

PAPERS LAID

DATE	03/05/2023
TABLED BY	Hon. Member Majority Education
COMMITTEE	Education.
CLERK AT THE TABLE	M. Adj. Badau.

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

PARLIAMENT OF KENYA LIBRARY

THE STANDING COMMITTEE ON EDUCATION

REPORT ON THE LEARNERS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 3 OF 2023)

Approved
02/05/23

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date: 02/05/23

Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI.

April, 2023

Forwarded as recommended for approval
02/05/2023

Contents

ABBREVIATIONS AND ACRONYMS 3

PRELIMINARIES 4

1.1 Membership of the Committee 4

1.2 Mandate of the Committee 4

CHAIRPERSON'S FOREWORD 5

CHAPTER ONE: INTRODUCTION 8

1.1 Background 8

1.2 Overview of the Bill 8

CHAPTER TWO 11

2 OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL 11

CHAPTER THREE 12

3 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS 12

3.1 COMMITTEE OBSERVATIONS 12

3.2 COMMITTEE RECOMMENDATIONS 14

4 LIST OF ANNEXURES 18

Annex 1 : Minutes of the Committee Meetings 18

Annex 2 : Leaners with Disabilities Bill, 2023 18

Annex 3 : Advertisement as published in the Media 18

Annex 4 : Stakeholder submissions 18

Annex 5 : Matrix of Submissions to the Bill by the Stakeholders 18

Annex 6 : Committee Stage amendments 18

ABBREVIATIONS AND ACRONYMS

CECM	County Executive Committee Member
CoG	Council of Governors
KICD	Kenya Institute of Curriculum Development
KISE	Kenya Institute of Special Education
KNCHR	Kenya National Commission on Human Rights
KUB	Kenya Union of the Blind
MoE	Ministry of Education
NCPWD	National Council for Persons with Disabilities
NGEC	National Gender and Equality Commission
SSHAK	Special Schools Association of Kenya
TSC	Teachers Service Union
TVET	Technical and Vocational Education and Training
UDPK	United Disabled Persons of Kenya

PRELIMINARIES

The Standing Committee on Education is established pursuant to standing order 228(3) and the Fourth Schedule of the Senate Standing Orders.

1.1 Membership of the Committee

1. Sen. Joe Nyutu, MP	**Chairperson**
2. Sen. Peris Tobiko, CBS, MP	**Vice Chairperson**
3. Sen. (Prof) Margaret Kamar, EGH, MP	Member
4. Sen. Johnes Mwaruma, MP	Member
5. Sen. John Kinyua Nderitu, MP	Member
6. Sen. Agnes Kavindu Muthama, MP	Member
7. Sen. Joseph Githuku Kamau, MP	Member
8. Sen. James Kamau Murango, MP	Member
9. Sen. Lenku Ole Kanar Seki, MP	Member

1.2 Mandate of the Committee

The Standing Committee on Education is mandated to *"Consider all matters related to education and training."* Specifically-

1. Build capacity of Committee Members to undertake their roles in line with Article 96 of the Constitution;
2. Develop and facilitate the development of legal frameworks, policies and guidelines in the Education Sector;
3. Provide oversight for the Education Sector;
4. Facilitate budgetary resources toward the Education Sector; and
5. Any matter that relates to education and training.

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023) seeks to provide a proper legal framework in order to ensure the actualization of the right to basic education for learners with disabilities in Kenya at all levels of education in Kenya.

The Bill creates provisions of law that obligate the National Government through the Ministry of Education and the county governments to carry out their duties in bringing the education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disabilities from the education cycle.

Mr. Speaker Sir,

The Learners with Disabilities Bill, 2023 (Senate Bills No. 3 of 2023) was introduced in the Senate by way of First Reading on 7th March, 2023 and thereafter stood committed to the Standing Committee on Education for consideration.

Pursuant to the provisions of Article 118 and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Education invited interested members of the public to submit their representations on the Bill.

The Committee further held stakeholder engagements with different stakeholders drawn from both state and non-state actors who provide education to learners with Special Needs and Disabilities.

The Committee reviewed all the submissions received and has taken into account the views of all stakeholders in proposing the amendments to the Bill and during preparation of this report.

Mr. Speaker Sir,

During the stakeholder participation engagements, the Committee observed that-

a) The Constitution expressly prohibits discrimination against learners with disabilities in education. Article 54, specifically guarantees the right of people with disabilities to be treated with dignity and respect, and to have *'access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person*';

b) Learners with disabilities have fewer resources and often their curricula and textbooks are designed at a pace that leaves them behind aggravating learning gaps which widen as children get older;

c) Special Needs Education centers are often characterized by inadequate support staff such as physiotherapists, teacher aides, Braille transcribers and Sign language interpreters;

d) Children with disability face extreme disparities, negative perceptions and societal attitudes which have the potential of subjecting their parents to stigma and discrimination. Sometimes such children are hidden away or forbidden from taking part in social activities;

Mr. Speaker Sir,

On behalf of the Committee, I wish to sincerely thank all the stakeholders led by the Ministry of Education, the Council of Governors, the Semi-Autonomous Government Agencies, Civil Society Organizations and individuals who responded to our call and made their well-researched and articulate oral and written submissions.

Mr. Speaker Sir,

As I conclude, I wish to sincerely thank the Members of the Committee on Education and the sponsors of this Bill for their insightful contributions during the consideration of this Bill and development of the report.

The Committee also thanks the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker, Sir

It is now my pleasant duty, pursuant to standing order 145 (5) of the Senate Standing Orders, to present the Report of the Standing Committee on Education on the Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023).

Hon. Speaker, I thank you.

Signed.....**Date**.....25th/4/2023.

SEN. JOE NYUTU, MP

For **CHAIRPERSON, STANDING COMMITTEE ON EDUCATION**

CHAPTER ONE: INTRODUCTION

1.1 Background

1. The Learners with Disabilities Bill, 2023 (Senate Bills No. 3 of 2023) seeks to provide a proper legal framework in order to ensure the actualization of the right to basic education for learners with disabilities in Kenya at all the three levels of education.
2. The Bill creates provisions of law that obligate the National Government through the Ministry of Education and the county governments to carry out their duties in bringing the education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disabilities from the education cycle.
3. The Learners with Disabilities Bill, 2023 (Senate Bill No. 4 of 2023) was read at the Senate for the First Time on 7th March, 2023 and thereafter stood committed to the Standing Committee on Education for consideration and facilitation of public participation.

1.2 Overview of the Bill

4. The Bill comprises of several provisions which includes consequential amendments to existing laws that may be affected by its implementation upon enactment.
5. **Part 1**, clauses 1 to 4, contains citation and definition of terms used within the Bill. This part also contains the objects and guiding principles in performing duties under its attendant Act once enacted. These principles are guided in part by Article 53 and the principles of public participation and rights of the parents and children as elaborated in the Constitution.
6. **Part II**, clauses 5 to 8, contains the rights of learners with disabilities. These rights include, access to quality education, the right to access to information delivered in suitable and legible media of instruction in their education and the right to access to all school buildings and facilities with ease.

7. Clause 6 provides for the rights of parents and guardians of learners with disabilities while clauses 7 and 8 provide for the roles of the national government and county governments respectively as regards education for learners with disabilities.
8. **Part III**, clauses 9-19, deals with the registration and management of special needs education centres within the country. This part provides for obligations of each county executive member to create a register of special needs education centres, regulation and creation of private special needs education institutions in accordance with Basic Education Act, 2013, the TVET Act, 2013 and the Universities Act, 2012, the process of admission of learners with disability and the management of an educational institution for learners with disabilities
9. **Part IV**, clauses 20-22, of the Bill deals with the identification and assessment of learners with disabilities. It specifically provides for the obligation of the County Education Boards.
10. **Part V,** clauses 23-28, provides for the institutional management of special education. It establishes the Special Education Advisory Board and proposes the creation of a special needs education resource centre by the Cabinet Secretary in every county which shall act as the main body charged with providing resources for special needs education institutions.
11. **Part VI,** clauses 29-34, deals with the development and financing of special needs education. It contains provisions relating to the funding of special needs education institutions and the responsibility of governing bodies. It further provides the criteria used to disqualify a private institution from receiving funding for special needs education.
12. **Part VII**, clauses 35-36, addresses quality assurance and standards of special needs education. It specifically provides for appointment of officers who with respect to special education institutions have authority to inspect the institutions and file necessary reports.

13. If enacted, the rights of learners with disabilities shall be greatly strengthened and realized. According to the National Gender and Equality Commission report on Access to Basic Education by Children with Disability, there is a widespread exclusion of children with disabilities from education despite the provisions of the Constitution and international protocols and local policies. Such exclusion from education further perpetuates the cycle of poverty and discrimination.

CHAPTER TWO

2 OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Standing Orders of the Senate, the Standing Committee on Education invited interested members of the public and stakeholders to submit their representations on the Bill. The invitations for submissions were made vide advertisements which appeared in the Daily Nation and the Standard on Saturday, 11th March, 2023 (Annex 3).

The deadline for submission of views was Monday, 27th March, 2023. At the close of the public participation period, a total of twenty-two (22) written memoranda had been received by the Committee. A list of the stakeholders who submitted the memoranda (Annex 4 (a)) and their respective submissions (Annex 4 (c)) are annexed in this report.

Further, the Committee interested members of the public and stakeholders to the meeting of the Committee held on Wednesday, 29th March, 2023 to deliberate on the provisions of the Bill and make oral presentations on their views. The list of the participants is annexed in this report (Annex 4 (b)).

A comprehensive list of all submissions, views and proposed amendments made both orally and vide written memoranda were thereafter captured, compiled and presented in a matrix, annexed in this report, for the Committee's consideration (Annex 5).

CHAPTER THREE

3 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 COMMITTEE OBSERVATIONS

Following extensive discussions with the stakeholders and analysis of the submissions and comments received from the members of public, the Committee observes that -

1. The Constitution expressly prohibits discrimination against learners with disabilities in education. Article 54, specifically guarantees the right of people with disabilities to be treated with dignity and respect, and to have *'access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person*'. Further, Article 53(b) guarantees every child the right to '*free and compulsory basic education'*;

2. Basic Education Act, 2013 specifically prohibits schools from denying admission to students with disabilities and authorizes the creation of a special public education system for students with disabilities (Section 34). Further, the government is mandated to establish and maintain public special schools to enroll learners with intellectual, physical, emotional, hearing or vision impairments as well as students with special talents or multiple disabilities (Section 44);

3. The Policy Framework for Education emphasizes the importance of assistive resources and devices in reducing effects of disabilities by enhancing functionality and mobility of learners. Assistive facilities are important for facilitating enrolment and participation of children with disability in both curricular and co-curricular activities;

4. Although the 2019 Kenya Population and Housing Census identifies a disability prevalence rate of 2.2%, the number of learners with disability could be much higher. There is inadequate data on the number of learners with special needs and disabilities, inadequate tools and skills for assessing and identifying learners with special needs;

5. Learners with disabilities have fewer resources and often their curricula and textbooks are designed at a pace that leaves them behind aggravating learning gaps which widen as children get older. Some learners require specialized learning and play resources, assistive devices such as hearing aids and adaptive devices to be able to learn but in most cases they are not available and/or affordable;

6. There are a few SNE centers in the country limiting spread and access to education. Further, learners in these centers face challenges during examinations ranging from the way examinations are set, invigilated and marked;

7. Learners with disabilities may have extra expenses associated with their education which includes the need for educational assessment, support and care and assistive technology. However, SNE centers underfunded and the annual capitation grant and attendant top-up is provided at a flat rate across all learners with disabilities whereas the cost varies from one learner to another and from one disability to the other;

8. Children with disability face extreme disparities, negative perceptions and societal attitudes which have the potential of subjecting their parents to stigma and discrimination. Sometimes such children are hidden away or forbidden from taking part in social activities;

9. Disability often affects families that are already poor, particularly those in remote rural and urban poor locations. Therefore, penalizing the failure of the parents to enroll and ensure attendance of such learners to school may subject the parents to double jeopardy;

10. Some of the SNE centers have unfriendly and inaccessible environments and facilities. Most of the centers have inadequate support staff such as physiotherapists, teacher aides, Braille transcribers and Sign language interpreters; and

11. Whereas the Education Assessment and Resource Centers (EARCs) have been set up for early identification, assessment and intervention and placement of learners with disabilities and special needs, they are not available in every county. Where they are present, they lack funding, equipment, facilities and face an imbalance in distribution of staff.

3.2 COMMITTEE RECOMMENDATIONS

The Committee therefore recommends that–

1. the **definition** of the words be amended by –
    a. inserting the word "*training*" to the "special needs education";
    b. incorporating behavior specialists, sensory integration therapists, psychologists, nutritionists, social workers, speech and language pathologists and therapists to the definition of "special service providers":
    c. providing more clarity to "special needs schools"
    d. including the word **"multidisciplinary"** in the definition of words
2. clause 3 (a) be amended to include the words *at all levels of education* in order to align it with clause 3 (f);

3. clause 3 be amended to add a new objective of "providing a framework for regular multidisciplinary assessment of learners with disability to determine their disability and learning needs";
4. clause 4 be amended to provide for mechanisms for provision of education of learners at post-secondary institutions;
5. clause 4 (c) be amended by deleting the words "cultural";
6. clause 5 (b) be amended by deleting it;
7. clause 5 (c) be amended to provide for alternative and argumentative medium of instruction;
8. clause 5 (f) be amended by inserting the word "appropriate"
9. clause 5 (g) be amended to provide for protection from any form of discrimination;
10. clause 5 (h) be amended to incorporate the definition of '*reasonable accommodation'* as provided for in the Convention on the Rights of Persons with Disabilities;
11. clause 6 be amended to recognize the roles, mandate and functions of other institutions that provide education for learners and trainees with disabilities;
12. clause 6 (1) (a) be amended by incorporating the following phrase "*obligated to present a learner with disability to a learning institution for the purposes of education and training".*
13. clause 6 (2) be amended by breaking it down to provide for-
    a. ***an obligation of a parent to present the child for assessment and attendant penalty in an event of failure; and***
    b. ***responsibility for enrollment and attendance to school.***
14. clause 6 (3) be amended to correct typographical errors and expand its provision to all levels of education;
15. clause 7 (2) (c) be amended by deleting the words necessary and substituting it with "*appropriate and adequate*"

16. clause 7 (2) (d) be amended to provide for the interval of the census of learners with disabilities and the kind of data to be collected
17. clause 7 (2) (h) be amended to include guardians
18. clause 7 (2) (i) be amended by redrafting it
19. clause 7 (2) (j) be amended to include education assessments and administration of examinations and use of assistive technology;
20. clause 7 (2) (k) be amended to provide for inclusion of technical vocational and university education;
21. clause 8 (2) (b) be amended to conform to the Universal Design Principles
22. clause 8 (2) (e) be amended to delete the repeated words and to provide for disaggregation of data by sex and category of a learners' disability;
23. clause 8 (2) (h) be amended to make provisions that apportion responsibility to the two levels of the government;
24. clause 9 (1) be amended to include the particulars of private education institutions;
25. clause 10 (1) be amended to correct typographical errors
26. clause 11 be amended to include private institutions
27. clause 12 be amended to include all levels of education;
28. clause 13 (1) be amended to improve the membership of the Board of Management
29. clause 15 (2) (b) be amended to replace the term parent-child-teacher relationship with parent-learner-teacher relationship
30. clause 17 be amended to reflect adherence to universal design principle of accessibility, usability and inclusion;
31. clause 19 be amended to provide for an appeal to decisions of the County Education Board and rename 'providers' as 'inclusive education service providers';

32. clause 23 be amended by deleting the whole of it and allocating the roles envisaged therein to the Cabinet Secretary, Ministry of Education;
33. clause 24 (3) (c) be amended by deleting the phrase "disabled children" and replacing it with a "learner with disability";
34. clause 25 (a) be amended to provide that facilities and amenities be accessible and appropriate for use;
35. clause 26 be amended to replace the word "special equipment" with "assistive devices";
36. clause 28 be amended by substituting the marginal note with "auxiliary and support staff";
37. clause 29 be amended to correct the typographical errors;
38. clause 33 (2) (a) be amended to ensure that the provision does not bar private institutions from charging school fees;
39. clause 42 (1) be amended to provide for close monitoring of learners in home-based programs; and
40. clause 42 (2) be amended to replace the words "*education institutions*" with "*educational institutions*"

4 LIST OF ANNEXURES

Annex 1 : Minutes of the Committee Meetings

Annex 2 : Leaners with Disabilities Bill, 2023

Annex 3 : Advertisement as published in the Media

Annex 4 : Stakeholder submissions

Annex 5 : Matrix of Submissions to the Bill by the Stakeholders

Annex 6 : Committee Stage amendments

MINUTES OF THE 20th SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON TUESDAY, 25th APRIL, 2023 AT 12:00 NOON ON ZOOM ONLINE MEETING PLATFORM.

PRESENT

1. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
2. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
3. Sen. Johnes Mwaruma, MP - Member
4. Sen. Agnes Kavindu Muthama, MP - Member
5. Sen. Joseph Githuku Kamau, MP - Member

ABSENT WITH APOLOGY

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. John Kinyua Nderitu, MP - Member
3. Sen. Lenku Ole Kanar Seki, MP - Member
4. Sen. James Kamau Murango, MP - Member

SENATE SECRETARIAT

1. Ms. Veronica Kibati - Principal Clerk Assistant I
2. Mr. Humphrey Ringera - Research Officer I
3. Ms. Carolyne Cheruiyot - Senior Legal Counsel
4. Mr. Dennis Amunavi - Research Officer III
5. Mr. Kenneth Ndirangu - Research Officer III
6. Ms. Fatuma Abdi - Audio Recording Officer
7. Ms. Hawa Abdi - Sergeant-at-Arms

MIN/SEN/SCE/091/2023 **PRELIMINARIES**

The meeting was called to order at twenty-five minutes past noon and the proceedings commenced with a word of prayer said by Sen. Peris Tobiko, CBS, MP.

MIN/SEN/SCE/092/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. (Prof.) Margaret Kamar, EGH, MP and seconded by Sen. Agnes Kavindu Muthama, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the Previous Committee meetings
    a. *Minutes of the 16th sitting held on 29th March, 2023;*
    b. *Minutes of the 17th sitting held on 11th April, 2023; and*
    c. *Minutes of the 18th sitting held on 17th April, 2023*

4. Matters arising from Minutes of the Previous Committee Meetings
5. Consideration and adoption of the Committee Report on the Learners with Disabilities Bill, 2023 (*Senate Bills No. 4 of 2023*)
6. Any Other Business;
7. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/093/2023 **CONFIRMATION OF MINUTES OF THE PREVIOUS COMMITTEE MEETINGS**

1. The Minutes of the 16th Committee meeting held on the 29th March, 2023 were confirmed as true record of the proceedings after being proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP;
2. The Minutes of the 17th Committee meeting held on the 11th April, 2023 were confirmed as true record of the proceedings after being proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP;
3. The Minutes of the 18th Committee meeting held on the 17th April, 2023 were confirmed as true record of the proceedings after being proposed by Sen. Agnes Kavindu Muthama, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP; and
4. The Minutes of the 19th Committee meeting held on the 17th April, 2023 were confirmed as true record of the proceedings after being proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP;

MIN/SEN/SCE/093/2023 **MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS COMMITTEE MEETINGS**

Ex MIN/SEN/SCE/080/2023 ***MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS COMMITTEE MEETING***

The Committee considered the two letters from the Cabinet Secretary, the National Treasury and the Chief Executive Officer of the Teachers Service Commission (TSC) and resolved to invite them to a meeting of the Committee to be held on Thursday, 4th May, 2023 to deliberate on the issues raised in the petition.

MIN/SEN/SCE/094/2023 **CONSIDERATION OF THE COMMITTEE REPORT ON THE LEARNERS ON DISABILITIES BILL, 2023**

1. The Committee Secretariat presented the Committee Report on the Leaners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023) for Committee consideration and adoption; and

2. The Committee considered the report which was unanimously adopted after being proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP

MIN/SEN/SCE/095/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at thirty minutes past one. The Committee resolved to hold the next meeting on notice.

SIGNED: ..... DATE: .....

(CHAIRPERSON: SEN. JOE NYUTU, M.P.)

MINUTES OF THE 19th SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON MONDAY, 17TH APRIL, 2023 AT 2:30 P.M. AT THE FRANGIPANI BALLROOM, SERENA HOTEL, NAIROBI.

PRESENT

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Agnes Kavindu Muthama, MP - Member
5. Sen. Joseph Githuku Kamau, MP - Member
6. Sen. James Kamau Murango, MP - Member

ABSENT WITH APOLOGY

1. Sen. John Kinyua Nderitu, MP - Member
2. Sen. Johnes Mwaruma, MP - Member
3. Sen. Lenku Ole Kanar Seki, MP - Member

IN ATTENDANCE

1. Sen. Crystal Asige, MP - Friend of the Committee

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Research Officer II
2. Ms. Carolyne Cheruiyot - Senior Legal Counsel
3. Mr. Dennis Amunavi - Research Officer III
4. Mr. Kenneth Ndirangu - Research Officer III
5. Ms. Ivy Wachira - Protocol Officer
6. Ms. Hawa Abdi - Sergeant-at-Arms
7. Ms. Irene Odenyi - Aide to Sen. Asige

MIN/SEN/SCE/087/2023 **PRELIMINARIES**

The meeting was called to order at thirty minutes past two and the proceedings commenced with a word of prayer said by Sen. (Prof.) Margaret Kamar, EGH, MP.

MIN/SEN/SCE/088/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. (Prof.) Margaret Kamar, EGH, MP and seconded by Sen. Joseph Githuku Kamau, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of the stakeholder submissions to the Learners with Disabilities Bill, 2023 (*Senate Bills No. 4 of 2023*);
4. Any Other Business; and
5. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/089/2023 **CONSIDERATION OF THE SUBMISSION TO THE LEARNERS WITH DISABILITIES BILL, 2023**

1. The Committee Secretariat continued to make the presentation on the stakeholder views to the Learners with Disabilities Bill (Senate Bill No. 4 of 2023) which had been tabulated in a matrix attached herein for consideration and comments;

2. The Committee observed that -

   a) Learners with disability face extreme disparities, negative perceptions and societal attitudes which have the potential of subjecting their parents to stigma and discrimination. Sometimes such children are hidden away or forbidden from taking part in social activities;
   b) Disability often affects families that are already poor, particularly those in remote rural and urban poor locations. Therefore, penalizing the failure of the parents to enroll and ensure attendance of such learners to school may subject the parents to double jeopardy;
   c) Some of the SNE centers have unfriendly and inaccessible environments and facilities have inadequate support staff such as physiotherapists, teacher aides, Braille transcribers and Sign language interpreters;
   d) Whereas the Education Assessment and Resource Centers have been set up for early identification, assessment and intervention and placement of learners with disabilities and special needs, they are not available in every county.

MIN/SEN/SCE/090/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at thirty minutes past five. The Committee resolved to hold the next meeting on notice.

SIGNED: ..... **DATE:** 25th/10/2023

for **(CHAIRPERSON: SEN. JOE NYUTU, M.P.)**

MINUTES OF THE 18TH SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON MONDAY, 17th APRIL, 2023 AT 10:00 A.M.AT THE FRANGIPANI BALLROOM, SERENA HOTEL, NAIROBI.

PRESENT

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Agnes Kavindu Muthama, MP - Member
5. Sen. Joseph Githuku Kamau, MP - Member
6. Sen. James Kamau Murango, MP - Member

ABSENT WITH APOLOGY

1. Sen. John Kinyua Nderitu, MP - Member
2. Sen. Johnes Mwaruma, MP - Member
3. Sen. Lenku Ole Kanar Seki, MP - Member

IN ATTENDANCE

1. Sen. Crystal Asige, MP - Friend of the Committee

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Research Officer II
2. Ms. Carolyne Cheruiyot - Senior Legal Counsel
3. Mr. Dennis Amunavi - Research Officer III
4. Mr. Kenneth Ndirangu - Research Officer III
5. Ms. Ivy Wachira - Protocol Officer
6. Ms. Hawa Abdi - Sergeant-at-Arms
7. Ms. Irene Odenyi - Aide to Sen. Asige

MIN/SEN/SCE/083/2023 **PRELIMINARIES**

The meeting was called to order at ten minutes past ten and the proceedings commenced with a word of prayer said by Sen. (Prof.) Margaret Kamar, EGH, MP.

MIN/SEN/SCE/084/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. (Prof.) Margaret Kamar, EGH, MP and seconded by Sen. Joseph Githuku Kamau, MP as follows:

1. Prayer;

2. Adoption of the Agenda;
3. Consideration of the stakeholder submissions to the Learners with Disabilities Bill, 2023 (*Senate Bills No. 4 of 2023*)
4. Any Other Business; and
5. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/085/2023 **CONSIDERATION OF THE SUBMISSION TO THE LEARNERS WITH DISABILITIES BILL, 2023**

1. The Committee was informed that twenty-two (22) stakeholders had submitted their views on the Bill which had been tabulated in a matrix for consideration and comments;

2. The Committee observed that-

a) Learners with disabilities have fewer resources and curricula and textbooks are designed at a pace that leaves them behind aggravating learning gaps which widen as children get older.
b) Some learners require assistive devices such as hearing aids and adopted devices to be able to learn but in most cases they are not available and/or affordable;
c) There are a few SNE centers in the country limiting access to education which is also coupled with a limited number of trained special needs education teachers which aggravates the teacher: learner ratio.
d) Learners in these centers face challenges during examinations ranging from the way examinations are set, invigilated and marked;
e) Learners with disabilities may have extra expenses associated with their education which includes the need for educational assessment, support and care and assistive technology. However, they are underfunded and the annual capitation grant and attendant top-up has remained the same for a very long period despite rising cost of living and increased enrollment.
f) The capitation for basic and secondary education is provided at a flat rate across all learners with disabilities whereas the cost varies from one learner to another and from one disability to the other.

MIN/SEN/SCE/086/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at fifteen minutes past one. The Committee resolved to hold the next meeting at half past two in the afternoon.

SIGNED: ..... **DATE:** 25th/4/2023

(CHAIRPERSON: SEN. JOE NYUTU, M.P.)

MINUTES OF THE 17TH SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON TUESDAY, 11th APRIL, 2023 AT COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDING.

