black townships or outlying rural areas. If they are able to pay the fees to attend these schools they must also find resources to travel the long distances daily or stay in hostels far from their families for the significant majority of the year. Frequently families are incapable of paying the fees that wealthier residents of the area in which the school is located may be able to afford and even when they can pay the fees, the additional travel and accommodation costs put these schools out of reach of most.

²⁷ Left in the Dark, *ibid.* p 42.

In addition, campaign members hold the view that some fee-paying schools deliberately discriminate and exclude poor children by using fees as the barrier to accessing the special school. In many cases the SGBs in these schools come from the wealthier community in which the school is located. *Action in Autism* reports the example of a public special needs school in KZN which justifies why 80% of its school population is white and wealthy by stating that the school is located in a middle class former White suburb. The quintile system does not work for special needs schools. Many schools fail to advise parents that there is a financial policy in place.

The process of applying for fee exemptions is complicated and very few families manage to obtain these. The result is that most parents simply do not pay school fees because they cannot do so. This is not taken into consideration when schools subsidies are calculated and thus schools are not properly compensated by the department for the learners who have received exemptions. The assumption that schools can fund a certain proportion of their expenses through the collection of fees is thus problematic when high proportions of the children at the school or at least those who should be at the school cannot afford the fees and/or are exempt.

Transport fees must fall!

In spite of recently being passed, the learner transport policy has yet to be implemented, and parents are often required to pay to transport their children hundreds of kilometres each term to the nearest appropriate full-service or special school. As many parents are reliant on social grants, in low-wage households or unemployed, the transport costs are unmanageable. Care-givers and parents must also cover the costs of their own transport to accompany their children on long trips which are otherwise unsafe. It is not uncommon to hear stories of parents who have no choice but to send their children in taxis and hope that they will reach their schools and return safely.

Because full-service schools are geared to teaching children with disabilities in a mainstream setting, and because they are few and far between, the children with disabilities that attend these schools often live further away from the school than most learners in the school. As such they have an additional transport burden that the other children in the school don't have. The lack of free learner transport is a problem for all poor families in South Africa but places an extra burden on the parents of children with disabilities in full service and special schools.

The state must provide appropriate safe transport to learners with disabilities attending special, full-service and public ordinary schools. This must also include providing for regular transport of parents and caregivers.

9. Children have the right to live in their family environment

The number of children with disabilities who are out of school is partially explained by the fact that appropriate special and full service schools are scarce and generally not situated near to where the children who must attend live. This is exacerbated by a lack of information and understanding by parents of children with disabilities about their children's educational rights, needs and abilities. Public ordinary schools that should accommodate children with disabilities often don't and would rather send the children home to be cared for by their parents.

The fact that most full-service and special schools are far from where children live and require those children to live in hostels or with other members in the community near to the school, linked to the high transport costs means that many children with disabilities are frequently deprived of the family environment or even from regular visits from their families. This is a violation of the best interest of the child principle, having extremely negative

consequences on the child's development, sense of belonging and integration. The pain and distress caused to the children and their families is profound. Parents and care-givers feel isolated from their children's education and express concerns that their children feel abandoned. The financial and emotional costs involved with sending children to schools that are far away means that some families stop trying to send their children to schools in which they can learn.

Many of these consequences, along with the cost issues discussed above can be overcome through the child attending their local school. Children with disabilities will not have to be sent away to hostels far from their families where there is high risk of abuse and neglect; they will pay the same fees as their non-disabled peers and will access the same scholar transport provisions. They will also be included in the school health and nutrition programmes.

Where the child's support needs cannot be met in the regular school and placement in a special school is indicated, they must have access to a special school closest to where they live. Where needed they must have access to safe accommodation and transport costs must be covered by the state to ensure that the child has regular contact with their families.

Hostel fees must fall!

In addition to transport costs and the emotional harm caused by living far from their families, there are three issues that must be noted regarding school hostels for children with disabilities. The costs of staying in hostels add a further financial burden, the conditions in many hostels are profoundly damaging to children and the regulatory framework for these is weak.

Different special schools require different contributions from parents, which are lumped together under the term "hostel fees". These hostel fees may include fees for staying in hostels, payments for food, contributions towards support staff's wages and payments for cleaning agents and toiletries. It must be stressed that these are not trivial amounts for low earning or unemployed and grant dependent families.

Schools maintain that transport and hostels fees are often necessary because of the inadequate subsidies provided to them by departments of education for the operation of special schools, given the learners particular needs. But the ultimate burden of these financial, emotional and physical barriers to access to education is borne largely by poor black children and their families.

Hostels must be safe and supportive environments!

The poor conditions and lack of protection to children in many hostels are extremely concerning. The Department has acknowledged the state of crisis that exists within hostels noting the "extremely poor conditions in many special school hostels".

There are often far too few housemothers available to schools generally and even less paid for by departments of education. Schools are therefore forced to make use of untrained, unskilled volunteer housemothers in many instances. Many hostels also have no structured weekend programmes of homework support and play nor sufficient supervision. This results in boredom and children engaging in unsupervised activity. These circumstances contribute to the very high rates of inappropriate sexual activity and abuse among learners.

In hostels for Deaf children, basic communication between the hostel parents and the children is a significant problem as the hostel parents frequently are unable to sign adequately, coupled with low education levels of many hostel parents this also affects their ability to assist the children with their homework.

Of serious concern is that the Children's Act (38 of 2005) expressly excludes school hostels from the definition of Child and Youth Care Centres (CYCC). The result of this is that school hostels in which children with disabilities are staying are not regulated by the minimum norms that apply to CYCC. It is extremely unacceptable that a lower standard of regulation is applied to this group of children who already face additional exclusion and marginalisation. Although education is the core function of the DBE, the Department of Social Development which has the necessary policy and regulatory frameworks and the expertise, should oversee school hostels. This oversight in the regulatory framework must be urgently addressed.

Reports of neglect and abuse of children with disabilities in hostels are widespread. The lack of protections to children results in either long-term abuse with no recourse to the child protection system or psycho-social support or in parents removing their children from the school in order to protect them – thus forgoing the child's right to education in favour of the child's safety. In a recent example a parents had no choice but to remove their 12 year-old nonverbal autistic child from school because she came home from the school holidays with a sexually transmitted infection, the absence of protection measures at the school and limitations on which school the child can attend means that this child now remains out of school.

10. Conclusion

We recognise the gains made to inclusive education over the past 14 years, however these are minimal and barely touch the tip of the iceberg. They fall woefully short of the level of progress needed and expected. Without a greater sense of urgency and priority the rights of children to equal education will not be met.

The starting point for transforming South Africa's education system to an inclusive one is taking the best interests of each child as the starting point, it requires stronger and more decisive political leadership, improved governance systems and allocation of funds. These must be followed by an intensive programme to promote the principles and requirements of inclusive education across the range of education settings and to the public more broadly.