PRESENT

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. John Kinyua Nderitu, MP - Member
5. Sen. Johnes Mwaruma, MP - Member
6. Sen. James Kamau Murango, MP - Member

ABSENT WITH APOLOGY

1. Sen. Agnes Kavindu Muthama, MP - Member
2. Sen. Lenku Ole Kanar Seki, MP - Member
3. Sen. Joseph Githuku Kamau, MP - Member

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Research Officer II
2. Ms. Carolyne Cheruiyot - Senior Legal Counsel
3. Mr. Dennis Amunavi - Research Officer III
4. Mr. Kenneth Ndirangu - Research Officer III
5. Ms. Ivy Wachira - Protocol Officer
6. Ms. Fatuma Abdi - Audio Recording Officer
7. Ms. Hawa Abdi - Serjeant-at-Arms

MIN/SEN/SCE/077/2023 **PRELIMINARIES**

The meeting was called to order at ten minutes past noon and the proceedings commenced with a word of prayer said by the Chairperson, Sen. Joe Nyutu, MP.

MIN/SEN/SCE/078/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Peris Tobiko, CBS, MP, as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 15th and 16th Committee meetings;
4. Matters arising from the Minutes of the 15th and 16th Committee meetings;
5. Consideration of the stakeholder submissions on the Learners with Disabilities Bill, 2023 (*Senate Bills No. 4 of 2023*) (**Committee Paper No. 18**)
6. Any Other Business; and
7. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/079/2023 **CONFIRMATION OF MINUTES OF THE PREVIOUS COMMITTEE MEETINGS**

1. Minutes of the 15th meeting held on Tuesday, 21st March, 2023 were confirmed as a true record of the proceedings after being proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Peris Tobiko, CBS, MP; and
2. Confirmation of the Minutes of the 16th meeting held on Wednesday, 29th March, 2023 was pended until the next meeting.

MIN/SEN/SCE/080/2023 **MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS COMMITTEE MEETING**

Ex-MIN/SCE/064/2023 - PETITION CONCERNING THE 1997-2007 RETIRED TEACHERS CLAIM

The Committee resolved to invite the Cabinet Secretary, the National Treasury and the Chief Executive Officer/Secretary, Teachers Service Commission to the meeting of the Committee to be held on Thursday, 20th April, 2023 to deliberate on the issues raised in the petition.

MIN/SEN/SCE/081/2023 **CONSIDERATION OF THE SUBMISSION TO THE LEARNERS WITH DISABILITIES BILL, 2023**

1. The Clerk to the Committee presented Committee Paper No.18 on the Learners with Disabilities Bill, 2023 (*Senate Bills No. 4 of 2023*);
2. The Committee **observed** that twenty-two (22) stakeholders had submitted their views to the Bill which had been tabulated in a matrix by the Secretariat for consideration. However, based on limited time during the Committee meetings, this would take a lot of time; and
3. With the foregoing, the Committee **resolved** to undertake a one day working retreat in Nairobi on Monday, 17th April, 2023 to comprehensively consider the matrix on stakeholder submissions and prepare the Committee report to the Bill.

MIN/SEN/SCE/082/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at fifteen minutes past noon. The Committee resolved to hold the next meeting on notice.

SIGNED: ..... **DATE:** 25th 4 2023

for **(CHAIRPERSON: SEN. JOE NYUTU, M.P.)**

MINUTES OF THE 16th SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON WEDNESDAY, 29th MARCH, 2023 AT ANNEX II BOARDROOM, FIRST FLOOR, KICC.

PRESENT

1. Sen. Lenku Ole Kanar Seki, MP - Member **(Chairing)**
2. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
3. Sen. Johnes Mwaruma, MP - Member
4. Sen. Agnes Kavindu Muthama, MP - Member

ABSENT WITH APOLOGY

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
3. Sen. John Kinyua Nderitu, MP - Member
4. Sen. Joseph Githuku Kamau, MP - Member
5. Sen. James Kamau Murango, MP - Member

IN ATTENDANCE

1. Sen. Crystal Asige, MP - Friend of the Committee

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Research Officer II
2. Ms. Carolyne Cheruiyot - Senior Legal Counsel
3. Mr. Dennis Amunavi - Research Officer III
4. Mr. Kenneth Ndirangu - Research Officer III
5. Ms. Fatuma Abdi - Audio Recording Officer
6. Irene Odenyi - Aide to Sen. Asige

STAKEHOLDERS

1. Dr. Norman Kiogora - Director, Kenya Institute for Special Education
2. Mr. Harun M. Hassan - Executive Director, National Council for Persons with Disability
3. Mr. Michael Mutua - Principal, Bloom Garden Autism Academy
4. Mr. Peter Sitienei - Chairperson, Special School Heads Association of Kenya
5. Mr. Ibrahim Alubala - Save the Children

MIN/SEN/SCE/073/2023 **PRELIMINARIES**

The meeting was called to order at fifty-five minutes past nine and the proceedings commenced with a word of prayer said by Sen. Lenku Ole Kanar Seki, MP.

MIN/SEN/SCE/074/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted with amendments having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of the stakeholder submissions to the Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023)
4. Any Other Business;
5. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/075/2023 **CONSIDERATION OF THE STAKEHOLDER SUBMISSIONS TO THE LEARNERS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 4 OF 2023)**

1. The Committee was informed that stakeholders from the National Council of Persons with Disabilities (NCPWD), the Kenya Institute of Special Education (KISE), Special School Heads Association of Kenya (SSHAK), Save the Children and Broom Garden Autism Academy were attending the meeting to make presentations on the Learners with Disabilities Bill, 2023 (Senate Bills No. of 2023).

2. All the stakeholders presented written memoranda on the Bill The submissions in their respective memoranda have been analyzed and tabulated in a matrix for the Committee's consideration.

i. Presentation by Kenya Institute for Special Education (KISE)

3. The Committee was further informed that the Kenya Institute for Special Education (KISE) is a Semi-Autonomous Government Agency (SAGA) of the Ministry of Education established through Legal Notice No. 17 of 14th February, 1986 and anchored on the Basic Education Act, 2012. The institute is managed by a Council appointed by the Cabinet Secretary for Education.

ii. Presentation by Bloom Garden Autism Academy

4. The Committee was informed that Bloom Garden Autism Academy (BGAA) is a special school that offers services and support to students with autism, Attention Deficit Hyperactivity Disorder (ADHD), intellectual challenges, down syndrome and specific learning difficulties.

5. The school provides a wide range of services from early identification and intervention, differentiated learning, speech and language stimulation, alternative and augmentative communication, prevocational and vocational training among other therapies.

iii. Presentation by Special Schools Heads Association of Kenya (SSHAK)

6. The Committee was informed that SSHAK is a professional body registered to address issues pertaining to education of learners with special needs or disabilities. The membership comprises head teachers of all school handling learners with disabilities or special needs. Currently, the membership stands at over 3,000 head teachers in special schools and units.

7. The Committee was informed that majority of Special Needs Education (SNE) learners in primary schools are underfunded. The government provides an annual top up of Kshs. 2,300 for learners with special needs and disabilities in primary schools and Kshs. 35,000 in secondary schools. The grant has remained the same over the years and the flat model assumes that there is uniform cost across all leaners with disabilities whereas costs vary from one child to another and from one disability to the other.

iv. Presentation by National Council of Persons with Disabilities (NCPWD)

8. The Committee was informed that the National Council for Persons with Disabilities is a State Corporation which was established in November 2004 following the enactment of the Persons with Disabilities Act No. 14 of 2003. The Council is charged with the responsibilities of formulating and implementing policies that are geared towards mainstreaming of Persons with Disabilities' issues to the National Economy and to create an enabling environment in which Persons with Disabilities can operate effectively and efficiently in order to contribute positively to the national economy.

9. The Committee was further informed that children with disabilities have a fundamental right to education just like any other child, as outlined in several international and national legislative and policy instruments. Some of these instruments include the Convention on the Rights of the Child (CRC, 1989), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2006) and the Basic Education Act, 2013 among others.

10. Persons with disabilities have largely been excluded from education and training due to beliefs and attitudes that cultivates culture of exclusion and segregation. These barriers, are further reinforced through structural hurdles, such as unfavourable admission criteria towards persons with disabilities and policies that do not recognize disabilities nor the importance of equal access to employment and decent work.

11. The Committee observed that-
    a) Whereas learners with disabilities and special needs require more resources in form of boarding and tuition fees, there are limited scholarships to support them. There are no affirmative action bursary funds to learners with disabilities;
    b) Attitudes and cultural beliefs by parents, teachers and general society affects and complicates access to education and learning opportunities to children with disabilities and special needs; and
    c) There are insufficient teaching and learning materials for learners with disabilities and special needs. Further, examination formats and other educational materials available in most schools are not in accessible formats.

MIN/SEN/SCE/076/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at fifteen minutes past noon. The Committee resolved to hold the next meeting on notice.

SIGNED: ..... **DATE:** 25th/11/2023

for **(CHAIRPERSON: SEN. JOE NYUTU, M.P.)**

MINUTES OF THE 15TH SITTING OF THE STANDING COMMITTEE ON EDUCATION HELD ON TUESDAY, 21ST MARCH, 2023, AT COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AT 12 NOON.

PRESENT

1. Sen. Joe Nyutu, MP - **Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP - **Vice-Chairperson**
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Johnes Mwaruma, MP - Member
5. Sen. Agnes Kavindu Muthama, MP - Member
6. Sen. Lenku Ole Kanar Seki, MP - Member

ABSENT WITH APOLOGY

1. Sen. John Kinyua Nderitu, MP - Member
2. Sen. Joseph Githuku Kamau, MP - Member
3. Sen. James Kamau Murango, MP - Member

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Research Officer II
2. Ms. Carolyne Cheruiyot - Senior Legal Counsel
3. Mr. Yusuf Duale - Committee Clerk III
4. Mr. Dennis Amunavi - Research Officer III
5. Mr. Kenneth Ndirangu - Research Officer III
6. Ms. Fatuma Abdi - Audio Recording Officer
7. Mr. Thomas Ndambuki - Attachee Makueni County Assembly
8. Mr. Julius Nzau - Attachee Makueni County Assembly
9. Mr. Peter Mwanzia - Attachee Makueni County Assembly

MIN/SEN/SCE/067/2023 **PRELIMINARIES**

The meeting was called to order at twenty minutes past noon and the proceedings commenced with a word of prayer said by the Chairperson.

MIN/SEN/SCE/068/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Peris Tobiko, CBS, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 14th Meeting held on 15th March, 2023;
4. Matters arising from Minutes of the 14th Meeting;
5. Consideration of the Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023) *(Committee Paper No. 16)*;
6. Any Other Business;
7. Adjournment /Date of the Next Meeting.

MIN/SEN/SCE/069/2023 **CONFIRMATION OF MINUTES OF THE 14TH COMMITTEE MEETING**

Minutes of the 14th Committee meeting held on Wednesday, 15th March, 2023 were confirmed as a true record of the proceedings after being proposed by Sen. Peris Tobiko, CBS, MP and seconded by Sen. Johnes Mwaruma, MP.

MIN/SEN/SCE/070/2023 **MATTERS ARISING FROM MINUTES OF THE PREVIOUS COMMITTEE MEETINGS**

Ex-Min/SCE/064/2023 ***PETITION CONCERNING THE 1997-2007 RETIRED TEACHERS CLAIM***

The Committee observed that in order to avoid delays in processing the Petition, the Committee should consider inviting the concerned stakeholders separately if they are not available to appear on the same day.

MIN/SEN/SCE/071/2023 **CONSIDERATION OF THE LEARNERS WITH DISABILITIES BILL, 2023 (COMMITTEE PAPER NO. 16)**

1. The Clerk to the Committee presented **Committee Paper No. 16** on the Learners with Disabilities Bill, 2023 (Senate Bills No.4 of 2023) and the Committee noted its contents;
2. The Legal Counsel presented the Bill digest on the Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023) and informed the Committee that the Bill was published in the 12th Parliament as the Special Needs Education Bill but it lapsed. However, the current sponsors of the Bill, Sen (Prof) Margaret Kamar, MP and Sen. Crystal Asige, MP changed the name of the Bill to Learners with Disabilities Bill;

3. The Committee observed that there is need to deliberate extensively on the provisions on penalties and ensure that parents are not disadvantaged but instead are encouraged to present their children with special needs to schools;
4. The Committee **resolved** to invite the following stakeholders to the meeting of the Committee to acquaint members on their roles, mandate and functions and make representations that they may have on the Leaners with Disabilities Bill, 2023 -
    a) Kenya Institute of Special Education (KISE);
    b) Kenya Special Schools Heads Association;
    c) National Council of Persons with Disabilities (NCPWD); and
    d) National Fund for the Disabled of Kenya (NFDK).

MIN/SEN/SCE/072/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at thirty seven minutes past one. The Committee resolved to hold the next meeting on notice.

SIGNED: ..... **DATE:** 11/04/2023

(CHAIRPERSON: SEN. JOE NYUTU, M.P.)

SPECIAL ISSUE

Kenya Gazette Supplement No. 8 (Senate Bills No. 4)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 31st January, 2023

CONTENT

Bill for Introduction into the Senate—

PAGE

The Learners with Disabilities Bill, 2023 77

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE LEARNERS WITH DISABILITIES BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

PART I – PRELIMINARY

1. —Short title.
2. —Interpretation.
3. —Objects of the Act.
4. —Guiding Principles.

PART II – RIGHTS AND RESPONSIBILITIES

5. —Rights of learners with disabilities.
6. —Responsibility of parents.
7. —Responsibility of the National government.
8. —Responsibilities of county governments.

PART III – REGISTRATION AND MANAGEMENT OF SPECIAL NEEDS EDUCATIONAL INSTITUTIONS.

9. —Register of special needs educational institutions.
10. —Registration of private special needs educational institutions.
11. —Deregistration or closure of special needs educational institutions.
12. —Admission of a learner with disability.
13. —Board of management.
14. —Functions of board of management.
15. —Establishment of a parents' association.
16. —Responsibility of County Education Boards.
17. —Facilities in institutions providing for special needs education.
18. —Provision of special needs education outside of an educational institution.

19. —Conduct of special needs education service providers.

PART IV – IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH DISABILITIES

20. —Register of learners with disabilities.

21. —Identification of children with disabilities.

22. —Assessment of special education needs.

PART V – INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION

23. —Establishment of the Special Needs Education Advisory Board.

24. —Special needs education resource centres.

25. —Infrastructure.

26. —Provision of materials and equipment.

27. —Establishment of county co-ordination mechanisms.

28. —Training of non-teaching staff.

PART VI – DEVELOPMENT AND FINANCING OF SPECIAL NEEDS EDUCATION

29. —Funding special needs educational institutions.

30. —Funding special needs education.

31. —Responsibility of governing bodies.

32. —Financial records and statements.

33. —Disqualification from receiving funding.

34. —Levy of fees.

PART VII – QUALITY ASSURANCE AND STANDARDS OF SPECIAL NEEDS EDUCATION

35. —Quality assurance in special needs education.

36. —Role of county government in quality assurance.

PART VIII – MISCELLANEOUS PROVISIONS

37. —Assessment.

38. —Educational institutions on public land.

39. —Prohibition of alienation of land used by public special needs educational institutions.

40. —Private special needs educational institutions.

41. —Declaration of eligibility as special needs educational institution.

42. —Registration of home-based learners with disabilities.

43. —Government financial aid.

44. —Regulations

45. —Offences.

46. —Consequential amendment.

THE LEARNERS WITH DISABILITIES BILL, 2023

A Bill for

AN ACT of Parliament to provide for the education of learners with disabilities; for the conduct of educational institutions for learners with disabilities and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART 1 – PRELIMINARY

Short title.

1. This Act may be cited as the Learners with Disabilities Act, 2023.

Interpretation.

2. In this Act —

"Advisory Board" means the Special Needs Education Advisory Board established under section 22;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to education;

"county executive committee member" means the county executive committee member responsible for matters relating to education in the county;

"County Education Board" has the meaning assigned to it under the Basic Education Act;

"educational institution" has the meaning assigned to institutions of basic education and training under the Basic Education Act; No. 14 of 2013.

"learner with disability" means a person who is undertaking special needs education as defined under section 2 of the Basic Education Act;

"special needs education" has the same meaning as assigned under section 2 of the Basic Education Act;

"special needs school" means an institution that is specially organized to make special educational provision for learners with disabilities and is for the time being registered as an educational institution under the Basic Education Act; and

"special service providers" means any person providing specialized, supplementary and related services to learners with special education needs and includes

braille readers and technicians, sign language instructors and interpreters, orientation and mobility specialists, physiotherapists, occupational therapists, speech and language pathologists and therapists, speech and language pathologists and therapists, counsellors and teacher aides.

Objects of the Act.

3. The objects of this Act are to —

(a) provide a framework for the realisation of the right to education for all learners with disabilities;

(b) provide a framework for the establishment of a comprehensive education system for the provision of education to learners with disabilities;

(c) provide a framework that will ensure equal access to education for learners with disabilities;

(d) provide standards that conform to international treaties and conventions to which Kenya is a party for the implementation of education for learners with disabilities;

(e) eliminate exclusion and discrimination that hinders the right of access to education to learners with disabilities;

(f) ensure the transition of all learners with disabilities through all levels of education; and

(g) provide a framework for accountability in the delivery of quality special needs education and related services.

Guiding principles.

4. Every person shall, in performing their functions under this Act, be guided by the following principles —

(a) the right to free and compulsory basic education pursuant to Article 53 of the Constitution;

(b) coordinated public participation in the implementation, monitoring and evaluation of policies and plans related to the implementation of special needs education;

(c) special needs education that is sensitive to the cultural and developmental needs of the learner;

(d) recognition of the parents and family of the child as the primary caregivers and the role of the

community in providing an alternative support system to the parents and an environment that ensures the realization of the right to special needs education;

(e) equality, equity and non-discrimination in the provision of special needs education;

(f) transparency and accountability in the implementation of programmes and activities and the allocation and utilization of public and private resources for the delivery of special needs education;

(g) ensuring that interventions are based on objective information and methods and that monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the public management, social audit and taking into account the needs of the population;

(h) collaboration and co-operation between the National and county governments and relevant stakeholders in the implementation of activities necessary for ensuring the actualization of the right to special needs education; and

(i) the identification and prioritization of communities most at risk while striving to make the system universally available to all those who wish to participate.

PART II – RIGHTS AND RESPONSIBILITIES

Rights of learners with disabilities.

5. Every learner with disability shall have the right to—

(a) access quality education;

(b) access to information delivered in a suitable and legible media of instruction;

(c) use Kenyan sign language, braille and other specialized medium of instruction commensurate with the learner's educational needs at every level of education;

(d) access to all school buildings and facilities with ease;

(e) admission, on application to any institution of learning and access to an inclusive, quality and free basic education on an equal basis with others;

(f) equal access to play, recreation, leisure and sporting and other activities undertaken in the school system;

(g) equal treatment with other learners; and

(h) reasonable accommodation within the institution providing the special education.

Responsibility of parents.

6. (1) Every parent or guardian of a learner with disability shall –

(a) admit or cause to be admitted their child to a school as the case maybe, for the purposes of completion of the child's basic education; and

(b) ensure that the learner attends school regularly as a pupil for the purposes of physical, mental, intellectual or social development of the child.

(2) A parent or guardian who fails, without reasonable cause submitted to the institution and County Director of Education, to admit, cause to be admitted or ensure the attendance of the learner in school commits an offence and shall be liable, on conviction, to a warning in the first instance and a fine not exceeding five thousand shillings for any subsequence offence.

(3) Where a parent or a guardian is unable to meet the obligations specified under subsection (1) such parent and guardian shall submit, within the prescribed time, the reason for the absence of the learner at a school or institution of basic education.

Responsibility of the National government.

7. (1) The National and county governments shall, to the extent of their constitutional mandate, promote the development and implementation of education for learners with disabilities.

(2) In ensuring that the National government fulfils its obligation under subsection (1), the Cabinet Secretary shall—

(a) adopt a comprehensive national strategy and plan of action and policies for the provision of

education to learners with disabilities at every level of education;

(b) take measures to create opportunities and an environment that enables the realisation of the right to special needs education by all persons requiring such education;

(c) put in place the necessary infrastructure, facilities and human resource necessary for the effective and efficient delivery of education to learners with disabilities in learning institutions falling within the mandate of the National Government;

(d) conduct, at such intervals as may be necessary, a census of learners with disabilities at each level of education including the number of such learners, the nature of their disability, their educational requirements, their level of education and their geographic distribution;

(e) maintain an inventory of the personnel and facilities available for the provision of education to learners with disabilities;

(f) monitor and evaluate the implementation of policies, plans and strategies for the provision of special needs education at the National and county levels of government;

(g) appraise and review the levels of access to special needs education, assess the quality of the existing infrastructure and human resource and put in place measures for the continuous development of such infrastructure;

(h) ensure that educational institutions and parents have the necessary tools to support learners with disabilities;

(i) formulate a programme for the recruitment and training, including in service, of education to learners with disabilities;

(j) ensure that the education curriculum and public examinations recognize and take account of the needs and circumstances of learners with disabilities;

(k) formulate programs and put in place structures for the provision of home-based, non-formal, adult, continuing, alternative, online, free and appropriate public education;

(l) collaborate with county governments and the relevant stakeholders in —

(m) putting in place measures to address factors that hinder the realization of the right to education for learners with disabilities; and

(n) formulating the appropriate strategies in ensuring that quality education for learners with disabilities is accessible to persons requiring such education; and

(o) ensure adequate funding of education for learners with disabilities ;

(p) put in place strategies for the delivery of quality education for learners with disabilities;

(q) put in place mechanisms to facilitate the registration of learners with disabilities with the National Council for Persons with Disabilities;

(r) ensure that learners with disabilities transition from one level of education to the next including to institutions of higher learning;

(s) collaborate with educational institutions to establish appropriate programs for the attachment, apprenticeship and internship of learners with disabilities;

(t) develop models and a curriculum for the delivery of education for learners with disabilities;

(u) ensure that boarding facilities in educational institutions accommodate the needs of learners with disabilities; and

(v) perform such other functions for the better implementation of this Act or as may be conferred on it under any other written law.

Responsibilities of county governments.

8. (1) A county government shall be responsible for the implementation and effective and efficient delivery of special needs education with respect to the learning

institutions falling within their mandate under the Constitution.

(2) The respective county executive committee member shall, for the effective performance of the functions of the county government under subsection (1) —

(a) implement policies and programs on the delivery of special needs education in the respective county;

(b) put in place the necessary infrastructure and establish the necessary education centres for the delivery of education to learners with disabilities;

(c) ensure that there are in place, the necessary resources for the development of education centres and the administration of education for learners with disabilities;

(d) collaborate with the Cabinet Secretary and other stakeholders in the county as are necessary in ensuring a coordinated approach in facilitating access to, and delivery of, education for learners with disabilities;

(e) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the needs of learners with learners with disabilities;

(f) ensure the proper identification of food insecure areas, appropriate programmes and eligible beneficiaries in relation to food security programmes and the correct application eligibility criteria;

(g) integrate the provision of education for learners with disabilities in existing public learning institutions under the mandate of the county;

(h) ensure that every education centre under the mandate of the county has at least one teacher who is able to assist learners with disabilities;

(i) provide the necessary facilities and put in place the necessary structures to ensure that there are adequate affordable assistive aids and devices for

learners requiring them in the learning institutions within the county;

(j) mobilise and sensitize the community on food and nutrition programmes and in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns on food and nutrition security issues;

(k) liaise with the National Council for Persons with Disabilities to maintain a database of learners with disabilities in the county; and

(l) work in collaboration with special education resource centres in the identification of children with special needs for registration and access to essential services.

PART III — REGISTRATION AND MANAGEMENT OF SPECIAL NEEDS EDUCATIONAL INSTITUTIONS

Register of special needs educational institutions.

9. (1) Each county executive committee member shall keep and maintain a register record of all educational institutions that provide education to learners with disabilities in the county including —

(a) public educational institutions that provide education for learners with disabilities in the county;

(b) the category of education that is offered in the said institution;

(c) the category of resources required by the educational institution; and

(d) such other information as the committee member may consider necessary for the management of special needs institutions in the respective county.

(2) Any person may inspect the register and obtain a copy of, or an extract from the register upon payment of such fee as the county may prescribe.

Registration of private special needs educational institutions.

10. (1) A person shall not offer special needs education services or establish or maintain a special needs educational institution unless such person is registered in

accordance with the Basic Education Act, the Technical and Vocational Education and Training Act and the Universities Act. No. 14 of 2013. No. 29 of 2013. No. 42 of 2012.

(2) A person who fails to comply with subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Deregistration or closure of special needs educational institutions.

11. Where the registration of a special needs education institution is revoked by the Cabinet Secretary, the principal of the institution shall —

(a) give adequate written notice to the institution;

(b) make arrangements for the transfer of the students and staff of the public institution;

(c) ensure that on the closing down of the institution, the learners in that public institution who are older members of society and reside within the confines of the institution are accommodated in another registered educational institution; and

(d) ensure safe custody and confidentiality of all documentation regarding learners with disabilities that were admitted in the institution prior to the closure.

Admission of a learner with disability.

12. (1) An early childhood education or technical and vocational training centre may admit a learner with disability after —

(a) studying the learner's continuous assessment records or;

(b) after administering an aptitude test, personality test or other entrance examination for the purpose of determining the learner's capabilities and needs.

(2) The principal or head of an educational institution may require a person attending the institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement.

(3) An assessment report prepared pursuant to subsection (2) shall be used, together with such other information as may be available, as the basis for placement of a learner to an educational programme or an institution consistent to the learner's disability along with any other relevant information pertaining to the learner.

Board of management.

13. (1) The following categories of learners shall be represented on the board of management of an educational institution for learners with disabilities —

(a) one person elected from amongst parents of the learners at the institution;

(b) one representative of the teaching staff at the institution;

(c) one representative of the non-teaching members of staff at the institution;

(d) two persons with experience in matters relating to special needs education and social work nominated by the county governor on the recommendation of the County Education Board;

(e) one public officer nominated by the county executive committee member within the county;

(f) the head teacher or the most senior teaching staff of the institution who shall be an *ex officio* member; and

(g) in the case of a sponsored institution, one person nominated by the sponsor.

(2) The Cabinet Secretary may by notice in the *Gazette* determine the manner of election or appointment the members of the board of management.

Functions of board of management.

14. (1) The board of management of an educational institution shall be responsible for —

(a) identifying the needs of learners in the institution and the resources necessary to ensure that they receive the appropriate and quality education;

(b) securing the resources required by a learner in the institution;

(c) ensure that where a learner with special needs is being educated in the educational institution, such education is compatible with—

(i) learners receiving the education which their learning difficulty calls for;

(ii) the provision of quality education for the learners with whom they will be educated; and

(iii) the efficient use of resources;

(d) ensuring the provision of adequate equipment and facilities within the education centre that such equipment and facilities are well maintained.

(2) A governing board may consult with such persons or authorities in relation to exercising its functions relating to the provision for special needs education to learners in the institution.

Establishment of a parents' association.

15. (1) Every educational institution shall establish an association of parents and guardians of learners with disabilities.

(2) A parents' association shall assist the board of management of an educational institution in the performance of its functions and shall in particular—

(a) advise the board on matters relating to the welfare of learners and staff at the institution;

(b) help in creating a more positive approach in parent-child-teacher relationship;

(c) liaise with the parents in obtaining parents' consent in the identification, evaluation, development of individualized education programs and educational placement of their children; and

(d) assist the board in the mobilization of resources and finances for the institution.

Responsibility of County Education Boards.

16. Where a County Education Board is satisfied that the resources or facilities required for the delivery of education to learners with disabilities are not available in an educational institution in the respective county, the Board may arrange for the provision of that special educational provision after consultation with the parent or

the guardian of the learner and the other institutions in the area.

Facilities in institutions providing for special needs education.

17. (1) A person, authority or institution exercising functions under this Act in respect of a learner with disability shall plan, locate, design, construct, equip, maintain and keep under review facilities intended to be used by learners with disabilities with due regard to the special capabilities, disabilities and requirements of such learners.

(2) The Cabinet Secretary shall, in addition to the requirements under subsection (1) prescribe architectural and other building standards required to be met in the construction of education facilities for learners with disabilities.

Provision of special needs education outside of an educational institution.

18. Where the Cabinet Secretary or a County Education Board is satisfied that an educational institution is not appropriate for a learner with disability, the Cabinet Secretary or the County Education Board concerned may after consultation with the learner's parents or guardian arrange for the special education provision or part thereof to be made outside of an educational institution.

Conduct of special needs education service providers.

19. (1) It shall be the responsibility of the Special Needs Education Advisory Board to establish and maintain a register of special service providers qualified to provide services to learners with disabilities.

(2) A person shall be entitled to be registered as a special service provider if they —

(a) are above the age of twenty two years; and

(b) have been awarded a certificate of proficiency awarded by a professional body or institute of certified special services providers established under this Act.

(3) The Cabinet Secretary may by notice in the Gazette approve other qualifications that he considers necessary to allow a person to practice as a special service provider under this Act.

(4) A person shall not be registered as a special service provider if such person —

(a) does not meet the requirements of registration under subsection (2);

(b) has been declared bankrupt;

(c) is of unsound mind;

(d) has been convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving contravention of the code of ethics of special service providers.

(5) A person aggrieved by the refusal of the Board to register him under this section may within twenty-eight days appeal to the Cabinet Secretary whose decision on the matter shall be final.

(6) The Cabinet Secretary shall compile and maintain a code of conduct to govern the provision of special services required by learners with disabilities and the code shall —

(a) provide for documentation or information required for the registration of all learners desirous of practicing as special services providers;

(b) provide for the formation and recognition of a professional association or institute of certified special services providers to train or regulate the training of special services providers;

(c) provide for a code of professional ethics to be observed by all special services providers;

(d) prescribe offences and penalties for the breach of the code of conduct; and

(e) provide for any other matters with respect to the provision of services which the Cabinet Secretary considers necessary to provide for.

PART IV — IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH DISABILITIES

Register of learners with disabilities.

20. Every County Education Board shall maintain a register of all learners with special needs in their area of jurisdiction who are receiving domestic, medical, institutional or other special education services outside of regular school programmes as well as special needs learners who are not receiving any special education services.

Identification of children with disabilities.

21. (1) Every County Education Board shall examine or cause to be examined —

(a) every child attending an educational institution within its area of jurisdiction; and

(b) every child who is not in an educational institution but who is suspected to have a learning difficulty or a disability in order to determine whether such child has special educational needs for the purpose of having such child enrolled in a special programme.

(2) Where it appears to a County Education Board that the services of the Ministry for the time being responsible for health or a county health institution would be required in the exercise of any of their functions under this section, they may request the assistance of the Ministry or the county health institution.

(3) A County Education Board shall notify the parent or guardian of any child in respect of whom any action under this section is contemplated prior to undertaking any such action.

Assessment of special education needs.

22. (1) Where a County Education Board is of the opinion that a child within its area of jurisdiction has or may have a special education need, the County Education Board shall determine a suitable educational provision that shall alleviate the learning difficulty.

(2) Pursuant to subsection (1), the County Education Board shall serve a notice on the learner's parent or guardian and inform them of the intent to make an assessment on the child, and of their right to make representations within the time and in the manner prescribed in the notice.

(3) Upon the expiry of the period specified in the notice in subsection (2), and if the County Education Board remains of the same opinion after taking into account any representation made to it in response to the notice under subsection (2) the County Education Board shall implement the educational provision determined in subsection (1).

(4) In the exercise of its powers under this part, the County Education Board shall maintain a statement of a

child's special educational needs determined pursuant to an assessment under subsection (1) in such form and containing such information as may be prescribed.

(5) Any person authorized by the County Education Board shall be entitled to have access at any reasonable time to the premises of any school in order to monitor the special educational provision made in pursuance of subsection (1).

PART V — INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION

Establishment of Special Needs Education Advisory Board.

23. (1) There is established within the Ministry of Education a board to be known as the Special Needs Education Advisory Board.

(2) The Advisory Board shall consist of a chairperson and six other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to be qualified as having experience and having shown capacity in the provision of special education.

(3) The Advisory Board may invite any person who in its opinion has expert knowledge concerning the functions of the Board to attend any meeting of the Board and take part in the proceedings but such invited person shall not have any voting rights.

(4) The functions of the Advisory Board shall be —

(a) to examine, comment and advise the Cabinet Secretary on any rules and regulations proposed to be made under this Act;

(b) to advise the Cabinet Secretary and any government agency on any matter pertaining to the provision of special education;

(c) to make an annual report to the Cabinet Secretary which report shall be published in the Gazette on the progress or lack thereof made in special education by the Government, its agencies and institutions; and

(d) such other functions as may be conferred on the Advisory Board by the Cabinet Secretary.

(5) The Cabinet Secretary may by order provide for any matter, which it is necessary or desirable to provide for in relation to the Advisory Board by the Cabinet Secretary.

Special needs education resource centres.

24. (1) The Cabinet Secretary shall establish a special needs education resource centre in every county and shall ensure that the centre is properly and adequately staffed with appropriate qualified personnel and equipment.

(2) The resource centre in subsection (1) shall be a link between children with disability and the society by—

(a) providing resource personnel who shall create disability awareness in the local community;

(b) providing sign language interpreters;

(c) providing shadow teachers;

(d) providing physiotherapy services; and

(e) carrying out any other activity that may further its role in providing special needs education in the county.

(3) The functions of a county resource education centre shall be to —

(a) provide expert economic and efficient diagnostic, therapeutic and corrective educational needs;

(b) provide corrective and supportive services for all children with special educational needs in the country;

(c) provide home or hospital instruction and corrective and supportive services to disabled children in cases where the nature and severity of the disabilities make the provision thereof in regular educational institutions impracticable;

(d) assist educational institutions in designing individualized instructional programmes for children, conduct educational and psychological assessment, plan curriculum implementation and provide outreach services to children not in educational institutions and provide advisory services to educational institutions in their jurisdiction; and

(e) carry out such other functions as the Cabinet Secretary may prescribe.

(4) So far as is practicable, a resource centre shall be established at, in conjunction with, or in close proximity to one or more primary and secondary schools but where it is impractical so to do, the resource centre may provide services in its own facilities.

Infrastructure.

25. In the implementation of this Act, the Cabinet Secretary shall —

(a) ensure that there is adequate infrastructure for learners with disabilities in special needs schools;

(b) ensure that all facilities and amenities in learning institutions in the country are friendly for use by learners with disabilities; and

(c) ensure that all special needs schools have school transport for learners in order to aid their accessibility to the learning institution.

Provision of materials and equipment.

26. (1) The Cabinet Secretary may establish a unit for development, production, procurement and distribution of special equipment, material, supplies and devices for use in the education of learners with special educational needs.

(2) In addition to any other functions which the unit or units may be required by the Cabinet Secretary to serve, the unit shall —

(a) provide instruction in the operation or use of equipment, materials, supplies and services referred to under subsection (1);

(b) accept and utilize government aid and any other grants, gifts or donations of funds, equipment, materials, supplies, facilities and services in connection with any of its authorized functions and comply with any lawful requirements or attached conditions; and

(c) furnish, lend or otherwise make available upon such terms as may be prescribed, equipment, materials, supplies and devices to public educational institutions and private non-profit educational institutions.

Establishment of county co-ordination mechanisms.

27. The Cabinet Secretary may establish mechanisms providing for the co-ordination of the activities of County Education Boards for the purpose of meeting the obligations of the Boards.

Training of non-teaching staff.

28. Every special needs education institution shall ensure that its non-teaching professional staff and any person providing special needs services within its premises are properly qualified in their special areas.

PART VI — DEVELOPMENT AND FACILITATION OF SPECIAL NEEDS EDUCATION

Funding special needs educational institutions.

29. The Cabinet Secretary shall –

(a) facilitate registered educational institutions on an equitable basis to ensure the proper exercise of the rights of learners with disabilities to education and the redress of fast inequalities in the promotion of education; and

(b) on an annual basis, provide sufficient information to registered educational institutions referred to in subsection (1) to enable them to prepare their budgets for the next financial year.

Funding special needs education.

30. (1) The Cabinet Secretary shall determine the funding procedures, provisions and minimum standards of the funding or provision of subsidies to special educational institutions and the proportion of the budget to be allocated between public and private special educational institutions.

(2) Where funding is provided to an educational institution, the Cabinet Secretary may attach conditions as to the use of such funds.

(3) If a condition upon which funding or a subsidy was granted has not been complied with, the Cabinet Secretary may terminate or reduce the funding or the subsidy.

(4) The board of management of a special education institution may appeal to the Cabinet Secretary against the termination or reduction of funding or subsidy.

Responsibility of governing bodies.

31. The governing body of a public education institution shall take all reasonable measures within its

means to supplement the resources supplied in order to improve the quality of education provided by the education institution.

Financial records and statements.

32. The governing body of an educational institution shall keep records of funds received and spent by the education institution and of its assets, liabilities and financial transactions and shall as soon as practicable but no later than three months after the end of each financial year, draw up annual financial statements in accordance with guidelines to be determined by the Cabinet Secretary.

Disqualification from receiving funding.

33. (1) A private educational institution, which, in any particular financial year, fails to comply with guidelines set out by the Cabinet Secretary, shall be disqualified from receiving funding in the subsequent financial year.

(2) Any private educational institution which receives funding from the National Government and —

(a) demands levies or fees from a learner with special education needs; or

(b) discriminates against a learner with special education needs in admission to its programmes; or

(c) discriminates against qualified or otherwise qualified learners with disabilities in employment;

shall be disqualified from receiving financial assistance from the National Government.

Levy of fees.

34. The Cabinet Secretary, in consultation with the Commission for Higher Education and the universities, may issue guidelines for the levying of fees for learners with disabilities attending or intending to attend universities and other tertiary education institutions.

PART VII — QUALITY ASSURANCE AND STANDARDS OF SPECIAL NEEDS EDUCATION.

Quality assurance in special needs education.

35. (1) The Cabinet Secretary shall appoint officers to—

(a) inspect the institution and file the necessary reports;

(b) inspect any ongoing developments on matters of teaching and special matters of service delivery gaps in special needs institutions; and

(c) inspect or audit the accounts of the special education institution and advise the principal manager of the institution on the maintenance of accounting records.

(2) The manager of a special needs educational institution shall on a request by an officer appointed under this section, produce any documentation on the facilities, records, accounts, books and other materials belonging to the institution that the officer may reasonably require for the inspection or audit of its accounts.

Role of county government in quality assurance.

36. (1) Each county executive committee member shall ensure that the special needs education is delivered as per the standards prescribed by the Cabinet Secretary or county legislation.

(2) In ensuring that special needs education is delivered in accordance with the quality standards prescribed under subsection (1), the county executive committee member shall —

(a) implement the standards prescribed by the Cabinet Secretary for the delivery of basic education under the Basic Education Act and any other institutions of higher learning falling within the mandate of the county governments;

(b) collaborate with the County Education Board, the Education Standards and Quality Assurance Council established under section 64 of the Basic Education Act and the Technical and Vocational Educational and Training Authority;

(c) assess the quality of service delivery in special needs educational institutions falling within the mandate of county governments;

(d) assess the development and adequacy of infrastructure necessary for the delivery of special needs education in the county and carry out the necessary improvements to ensure effectiveness in service delivery;

(e) identify the areas impeding the delivery of special needs education in the county and put in place measures to address the challenges; and

(f) monitor and evaluate the implementation of standards on quality assurance and where appropriate, review the standards to ensure delivery of quality special needs education.

(3) The county executive committee member may designate a unit or delegate to such public officers within the Department as may be necessary for the effective performance of the functions under subsection (1).

PART VIII — MISCELLANEOUS PROVISIONS

Assessment.

37. (1) The principal manager or head of an educational institution may require any person attending the institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre.

(2) The purpose of the assessment in subsection (1) shall be to determine the nature and the severity of the disabilities to aid in appropriate educational placement.

(3) The report submitted by a medical practitioner or an assessment centre shall not be used as the sole basis for placement of a learner to an educational programme or institution which may not be consistent to the learner's special needs.

Educational institutions on public land.

38. Where a special educational institution is established on land owned by the Government including land held in trust by a county government, the institution shall have the right for the duration of its existence, to occupy and use the land for educational purposes at or in connection without interference.

Prohibition of alienation of land used by public special educational institutions.

39. (1) No land owned by the Government and occupied by a public special education institution may be alienated except with the prior approval of the Cabinet Secretary.

(2) Notwithstanding anything contained in the Government Lands Act or any law relating to the transfer of land, any transaction in land entered into in contravention of this section shall be void.

Private special needs education institutions.

40. Subject to this Act and any other applicable law, any individual at their own expense may set up a private education institution or seek funding from the Ministry of Education.

Declaration of eligibility as special educational institution.

41. (1) The Cabinet Secretary may enter into an agreement with the governing body of a private education institution or research or training centre, which in the opinion of the Cabinet Secretary offers critical services to learners with disabilities as eligible to receive funding or to be declared to be a public special education institution.

(2) The Cabinet Secretary shall publish the status of such institutions under subsection (1) in the *Gazette*.

Registration of home-based learners with disabilities.

42. (1) A person who has charge of a learner with disability who is required to attend compulsory special education may apply to the Cabinet Secretary for the registration of the learner to receive education at home.

(2) The Cabinet Secretary shall register such a learner in respect of whom an application is made if they are satisfied that—

(a) the registration is in the interests of the learner;

(b) the education likely to be received by the learner at home —

(i) will meet the minimum requirements of the curriculum at special education institutions, and

(ii) be of a standard not inferior to the standard of education provided at special education institutions; and

(c) the applicant will comply with any other reasonable conditions set by the Cabinet Secretary.

Government financial aid.

43. Government financial aid may be applied for and may be paid by the Ministry, any County Education Board, resource centre or any other entity approved by the Cabinet Secretary to receive aid for each of the following elements—

(a) the education of learners with disabilities in the regular programmes of the county or entity;

(b) the education of learners with disabilities in special classes, schools and programmes designed

to meet their special needs and the furnishing of corrective or remedial services; or

(c) the furnishing of transportation.

Regulations.

44. The Cabinet Secretary may, in consultation with relevant stakeholders make regulations generally for the better carrying out of the provisions of this Act.

Offences.

45. (1) A person who —

(a) manages, maintains or conducts a special education institution which has not been provisionally licensed or registered in this Act or under another Act or whose provisional license has expired or

(b) hinders or obstructs any officer lawfully acting in the course of his duty as such or any person exercising any powers, or performing any duties conferred or imposed by or under this Act,

commits an offence and is liable to a fine of twenty thousand shillings or to imprisonment for a term of six months or to both.

(2) A person who —

(a) denies or prevents any child who is in need of special education from receiving or gaining access to such education;

(b) prevents County Education Board from assessing or examining children in or out of school with a view to determining whether or not they require special needs services; or

(c) otherwise prevents any other person from exercising their functions under this Act;

commits an offence and is liable to a fine of one hundred thousand shillings or six months imprisonment or to both.

(3) A person who commits an offence under this Act for which no penalty is provided shall on conviction, be liable to a fine of ten thousand shillings or imprisonment for a term of three months or to both.

Consequential amendment.

No. 29 of 2013.

46. The Technical and Vocational Education and Training Act, 2013 is amended by deleting section 52 and substituting therefor the following new section –

Placement of students into technical and vocational education institutions.

52 (1) Admission of students into technical and vocational education institutions shall be conducted by the Service established under the law relating to universities.

(2) Subject to subsection (1), the Service shall ensure that learners with disabilities are taken into consideration and lower the entry grade for such students.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Object and Reasons for the Bill

Education is a fundamental right that is enshrined in the Constitution. Article 2(6) of the Constitution states that any treaty or convention ratified by Kenya shall for par of the law of Kenya. This means that Kenya's ratification of important international conventions that touch on the right to basic education such as the Universal Declaration of Human Rights the African Charter on Human and People Rights, and the African Charter on the Rights and Welfare of the Child.

Article 26 of the Universal Declaration of Human Rights decrees education as an inalienable human right upon which depends the realization of other rights. Article 17(1) of the African Charter on Human and Peoples Rights guarantees the right to education. Article 2 of the same decrees that rights assured by the charter be enjoyed without any form of discrimination and article 18 (4), specifically targets learners with disabilities and provides that learners with disabilities should be accorded special measures of protection in reference to their physical and moral needs. The African Charter on the Rights and Welfare of the Child states that every child has a right to education. Section 3(e) exhorts state parties to take special measures in respect to female, gifted and disadvantaged children, to ensure equal access to education. Kenya is party to all these international conventions and protocols and as such, these form part of Kenyan law.

The Bill of Rights also make provision on the right to education. Article 43(1)(f) states that every person has a right to education and Article 53(1)(b) states that basic education is a right of every child in Kenya.

Access to education for learners with disabilities continues to face innumerable barriers and obstacles. Additionally, the legal framework that would protect the rights and needs of special needs learners has yet to be fully actualized.

According to the National Gender and Equality Commission report on Access to Basic Education by Children with Disability, there is a widespread exclusion of children with disabilities from education despite the provisions of the Constitution and international protocols and local policies. Such exclusion from education further perpetuates the cycle of poverty and disability.

This Bill is aimed at providing a proper legal framework in order to ensure the actualization of the right to basic education for learners with

disabilities in Kenya at all the three levels of education in Kenya. The Bill creates provisions of law that obligate the National Government through the Ministry of Education and the County governments to carry out their duties in bringing the special needs education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disability from the education cycle.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill once enacted, would give the Cabinet Secretary the power to create subsidiary legislation that would affect all educational facilities in order to accommodate learners with disabilities.

Statement on how the Bill concerns county governments

As per paragraph 9 of Part Two of the Fourth Schedule of the Constitution, pre-primary education, village polytechnics and home craft centres are educational institutions within the function of the county governments. This Bill concerns learners with disabilities within all educational institutions and as such it concerns the county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th January, 2023.

MARGARET KAMAR,
Senator.

CRYSTAL ASIGE,
Senator.

Annex III: Advertisement as published in the Media

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Thursday, 2nd March, 2023 and Tuesday, 7th March, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

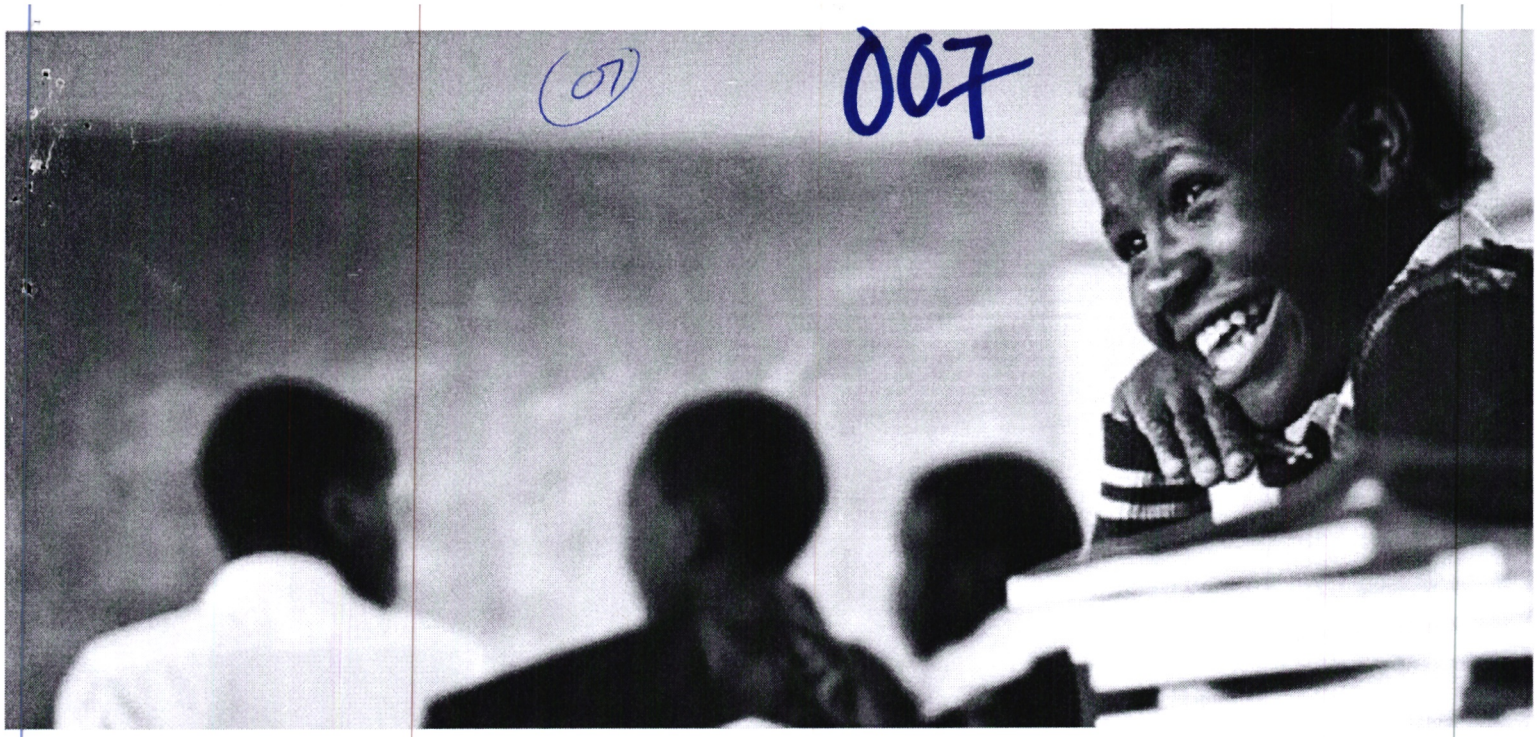
Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the respective Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of submission of written memoranda on email to the Clerk of the Senate on the address: **clerk.senate@parliament.go.ke** and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received **on or before Monday, 27th March, 2023.**

	Bill	Committee Referred To	Email
a)	The Cotton Industry Development Bill, 2023 (Senate Bills No. 5 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	agriculturelfcommittee.senate@parliament.go.ke
b)	The Equalization Fund Appropriation Bill, 2023 (Senate Bills No. 3 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
c)	The Learners with Disabilities Bill, 2023 (Senate Bills No. 4 of 2023)	Standing Committee on Education	educationcommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament Website at http://www.parliament.go.ke/the-senate/house-business/bills.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.



Memorandum to the Senate in consideration of the Learners with Disabilities Bill, 2023

Submitted by

ACD | ACTION FOR CHILDREN WITH DISABILITIES

F00

1.0. Introduction

We, the Civil Society stakeholders convened under the umbrella of Action for Children with Disabilities (ACD) network and working in collaboration with the Ministry of Education, Directorate of Special Needs Education (DSNE) and the Office of Hon. Senator George Mbugua, wish to reaffirm our commitment to advance inclusion and equity for children with disabilities.

The Constitution of Kenya (2010) Article 54(b) gives specific right to Persons with Disabilities to access educational institutions and facilities that are integrated into society and are compatible with the interests of the person. The commitment demands a system of education that guarantees this right. To give effect to the provisions of the Constitution, the Basic Education Act (2013) was enacted with the accompanying Regulations of 2015. The Act assures the right of all children in Kenya to a free and compulsory education. In addition, the Sector Policy for Learners and Trainees with Disabilities (2018) goes further to recognize the importance of inclusive education by emphasizing on the need for all learners to learn together in an inclusive environment.

Noting that The Learners with Disabilities Bill (Senate Bills No. 4 of 2023) was introduced in the Senate and thereafter committed to the Standing Committee on Education, we members of the ACD, pursuant to the provisions of Article 118 of the Constitution, and the Senate's invitation for public submissions have read the proposed bill and submit as follows;

2.0. General Comments and Recommendations

2.1. We recognize that this Bill is coming in the backdrop of failed attempts to review the Basic Education Act 2013 for the last 8 years. Whereas the rule of procedure would first require reviewing the primary Act to give effect to development of the necessary subsidiary legislations, the purpose and intent to enact a specific law that provides for the education of learners with disabilities is a move in the right direction. Notwithstanding this, **efforts are still required to push for the amendment of the Basic Education Act 2013 to provide a foundation that entrenches the tenets and principle of inclusion to facilitate conveyance of the purpose and objects of the Learners with Disabilities (LWD) Bill**.

2.2. In its current form, the Basic Education Act roots for application of the medical and charity approach for provision of education services to learners with disabilities. It provides for provision of education to learners with disabilities through the special schools model. The special school model perpetuates discrimination, segregates learners with disabilities, and is inconsistent with

the provisions of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Constitution. To address this, the Sector policy for Learners and Trainees with Disabilities of 2018, the National Education Sector Strategic Plan (NESSP) and now this Bill **envisage anchoring provision of education for learners with disabilities on the social and human rights models to drive equity and inclusion in education programmes and services. The Basic Education Act also needs to align with these developments**. Further amendments required to be done on the Act to cause effect to some provisions of this Bill include;

2.2.1. Recognize and entrench **establishment of the Special Needs Education Advisory Council** envisaged in section 23 of the LWDs Bill

2.2.2. Recognize and entrench **establishment of the Institute of Certified Special Services Providers** envisaged in section 19 (2) b of the LWDs Bill

2.2.3. **Recognize the important role of the Education Assessment and Resource Centres (EARCs)** in promoting inclusive education through provision of early identification, assessment and intervention services for learners with disabilities and entrench its functions in the Act. This is envisaged in Section 24 of the LWDs Bill.

2.2.4. Recognize and entrench inclusion and equity as the overarching principle guiding provision of education services to learners with disabilities and require education service providers to first **consider provision of education services to LWDs in the mainstream/regular schools and reserve special schools as the last resort**.

3.0. Specific Comments and Recommendations on the LWDs Bill

3.1. Section 6 (2) of the Bill seeks to push the burden of ensuring the learner with disability attends schools to the parent or guardian rather than being the primary duty of the government. It is the primary responsibility of the government to make sure appropriate measures are in place to address the issues preventing parents and guardians from enrolling their children in schools before criminalizing and imposing fines on them. **It is unfair to criminalize the inability of a parent or caregiver to enroll a child with disability in school whereas the school environment is not appropriate, accommodating and accessible to learners with disabilities**.

3.2. Section 8 (2), there is no reference to the County's responsibility to provide early intervention to children with disabilities. According to The Early Childhood Education Act Part II Section 9 (2) (b), concerning the right to early childhood education for children with special needs, county executive committee members are responsible for ensuring "early identification, assessment and interventions of children." We hereby submit that **providing early intervention should be included as one of the responsibilities of the County government and define the structure through which early intervention will be provided (e.g., EARCs) and the human resources required (e.g., Learning Support Assistants) should be specified**.

3.3. Section 8 (2) (k) Data of LWDs – in reference to educational data, the Ministry of Education uses the National Education Management and Information System (NEMIS) platform to keep data of all children in school while the Kenya Institute of Special Education (KISE) maintains data of all children with disabilities that have undergone functional assessment, and is linked to the NEMIS. On the other hand, the National Council for Persons with Disabilities (NCPWD) maintains data of CWDs that have been registered and issued with a disability card. It is worth noting very few learners with disabilities attending school are registered and issued with the Council's disability card. It is our submission that **data meant for education planning and related services should remain centralized in the NEMIS at the national level and not with the NCPWD. However, the counties can also be encouraged to maintain their own databases for purposes of county education planning and decision-making processes**.

3.4. Section 12 (1) (a) and (b) requiring administration of tests and studying learners' continuous assessment records to determine the learners capability and needs, will serve to lock out learners with disabilities from being admitted in school. This is also seen as an act of discrimination on LWDs because the regular learners are not subjected to such procedures as taking aptitude tests, personality tests to determine their admission in school. Ideally, admission of a learner with disability should be unconditional and compulsory irrespective of the learner's performance in tests. The Early Childhood Education Act Part V(42) prohibits the administration of exams for purposes of admission to education centres in the county. **It is our view that the education assessment report from the EARC office is enough to inform on the learners with disabilities capabilities, needs and admission**. Delete this section from the Bill!

3.5. Section 13 and 14 that seeks to establish and stipulate functions of a board of management is potentially in conflict with sections 55-59 of the Basic Education Act. Establishing a Board of Management that does not meet the criteria and functions spelt in these clauses is construed to root for a parallel

board mandated to oversee matters of learners with disabilities. This may cause conflict in the school because every school is mandated to have one board of management that draws membership in the manner provided in the Basic Education Act. In the current structure, special schools have distinct BOMs in place and for regular schools there is a provision for a representative of persons with disabilities to sit in the board. **It is our view that in the spirit of championing for inclusion of LWDs in regular schools, the Bill should seek to increase representation of parents of children with disabilities in the existing board of management structure by establishing SNE sub-committees in regular schools**. This will accord a bigger platform for championing issues of LWDs in the school rather than leaving it to one representative in the BOM.

3.6. Section 15 seeking to establish parents associations – the 3rd schedule of the Basic Education Act provides for the establishment and functions of the parents association at the school level, Sub County, county and national. Looking at the formation and representation in the current Parents Associations, there is very little room to advance the issues of learners with disabilities because the representation of parents of learners with disabilities in the structure is not a guarantee. In the schedule referenced above, there is no mention of the welfare of learners with disabilities. **It is our submission that the LWDs Bill presents an opportunity to secure better representation of parents of learners with disabilities in the parent's association structure. The LWDs Bill should seek to create an independent association for parents with learners with a disability akin of a parents support group for parents that have a child with disability or propose creation of an SNE sub-committee within the current parent's association structure**.

3.7. Section 21 specifies the County's responsibilities toward a child suspected of having a disability, but does not specify their responsibility in identifying and locating children who may have disabilities. Without a proactive and coordinated identification process in place, children with disabilities will not have access to the services they need to access appropriate and quality education. **The Bill should explicitly state that the County Education Board, through the EARCs and in collaboration with the Ministry for the time being responsible for health or a county health institution, shall identify, locate, and assess all children who may have a disability right from birth through 18 years of age**.

3.8. Section 23 has a clear mandate for the established Special Needs Education Advisory Board but its relationship to other institutions is not defined. It is important to **clarify the relationships among the Special Needs Education**

Advisory Board, the County Education Board, and the Directorate of Special Needs Education (DSNE) in the Ministry of Education.

3.9. Section 24 establishes Special Needs Education Resource Centres, whose mandate would overlap significantly with that of Educational Assessment and Resource Centres (EARCs). According to the Sector Policy of 2018, the mandate of EARCs is to ensure early identification, assessment, intervention and placement of learners and trainees with disabilities. They are to be established and operationalized at the national, county, and sub-county levels. In this section, **rather than establishing Special Needs Education Resource Centres, explain the County's role in supporting the existing EARCs**.

3.10. Section 26 seeks to establish a unit to develop and provide materials and equipment for children. This would create an overlapping mandate with SNE units within the School Equipment Production Unit (SEPU), Kenya Institute for the Blind (KIB), and Kenya Institute of Special Education (KISE). SEPU provides science materials and apparatus, KIB provides materials in braille, audio, and other alternative formats while KISE provides "special materials and equipment." In this section, **rather than establishing a different unit, explain the County's role in supporting or coordinating with SEPU, KIB, and KISE to provide materials and equipment to LWDs**.

3.11. The Copyright Act (2019) establishes important exceptions to copyrights for people with visual impairments and other disabilities. Section 26 does not reference these exceptions to establish guidelines to facilitate the development of accessible materials. According to the Copyright Act (2019), "it shall not be an infringement of copyright for an authorized entity to reproduce or to distribute copies or sound recordings of a previously published literary work if such copies or sound recordings are reproduced or distributed in specialized formats exclusively for use by visually impaired or other persons with disabilities." The LWDs Bill should **seek to define "an authorized entity" and "a specialized format" when applying this law to the education sector and outline the process and parties responsible for determining a learners eligibility and managing/ distributing copies of texts. The KIB, KISE, KICD and NCPWD can be considered for these roles**.

3.12. Consistent use of terms and concepts - There is a need to **replace use of outdated terms and concepts with current terms and ensure they are used consistently** in the Bill. For example;

3.12.1. Use Education Institution instead of Education Centres

3.12.2. Use Special Needs Education Institution or School instead of Special Education School

3.12.3. Use Learning Support Assistants instead of Teacher Aides or Shadow Teachers

3.12.4. Use Education Assessment and Resource Centres (EARCs) instead of Special Needs Education Resource Centre

3.12.5. Use learner instead of pupil or student

3.12.6. Use regular learners instead of normal learners ref pg 105 top paragraph

3.13. There are learners with disabilities abandoned in boarding schools. How can this bill safeguard them? What modalities can be put in place to ensure once a learner is ready to leave school, their family takes charge to care for and safeguard them? There is also the matter of special education boarding schools employing qualified staff and these staff members should be able to prove they are persons of good conduct. Where abuse of learners with a disability happens, what measures will be taken to protect the child or young person within the institution. Learners with disabilities are vulnerable and may not report abuse so can there be a measure put in place to allow for whistle blowers for the safeguarding of these vulnerable persons. We suggest **introducing a provision to prohibit abandonment, detention and other forms of abuse such as physical punishment, sexual exploitation and mental harassment to a learner with disability**. Refer example in Basic Education Act Section 38.

3.14. The Bill mentions a number of therapy services needed for a special needs learner to succeed in accessing education. There should be **a provision in the Bill indicating that therapy services should be provided within the learners with disability learning environment** and not in a far-off center where they have to leave school to access them.

3.15. Lastly, considering that (i) provision of education services is a shared responsibility between the county and national government, and (ii) the intent of Part VI of this bill, we hereby submit that **this should be a MONEY BILL**. Further, due to the importance and the impact this bill will have on the education of learners with disabilities, we call upon the sponsors to **consider having this bill CO-SPONSORED with a member of the national assembly**. This will help to create concurrence on the bill from the onset and save on time taken to move the bill through the procedures of both houses.

For more information, please contact: The Chairperson, Action for Children with Disabilities (ACD) Email: info@acdnet.org Telephone: 0733 408 636

Submitted on the 27th Day of March 2023.

006

UNIVERSITY OF NAIROBI

AFRICAN WOMEN STUDIES CENTRE

WOMEN'S ECONOMIC EMPOWERMENT HUB

P.O Box- 30197-00100 Tel: 0705 541746

Email: weehub@uonbi.ac.ke **Web**: www.weehub.uonbi.ac.ke

SUBMISSION OF MEMORANDUM BY THE UNIVERSITY OF NAIROBI WOMEN ECONOMIC EMPOWERMENT HUB ON LEARNERS WITH DISABILITIES BILL, 2023

Contact person: Mary Wambui Kanyi

Tel no: 0722868461

Email: wambui0308@yahoo.co.uk.

02

UNIVERSITY OF NAIROBI
AFRICAN WOMEN STUDIES RESEARCH CENTRE
WOMEN'S ECONOMIC EMPOWERMENT HUB
P.O Box- 30197-00100 **Tel:** 0705 541746
Email: weehub@uonbi.ac.ke **Web:** weehub.uonbi.ac.ke

THE SENATE RECEIVED 29 MAR 2023 DIRECTOR COMMITTEE SERVICES (DSEC)

THE SENATE RECEIVED 29 MAR 2023 DIRECTOR COMMITTEE SERVICES (DGAC)

Date: 27.3.2023

To:
Mr. J.M. Nyegenye,CBS
Clerk of the Senate,
P.O Box 41842- 00100
Nairobi.

Dear Sir,

RE: RECOMMENDATIONS ON THE LEARNERS WITH DISABILITIES BILL 2023, (Senate Bills No. 4 of 2023)

Greetings,

The African Women's Studies & Research Centre (AWSRC) is a multi-disciplinary institution of the University of Nairobi that focuses on bringing African women's knowledge on development, and socio-political and socio-economic issues to visibility. This is realized through action-oriented research and academic discourse.

The University of Nairobi's Women Economic Empowerment (UoN WEE) HUB is a programme of the AWSRC. The Hub aims to contribute to evidence-based decision-making and implementation of policies and programmes informed by what works for WEE in Kenya. The Hub is a Multi-disciplinary research Team comprising of Economists, Development Experts, Agriculturalists, Educationists, Gender Experts, Legal Experts and Population Experts, have researched and come up with suggestions and recommendations.

Researchers from AWSRC – UoN WEE Hub hereby make an input to the Learners disabilities Bill 2023. The recommendations are part of the Hub's process to engage and contribute to the economic welfare of women and men of all ages in the spirit of national development. It is with this in mind that the AWSRC- UoN WEE Hub has made these recommendations.

3. Mr. Rongera
Kindly deal
29/03/2023

1. DSEC
Kindly deal
29/03/2023

2. HOD - Ms. Kibati
Kindly deal
29.03.023

It is our prayer that the Committee will consider these recommendations.

Yours sincerely,

Wanjiku Mukabi Kabira EBS, CBS
Prof. Emeritus Literature and African Women's Studies.
UON Women's Economic Empowerment Hub Leader
Writer of "Time for Harvest: Women and Constitution Making in Kenya"
"A Letter to Mariama"
"In search of our Dreams "
"Remember not every door that is closed is locked. Push."
Tel: (+254-20) 3318262 Ext: 28075/070
Mobile: (+254) 728 907 978
Email: wkabira1@gmail.com; wkabira@uonbi.ac.ke
Website: https://profiles.uonbi.ac.ke/wkabira

NO.	Clause	Proposed Recommendation	Justification
2	Interpretation	Include the Convention on the Rights of Persons with Disabilities definition of "reasonable accommodation": necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.	Section 5 (h) enshrines the right of learners with disabilities to reasonable accommodation within an institution providing special education. The Act however fails to define what "reasonable accommodation" means. A clear definition of what "reasonable accommodation" entails will enable implementation of this right. In its 2015 Concluding Observations issued to the Government of Kenya, the Committee on the Rights of Persons with Disabilities raised concern about the absence of definition of reasonable accommodation. The Committee urged the Government to define in its legislation the principle of reasonable accommodation in all areas, in line with article 2 of the Convention on the Rights of Persons with Disabilities.[1]
	Interpretation	Learner with disability: This should be clearly and fully defined within the Act rather than cross-referencing to the Basic Education Act.	The definition should align with that provided under the CRPD and the Constitution which describes a person with disability to include 'physical, sensory, mental, psychological or other impairment, condition or illness...'. The State's obligation is on lifelong learning at all levels (whether tertiary, vocational etc); overreliance on the Basic education Act suggests that the Bill is only

[1] See https://www.cbm.org/fileadmin/user_upload/Publications/G1522337.pdf page 3

ensure teacher education and awareness raising so as to ensure effective learning and reduce stigma and discrimination of the learners with disabilities and their families. A robust teacher education program and continuous learning is essential on areas such as identification of people's abilities and needs, making adjustments to the learning environment and curriculum, different methods and styles of communication and human rights and disability generally.

PART C: SPECIFIC RECOMMENDATIONS

12. On a positive note, the Commission notes that the Bill aims to provide for the functions of the national government and the county governments. The Commission welcomes the clear delineation of the complementary roles between the national and county governments towards the realization of the rights of learners with disabilities as provided for under Part II in the Bill. This is critical towards ensuring that the respective governments understand their roles in protecting and promoting the rights of learners with disabilities.

13. The Commission also appreciates the provision for maintenance of a register of special needs educational institutions. This will ensure that all educational institutions are known and that they are regulated. The sanctions provided for including deregistration will further protect learners with disabilities from abuse and neglect.

14. The Commission advises on the need to harmonise the ecosystem on disabilities and education sector in the country. This would include mainstreaming the leadership and governance across the relevant laws and policies including the Persons with Disabilities Act (as will soon be reviewed), the Mental Health Act (as amended by Act No. 27 of 2022) and the various policy frameworks and education legislation within the country. Such move would avoid gaps, duplication and serve to ensure that the learners with disabilities (whether physical, mental, sensory or cognitive) at all levels, across the geographical divides enjoy, to the greatest extent possible, the right to education and appurtenant rights, in an efficient and effective manner. Thus, implementing a national education strategy that covers all levels of education and all-inclusive education sector plans that allows for seamless coordination across the sectors is recommended.

15. For an inclusive system for learners with disabilities to succeed will further require adequate resources and teacher support. The Government will have to allocate sufficient financial and human resources to ensure improvements to both the infrastructure in schools, provide reasonable accommodations and assistive technology as well as to

b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

c) Reasonable accommodation of the individual's requirements is provided;

d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion."

For more information about inclusive education, please see the Committee on the rights of Persons with Disabilities, **'A guide to Article 24: The Right to Inclusive Education'** accessible here.

9. The National Commission remains concerned that many persons with disabilities face numerous difficulties in accessing education from early childhood to tertiary level. This is attributed to the lack of reasonable accommodation in learning schools, poverty, stigma and discrimination amongst other reasons. This lack of access to education has only served to marginalize learners with disabilities further as they miss out on access to employment opportunities.

10. The Commission welcomes the enactment of a law to enhance the right to access education for learners with disabilities. Sponsored by Hon Margaret Kamar and Hon Crystal Asige (Senators), the Bill seeks to, "providing a proper legal framework in order to ensure the actualization of the right to basic education for learners with disabilities in Kenya at all the three levels of education in Kenya".

11. Notably, the Bill aims to provide for the rights of learners with disabilities and responsibilities of parents and guardians. This is a progressive move as learners with disabilities enjoy equal rights as those without disabilities and therefore contributes to equality and non-discrimination. Equally, requiring parents and guardians to be responsible, including providing sanctions in case of failure, will ensure that such learners have access to education.

- Establishing barrier-free environments in all institutions of learning and training, and provide for the health, safety and physiological needs of learners and trainees with disabilities;
- Provision and maintenance of quality specialized learning resources and assistive devices, and adopt new technologies to improve learning and training in the targeted disability categories;
- Capacity building and human resource development;
- Advocacy and awareness creation;
- Promoting participation and involvement of learners and trainees with disabilities and their parents/guardians in decision making in all institutions of learning;
- Implementing and continually review the differentiated curricula at all levels and reform education assessments to effectively include learners and trainees with disabilities.

7. Under SDG Goal No. 4, UN member States including Kenya committed to, ensuring inclusive and equitable quality education and promote lifelong learning opportunities for all. In Particular, countries undertake by 2030 to inter alia, '*eliminate gender disparities in education and* ***ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities****, indigenous peoples and children in vulnerable situations*' as well as to '*build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all*'.

8. Moreover, Kenya ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. Under Article 24 of the CRPD, State Parties recognise the right of persons with disabilities to education without discrimination and on the basis of equal opportunity, and the obligation to ensure an inclusive education system at all levels and lifelong learning. More specifically, State Parties are bound to ensure that:

> "a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

PART B: GENERAL COMMENTS ON THE BILL

4. The Constitution obligates all state organs and all public officers to address the needs of vulnerable groups within society. In this regard, the Kenya National Commission on Human Rights welcomes the efforts to enact the Learners with Disabilities Bill, 2023 into law.

5. The Constitution provides for an expanded bill of rights, which provides specific protection to persons with disabilities. Article 21 (3) of the Constitution identifies vulnerable groups in society as including persons with disabilities. Article 43(1)(f) secures the right of everyone to education. According to article 53(1) (b) of the Kenyan constitution, every child has the right to free and compulsory basic education. Article 54 of the Constitution obligates the state to put in place measures to ensure access to educational institutions and facilities for persons with disabilities that are integrated into society, reasonable access to all places, public transport and information, to use sign language, braille or other appropriate means of communication and access to materials and devices to overcome constraints arising from a person's disability. The Constitution further establishes a devolved system of governance and attributes responsibilities on both the national and county governments under the fourth schedule of the Constitution.

6. The Sector Policy for Learners and Trainees with Disabilities (2018) by the Ministry of Education further recognises the importance of inclusive education by emphasizing on the need for all learners to learn together in an inclusive environment. The Policy seeks to among other things, align education and training services for learners and trainees with disabilities with the relevant national policy frameworks and to develop a clear policy framework for the provision of inclusive education and training. The Policy among other things underscores:
    - Development and implementing early identification, assessment and intervention standard procedures and guidelines for learners and trainees with disabilities;

A. INTRODUCTION

1. The Kenya National Commission on Human Rights ("KNCHR" or "National Commission") is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The Commission is also the designated state organ in ensuring State compliance with obligations arising from regional and international human rights treaties that Kenya has ratified. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles and is accredited as an 'A' status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples' Rights.

2. The National Commission under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.

3. The Commission submits this memorandum pursuant to its constitutional mandate and special mandate to monitor implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Prevention of Torture Act (section 12). The advisory is divided into three parts: **Part A:** The Introductory part; **Part B:** General Comments; **Part C:** Specific Recommendations (on specific clauses in the Bill).

(10)

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON THE LEARNERS WITH DISABILITIES BILL, 2023

PRESENTED TO

THE SENATE STANDING COMMITTEE ON EDUCATION

28TH MARCH 2023

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160
Website: www.knchr.org

8. Remove the age limit of 18 years in provision of capitation for learners and trainees with special needs and disabilities.

Conclusion and Recommendation.

The Institute has exposed this bill to its experts and have received a strong positive opinion in its proposals. It is believed that the Bill is able to enhance the education for learners and trainees with special educational needs. We support its enactment and hope also the additional proposals and our observations will be embodied in it. We remain open to discuss the provisions beyond what we have selected to respond to.

43 Government financial aid may be applied for and may be paid by the Ministry, any County Education Board, resource centre or any other entity approved by the Cabinet Secretary to receive aid for each of the following Elements	***Transport was cited as a key barrier to access to education for learners with special needs and disabilities in KISE National Survey on Disabilities, 2018. We note with gratitude the inclusion of transport to the list of possible application of funds towards successful special needs education.***
2) Subject to subsection (1), the Service shall ensure that learners with disabilities are taken into consideration and lower the entry grade for such students.	***We support affirmative action in allowing a lower entry grade for learners with special need a and education. We further propose that this affirmative action is given due recognition by the labour market.***

Additional Proposal for Inclusion in the Bill

1. Kenya Institute of Special Education to be made a body corporate bill as a Part in the Bill to help strengthen the Assessment and rehabilitation services, and
2. Serve as the Unit for development production, procurement and distribution of special equipment, material, supplies and devices for use in the education of learners with special educational needs as envisaged in the bill.
3. County Special Education Resource Centre (SERCs) to be adequately and directly funded by the MOE. Also need to have the SERCs defined- whether it has a relationship with EARC. "Special" in the name may be stereotypical and can be better renamed to avoid the labeling of the centers as places for those with disabilities only.
4. KISE as National Assessment Centre to devolve assessment and rehabilitation services to regions for all categories of special needs and disabilities. The Institute to also manage the SERCs services in the country. The national and regional centers to undertake the role of monitoring and evaluation on implementation of these provisions.
5. Structures be instituted for Multidisciplinary approach in assessment of learners with special needs and disabilities including but not limited to assessment officers, teachers, parents, counsellors, therapists, social workers and nutritionists.
6. Enhance use of assistive technology and devices at the regional and county SERCs in collaborate with KISE ARC. This will minimize disparity in service provision and data management.
7. All co-curricular activities for learners and trainees with disabilities to be adequately supported to cater for other extraneous needs such as guides and appropriate adaptations. The programs should also ensure structures are in place for talent capture and development.

and six other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to be qualified as having experience and having shown capacity in the provision of special education.	***representative of the EARC office over and above the slot given to a representative of the persons with disabilities.***
24(2) The resource centre in subsection (1) shall be a link between children with disability and the society by– (b) providing sign language interpreters; (c) providing shadow teachers; (d) providing physiotherapy services;	***We appreciate the endeavour to avail appropriate support to the learners. In this regard, we feel that learner support assistant is a better term than shadow teachers and also that more therapies are required beyond physio while providing habilitation and rehabilitation services***
25(a)In the implementation of this Act, the Cabinet Secretary shall – (a) ensure that there is adequate infrastructure for learners with disabilities in special needs schools;	***In view of the SDG 4 wherein inclusive education is preferred, we recommend that special needs education in regular schools is also supported;***
26. (1) The Cabinet Secretary may establish a unit for development, production, procurement and distribution of special equipment, material, supplies and devices for use in the education of learners with special educational needs.	***The education sector has felt the need to centralize production and distribution of specialised materials and assistive devices, as well as their repair and maintenance. We therefore propose that the bill also embodies this aspiration and allow KISE to be the production centre as envisaged. The workshops have since been upgraded towards this end.***
30 (1) The Cabinet Secretary shall determine the funding procedures, provisions and minimum standards of the funding or provision of subsidies to special educational institutions and the proportion of the budget to be allocated between public and private special educational institutions.	***The private institution to be exclude in funding from the government and instead fund available be used to upgrade, the existing public institutions and also establish more educational institutions for learners and trainees with special needs and disabilities.***

completion of the child's basic education; and	***trainees -for the purposes of completion of the child's basic education, e.g vocational training, home-based education, Alternative provision of basic education and such programmes***
7 (h) ensure that educational institutions and parents have the necessary tools to support learners with disabilities;	***7 (h) ensure that educational institutions and parents have the necessary tools and equipment to support learners and trainees with special needs disabilities;***
(j) ensure that the education curriculum and public examinations recognize and take account of the needs and circumstances of learners with disabilities;	***Administration of examinations to allow learners and trainees with special needs and disabilities to use assistive technology;***
8 (2) (h) ensure that every education centre under the mandate of the county has at least one teacher who is able to assist learners with disabilities;	***We support this proposal and emphasize the need to have teachers who are trained in special needs education and hence able to support learners with disabilities;***
(k) liaise with the National Council for Persons with Disabilities to maintain a database of learners with disabilities in the county; and	***There is urgent need for relevant agencies and organizations to maintain and integrate respective databases of learners with disabilities in the county for data exchange. These data will go along way to inform policy and planning.***
9(1) (c) the category of resources required by the educational institution; and	***We hold the view that resources also relate to human as well as materials required by the educational institution***
13(1) (a) to (g)	***Constitution of the Board to be framed in a manner to be in tandem with the Basic Education Act 2013 Section 55***
19(6) (b) provide for the formation and recognition of a professional association or institute of certified special services providers to train or regulate the training of special services providers;	***We take note that the proposed bodies would standardize practice of special needs education. We also propose that KISE be the body that will certify such teachers***
23(3) The Advisory Board shall consist of a chairperson	***We propose that the function is nested within the current county education boards but have a seat reserved for the***

"Learner with disability" means a person who is undertaking special needs education as defined under Section 2 of the Basic Education Act;	***Sector policy 2018 defines it as a learner who has a "Lack or restriction of ability to perform an activity in the manner within the range considered normal within the cultural context of the human being"***
Preliminaries	***To include current terms and practice in respect to:*** • ***Itinerant/Peripatetic teachers*** • ***Learner Support Assistants (Referred to as Teacher Aides)*** • ***Care givers (house mother/father)***
3 (c) provide home or hospital instruction and corrective and supportive services to disabled children in cases where the nature and severity of the disabilities make the provision thereof in regular educational institutions impracticable;	***The clause needs to adopt to the disability etiquette where the child comes first thus: children with disabilities***
Part 1: Sect 4 (c) special needs education that is sensitive to the cultural and developmental needs of the learner;	***Should cover the sensitivity to the socio economic and social needs of the learner over and above the cited cultural and developmental aspects;***
(e) equality, equity and non-discrimination in the provision of special needs education;	***Should also include the question of access to education as well as provision of career guidance;*** ***We appreciate the clause have addressed equality and equity in education***
(e) admission, on application to any institution of learning and access to an inclusive, quality and free basic education on an equal basis with others;	***Referral for institutional placement from a functional Educational Assessment and Resource centre to be considered as an application for admission. The institution should admit the learner or provide in writing justifiable reasons why they have declined. This should be presented to the officer who made the placement for consideration and further advise.***
6(a) admit or cause to be admitted their child to a school as the case maybe, for the purposes of	***There is need to recognize that other institutions as the case maybe that also provide education for SNE learners and***

110

KENYA INSTITUTE OF SPECIAL EDUCATION

Tel: 020- 8007977,
Cell : 0734-801 - 860
Website: www.kise.ac.ke
Email: info@kise.ac.ke.

Kasarani, Thika Superhighway Exit 8
Off Kasarani-Mwiki Rd
P. O. Box 48413 - 00100
NAIROBI, KENYA

MEMORANDA ON THE LEARNERS WITH DISABILITIES BILL, 2023

Introduction

Kenya Institute of Special Education (KISE), a Semi-Autonomous Government Agency (SAGA) was established through legal notice No. 17 of 14th February 1986. The Institute is managed by a council appointed by the Cabinet Secretary Ministry of Education. The head of the Institute is the Director who is also the Secretary to the council. The core functions of the Institute are; Training of personnel to serve persons with special needs and disabilities, conducting research in special needs and disabilities, assessment of children with special needs and disabilities, production of educational materials and assistive devices for learners with special needs and disabilities, habilitation and rehabilitation of persons with special needs and disabilities, modelling inclusive education among other functions.

KISE submits this memorandum in line with its mandate. Further, it responds to the invitation dated 22nd March 2023 for participation and submission of memoranda by the Senate - The thirteenth Parliament on the bill. This memorandum highlights KISE views on the proposals included in the Bill.

Our Observations on the Clauses in the Bill

Bill content	***Observations***
Overall title The Learners with Disabilities Bill, 2023	***Should read "The Learners and Trainees with Special Needs and Disabilities Bill, 2023" so as to include learners who take the vocational path due to the nature of their disability.***
Learners with disabilities	***Whilst the greatest necessity for interventions lies more for Learners with disabilities, those with special needs should also be considered depending on the nature of their challenge.***

070

MEMORANDUM ON THE LEARNERS WITH DISABILITIES BILL, 2023

011

PRESENTED TO
THE SENATE
THE THIRTEENTH PARLIAMENT

SUBMITTED TO
CLERK OF THE SENATE
PO BOX 41842-00100, NAIROBI

IN THE MATTER OF CONSIDERATION BY THE EDUCATION COMMITTEE
OF THE SENATE:

27TH MARCH 2023

SUBMITTED BY:
The Kenya Institute of Special Education
P.O. Box 48413-00100, Nairobi, Kenya
Office Tel: +254-705269505 |
Email: info@kise.ac.ke

Submitted by Kesho Kenya



Name: Wanjiru Mbugua

Designation: Policy Advocacy Officer, Pamodzi for Inclusive Education in South-East Africa

Date: 27/03/2023

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org

KESHO UK Office
47 The Parade
Royal Priors Leamington Spa
CV32 4BL UK

KESHO Main Office
PO Box 997 Kilifi Kenya

KESHO Tel (Mobile) +254 728 413 227

KESHO funds children to attend school and is also a Cooperating Institution of Rotary

4) Conclusion

Whereas Kenya has made significant strides by putting in place policies that promote inclusive education, the implementation is still low. This can be attributed to a number of reasons including, but not limited to issues of budgetary constraints/inadequate funding,policy awareness gaps, and lack of implementation guidelines and policy accountability frameworks.

According to the Kenya Institute of Curriculum Development, the Basic Education Curriculum Framework provides for a differentiated curriculum for learners with special needs. Learners follow the regular curriculum with adaptations, an enriched and accelerated curriculum, a specialized or home/hospital based intervention programmes; all these to ensure that no learner is left behind.

While the design of the competence based curriculum took into consideration the diverse needs of learners & trainees with disabilities, and those with special education needs, the implementation of the same is lacking in respect to the special needs education model. This is more so in the area of educational assessment and placement as well as classroom support & home-based program as applicable to the learner, as well as the broader special needs education management and administration.

With the reigning debate concerning the Competency Based Curriculum (CBC) implementation, the Learners with Disabilities Bill(2023) is a timely intervention in charting a path for the effectiveness and efficiency in inclusive education delivery in the country. Hinged on the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, this Memorandum has been submitted in good faith, and in confidence to marshall the support of the Standing Committee on Education for the submissions made.

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org

KESHO UK Office
47 The Parade
Royal Priors Leamington Spa
CV32 4BL UK

KESHO Main Office:
PO Box 997 Kilifi Kenya.

KESHO Tel (Mobile): +254 728 413 227

KESHO funds children to attend school and is also a Cooperating Institution of Rotary

3) Submissions:

In line with the various legal instruments on which inclusive education is premised, including the realization of SDG No.4 on inclusive and equitable quality education for all, and promotion of lifelong learning opportunities, we submit:

I. *That the title of this bill be consistent with the Sector Policy for Learners and Trainees with Disabilities(2018) so as to read "Learners and Trainees with Disabilities Bill(2023)"*

II. *That in the description of this Act, the adoption/addition of the word "Trainees" be incorporated to read: 'AN ACT of Parliament to provide for the education of learners and trainees with disabilities; for the conduct of educational institutions for learners with disabilities and for connected purposes'*

III. *That the Act provide for the formal employment, as civil servants in the education sector, of the "special service providers" including braille readers and technicians, ear molds technicians among others. These supportive specialized staff, despite undergoing formal training and certification at university level, and at Kenya Institute of Special Education, are not recognized as a cadre for purposes of employment by the Public Service Commission.*

IV. *That the issue of deployment of Special Needs Education trained teachers to special units and special schools be addressed through a provision on recruitments and deployment specifically for SNE trained teachers. It is only once, in the year 2015, that the Teachers Service Commission (TSC) made an advertisement for the recruitment of Special Needs Education teachers. SNE trained teachers remain in regular classes despite a glaring gap of shortage of SNE teachers posted to schools with learners and trainees with disabilities.*

V. *That learners in the home-based program be followed up regularly. The level of attention & quality of learning is in question since they are not in school like other learners. Inadequate teachers in special units and schools have made this difficult, with the focus being more on learners in the classroom, thus disadvantaging those in the home-based program.*

VI. *That the context and application of this Act be expanded beyond the interpretation, and mandate of the Basic Education Act(2013) that sets basic education in Kenya as Primary and Secondary Education; so as to accommodate learners and trainees with disabilities pursuing alternative pathways such as Stage-Based learning under the specialized curriculum, and those undertaking the enriched & accelerated curriculum, as per the provisions of a differentiated curriculum in the Sector Policy for Learners and Trainees with Disabilities(2018).*

VII. *That, in this Act, there be a provision under the Quality Assurance and Standards for the pre-liminary development of inclusive education indicators, and guidelines on generation of periodic status reports and reviews to provide a framework for accountability in the delivery of quality special needs education and related services, the implementation, monitoring and evaluation of policies and plans related to the implementation of special needs education.*

We, Kesho Kenya organization, with the support of the Global Partnership for Education(GPE) Education Out Loud Program on advocacy and social accountability, through the Pamodzi for Inclusive Education in South-East Africa, seek your indulgence by way of this memorandum to ensure the realization of inclusive and equitable quality education for all.

We acknowlegde the development of the Learners with Disabilities Bill(2023) as part of the continued investments, and indicative of the ongoing commitment to enhancing education and promoting lifelong learning opportunities for all.

1) About Kesho Kenya

Kesho Kenya was founded in the year 2004 in Kilifi County to address concerns over the lack of educational opportunities for children and youth from disadvantaged families. Kesho Kenya is a Non-Governmental Organization in Kenya of registration number OP.218/051/15-179/10159.

Vision

We envision a coast of Kenya where all young people are educated, fulfill their potential and broaden their experience of the world, irrespective of poverty, ethnicity, gender, religion or special needs

Mission

We exist to advance access to education and employment for vulnerable young people living in the coast of Kenya, through a long-term holistic integrated approach.

Core Values:

•A belief in education •Putting children first •Strong governance •Non-discrimination & inclusivity •Relevant and rooted in the community •Participation •Transparency •Dynamic spirit

2) Inclusive Education In Kenya; A Policy Perspective

Kenya affirms that education is a fundamental right that should be available to all learners and trainees as embodied in the Kenyan Constitution (2010) and the Basic Education Act (2013). The specific guidelines that cover inclusion of learners and trainees with disabilities are contained in the 2018 Ministry of Education Sector Policy for Learners and Trainees with Disabilities; whose goal is to mainstream and provide for inclusive education and training at all levels of learning.

The policy defines inclusive education as an approach according to which 'learners and trainees with disabilities are provided with appropriate educational interventions within regular institutions of learning with reasonable accommodations and support'.

For learners and trainees with disabilities, and those with special education needs, policies and other legal instruments that do not address the challenges of disability and special needs education holistically present a disconnect between the policy frameworks and implementation in light of universal education indicators such as access, quality, transition and inclusion.

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org

KESHO UK Office
47 The Parade
Royal Priors, Leamington Spa,
CV32 4BL UK

KESHO Main Office:
PO Box 997, Kilifi, Kenya.

KESHO Tel (Mobile): +254 728 413 227

KESHO funds children to attend school and is also a Cooperating Institution of Rotary

KESHO
Helping children in Kilifi attend school

Enhancing Opportunities for Education in Kenya...

GPE Transforming Education

OXFAM IBIS

THE SENATE CLERKS OFFICE * RECEIVED 29 MAR 2023 * P.O. Box 41842 - 00100, NAIROBI *

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

Ref: Kesho Kenya 3/2023/Vol. 1

KESHO KENYA

PAMODZI FOR INCLUSIVE EDUCATION IN SOUTH-EAST AFRICA PROJECT

TO:

THE CLERK OF THE SENATE

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

THE SENATE

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

THE STANDING COMMITTEE ON EDUCATION

MEMORANDUM ON

THE LEARNERS WITH DISABILITIES BILL, 2023

(SENATE BILLS NO. 4 OF 2023)

① DSEC
Kindly deal
29/03/2023

② HOD-Ms. Kebali
Kindly deal
29/3/2023

27th March, 2023

③ Mr. Rongera
Kindly deal.
30/03/2023

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org

KESHO UK Office
47 The Parade
Royal Priors Leamington Spa
CV32 4BL UK

KESHO Main Office
PO Box 997 Kilifi Kenya

KESHO Tel (Mobile): +254 728 413 227

KESHO funds children to attend school and is also a Cooperating Institution of Rotary

005

08 Ms. Emma. 002

Ref: part IV identification and assessment of children with special needs in education and disabilities,

a)Clarification of which office mandated for assessment and placement of learners with special needs education to special schools.is it the County education board or Educational Assessment Resource Center (EARC) officers,trained for functional assessment under ministry ?

b) That all sub counties to have Educational Assessment Resource Center (EARC)

c) That educational assessment officers to be deployed by the Ministry of Education as the office is under the ministry.

d) That there should be a clear guidelines on how the learners with intellectual challenges exit the special school to join vocational and TIVET institutions.

e) That each disability to have it's own sperate school compound, unlike some of the special schools have sheltered almost seven different disabilities together and behavioral issues has emerged living some learner victims of sodomy and able ones molesting others.

f) That support staff assisting teachers in special schools to have atleast a sort of training on special needs and disabilities

			Additionally, the Bill should provide for the composition of the membership of the proposed Bill including the qualification criteria.
PART VI	Development and Facilitation of Special Needs Education		The provisions of sub sections 29 and 30 on the funding special needs education institutions and funding special needs education needs to also include the institutions under the management of County Governments, including the provision of capitation grants for the learners with disabilities integrated into mainstream learning institutions.

B. RECOMMENDATION

For the Senate to incorporate the proposals by the Council of Governors.

			The rest are under the mandate of the National Government.
13(1)	The Board of Management		The Formation of the Board of Management should be guided by the Basic Education Act (2013). The Bill should not seek to establish separate provisions for the Board, but rather seek to expand the membership of the Boards established by the Basic Education Act (2013) to include representatives for learners with disabilities.
19 and 23	The Establishment of Special Needs Education Advisory Board		The establishment of the proposed special needs education advisory board should not be in contradiction with the mandate of the special education directorate of the Ministry of Education and other specialized agencies such as the Kenya Institute of Special Education.

SPECIFIC COMMENTS

Section of the Bill	Provision of Section in the Bill	Proposed Amendment	Rationale/Justification for Amendment
4	Guiding principles	Inclusion of the overriding principle of **" best interest of the learner"**	This is a key principle in the rights and duties discourse especially on programs/ interventions targeting the needs to children
6 (2)	A parent of guardian who fails, without reasonable cause submitted to the institution and County Director of Education, to admit, cause to be admitted or ensure the attendance of the learner in school commits an offence and shall be liable, on conviction, to a warning in the first instance and a fine not exceeding five thousand shillings for any subsequence offence	A parent of guardian who fails, without reasonable cause submitted to the institution and County Director of Education and County Executive Committee Member in Charge of Education, to admit, cause to be admitted or ensure the attendance of the learner in school commits an offence and shall be liable, on conviction, to a warning in the first instance and a fine not exceeding five thousand shillings for any subsequent offence	Guided by Article 189 of the Constitution (2010) the two levels of government are to discharge their functional assignments in a cooperative and consultative manner.
9 (1)	Each county executive committee member shall keep and maintain a register record of all educational institutions that provide education to learners with disabilities in the county including-	Each county executive committee member shall keep and maintain a register record of all educational institutions under the management of the County Government that provide education to learners with disabilities in the county including-	The County Executive Committee Member is only responsible for educational institutions under the mandate of the counties (pre-primary education and vocational training centers).

institutions and other institutions of research and higher learning and primary schools, ***special education***, secondary schools and ***special education institutions***." The implication of this functional assignment is that the National Government is expressly obligated to plan for special education institutions and provide special education across all the levels of education. However, as special education moves increasingly towards integration, this then also obligates County Governments to ensure provision of access and quality education to learners with special needs in both pre-primary education and vocational training centers. Accordingly:

i. County Governments should continuously work towards the integration of learners with special needs in the mainstream county learning institutions;

ii. The National Government should provide additional resources, including human resources and capitation to support the integration of learners with disability in pre-primary education and vocational training.

iii. The bill to provide a framework for the coordination of services critical to the welfare of the learners with disability that are under the management of County Governments such as health, nutrition, social protection services among others.

iv. In the implementation of targeted interventions for learners with disabilities at pre-primary level and vocational training level, the County Education Boards and the County Director of Education should continuously consult and collaborate with the County Executive Committee Members in Charge of Education.

Introduction

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need to ensure that legislation reflects the spirit and objects of devolution and are aligned to the Constitution in the assignment of functions between the National Government and County Governments.

Conscious that Government at either level is to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respect the constitutional status and institutions of government at the other level.

The Council wish to note as follows;

A. GENERAL COMMENTS

1. The efforts made towards providing a comprehensive legal framework for learners with disabilities is appreciated. It is however worth noting that there are various legal frameworks that address issues of learners with disabilities. The frameworks include Persons with Disabilities Act, 2003 (curremtly under review), Children Act, 2022, Basic Education Act albeit, not as comprehensive as the proposed Bill. The danger of having various legal framework to address a specific matter is contradictions in the law. Further, the learners with disabilities Bill has been developed without the benefit of a policy, this goes against the trite principle that policy precedes law.

2. The Fourth Schedule of the Constitution (2010) assigns specifics function to the National Government and County Governments. Specifically, the 16th function assigned to the National Government reads "Universities, tertiary educational



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE

THE LEARNERS WITH DISABILITIES BILL, 2023 (SENATE BILLS No.4)

TO

SENATE STANDING COMMITTEE ON EDUCATION

FROM

THE COUNCIL OF GOVERNORS

07

29 MAR 2023

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

URGENT

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

Our Ref: COG/6/39 Vol. 17 (10)

28th March, 2023

Mr. Jeremiah Nyegenye, CBS
The Clerk of the Senate
The Senate
Parliament Buildings
NAIROBI

Dear Mr. Nyegenye

LEGISATIVE MEMORANDUM ON THE LEARNERS WITH DISABILITIES BILL, 2023 (SENATE BILLS No. 4)

We acknowledge receipt of your letter Ref. SEN/SCE/CORR/2022/09(ii) dated 15th March, 2023 on the above referenced and whose content we have noted.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council has reviewed the aforementioned Bill and wishes to share its memorandum as enclosed.

Please be assured of our highest esteem and consideration.

Yours sincerely

Mary Mwiti
Chief Executive Officer

(1) DSEC
Kindly deal
29/03/2023

(2) HCD - Ms. Kibati
Kindly deal
29.03.2023

(3) Mr. Rongera
Kindly deal.
Kibati
30/03/2023

(86)

003

MEMORANDUM ON LEARNERS WITH DISABILITY BILLL 2023

Presented by Cosma G. Gatere

March 27th 2023

1. **Clause 5 on Rights of Learners with Disability** – add clause in this section requiring *education institution where learner with disability is first admitted to issue them with a Unique Special Needs Identification Number.* This would be a unique identifier (and later digitally enabled card) containing all information on the learner including type and severity of disability, adapted curriculum being pursued, assistive devices being used and examination results throughout their life in the education system. Information would be relayed to a central database to enable planning, improve M&E and thus better outcome for learners with disability. It would also ensure more adequate provision of services and funding. (Adapted from best practice in India).

2. **Clause 7 (2) (d)** – specify period of census to be "*at least once every five years*" to ensure database is current.

3. **Clause 7 (2) (e)** – amend to read "maintain an **up-to-date** inventory"

4. **Under section on examinations add these two clauses:**

   a) *"the Cabinet Secretary, in consultation with the Special Education Advisory Board, shall establish a Special Education Curriculum and a standardized Special Education Examination & Certification System designed to be a parallel examination and certification track (adapted for learners with disability and based on an adapted curriculum) under which they can be fairly examined, assessed and certified at all three stages of the education system".*

   b) *"the Cabinet Secretary shall ensure that the Special Education Certification System is nationally recognised - at tertiary and at all subsidiary levels of the education system to ensure optimal transition rates within the education system, and that the certification system is recognised by government and industry as a valid equivalent certification in order to allow smoother absorption of learners with disability into the job market"*

5. Section 19 (5) amend to read *"... whose decision on the matter,* ***delivered not more than 14 days from receipt of the appeal****, shall be final".*

6. Section 19 (5) (a) amend to read *"...**appeal to the Special Education Advisory Board**".*

   a) ***Ditto for Section 42 (1).*** *Appealing to the Board is likely to easier and they are likely to be more accessible.*

7. ***Under Section IV – Institutional Management of Special Education*** *add:*

   a) Establish the Special Education Tribunal which shall have jurisdiction to hear a request or petition from any interested person to review any action or omission by any person, other than the Cabinet Secretary, or any institution that falls short of, or is lethargic in, the implementation of the provisions of this Act. **[An option is to expand the mandate of the Special Needs Education Advisory Board by giving it this responsibility and renaming it the SNE Advisory and Appeals Board].**

   b) ***Establish*** **the Special Education Trust Fund** which shall be responsible for mobilization and management of resources for SNE in Kenya. In partnership with the Government and non-state actors, it will allocate funds for SNE research, purchase of assistive technology and ensure equitable distribution to help redress past inequalities in the promotion of education. This trust fund can explore innovative fundraising mechanisms including floating an SNE Bond, having regular donor pledging conferences earmarked for SNE and developing a SNE Public-Private Participation Framework to mobilize private sector resources.

8. **Under Section VI – Facilitation of SNE** – Propose review of relevant legislation **to *require HELB to give all learners with disability entering tertiary*** *(including TVET institutions) automatic grants, not loans, for their education up to the highest level.*

Cosma G. Gatere
Former Chairman Down Syndrome Society of Kenya
0722 541 303 cgatere@gmail.com
Coordinator, SNE Citizen Action Group

	executive committee member within the county;		
23(2)	(2) The Advisory Board shall consist of a chairperson and six other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to be qualified as having experience and having shown capacity in the provision of special education.	The board should have diverse membership from other sectors such as private sector, academia, KISE, medical practitioners in the special needs space and parents or guardians of persons with special needs.	This is will ensure the board has a holistic view of the challenges and gaps from all players.
24	The entire section.		Are these services free of charge? If not, can the Act provide that they will be provided at a reasonable fee to avoid exploitation by those running the centres?
25(c)	ensure that **all** special needs schools have school transport for learners in order to aid their accessibility to the learning institution.	**May** ensure that all special needs schools have school transport for learners in order to aid their accessibility to the learning institution.	If mandatory for all, it may be difficult to implement as most parents/guardians prefer private transport arrangements depending on the needs and/or severity of the learner's mental disability.
33(2)(a)	(2) Any private educational institution which receives funding from the National Government and demands levies or fees from a learner with special	Clarification needed on whether this completely bar private institutions from charging school fees.	

	education needs; shall be disqualified from receiving financial assistance from the National Government.		

MORE SUBSTANTIVE FEEDBACK

i. **Setting up learning support departments in centers and not merely providing a teacher**

Rights and responsibilities

The responsibilities of various stakeholders are clearly outlined in part 2 of the bill. This is good to ensure that there is good coordination in the service delivery process. In section 8, subsection 2 h recommends at least 1 teacher per every education center under the mandate of the county. In special education, learners require more attention from the teacher than their typically developing peers. Most learners especially those with attention deficit and hyperactivity disorders and autism need personalized teaching most of the time. The bill needs to focus more on teacher to student ratio per center.

The bill also needs to recommend learning support teams or departments within those centers as opposed to a teacher who can assist learners with disabilities. Learning support can be defined as support, assistance or services delivered to students with special needs to ensure that they gain full benefit from the teaching and learning process. A learning support team will help the learning center to provide practical guidance to teachers, parents and other interested persons on the provision of effective learning support to pupils with low achievement/learning difficulties.

ii. **Moving beyond assessment to post assessment procedures/interventions**

Part IV Identification and assessment of children with disabilities

Assessment of learners suspected to be having learning difficulty or a disability is usually the starting point for future interventions. This has been outlined under part 5 section 1 of the bill and has been assigned to the county education board. Since **assessments just the initial** step towards ascertaining if there is a

problem or not, the involvement of the county education board should be expanded to ensure that other subsequent actions are takes after the assessment to enable the child to overcome their challenges.

Upon assessment of a child suspected to be having a disability or learning difficulty, the board needs to be empowered to ensure that other crucial "**post assessment processes**" are undertaken. These include developing an Individualized Education Program (IEP) for the child, implementation of the IEP & annual review. Children with disabilities need more than just an educational intervention. Most of them need therapies. After the assessment, the institution should be empowered to make recommendations on which set of therapies and a child requires. These therapies can be part and parcel of the package of services that a child receives within learning institutions.

iii. Simplifying the process of school registration in regards to SNE institutions

Part III Registration and management of special needs education institutions

To improve access to education by learners with disabilities, there is need to encourage setting up of special education learning institutions with the country. The registration process currently has a lot of procedures which mostly discourage people from pursuing the MoE registration procedures. At the moment, there are a number of centers in Nairobi and around the country which are registered as Community Based Organizations (CBOs). This is not always by choice but people are forced by prevailing circumstances to opt for CBO registration since it takes only a few weeks to register a CBO as opposed to registering a school. With a CBO registration, most of these centers are not able to offer certain services which they might want to offer. Secondly, the integration of these children to the mainstream may be a challenge since most schools require a child to have had previous school history. Some registration requirements e.g., change of land use from commercial use to institution use subjects people intending to set up private SNE institutions to extra costs even before they start operating.

iv. Providing therapies as part of the SNE curriculum

Part V: Institutional management of special education

Clause 24(a) of the bill advocates for creation of education resource centers in every county to provide assistance in regards to several supports including therapy needs of the students. While this is a good

proposal, it can be more beneficial if therapies can be provided within learning institutions. When therapies are taken closer to learners, it is possible to increase the frequency and intensity of those services for maximum gains. Education and therapy needs of learners with disabilities should therefore be given equal weight by the bill. Besides ensuring that there is a teacher who can support learners with disabilities within centers, relevant therapists should also be made available. The bill should create a provision for access to multidisciplinary teams by every child with disabilities. Multidisciplinary approach to special needs education involves assembling experts from other fields other than special education to join hands with special educators in delivering education to persons with special needs. Multidisciplinary approach leads to the formation of multidisciplinary teams. A multidisciplinary team in special needs education is a group of individuals from several disciplines who are brought together to pursue a mutual goal, such as evaluating a student for placement in special education or setting up an individualized education program (IEP) for a student.

Yours Sincerely,

Michael Mutunga Mutua
Headteacher/Director
Bloom Garden Autism Academy

05

009

BLOOM GARDEN Autism ACADEMY

"LET A MILLION FLOWERS BLOOM"

Muthangari Rd, Lavington
info.bloomgardenacademy@gmail.com
+254 722 987 077 / +254 712 170 882

Our Ref: EDU/13/2023 Your Ref: **SEN/SCE/CORR/2022/10(V)** Date: **March 27, 2023**

J.M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear Sir,

RE: SUBMISSION OF MEMORANDA ON THE LEARNER'S WITH DISABILITIES BILL 2023 (SENATE BILLS NO. 4 OF 2023)

We wish to register our deep appreciation for the opportunity that the Senate has accorded us to present our views on the above-referenced proposed legislation.

Who we Are

Bloom Garden Autism Academy (BGAA) is a special school that offers services and supports to students with autism, ADHD, intellectual challenges, down syndrome and specific learning difficulties. The school is founded on the premise of provision of quality and affordable services in line with the current global trends in the field of special educational needs.

We provide a wide range of services from early identification and intervention, differentiated learning, speech and language stimulation, alternative and augmentative communication, prevocational and vocational training; among other therapies.

Our Position on the Bill

The Learners with Disabilities Bill, 2023 is a very important step towards the inclusion, and support of learners with disabilities to access quality education and other needed services within safe and highly supportive environments. This will help a lot in improving the quality of life for children with special needs in learning institutions, families and in the society at large.

While we acknowledge that the Bill seeks to address various challenges facing learners with disabilities in Kenya, and the institutions providing specialized education to learners with disabilities, we propose the following to help improve the Bill:

The Clause Number	Current Clause	Proposed Amendment	Rationale and Justification
2	"special service providers" means any person providing specialized, supplementary and related services to learners with special education needs and includes braille readers and technicians, sign language instructors and interpreters, orientation and mobility specialists, physiotherapists, occupational therapists, speech and language pathologists and therapists, speech and language pathologists and therapists, counsellors and teacher aides.	Add applied behavior therapists and sensory integration therapists.	There are therapists who support learners with autism e.g., applied behavior therapists who help learners to develop desired set of behaviors, sensory integration therapist who support learners who have challenges related to sensory regulation. Most learners with autism require applied behavior therapy and sensory integration therapy.
6(2)	(2) A parent or guardian who fails, without reasonable cause submitted to the institution and County Director of Education, to admit, cause to be admitted or ensure the attendance of the learner in school commits an offence and shall be liable, on conviction, to a warning in the first instance and a fine not exceeding five thousand shillings for any subsequence offence.	Increase the fine to Ksh. 100,000.	A number of children with special needs are deprived the right to education especially in the rural and low-income households due to stigma and cultural xxxxx. A higher penalty will be a better deterrent as Ksh. 5000 is too low.

9(1)	(1) Each county executive committee member shall keep and maintain a register record of all educational institutions that provide education to learners with disabilities in the county including public educational institutions that provide education for learners with disabilities in the county;	(1) Each county executive committee member shall keep and maintain a register record of all educational institutions that provide education to learners with disabilities in the county including public **and private** educational institutions that provide education for learners with disabilities in the county;	This data will assist government in formulating the national strategy and plan of action for learners with disability. Whilst some learners attend private schools, to mitigate costs they opt for therapies provided by public institutions such as KISE, KNH, Mbagathi hospital etc.
10(1)	(1) A person shall not offer special needs education services or establish or maintain a special needs educational institution unless such person is registered in accordance with the Basic Education Act, the Technical and Vocational Education and Training Act and the Universities Act	(1) A person shall not offer special needs education services or establish or maintain a special needs educational institution unless such person is registered in accordance with the Basic Education Act, **or** the Technical and Vocational Education and Training Act **or** the Universities Act;	The clause as is suggests we will have to be registered under all 3 Acts/regimes.
11 and 40.	The entire section on De-registration.	Clarification needed.	It makes reference to public institutions only, whilst there are a number of private institutions that ought to be equally regulated to protect the learners attending those institutions.
12(2)	(2) The principal or head of an educational institution may require a person attending the institution or	(2) The principal or head of an educational institution **shall** require a person attending the institution or	Assessment is a key step prior to admission, to ensure the learner is properly placed. It is currently being practiced and a

	applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement.	applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement.	good number of schools do not admit learners without the KISE assessment report. However due to the backlog at KISE that makes learners wait for months before assessment, this can be opened up to include private assessment by qualified persons.
37(1)	The principal manager or head of an educational institution may require any person attending the institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre.	The same mandatory language ought to be used at Clause 37(1).	Same as above.
13(1)(d)&(e)	The following categories of learners shall be represented on the board of management of an educational institution for learners with disabilities – (d) two persons with experience in matters relating to special needs education and social work nominated by the county governor on the recommendation of the County Education Board; (e) one public officer nominated by the county	There is need for clarification on whether this will apply to private institutions as well and the rationale behind it.	

04

001

MEMORANDUM

To: The Senate Committee on Education

Subject: Learners with Disability Bill

Greetings,

Clause 6(4)
Where a learner above the legal age of 18yrs still cannot cope in the regular sector then a Power of Attorney is to be issued to the guardian as per the requirement.

(i) ensure that at least 2% of the state budget allocated for primary and secondary education (Eg Disadvantaged students in general fee, special grant schemes etc) is earmarked for the development and implementation of specific disability related programs in schools.

(j) set up a disability affairs secretariat in the state government with the mandate of providing technical assistance and coordination to the implementation of programs in the field of disability.

(k) set up disability counseling centers in major towns and cities across the state.

Establish a special needs trust for Learners with disability.

Provide modules of Learners with disability studies both at the middle health training institutions and higher levels of medical training.

At the County Government level

(m) ensure a direct means of employment opportunities and internship placements of trained Learners with disability in the County Public Service with minimum requirements.

(n) organise yearly activities in observance to various international days to honour Learners with disability.

24(3) adopt programs in the resource center linked to the County Education Board.

In addition

This memorandum is only a suggestion and the final version of the Learner with Disability Bill should be drafted in consultation with the disability sector

Yours sincerely
Angela Michelle Gatugu

MEMORANDUM ON SPECIAL NEEDS EDUCATION BILL 2023 (SENATE BILL NO.44 OF 2023)

Amnesty International Kenya was registered as a non-governmental organization in 2012 after a decade of human rights protection from either London or Kampala. Over the years, we successfully contributed to strategic policy and legislative changes. We have deepened relationships within the Executive, Cabinet, Parliament, independent agencies and constitutional commissions, civic organizations, trade unions, and community-based human rights organizations to stand for and protect human rights. Amnesty International Kenya currently works with secondary schools across the country to promote nonviolent, peaceful engagement between learners and administration.

Upon carefully analyzing the constitutional and human rights implications of the Special Needs Education Bill 2021 which was before the Senate Standing Committee for consideration of public participation, we have made the following specific recommendations and more general recommendations

Article	Current provision	Proposed amendment	Rationale
7 clause 2 (d)	conduct, at such intervals as may be necessary, a census of learners with disabilities at each level of education including the number of such learners, the nature of their disability, their educational requirements, their level of education and their geographic distribution	We propose that the data collected is disaggregated and includes transition rates at the different level to enable tracking of learners	Girls and boys/men and women have different needs and an amalgamation of all the data will not be sufficient to support learning institutions preparing adequately for leaners
8 clause 2 (b)	put in place the necessary infrastructure and establish the necessary education centers for the delivery of education to learners with disabilities;	We propose that all learning institutions be required to adopt a universal design to facilitate the integration of learners with disabilities into society	The current infrastructure does not support the movement and accommodation of learners. This proposal will enable all schools to be prepared for future integrations
8 clause 2 (h)	ensure that every education center under the the mandate of the county has at least one teacher who	We propose that the teacher's training curriculum actively include training for all teachers on disability awareness	A survey carried out by Amnesty International found that over 59% of schools have learners with special abilities

	can assist learners with disabilities;		while they had no teachers who had any training on special needs. Additionally, teachers who need training have to pay for their training, addition of a PWD course in the teacher training curriculum helps the teachers work with learners
Article 13	The following categories of learners shall be represented on the board of management of an educational institution for learners with disabilities	We propose the addition into the committee of a member of the community and/or a representative from a special interest group	Community engagement in decision-making ensures that the bottlenecks within the community that hinder learners' participation are eliminated.

Amnesty International Kenya calls upon the National Assembly to take the following additional considerations: -

1. Has adequate public participation been achieved?

Should the Special Needs Education Bill be enacted as an act of parliament, one of the important determinants should be that the people of the nation are aware of the Bill and its contents thereof. Article 10 of the constitution provides that concerning national values and principles of governance, public participation of the people is required. A public hearing alone at the senate will not amount to adequate public participation. We, therefore, propose several public county hearings targeted sessions to get views from marginalized communities on matters of special need community.

2. Ensure the Bill addresses the inclusion of persons living with disabilities, particularly through the recruitment of trained personnel

Special needs education centers in this country are few thus limiting the spread of education to the children. There is also a limitation of trained special needs education teachers yet there is a need for more to reduce the heavy burden of the already existing ones. This will ensure that each child is catered for and no one is excluded. We propose to train more teachers so that all the children with special needs are not limited in their right to education but also have the opportunity to explore their education without any limits to help achieve their goals. Inclusion of special needs children should also include enhancing and renovating the already existing schools and making them accessible for the children to acquire education without being secluded.

3. **Introduce a proper institutional framework to govern and implement provisions of the Bill to all learning institutions, the administration of the legal identification in line with chapter three of the constitution.**

The Bill, as drafted, proposes the provision of a framework of the act by the special needs education in Section 3. This does show that the senate committee will be obliged by the provisions of the Act to work towards the realization of the provisions and ensure the special needs children's education is well catered for and there shall be no room for discrimination or limitation of any kind. We propose that a task force be formed specifically to be held responsible for the realization of the Bill to every single provision to the latter. This will ensure that cases of discrimination or alienation are reduced significantly or close to none. The task force shall be answerable to the senate committee handling special needs education. We secondly propose that the committee and the task force shall also work together towards the administration of the legalities conformed to the provisions of chapter three of the Constitution.

4. **Establish safeguarding guidelines and frameworks to provide a safe and secure learning environment for learners with disabilities both at home and at school**

The biggest barrier people with disabilities face is people and the lack of awareness. Due to taboos and traditional myths, many children with disabilities are kept home from school in the belief that they will not contribute anything to the family. The bill is silent on the efforts to educate the community and families to promote sending children to school.

Furthermore, girls with disabilities are more vulnerable to experiencing Gender-based violence which contributes to school dropout. The bill should propose guidelines to ensure that girls are protected from dropping out of school due to Gender-based violence at learning institutions and home

On behalf of Amnesty International

(03)

THE SENATE CLERK'S OFFICE * RECEIVED * 29 MAR 2023 * P.O. Box 41842 - 00100, NAIROBI

Subject MEMORANDUM ON SPECIAL NEEDS EDUCATION BILL 2023 (SENATE BILL NO.44 OF 2023)

From Emily Maranga <emily.maranga@amnesty.or.ke>

To clerk senate <clerk.senate@parliament.go.ke>

Cc educationcommittee senate <educationcommittee.senate@parliament.go.ke>

Date Monday March 27, 2023 4:45:56 PM

THE SENATE RECEIVED 29 MAR 2023 DIRECTOR COMMITTEE SERVICES (DSEC)

CAUTION:This Mail Originated from outside of the Organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, please find attached memoranda toward the Special Needs education Bill.

Kindly acknowledge receipt

(1) DSEC
Kindly deal
29/03/2023

(2) HoD - Ms. Kibati
Kindly deal
29.03.2023

Regards,
Emily Maranga
Human Rights Education, Activism, and Learning Manager
Amnesty International Kenya
T +254 20 4283000
M +254 786459885

KENYA AMNESTY INTERNATIONAL

DISCLAIMER This email has been sent by Amnesty International Limited (a company registered in England and Wales limited by guarantee, number 01606776 with a registered office at 1 Easton St, London WC1X 0DW). Internet communications are not secure and therefore Amnesty International does not accept legal responsibility for the contents of this message. If you are not the intended recipient you must not disclose or rely on the information in this e-mail. Any views or opinions presented are solely those of the author and do not necessarily represent those of Amnesty International unless specifically stated. Electronic communications including email might be monitored by Amnesty International for operational or business reasons.

Attachments
MEMORANDUM ON SPECIAL NEEDS EDUCATION BILL 2023.docx (63.7 kB)

(3) Ms. Rongera
Kindly deal.
Kobati
30/03/2023

THE SENATE RECEIVED 29 MAR 2023 DIRECTOR COMMITTEE SERVICES (DGAC)

39. (1)	No land owned by the Government and occupied by a public special education institution may be alienated except with the prior approval of the ***Cabinet Secretary***	With the statement "may be" land belonging to special needs institutions is left very vulnerable to corrupt cabinet secretaries. May this should be left to an institution such as the ***"Land Commission"*** (.i.e. institution) rather than an individual given the high level of corruption and land grabbing in Kenya particularly those in prime areas	Delete "***may be***" and replace it with "***shall" and delete the words*** " ***Cabinet Secretary" and replace with "Land Commission"***	No land owned by the Government and occupied by a public special education institution "***shall***" be alienated except with the prior approval of the **Land Commission**

	be qualified as having experience and having shown capacity in the provision of special education	categories of disabilities
		• **Three** specialists drawn from: -
		  • Representative from the Pediatrics who are important for early detection of disabilities
		  • Psychologist who are important in detecting in detecting challenges with the learners' mental processes, brain functions, and behavior
		  • Curriculum development in education which is critical in the delivery of quality education for learners with disability
		• A parent or guardian of a learner with mental challenges such as autism
			board by people who clearly articulated their concerns	**different categories, three experts comprises of a pediatrician, a psychologist and a curriculum developer and one parent or guardian of a learner who is mentally challenged** and with experience and having shown capacity in the provision of special education.

PART VIII				

				The clauses below should either be numbered using Roman numbers or bulleted
7(2: (t)	develop models and a curriculum for the delivery of education for learners with disabilities;	Comprehensive and inclusive curriculum targeting pediatricians, psychologists	The curriculum should be comprehensive and inclusive and target personnel from all the different disciplines that are involved with children for the identification of developmental challenges throughout a learner's lifespan	develop models and **comprehensive and inclusive multidisciplinary** curriculum that **target personnel from all the different disciplines that are involved with children for the detection of developmental challenges throughout a learner's lifespan** for the delivery of education for learners with disabilities;
8(2;e)	initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the needs of learners with learners with disabilities	Add "**gender disaggregated**" before data	It is important to collect and disseminate disaggregate the data by sex and category of learners' disabilities	initiate, undertake and participate in the collection, preparation, production and dissemination of **gender disaggregated** data and information on the needs of learners with learners with disabilities
PART V				
23(2)	The **Advisory Board** shall consist of a chairperson and **six** other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to	The Board should have seven members comprised of: - • **Three** persons with disabilities drawn from the different	Given the diversity of disabilities it would be good to ensure different categories of learners with disabilities are represented in the	The **Advisory Board** shall consist of a chairperson and **seven** other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary comprised of **three persons with disability from**

			equipment for the regular assessment of learners with disabilities in case a learner gets healed from the disability he/she suffered from	
7(2:d)	National Government: conduct, at such intervals as may be necessary, a census of learners with disabilities at each level of education including the number of such learners, the nature of their disability, their educational requirements, their level of education and their geographic distribution	**"as may be necessary"** is very ambiguous. Learners with disabilities are quite few and so it's possible to track and monitor their annual progress to ensure they do not fall out of the education system before completion. And should they dropout the guardians may not give a priority to their education and so they are likely to take them back to school	**Delete**: **at such intervals as may be necessary** and replace with, ***shall annually*** **Add and *monitor the*** progression	National Government: ***shall annually*** conduct a census and ***monitor the progression*** of learners with disabilities at each level of education including the number of such learners, the nature of their disability, their educational requirements, their level of education and their geographic distribution
7(2:h)	ensure that educational institutions and parents have the necessary tools to support learners with disabilities	Add **guardians** after parents	A learner with disability maybe under the care of the guardian(s) and not necessarily be the parents	ensure that educational institutions and parents **or guardians** have the necessary tools to support learners with disabilities
7(2:l)	collaborate with county governments and the relevant stakeholders in –	The numbering should be removed	Numbers (m) to (v) are under ***this sub-heading***	The National government will collaborate with county governments and the relevant stakeholders in: -

4(c)	special needs education that is sensitive to the **cultural and** developmental needs of the learner;	African **cultures** are **normally discriminative** to PWDs	Delete the word "cultural and" and leave "***developmental needs***" which may include inte*llectual, psychological and* social" needs of the individual learners with different disabilities	special needs education that is sensitive to the developmental needs of the learner;
5(h)	**reasonable** accommodation within the institution providing the special education.	The word reasonable may not respond to the needs of the different categories of learners with disabilities	Delete the word **reasonable** and replace it appropriate and	**Appropriate** accommodation for learners with special needs in learning institutions
6(3)	under subsection (1) such parent and guardian shall submit...	Editorial	Delete "***and***" and replace with "***or***"	under (1) such parent ***or*** guardian shall submit...
7(2c)	put in place the **necessary** infrastructure, facilities and human resource necessary for the effective and efficient delivery of education to learners with disabilities in learning institutions falling within the mandate of the National Government;	Delete the word necessary and replace it with **appropriate** and **adequate**	The government should aim as providing the relevant resources for the diverse categories of learners with disability and the words **appropriate** and **adequate** will carter for this. It's important to have medical centres equipped with appropriate	put in place the **appropriate** and **adequate** infrastructure, facilities, **medical centres equipped with appropriate equipment for the regular assessment of learners with disabilities** and ***human resource*** necessary for the effective and efficient delivery of education to learners with disabilities in learning institutions falling within the mandate of the National Government;

THE LEARNERS WITH DISABILITIES BILL, 2023

Clause	Provision	Rationale	Recommendation	Revised Provision
2	**In this Act**	Add the word **"multidisciplinary"**		**Multidisciplinary means involving the different disciplines dealing with disability including psychology, pediatrics, educationists**
3(a to g) objectives	**No** objective in relation to assessment of learners with disability	There should be regular or continuous assessment of the learners with disabilities so that should one be healed from the disability they are graduated from their current category of learners with disability	**Add a new objective** after the current objective 3(b)	**Proposed New objective (bi):** **Provide a framework for regular multidisciplinary assessment of learners with disability to determine their disability and learning needs**
	There is no objective targeting the family of the learner with disability	Add a new objective that targets the family of the learner with disability	The family of the learner with disability plays a critical role in the learning of a learner with disability and they should be given appropriate support	**Proposed New objective (bi):** **empower and support learners with disability and their families**
	speech and language pathologists and therapists, ***speech and language pathologists and therapists***, counsellors and teacher aides	Repetition of ***speech and language pathologists and therapists***	Delete repetition	**speech and language pathologists and therapists, counsellors and teacher aides**

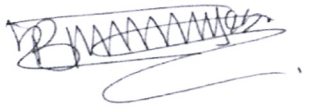
			concerned about learning at the basic level, which is limiting in terms of the scope and application.
2	Interpretation	Include a definition of "special education institution"	For clarity. Special education institutions have been referred to in Section 42 (2) (b) (1). There is no clarity on how different they are from "special needs schools" defined in Section 2.
6(2)	Responsibility of parents	In implementation, care should be taken not to rush to penalize parents who may fail, for one reason or the other, to admit their children with disabilities in school. All other avenues should be exploited and conviction considered as a last resort.	A significant number of persons with disabilities come from humble backgrounds and struggle to meet basic needs such as food, shelter and clothing. Prosecution and conviction of the parents, guardians or other caregivers only risks to deprive the learners with disabilities their primary support.
7(2)	Responsibility of the National Government	Amend to read: (2) In ensuring that the National government fulfils its obligation under subsection (1), the Cabinet Secretary shall, **in consultation with relevant stakeholders**-	Under Article 10(2)(a) of the Constitution of Kenya, 2010 participation of the people is a national value and principle of governance. Involving stakeholders in the disability rights space shall show constitutionalism. Moreover, under the Convention on the Rights of Persons with Disabilities, it is an imperative for the State to meaningfully engage the persons with disabilities and their organisations in matters of policy and indeed all other issues affecting them.

7 (2) (h)	Responsibility of the National Government	Amend to read: Ensure that educational institutions and parents have the necessary tools **and information** to support learners with disabilities.	Parents of learners with disabilities should have adequate and appropriate information on all types of education available and suitable for their children in order to make informed decisions. This is in line with the policy priorities under the Sector Policy for Learners and Trainees with Disabilities (2018). It is the commitment and indeed responsibility of the government under SDG.7.1.1; to provide accessible information to persons with disabilities about mobility aids, devices, and assistive technologies, including new technologies, as well as other forms of assistance, support services, and facilities.
8 (2) (e)	Responsibility of county governments	Delete the word "learners with" that come immediately after the word "of", so the provision reads: initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the needs of learners with disabilities.	For clarity.
9(2)	Register of special needs educational institutions	Amend to read: (2) Any person may inspect the register and obtain a copy of, **in an accessible format**, or an extract from the register upon payment of such **reasonable** fee as the county may prescribe.	All information should be accessible to all, including persons with visual impairment. The fees should not be exorbitant as this only serves to hinder access to important information.

12 (2)	Admission of a learner with disability	In implementation, the licensed medical practitioners that carry out this assessment should undergo training on inclusive education.	This will ensure that the decisions and actions they recommend do not rely on the medical model of disability that could lead to placing of a child with disability in a segregated school, rather than a mainstream school.
13(1)	Board of Management	Amend to read: The board of management of an educational institution for learners with disabilities shall consist of the following-	For clarity.
19(2)(a)	Conduct of special needs education service providers.	Amend to read: (a) are above the **eighteen** years; and	18 is the age of legal majority in Kenya.
19(4) (c)	Conduct of special needs education service providers.	Reasonable accommodation should be provided to a person with mental illness	"unsound mind" is a derogatory description of mental illness and is anti-human rights language.
42 (1)	Registration of home-based learners with disabilities	Replace the word "may" appearing immediately after the word "education" with the word "shall".	Learners with disabilities have a right to quality education. The word "shall" rather than "may" obligates the responsible persons to apply for the learner with disability to received home-based education, which in turn will enable regulation of home schooling of learners with disabilities.
42 (2) (b) (i) and (ii)	Registration of home-based learners with disabilities	Replace the words "special education institutions" with "educational institution".	The curriculum being taught to learners with disabilities receiving home-based instruction should be similar to the one taught in mainstream schools rather than the one in special needs schools, pursuant to the principle of inclusive education for all.

		Include a section enabling learners with disabilities whose right to education has been violated to lodge complaints and obtain remedies.	The Bill fails to provide complaints mechanisms for aggrieved learners. The Committee on the Rights of Persons with Disabilities in General Comment No. 4 (2016) on the right to inclusive education provides that "learners must have access to recourse mechanisms if support is unavailable or inadequate".[2]

SIGNED BY:



Dr. Bernard Mogesa, PhD, CPM

Commission Secretary/CEO

[2] See https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/263/00/PDF/G1626300.pdf?OpenElement page 9

015

MEMORANDUM ON THE LEARNERS WITH DISABILITIES BILL (2023)

Submitted to the Senate Standing Committee on Education by the National Council for Persons with Disabilities

28 March 2023

I. Introduction

1. This memorandum has been prepared by the National Council for Persons with Disabilities (Council) for its engagements with the Departmental Committee on education of the senate (Committee). The memorandum focuses on the learners with Disabilities Bill (2023) which is being considered by the Committee.

2. The memorandum proposes amendments which the Committee should consider towards the enactment of a law with optimal guarantees and institutional arrangements for ensuring the rights of learners with disabilities. The memorandum provides addition to omissions and recommendations for each of the suggested sections.

3. The Council, therefore, welcomes the fact that the Government, finally, has recognized the fact that learners with disability needs a space and provisions towards the right to education, inclusion and in the spirit of Education For All (EFA) as sponsored through this Learners with disability Bill 2023. The Council also welcomes the fact that the tabled Bill takes account of many proposals which learners with disability and stakeholders have been yearning for, over the years.

4. The suggestions for amendments made in this memorandum are guided by the following key considerations:
    a. That the enacted law on learners with disability must respect the letter and spirit of the Constitution which establishes a clear framework for the exercise of access to quality education by all children including learners with disabilities as well as their full participation in all spheres of life, including political, social and economic fields.
    b. That while flagship legislation for learners with disabilities is necessary, all national and county legislation should make provisions as necessary to address education needs for all children and learners with various categories of disabilities as guided by the principles of inclusion and mainstreaming.
    c. That the enacted law must abide and be guided by the rights to education approach to disability encapsulated in the article 24 of UNCRPD and Persons with Disabilities Act No.14 of 2003 under Article 18.
    d. That the law must address education barriers that hinder learners with disabilities from equal access to education as compared to regular learners (learners without disabilities).

II. Amendments and reccomendations.

5. The Council calls on the Committee to consider making amendments to the Bill in respect of the provisions set out hereunder.

PART	NUMBER	TITLE	ISSUES AND RECCOMENDATIONS
1.PRELIMINARY	1	INTERPRETATION	learners with disabilities definition-It excludes students who are not enrolled in special schools. The council recommends introduction of integrated learning in the mainstream school where all learners access equal education in the same classroom and school.
PART II	**3**	Objects of the Act	Act should provide legal framework for providing **capitation** to all learners in special schools. To cushion parents from high cost of special education.
			Provide framework for enabling learners with disabilities, **access assistive devices** and assistive technologies to ease access to quality education.
	5	Rights and responsibilities	**a. Access to inclusive, quality and free education, at all levels, on an equal basis with the others.**
			b. Access to information delivered in a suitable, mainstreamed, and accessible media of instruction.

			c. Use KSL, Braille, **Argumentative Alternative communication (AAC), alternative script** and other specialized medium of instruction commensurate with learner's educational needs at every level of education. Also, orientation of mobility skills, and facilitating peer support and mentoring.
			Insert Access to a curriculum that leads to recognition of human/social potential, self-worth, talents, creativity as well as mental and physical capabilities, to their fullest potential. (Recognize learners with developmental disabilities).
			Insert Promote dignity for learner with disability by imposing imprisonment just in case of defilement, harassment and any other child abuse or neglect by the perpetrator(s).
			insert: Facilitating learning of sign language and promoting it as a linguistic identity to the deaf community.
			insert a definition of reasonable accommodation. Providing reasonable accommodation to students in all learning institutions, including

			special and integrated schools.
	6	Responsibility of the parents	insert: Attend parents meeting, counselling and other social support, int the spirit to ensure that they provide social care and support to the child with disability.
			6.2 Increase the fine limit to a higher amount.
			Insert: provide basic needs and primary disability care to the child with disability, including enrolling the child to therapy services; Physio therapy, speech therapy etc.
			Insert: ensure that the child is assessed, and placed in school and registered by NCPWD
	7	Responsibility of national government	7.2 adopt a comprehensive national strategy or plan of action and policies for the provision of education for learners with disabilities at every level of education.
			7.2b replace persons with learners
			7.2h Define tools
			7.2.I correct numbering of activities from M.....
			Insert: Consider learners with disabilities performance during selection and placement when transitioning to

			secondary schools, university, tertiary and other levels of education
			insert: Reading materials and examinations, be availed in accessible formats e.g., in braille, large prints etc.
	8	Responsibilities of County Governments	**Insert: set up special schools, special ECDE and special tertiary in every subcounty as model institutions.**
			Insert: All learning, social facilities and amenities should be disability friendly.
			insert: ECDE teachers be acquainted with basic sign language training so that they can be able to issue instruction to all students including those with hearing impairment.
			insert: Each subcounty have an ECDE center, and a model ECDE in a county to enhance inclusion.
			insert: Continuously increase the number of ECDE teachers trained to handle various types of disabilities and curriculum suitable for their needs.
			insert: put in place framework for identification of disabilities as characterized by learners

			at early stages before joining ECDE.
			insert: include also register of institutions be maintained by County Director of Education at all levels of education. This section leaves responsibility of institutions to be run by county, which is not the case.
PART III	13	Boad of management	**insert: One Board member of BOM with disability.**
	18	Provision of special needs education outside education institution	insert: Government to provide alternative pedagogical approach where the learner can receive education through organized home learning. This if for learners with disabilities who cannot to physically attend school due to difficulty in walking, sitting and permanently depend on the caregiver.

(14)

National Fund for the
Disabled of Kenya
2nd Floor, Rehema House

Kaunda/Standard Street
P.O. Box 47857-00100 GPO
TEL: 254- 20 2133652 2251791
CELL: 0722-200 783 / 0735-76 9 852
E-mail: info@nfdk.or.ke
NAIROBI.

YOUR REF: _____

OUR REF:

DATE: 5th April 2023.

J.M Nyegenye, CBS,
Office of the Clerk of the Senate,
Parliament building
Nairobi

Dear Sir,

RE: SUBMISSION OF MEMORANDA ON THE LEARNERS WITH DISBILITIES BILL, 2023 (SENATE BILLS NO.4 OF 2023)

Reference is made to the Senate Committee on Education letter dated 22nd March 2023, referenced SEN/SCE/CORR/2022/10(iii) which invited the Fund to submit views on the Learners with Disabilities Bill, 2023(Senate Bills No. 4 of 2023) and our quick response on the same to your Mr. Humphrey Ringera on 29th March 2023,(Copy attached for ease of reference) that seeks to provide a legal framework in order to ensure the actualization of the rights to basic education at all levels of education in Kenya.

The National Fund for the Disabled of Kenya (NFDK) is a Trust Fund registered in 1981 under Trusteeship (Perpetual Succession) act cap 164 whose mandate is to enhance social and economic empowerment of Persons with Disability through provision of resources, promotion of awareness and advocacy of appropriate policies.

The Fund has put together observations on the draft bill for consideration by the Senate Committee on Education which we hereby forward for your kind consideration. These observations are as per the attached appendices.

We hope that our views will enrich the contents of the bill, as it goes through its formulation process. The Fund remains readily available for any further engagement on the bill. Please do not hesitate to get in touch with the Ag. Chief Executive Officer through the office number 0722-200783 for any further clarifications.

Yours sincerely,

Dr. (Mrs.) W. Kristina Kenyatta - Pratt, CBS, EBS,
Chairperson,
Board of Trustees,
National Fund for the Disabled of Kenya.

CONTEXT

The Bill provides a framework towards actualization of the right to education for leaners with disabilities. It also sets the responsibilities of the 2 levels of Government as duty bearers in ensuring that the needs of learners with disabilities are met.

Concerted advocacy efforts and legislations have been made and positive steps undertaken in the global and local scene where matters touching on education of learners with disabilities are concerned. In 2008, Kenya as state party ratified the UN Convention on the rights of Persons with Disabilities (CRPD) which the first legally binding treaty that seeks to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. Article 24 of the CRPD proclaims the right to inclusive education. For Kenya to fully comply with Article 24 of the CRPD, a shift in perspective on how to define inclusive education is imperative.

Similarly, the Government of Kenya signed the Salamanca Statement during the UNESCO, 1994 conference in Spain. The conference endorsed inclusive approach to education. However, 29 years later, very little has been done to fully implement it. The Special Needs Education Policy is a notable endeavor by Kenya Government to domesticate the Salamanca agreement. However, the SNE Policy-2009 did not provide for adequate systems and facilities that respond to the challenges faced by learners with disabilities. A shift to inclusive education as an overarching principle was made with the development of the Sector Policy for learners and Trainees with Disabilities-2018.

The Persons with Disabilities Act of 2003 which is currently undergoing repeal provides for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities. Article 18 of the Act underscores the right to access education by persons with disabilities. Similar provision is echoed in the Basic Education Act of 2013.

The Constitution of Kenya – 2010 (Article 53 and 54) provides for the Right to free and compulsory Education and the right to access educational institutions and facilities for PWDs that are integrated in the society to the extent compatible with the interest of the person.

The current draft bill on learners with disabilities has to be consistent with the provisions of the standards that Kenya has adopted.

Under the provisions on the Learners with Disabilities Bill, 2023, The Fund as a stakeholder seeks to improve the wordings of individual provisions and also introduce new clauses aimed at addressing the gaps and omissions in the original text. In this regard, NFDK identifies a number of recommendations (as listed below) for change and/or consideration by the committee. In particular:

1. Section 2 on definition of terms. The interpretation of Special Needs School as an ***institution that is specially organized to make special educational provision for learners with disabilities*** seems to perpetuate segregation and goes against the principle of inclusive education.

   We recommend for consideration the shift to inclusive education as compared to the segregated education that is currently practiced and termed as special needs education. Article 54 (b) of the constitution provides the 'Persons with Disabilities be entitled access to educational institutions and facilities for PWDs that are integrated in the society to the extent

compatible with the interest of the person. We are of the view that there is continued segregation in educational institutions even where particular disabilities do not necessitate segregation.

2. Section 2 on the definition of the term Special Needs Education.

   We recommend an addition of the word **Training** to the term Special Needs Education, so as to read **Special Needs Education and Training** and wherever else it appears in the bill. Training is the development of skills and knowledge that relate to specific useful competencies as per policy provisions (***Sector Policy for Learners and Trainers with Disabilities)***

3. **Section 2 on special service providers**
   There is repetition of **speech and language pathologists and therapists.**
   We also recommend addition on the list of special services providers to include psychologists, nutritionists, social workers, SNE educators with specialization to cater for various disabilities and medical practitioners with specialization in different disabilities

4. On the Rights of learners with disabilities, Section 5 (a) to ***access quality education***.
   We recommend amendment to the wording to read **"Access inclusive, quality, free and compulsory education and Training**.
   We also recommend **free education** to learners with disabilities at **all levels of education and training**.

5. Section 5(b) access to information delivered in a **suitable** and **legible** media of instruction. We recommend deletion of the word suitable and legible' and substitution with 'an accessible and appropriate' so as to read 'Access to information delivered in accessible and appropriate media of instruction'.

6. Section 5(c) after the word braille, add 'alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills and facilitate peer support and mentoring at every level of education.

7. Section 5(e) remove the word **basic education** and replace with **education at all levels** to read 'admission, on application to any institution of learning and access to an inclusive, quality education at all levels on an equal basis with others.

8. Section 6(1) (a) on responsibility of parent to **admit or cause to be admitted**,
   We seek clarification on the language used herein and submit replacement with ' **obligated to present a learner with disability to a learning institution for the purposes of education and training.**

9. Section 7 on responsibility of the National Government. We seek to introduce an additional provision;
   'Provide vocational centres with technical trainers to offer vocational skills to learners with disabilities where they cannot transit to institutions of higher learning'.

On the same section, we also seek clarification on numbering especially from (I) to (v) and whether they can be moved to section 8.

10. Section 7 (2) c)
    We recommend improvement on the wording or introduction of a separate provision that states the responsibility of the national Government to deploy qualified special needs education teachers and teacher aides. Where possible level of training and qualification should be stated.

11. Section 8 (2) on responsibility of the County Governments, we seek an additional provision **(m)** Increase the number of EARCs, equip them and allocate adequate funds to run them' and, **(n)** Sensitize communities on disabilities and the right to education for persons with disabilities''

12. Section 12 (1) as stated appears limiting to only admission to **ECD** and **TVET**. It excludes learners seeking admission in basic level and other levels. We recommend that it reads **An institution of learning at any level may admit a learner with disability after-**
    We also recommend provisions for admission on basis of an **EARC report** especially for entry level.

13. Section 17 on the facilities in institutions providing for special needs education,
    We recommend re-framing and the wording that reflect adherence to universal design principle of accessibility, usability and inclusion as well as reasonable accommodation'

14. section 25 (a) on the infrastructure add the word accessible to read '**adequate and accessible infrastructure for learners...'**

15. section 25 (b) on the infrastructure the words '**friendly for use by learners**...should be replaced with **'accessible and appropriate for use...'**
16. Section 29(a) There seems to be a typographical error. We recommend deletion of the word '**fast** inequalities and substitution with '**vast** inequalities'

OTHER RECOMMENDATIONS

1. There is need for consistency in the terminologies used across the draft especially where special needs and special education as well as learners with disabilities and learners with special needs are concerned. They should not be used interchangeably.
2. The need for the National Government to ensure appropriate teacher-learners ratio in institutions of special needs institutions.
3. Testing and examination - Consideration for allocation of extra time for leaners with disabilities should be included either in this legislation or subsidiary legislations
4. Consideration for adequate remuneration of special education teachers, teacher aides and provision of shadow teachers in inclusive settings.
5. Staffing and equipping of EARC Centres is critical.

(15)

NGEC
National Gender and Equality Commission

When replying please quote

National Gender and Equality Commission
1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi
P.O Box 27512-00506 Nairobi, Kenya
Landline: +254(020) 3213100
Mobile: +254(020) 375100
Toll Free :0800 720187
www.ngeckenya.org
Email:info@ngeckenya.org

THE SENATE RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

Ref: No:NGEC/CS/NAS/005/VOL. III (89)

28th March 2023

NATIONAL GENDER AND EQUALITY COMMISSION

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI
educationcommittee.senate@parliament.go.ke

29 MAR 2023

THE SENATE RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

Dear *Mr. Nyegenye,*

SUBMISSION OF MEMORANDA ON THE LEARNERS WITH DISABILITIES BILL,2023 (SENATE BILLS NO 4 OF 2023)

Reference is made to your call for submission of memoranda on the Learners with Disabilities Bill,2023 (Senate Bill No 4 of 2023).

(1) DSEC Kindly deal 29/3/2023

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

(2) HOD Ms. Kibati Kindly deal 29.03.2023

The Commission is honored by your acknowledgment, reference and specific mention in the memoranda of objects and reasons, of the NGEC report titled, *"Access to Basic Education by Children with Disability"*. Indeed, this report documents widespread exclusion of children with disabilities from enjoying education right despite wide array of provisions in the Constitution of Kenya, 2010, international and regional instruments which Kenya is a party to, local laws and policies. Such exclusion from education perpetuates the cycle of poverty and disability.

At the onset, the Commission applauds you for developing such a comprehensive bill. We also note that you have taken into consideration a number of findings made in our reports and observations on contemporary status of children with disabilities.

Mr. Rongera Kindly deal. Kobati 30/03/2023

We are pleased to share the attached memorandum with additional comments and proposals on the Bill for your consideration.

Yours *sincerely*,

Betty Sungura, **MBS**
COMMISSION SECRETARY/ CEO

Encl.

National Gender and Equality Commission
1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi
P.O Box 27512-00506 Nairobi, Kenya
Landline: +254(020) 3213100
Mobile: +254(020) 375100
Toll Free :0800 720187
www.ngeckenya.org
Email:info@ngeckenya.org

THE SENATE
RECEIVED
30 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

When replying please quote

Ref: No:NGEC/CS/NAS/005/VOL. III (89)

28th March 2023

THE SENATE
RECEIVED
30 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

(1) DSEC
Kindly Serve
30/03/23

(2) H2D - Ms. Kibaki
Kindly deal
30/3/23

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI
educationcommittee.senate@parliament.go.ke

Dear *Mr. Nyegenye,*

SUBMISSION OF MEMORANDA ON THE LEARNERS WITH DISABILITIES BILL,2023 (SENATE BILLS NO 4 OF 2023)

Reference is made to your call for submission of memoranda on the Learners with Disabilities Bill,2023 (Senate Bill No 4 of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

The Commission is honored by your acknowledgment, reference and specific mention in the memoranda of objects and reasons, of the NGEC report titled, *"Access to Basic Education by Children with Disability"*. Indeed, this report documents widespread exclusion of children with disabilities from enjoying education right despite wide array of provisions in the Constitution of Kenya, 2010, international and regional instruments which Kenya is a party to, local laws and policies. Such exclusion from education perpetuates the cycle of poverty and disability.

At the onset, the Commission applauds you for developing such a comprehensive bill. We also note that you have taken into consideration a number of findings made in our reports and observations on contemporary status of children with disabilities.

(3) Mr. Rongera
Kindly deal.
31/03/23

"Gender Equality and Non-Discrimination"

NATIONAL GENDER AND EQUALITY COMMISSION

We are pleased to share the attached memorandum with additional comments and proposals on the Bill for your consideration.

Yours *sincerely*,

Betty Sungura, **MBS**
COMMISSION SECRETARY/ CEO

Encl.

MEMORANDUM WITH COMMENTS AND INPUTS ON THE LEARNERS WITH DISABILITIES BILL,2023

Submitted to: educationcommittee.senate@parliament.go.ke

S/NO	PROVISION	PROPOSALS FOR AMENDMENT	JUSTIFICATION/RATIONALE
1.	**Preamble** AN ACT of Parliament to provide for the education of learners with disabilities; for the conduct of educational institutions for learners with disabilities and for connected purposes.	To amend the Preamble by inserting the words " and trainees" after the word "learners" To amend the preamble of the Bill by inserting the following words "to establish *"The National Council of Learners with Disability"* after the phrase "institutions for learners with disabilities"	The proposed objectives cover both the learners and trainees as provided for under the Basic Education Act, No 14 of 2013. i.e the learners in schools and trainees in vocational institutions. The Commission has proposed the creation of a Council to oversee issues of the education of persons with disabilities instead of the Special Needs Education Advisory Board proposed in clause 23. The Kenya Sector policy for learners and trainees with disabilities of 2018 envisages on page 39 developing a coordinating framework that will bring together the players who provide services to learners and trainees with disabilities hence the justification of a Council. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjIs_-A9NP9AhWChvoHHZWqBr4QFnoECB4QAQ&url=https%3A%2F%2Fplanipolis.iiep.unesco.org%2Fsites%2Fdefault%2Ffiles%2Fressources%2Fkenya_sector_policy_learners_trainees_disabilities.pdf&usg=AOvVaw0odE6wZiY_Q-vefe-i_F3Y
2.	**Interpretations**	Propose to amend as follows	Section 2 of the Basic Education Act No. 14 of 2013. *Special needs education"* includes education for

	"special needs education" has the same meaning as assigned under section 2 of the Basic Education Act;	"for the purpose of this Act special needs is limited to learners with disability"	gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners; This interpretation includes gifted and talented learners. The proposed interpretation by the Commission ensures that the focus is only on learners with disability. The sector policy also only recognizes learners with disability and has excluded the other categories of needs.
	Special service providers "special service providers" means any person providing specialized, supplementary and related services to learners with special education needs and includes braille readers and technicians, sign language instructors and interpreters, orientation and mobility specialists, physiotherapists, occupational therapists, speech and language pathologists and therapists, *speech and language pathologists and therapists,* counsellors and teacher aides	Amend by deleting the second last phrase in the interpretation i.e "speech and language pathologists and therapists"	The phrase has been repeated
3.	**Proposed new interpretation**		
	Auxiliary services	Amend by introducing a new term as follows-;	The Commission has proposed a new clause on auxiliary services under Part VIII of the Bill

		"Auxiliary service" means a person or thing that supports or supplements.	
4.	**Guiding Principles** 4. Every person shall, in performing their functions under this Act, be guided by the following principles – (a) the right to free and compulsory basic education pursuant to Article 53 of the Constitution;	Amend clause 4(a)by inserting after the word "53" the following "and Article 43(1)(f)"	Article 53 is limited to children which discriminates other beneficiaries. The proposed bill seeks to benefit all the target groups in the Basic Education Act 2013 inclusive of adult learning and vocational training. Article 43(1)(f) meanwhile guarantees education to all persons of all ages.
5.	**Rights of learners with disability** (e) admission, on application to any institution of learning and access to an inclusive, quality and free basic education on an equal basis with others;	Amend by inserting the word "Suitable" after the word " any"	This is specific to learners who will not necessarily fit in any mainstream school but require an institution specific to their needs i.e special school
6.	**Responsibility of parents.** 6. (1) Every parent or guardian of a learner with a disability shall — (a) admit or cause to be admitted their child to a school as the case maybe, for the purposes of completion of the child's basic education; and (b) ensure that the learner attends school regularly as a pupil for the purposes of physical, mental, intellectual or social development of the child. (2) A parent or guardian who fails, without reasonable cause submitted to the institution and County Director of Education, to admit, cause to be admitted or ensure the	Amend clause 6(1)(a) by inserting the word "Suitable" before the word "school"	The emphasis on suitability is for the benefit of the learner. This deters a parent from insisting on their child being admitted to an institution of choice to the parent, when indeed the institution is not able to accommodate the learner due to a number of reasons including the category of disability.

	attendance of the learner in school commits an offence and shall be liable, on conviction, to a warning in the first instance and a fine not exceeding five thousand shillings for any subsequence offence. (3) Where a parent or a guardian is unable to meet the obligations specified under subsection (1) such parent and guardian shall submit, within the prescribed time, the reason for the absence of the learner at a school or institution of basic education	Amend clause 6(3) by inserting after "education" the following words "and in such cases, the County Board shall facilitate the admission of the child to an appropriate institution"	The provisions of this clause (i.e 6(3) are very commendable. However, if sub-clause (3) is left as is without a remedy it does not serve the best interest of the child with disability.There are very many parents with children with disability who are unable to take care of them due to various reasons and if the Government does not step in to assist then the fate of such a child is sealed.
6.	**Clause 8** **Responsibilities of county governments** 8(2) The respective county executive committee member shall, for the effective performance of the functions of the county government under subsection (1) – h) ensure that every *education centre* under the mandate of the county has at least one teacher who is able to assist learners with disabilities l) work in collaboration with special education resource centres in the identification of children with special needs	Amend clause 8(2) (h)by substituting the words "education centre" where ever they are appear in the whole clause with *"Educational institution"* Amend 8(2)(h) further by substituting the phrase "at least one teacher who is able to assist learners with disabilities" with the following words "qualified and adequate special needs education teachers or instructors" Amend 8(2)(l) by substituting the phrase "special education resource centres" with "Education Assessment and Research Centres"	The term education centre is not defined in the interpretations and is only applied in clause 8 "educational institution" has the meaning assigned to institutions of basic education and training under the Basic Education Act 2013; In order to address understaffing of educational institutions with special needs education teachers then obligation, accountability and responsibility has to be prescribed in the law. Education Assessment and Research Centres (EARCs) are the institutions charged with the mandate of identification of children with special needs

7.	**Admission of a learner with disability.** 12. (1) An early childhood education or technical and vocational training centre may admit a learner with disability after – (a) studying the learner's continuous assessment records or; (b) after administering an aptitude test, personality test or other entrance examination for the purpose of determining the learner's capabilities and needs. (2) The principal or head of an educational institution may require a person attending the institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement. (3) An assessment report prepared pursuant to subsection (2) shall be used, together with such other information as may be available, as the basis for placement of a learner to an educational programme or an institution consistent to the learner's disability along with any other relevant information pertaining to the learner	Amend the sub title by substituting "admission of a learner with disability" with the following *'Responsibility of educational institutions"* Amend by inserting the following additional sub clauses (4) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course. (5) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.	All the institutions except educational institutions in the proposed bill have been tasked with responsibilities. The educational institutions are charged with the responsibility of admitting the learners. The additional 2 sub-clauses (4) and (5) are lifted from section 18 of the Persons with Disabilities Act.
Part IV IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH DISABILITIES			

8.	**Identification and assessment of children with disabilities**	Amend the title of Part IV by inserting the word "placement" after the word "Assessment"	The two components of identification and assessment are key for the placement of learners with disabilities in appropriate institutions.
9.	**Clause 22** **Assessment of special education needs** 22. (1) Where a County Education Board is of the opinion that a child within its area of jurisdiction has or may have a special education need, the County Education Board shall determine a suitable educational provision that shall alleviate the learning difficulty. (2) Pursuant to subsection (1), the County Education Board shall serve a notice on the learner's parent or guardian and inform them of the intent to make an assessment on the child, and of their right to make representations within the time and in the manner prescribed in the notice	Amend by substituting the sub title "Assessment of special education needs" with the following *"Education Assessment and Research and Resource Centres"* Amend by merging clause 22 with clause 24 (Serial no 11 below) The final proposed merged clause is as below-; Section 22 **"***Education Assessment and Research and Resource Centres.* (1) The Cabinet Secretary and the County Governments shall establish Education Assessment Research and Resource Centres in every county and shall ensure that the center is properly and adequately staffed with appropriate qualified personnel and equipment. 2) The Centre in subsection (1) shall be a link between children with disability and the society by– (a) providing resource personnel who shall create disability awareness in the local community; (b) providing sign language interpreters; (c) providing shadow teachers; (d) providing physiotherapy and occupational therapy services; and	To align with section 46 the Basic Education Act 2013 which is the parent law of the proposed Bill and which gives provisions on Education Assessment and Research Centers. 46. Duty of County Education Boards is to provide child guidance related services. (1) Subject to the Constitution of Kenya 2010 and the provisions of this new bill, it shall be the duty of every County Education Board in consultation with the relevant county government to provide for *education assessment and research centers* including a special needs services in the identified clinics within the county. (2) The functions of that service shall include— (a) the study of children with special education needs within the county; (b) the giving of advice to parents and teachers as to appropriate methods of education for such children; (c) in suitable cases, provision for the special education needs of such children in the identified clinics; and the giving of advice to County Education Boards regarding the assessment of the needs of any child under special needs education for the purposes of any of the provisions of this Act. The few existing centers are dysfunctional because of inadequate funding. The merger of clauses 22 and 24 is because of the overlap of the functions of the two institutions and the rationale is provided in clause 24. (Serial 11 below)

		(e) carrying out any other activity that may further its role in providing special needs education in the county. (3) The functions of the centre shall be to – (a) provide expert economic and efficient diagnostic, therapeutic and corrective educational needs; (b) provide corrective and supportive services for all children with special educational needs in the country (c) Carry out the study of children with special education needs within the county; (d) Give advice to parents and teachers as to appropriate methods of education for such children; (c) Provide for the special education needs of such children in the identified clinics; and the give advice to county education boards regarding the assessment of the needs of any child under special needs education (3) Where a County Education Board is of the opinion that a child within its area of jurisdiction has or may have a special education need, the County Education Board shall determine a suitable educational provision that shall alleviate the learning difficulty. (4) Pursuant to subsection (2) the County Education Board shall serve a notice on the learner's parent or	

		guardian and inform them of the intent to make an assessment on the child, and of their right to make representations within the time and in the manner prescribed in the notice.	
Part V	**INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION**		
10.	**Clause 23** **Establishment of Special Needs Education Advisory Board.** 23. (1) There is established within the Ministry of Education a board to be known as the Special Needs Education Advisory Board. (2) The Advisory Board shall consist of a chairperson and six other members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to be qualified as having experience and having shown capacity in the provision of special education. (3) The Advisory Board may invite any person who in its opinion has expert knowledge concerning the functions of the Board to attend any meeting of the Board and take part in the proceedings but such invited person shall not have any voting rights	The Commission proposes that in place of an advisory Board the alternative of *a National Council of Learners with Disability* be considered. **Proposed membership** 1. Ministry responsible for matters of education 2. Ministry responsible for issues of disability 3. Department responsible for issues of disability in the ministry of Health 4. Council of Governors 5. National Council of Persons with Disability 6. Kenya Institute of Special Education 7. Kenya Institute of Curriculum Development 8. Representative of special schools 9. Representation from Disabled Persons Organisations The Council may co-opt other stakeholders including the Exams	Issues of education of persons with disability are multi-disciplinary, vast and diverse and need a semi-autonomous body to handle them effectively hence the proposal of a Council. The sector policy referred to in Serial no 1 envisages a coordination framework that can ensure proper coordination and effective integration of diverse educations services for learners and trainees with disabilities and programs by various line ministries, county governments, partners and other stakeholders at the national and county levels including the institutions of learning Precedence can be drawn from the Sixth Schedule of the Basic Education Act 2013 which establishes The National Council for Nomadic Education in Kenya.

		governing bodies (KNEC), Teachers Service Commission, Technical, Vocational Education and Training the Education Standards and Quality Assurance Council. etc **Proposed Functions of the Council (among others)**) The functions of the Council shall be to- (a) advise the Cabinet Secretary in relation to any matter relating to the education of learners with disabilities (b) Plan and monitor education services provided for learners with disabilities (c) Initiate the development and review of education policies and legislation on all matters relating to special needs education in Kenya; (d) To disseminate to learning institutions, parents and such other persons as the Council considers appropriate information relating to best practice, nationally and internationally, concerning the education of learners with disabilities	

		(e) Collaborate with the Ministry in the coordination, monitoring and evaluation of services within the country and other agencies in the provision of education for learners with disabilities. (f) Advise the Ministry on the management of institutions offering education for learners with disabilities (a) Establish appropriate linkages and partnerships, coordinate, monitor and evaluate activities of other relevant agencies and institutions involved in the provision of special needs education	
11.	**Clause 24** **Special Needs Education Resource Centres.** 24. (1) The Cabinet Secretary shall establish a special needs education resource centre in every county and shall ensure that the centre is properly and adequately staffed with appropriate qualified personnel and equipment. 2) The resource centre in subsection (1) shall be a link between children with disability and the society by–	The Commission is of the opinion that this clause 24 should be merged with clause 22 (serial No 9) on Education Assessment and Research Centre and expand the functions thereto Amend Clause 24(2)(d) by inserting the phrase "and occupational therapy" after the word "Physiotherapy"	The functions of the two are not distinct from each other and can be handled under a 'single roof', as long as the institution is properly and adequately staffed with appropriate qualified personnel and equipment as provided for in clause 24(1). This will also be cost effective and avoid overlap of functions of the two proposed institutions. Occupational therapy is identified as part of part of special services in the interpretations and is key for children with sensorial disabilities and challenges Clause 24 as proposed has been merged with clause 22 in serial No 9 above

	(a) providing resource personnel who shall create disability awareness in the local community; (b) providing sign language interpreters; (c) providing shadow teachers; (d) providing physiotherapy services; and (e) carrying out any other activity that may further its role in providing special needs education in the county. (3) The functions of a county resource education centre shall be to – (a) provide expert economic and efficient diagnostic, therapeutic and corrective educational needs; (b) provide corrective and supportive services for all children with special educational needs in the country	After inserting the phrase as above amend by deleting the entire clause 24 without replacement by transferring the provisions to clause 22(serial 9 above).	
12.	**Clause 26** **Provision of materials and equipment** 26. (1) The Cabinet Secretary may establish a unit for development, production, procurement and distribution of special equipment, material, supplies and devices for use	Amend by substituting the word "may" after Secretary with "shall"	The proposed amendment puts an obligation on the Cabinet Secretary to ensure materials and equipment are made available. The sector has been underfunded for a long time resulting into a deplorable state .The phrase "may" denotes discretion which will be disadvantageous to the beneficiaries of the proposed law.

	in the education of learners with special educational needs		
13.	**Clause 28** Training of non-teaching staff Every special needs education institution shall ensure that its non-teaching professional staff and any person providing special needs services within its premises are properly qualified in their special areas.	Amend the sub-title of the clause by substituting "Training of non-teaching staff" with *"Auxilliary and support staff"* Amend by numbering the provision as **"i)** Every special needs education institution shall ensure that its non-teaching professional staff and any person providing special needs services within its premises are properly qualified in their special areas Amend further by inserting the following additional sub clauses as follows -; ii). the qualifications referred to in subsection 1 shall be consistent with approved certification, licensing and registration in the area in which they provide special education services iii. the auxiliary and support staff shall be appropriately supervised in accordance with their profession and regulations set iv. All institutions shall vet all the auxiliary and support staff before employment.	Many learners with disability may have many other needs which cannot be met by the teachers and instructors and so need for qualified support staff. There have been widespread cases of abuse of children with disabilities by support staff. All staff therefore should be vetted thoroughly before being allowed to take care of the children with disabilities. Serial and sex offenders should not be allowed to serve learners with disabilities or vulnerable learners.

		v. The Ministry shall establish a register of all the non- teaching staff and put in place mechanisms for their supervision	

14.	**Clause 37 Assessment** 37. (1) The principal manager or head of an educational institution may require any person attending the institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre. (2) The purpose of the assessment in subsection (1) shall be to determine the nature and the severity of the disabilities to aid in appropriate educational placement. (3) The report submitted by a medical practitioner or an assessment centre shall not be used as the sole basis for placement of a learner to an educational program or institution which may not be consistent to the learner's special needs	Delete the entire clause without replacement	The provisions therein have already been captured in clause 12 serial no 7 above.

Other General comments

1. The Commission makes recommendations for the enactment of the Bill into law subject to consideration of the comments in the memoranda. The Bill comprehensively covers issues of education for learners with disabilities.
2. Correct the word" Par" in the first paragraph of the memorandum of objects and reasons to "Part". Better put, recheck spellings across the entire draft.
3. We can confirm that the proposed Bill is well aligned with the Ministry of Education Sector Policy for Learners and Trainees with Disability, May 2018. The proposed Bill also aligns with the Convention on the Rights of Persons with Disability, the Constitution of Kenya 2020 and the Basic Education Act No 14 of 2013.
4. The Commission lauds the proposal of this Bill. It realizes the vision of the Commission traced back in 2015 when it the Commission commenced facilitation of the state and key stakeholders with development of Persons with Disabilities Education Bill.
5. And finally, the Commission is committed to continue supporting Senate and all arms of government to eliminate discrimination and inequality directed to learners with disabilities.

014

1. Learners with disability should be integrated into normal classroom learning as much as possible. But for national exams, it would be beneficial to allow schools to register them as a seperate examination centre but with exams still being done in the same school. This will allow more time for LWDs to complete exams. Right now, special needs candidates only get 30mins extra time. A certificate or assessment by a credible person(s) can help to establish whether a LWD can qualify for such special examination arrangements.
2. Exams should also be geared towards supporting the disability. For example, dyslexic children should be allowed to type or read out their answers. Insisting on written inshas and compositions will not do.
3. Recognise and accomodate the various learning disabilities including ADHD, dyslexia and autism.

Ms. Njeri Ndeki.

014

Ms. Hjeri Hdelni.

008 (017) Paddy K. Gikunda.

Hi,

I hope this email finds you well.
The following is my input towards the learners with disability Bill 2023.

THAT:

1. The Directorate of special needs to start from grassroot.
A). Directorate Of Special Needs.
B). Regional director SNE
C). County director SNE
D). Subcounty SNE director
Note.. DIRECTORATE OF SPECIAL NEED IS IN NRB ONLY.

2. The rights of the SNE child, in terms of Access to educational & health care to be put into the top of things.

3. Financial support, during and after school.

4. Adequate staffing(teachers and qualified teacher aid) to be posted in SNE institutions.

5. Technical teachers and adequate support staff.

6. Secondment of nurses, occupational therapists and physiotherapists in special schools.

7. EARC office, to be built in consideration of modern requirements, tools and equipment.

8. Adequate facilatition (kitty and vehicle) to support the officers at the assessment centre.

9. GK to encourage reverse integration in special schools for age based.

10. Special schools to be registered as per category. No mixing two disability in one school. For example NJIA SPECIAL SCHOOL FOR THE DEAF CHILDREN in MERU is also a SCHOOL FOR THE MENTALLY HANDICAPPED CHILDREN.

10). KNEC to consider other forms of examining learners with special needs. For example recording for learners with DYSLEXIA and use of computers for children with CEREBRAL PALSY to save on mechanical time. Additional 30 minutes does very little in helping a disabled learner achieve.

Thank you and looking forward to receiving a positive action.

Paddy K Gikunda
Cso SNE

010

SUBMISSION OF MEMORANDUM ON LEARNERS WITH DISABILITIES BILL, 2023

Presented by
Prof. Michael M. Ndurumo
March 27, 2023

PART 1 – PRELIMINARY

1. Proposed amendment County Education Board to read "County Special Needs Education Board" assigned to it under this Act.

2. Proposed Amendment Basic Education Act to read "this Act"
   Rationale: This will make the Learners with Disabilities Act independent and not an appendage of the Basic Education Act. We need a comprehensive Act to regulate education of learners with disabilities.

3. Proposed amendment to 3(a): add "at all levels of education" so as to align with 3(f).

4. Proposed amendment to 4. Add 4(j) to read "provide mechanisms for provision of education of learners with disabilities at post-secondary institutions."

   Rationale: As above where we are referring to all levels of education as well as in line with 5(c).

5. Proposed amendment to 5(e): Add "post-secondary education" after basic education.
   Rationale: This will support the clause on **past historical injustices** mentioned in **xxx**.

6. Proposed amendment: 5(h). Delete "special" education.
   Rationale: To cover all institutions offering education and programmes to learners with disabilities.

7. Proposed amendment to 6(2). Replace "County Director of Education" with "County Director of Special Needs Education".
   Rationale: There is need for special needs education to have its own county director to push for the improvement and enhancement of education of learners with disabilities.

8. Proposed Amendment to 6(3). Delete "basic"
   Rationale: We must focus on all levels of education as shown under Section 7(a), (7(d), and 7(r).

9. Proposed Amendment to 7(k). Add "technical, vocational, and university" after non-formal.
   Rationale: To cover all levels of education and programmes.

10. Proposed Amendment to 12(1). Delete early and replace with "basic education, technical and vocational education centre"
    Rationale: Early childhood education is covered under basic education unless a separate law governs early childhood education.

11. Proposed Amendment to 13(1). Add (h) two professionals with disabilities of the concerned institution"

12. Proposed Amendment to 13(1). Add local TVET and University institutions.
    Rationale: Learners with disabilities must have representatives in the management board. Also TVET and universities need to be incorporated in secondary school institutions for learners with disabilities.

13. Proposed Amendment to 13(1)(d). Replace County Education Board with County Special Needs Education Board,
    Rationale: As described earlier.

14. Proposed Amendment to 14(1)(c). Replace special needs with disability.
    Rationale: The term special needs is becoming obsolete and vague and would open doors to learners who do not have a disability.

15. Proposed Amendment to 14(1)(c). Add (iv) after (iii) learner is provided with appropriate education and service providers commensurate with the level of education and needs.
    Rationale: This is a basic right.

16. Proposed Amendment to 14(1). Add (e) after (d). "ensuring availability of the special service providers."
    Rationale: Special service providers are an integral part of special needs education.

17. Proposed amendment to 15(2)(b). Replace parent-child-teacher with "parent-learner-teacher"
    Rationale: This implies parents in other levels of education will be involved.

18. Amendment to 15(2)(d). Expand (d) to end with "in addition to funds provided by the government".
    Rationale: Government responsibility will need to be manifested if "past injustices" is to bear weight.

19. Amendment to 18. Replace County Education Board with County Special Needs Education Board.

20. Proposed Amendment to 19. Move this section to PART V on Management of Special Needs Education as it repeats the same section.

21. PART V should be amended to read "Management of Special Needs Education" and have sections related to "Special Needs Education Management Board", "Special Needs Advisory Board", "Director General of Special Needs Education", "County Directors of Special Needs Education" and so on. Borrow from The TVET Act 2013.

22. Amend 23(1) to start with Special Needs Education Board.

23. Amend 24(1) to be preceded with the appointment of a Director General of Special Needs Education as described below:

24. Director-General of Special Needs Education

(1) There shall be a Director-General of the Special Needs Education who shall be appointed by the Cabinet Secretary on the recommendation of the Public Service Commission following a competitive recruitment process and who shall serve for a period of five years, which term may be renewed once.

(2) The Director-General shall be the accounting officer of the Special Needs Education and shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Authority.

(3) A person shall be qualified for appointment as a Director-General if the person—

(a) holds at least a Master's degree from a university recognized in Kenya;

(b) has at least fifteen years' experience in management of public or private educational institutions; and

(c) meets the requirements of Chapter Six of the Constitution. [Act No. 18 of 2014, Sch.] 10.

(4) County Director of Special Needs Education

25. Amend 25 and add (d) to the extent appropriate student with disability shall be educated in regular educational institution with reasonable accommodation and special service provider.

26. Amend 36(2)(b) by adding the Universities Act 2012 after Technical and Vocational and Training Authority.

27. Go through the entire document to ensure County Education reads County Special Needs Education.

Sincerely,

Prof. Michael M. Ndurumo
Former Programmes Coordinator, Special Education
Kenya Institute of Curriculum Development

19/23

JOINT MEMORANDUM ON THE LEANERS WITH DISABILITIES BILL 2023

ABOUT SSHAK AND SAVE THE CHILDREN

Special Schools Heads Association of Kenya (SSHAK)

Special Schools Heads Association is a professional body registered as an Association to address issues pertaining to education of learners with special needs or Disabilities. The membership comprises Head teachers of all schools handling learners with disabilities or special needs. The membership stands at over 3000 head teachers in special schools and Units. The office bearers are elected every five years as per the constitution. It is important to note that issues of education as far as learners with special needs call for special attention, which goes beyond the regular learners. Our Aim is to ensure that learners with special needs receive the best education available.

Save the Children

Save the Children has been providing support to children in Kenya through our development and humanitarian programmes since 1950. We work with communities, local partners, and the government to design and deliver programmes to meet the needs of the most deprived children. We also advocate for greater investment of public and private resources on children. Our vision is a world in which every child attains the right to survival, protection, development and participation. Our Education program aims to help young children access basic education and to advocate for education reforms through our projects Ready to Learn approach and Building Brains. Save the Children is based in Nairobi and has operational presence in Dadaab Refugee Camp, Garissa, Mandera, Bungoma, Kisumu, Kitui, Wajir, Samburu, Baringo and Turkana respectively.

General Observations:

We acknowledge The Learners with Disabilities Bill, 2023, progressive provisions that embrace compliance to the Constitution of Kenya (CoK) 2010, the Children Act, the Basic Education Act and the Persons with Disabilities Act provisions. We further acknowledge the various international legal instruments, which Kenya is a signatory to. These include the United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights, the African Charter on Human and People Rights, the African Charter on the Rights and Welfare of the Child, the global and regional treaties on Persons with Disabilities.

In the matter of consideration by the Senate Kenya Gazette Supplement No. 8 (Senate Bills No. 4) Pursuant to Article 118(1) b of the Constitution of Kenya. SSHAK and Save the Children submits this memorandum for consideration.

The Memorandum includes justification on what needs to be retained or amended or deleted in all Parts and Sections in the Bill. Where there is a justification to amend, the proposed amendment (new clause) has been stated.

Section / Provision	Proposal / Suggestion	Justification
Clause 5 is on Rights of learners with disabilities.	Add a new sub clause, for children with disabilities will be accorded education and training free of charge	Guarantee free education and training for children with disabilities as expressly provided for under section 20 of the Children Act, the section provides: A child with disability shall, in addition to the rights guaranteed under the Constitution, have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education and training free of charge.

Clause 7(2) O Responsibility of the National government	Rephrase to read: Provide adequate capitation to public special needs schools taking into account the different needs for learners with disabilities	Ensure adequate funding of education for learners with disabilities. The majority of SNE learners in primary schools are underfunded owing to the same figures budgeted despite the increase in enrolment. The government provides an annual capitation grant at the rate of Ksh.1,420 per child in primary school and a top up of 2,300 for learners with special needs and disabilities. On the other hand, SNE secondary schools receive a capitation of Ksh.22,244 and a top up of Ksh.35,000 for all leaners with special needs and disabilities. From the primary school's data above, you can deduce that the grant has always remained the same or lower despite the increase of learners in schools. This flat rate model assumes that there is uniform cost across all learners with disabilities, an assumption which is not true at all. The cost varies from one child to another and from one disability to the other.
Clause 8(2) Responsibilities of county governments.	Add a new phrase within the clause that clarifies that County Government roles are limited to facilities that are within the mandate of the County Government to wit: Pre-primary and vocational training centers	
Clause 9 Each county executive committee member shall keep and maintain a register record of all educational institutions that provide education to learners with disabilities in the county	The proposed role should be undertaken by the County Education Boards and the Ministry of Education and not the County CECs	Schedule 4 of the Constitution details the roles of the respective Governments ie national and county.
Clause 13 The following categories of learners shall be represented on the board of management of an educational institution for learners with disabilities	Rephrase the clause and cross-reference it to the Basic Education Act, section 56 makes reference to the membership of the Board, with clause f, expressly recommending that there has to be a member representing special needs.	It is important for a policy decision to be made on which legislation will provide for management of facilities offering education and training to learners with disabilities and those with special needs. There is a potential conflict on which law would be applicable if this is not addressed
Establishment of Special Needs Education Advisory Board.	23(4) add e Cross-reference this clause to Part VI of the Basic Education Act, which provides for special needs education. Under the part Regulations are supposed to be	There is need to make reference to the Basic Education Act and synchronize the institutional mechanisms established under the Act an example is section 46 which establishes education assessment and research centers within counties. How will the envisaged board interact with the different

	developed around special needs education	institutional mechanisms under the Basic Education Act
Clause 26 the Cabinet Secretary may establish a unit for development, production, procurement and distribution of special equipment, material, supplies and devices for use in the education of learners with special educational needs.	Replace the term "may" with "shall"	It is critical to establish the suggested unit to address the challenges that are faced with institutions for special needs education. It is important to note that capitation shall not be deducted to cover the development and or production of the same.
Clause 30 The Cabinet Secretary shall determine the funding procedures, provisions and minimum standards of the funding or provision of subsidies to special educational institutions and the proportion of the budget to be allocated between public and private special educational institutions	Rephrase the clause to guarantee differentiated unit costs for different categories of learners, besides providing for a minimum package for schools with few learners	There is need to move away from the practice which provides for a flat rate capitation. The envisaged funding procedures should expressly provide for a differentiated unit cost that take into account the various disability categories. All schools be considered for a basic package to cushion the economies of scale as follows: ▪ Basic package = Ksh.750, 000 per school per unit. • Ksh. 350,000 per unit. ▪ Infrastructure in all special schools be improved as follows: o Implement 2018 presidential directive of allocation of 20% of MOE infrastructure funds to schools be applied to SNE schools. (OP/OAB/261/3A of 2018) o SNE secondary schools should be considered and treated as national schools by availing funds to lift the 38 special secondary schools. These schools are always known to be national schools but their infrastructure is wanting. ▪ Transport for special schools be looked into. Their needs may differ from the regular learners as their mobility is restricted especially the physically handicapped. o We recommend a one-time fund of Ksh.10, 000,000 per school (both primary and secondary) to allow the schools purchase a disability friendly school bus. ▪ Insurance for the bus. o A yearly payment of Ksh.310, 000.

		▪ Educational assessment and resource centers. ○ A budget of Ksh.1.6m per county per year, Ksh.5M per year per region for regional referral EARC's. ▪ Construction of 10 EARC's centers of excellence at Ksh.601, 600,000. ▪ Capacity building of 10 EARC is at Ksh.17, 200,000 per EARC. ▪ Employment of teachers in SNE schools as a unit to curb the understaffing. ▪ Provide funding to take care of the CBC requirements. ▪ Reviewing salaries of non-teaching staff with prevailing economic situation and centralize their employment.

In case of any clarification,

Pleaese reach out to PETER SITIENEI

0724280395

DC

THE SENATE CLERK'S OFFICE
RECEIVED
29 MAR 2023
P.O. BOX 41842 - 00100, NAIROBI

Subject SPECIAL SCHOOLS HEADS ASSOCIATION OF KENYA

From Peter Sitienei <pkoechss@gmail.com>

To clerk senate <clerk.senate@parliament.go.ke>

Date Monday March 27, 2023 4:44:45 PM

Dear Sir,
Kindly find an earlier sent memoranda as per your kind invitation.
Special Schools Heads Association of Kenya shall present the same jointly with Save the Children Organisation.
Yours sincerely,
PETER SITIENEI
NATIONAL CHAIRMAN

Attachments
memo on LD Bill.docx (66.6 kB)

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

1. DSEC
Kindly deal
29/03/2023

2. HSD-Ms. Kibati
Kindly deal
29.03.2023

3. Mr. Nongera
Kindly deal
Kofoh
30/03/2023

THE SENATE
RECEIVED
29 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

(20)

SPECIAL SCHOOLS HEADS ASSOCIATION OF KENYA

Email: sshak2021@gmail.com

Phone: 0724.280395/0710.826740

H.E the President William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the defense forces through a Gazette Notice No.11920 of 29th September, 2022 appointed a Presidential Working Party on Education Reform in Kenya, pursuant to the Articles of the Kenya Constitution as quoted by your office – Special Schools Heads Association of Kenya – a registered Professional Association that represents all headteachers and principals of special schools in Kenya do hereby respond to your request for our views on the said subjects.

It is our humble submissions that our views shall be biased towards learners and students with Special Needs in education. The learners with special needs in education in this context shall include but not limited to the following.

a. Learners with hearing impairment.
b. Learners with visual impairment.
c. Learners with physical impairment.
d. Learners with mental challenges.
e. Learners with deaf blindness.
f. Learners with autism.
g. Learners with gifted and talentedness.
h. Learners with multiple disabilities.

We have mentioned the above to act as representation of all other disabilities put together.

From the above list, it is prudent to note that UNICEF through researched findings has come up with the population of children with disabilities to number about 240 million which is roughly 10% of the children's global population.

BASIC EDUCATION

a. **Appropriate Structure:**

It is our view that the grading system remain as prescribed structures. PP1, PP2, Grade 1, Grade 2, Grade 3, Grade 4, Grade 5, Grade 6, Grade 7, Grade 8, Grade 9, Grade 10, Grade 11 and Grade 12.

b. **Governance of the Basic Education Sub-Sector:**

It is our view that PP1 to Grade 8 be domiciled in primary school and a proper renaming be applied as follows:

- ✓ PP1 – PP2
- ✓ Grade 1 – 6 : Primary
- ✓ Grade 7 -8 : Senior Primary
- ✓ Grade 9 : Junior Secondary
- ✓ Grade 10 – 12 : Senior Secondary

c. The Conceptualization and implementation of key tenets guiding the competency-based approach.

1. Value based approach is hereby welcomed though costing and parental engagement need not be expensive.
2. **Assessment and examination framework.**
   ✓ Examinations need to be reduced so that we have one at the end of senior primary and the other at the end of senior secondary. Continuous assessment be encouraged but costing be off-loaded to the MOE with clear capitation for the same.
3. **Quality assurance and standards:**
   ✓ The above is a requirement but this calls for more funding to cater for the same parents and schools need to be safeguarded against expensive ventures in trying to ensure the same.
4. **Teacher educational training:**
   ✓ Teachers colleges need to be equipped with SNE training modules to be able to produce a teacher for all.
5. **Teacher employment framework:**
   ✓ More teachers needed to be posted to special schools. The standard teacher vs. pupil ratio need to be employed. All the teachers should teach in their locality to be able to address the mother tongue as a subject and learning area. De-localized teachers be re-routed back to their locality.

d. Appropriate financing framework:

There is a serious need to re-look at the capitation for SNE learners. The budget below calls for Differentiated Unit Cost (DUC) as the needs per disability differs greatly. Most special schools are boarding schools which calls for proper funding to cater for children's individual needs. The budget is as set out below: -

STATUS OF SNE IN KENYA

National census of 2019 established an estimate of 190,916 Kenyans aged 5-22 years live with disabilities. Out of this, 131,564 (68.9%) were enrolled in various educational institutions while 59,352 (31.1%) were not enrolled in any educational institution. The official figure from NEMIS (National Education Management Information System) indicated that the number of primary and secondary schools' learners enrolled in 2019 was 137,232 – this excluded those in ECDE and TVET institutions. 2020 CBC task force established that 219,159 leaners were enrolled in the various schools while a further 10,576 were enrolled in TVET institutions.

INSTITUTIONS OFFERING SNE IN KENYA:

a. INTEGRATED:

	SCHOOLS:	**ENROLMENT:**
Pre-primary	6,170	30,114
Primary	10,923	153,032
Secondary	935	6,376
	Total	***189,522***

b. SNE INSTITUTIONS

	SCHOOLS:	**ENROLMENT:**
SNE pre-primary	39	1,081
SNE primary	427	26,288
SNE secondary	38	2,268
	Total	***29,637***

FINANCING SNE PRIMARY SCHOOLS:

Category:	2016/17 FY	2017/18 FY	2018/19 FY	2019/20FY
Boarding schools	243	290	290	339
Enrolment	26,900	31.519	31,519	39,629
Grant allocation	455M	455M	425M	455M
Rate per learner per yr.	Ksh.16,914	Ksh.14,435	Ksh.14,147	Ksh.11,481.50

The majority of SNE learners in primary schools are underfunded owing to the same figures budgeted despite the increase in enrolment. The government provides an annual capitation grant at the rate of Ksh.1,420 per child in primary school and a top up of 2,300 for learners with special needs and disabilities. On the other hand, SNE secondary schools receive a capitation of Ksh.22,244 and a top up of Ksh.35,000 for all leaners with special needs and disabilities. From the primary schools data above, you can deduce that the grant has always remained the same or lower despite the increase of learners in schools. This flat rate model assumes that there is uniform cost across all learners with disabilities, an assumption which is not true at all. The cost varies from one child to another and from one disability to the other.

I echo recommendations by the 2020 CBC task force that there is need to establish and apply Differentiated Unit Cost (DUC) for various categories of learners with special needs and disabilities as well as other issues (such as epilepsy) at all levels of education.

All schools be considered for a basic package to cushion the economies of scale as follows:

- ✓ Basic package = Ksh.750,000 per school per unit.
    - Ksh. 350,000 per unit.
- ✓ Infrastructure in all special schools be improved as follows:
    - Implement 2018 presidential directive of allocation of 20% of MOE infrastructure funds to schools be applied to SNE schools. (OP/OAB/261/3A of 2018)
    - SNE secondary schools be considered and treated as national school by availing funds to lift the 38 special secondary schools. These schools are always known to be national schools but their infrastructure is wanting.
- ✓ Transport for special schools be looked into. Their needs may differ from the regular learners as their mobility is restricted especially the physically handicapped.
    - We recommend a one-time fund of Ksh.10, 000,000 per school (both primary and secondary) to allow the schools purchase a disability friendly school bus.
- ✓ Insurance for the bus.
    - A yearly payment of Ksh.310,000.
- ✓ Educational Assessment and Resource Centers.
    - A budget of Ksh.1.6m per county per year, Ksh.5M per year per region for regional referral EARC's.
- ✓ Construction of 10 EARC's centers of excellence at Ksh.601,600,000.
- ✓ Capacity building of 10 EARC's at Ksh.17,200,000 per EARC.
- ✓ Employment of teachers in SNE Schools and Units to curb the understaffing.

✓ Provide funding to take care of the CBC requirements.

✓ Reviewing salaries of non-teaching staff with prevailing economic situation and centralize their employment.



PETER SITIENEI

NATIONAL CHAIRMAN

SPECIAL SCHOOLS HEADS ASSOCIATION OF KENYA

(21)

TEACHERS SERVICE COMMISSION

TELEPHONE: 2892000
EMAIL: ceo@tsc.go.ke
WEBSITE: www.tsc.go.ke

TSC HOUSE, UPPER HILL
KILIMANJARO ROAD
OFF MARA ROAD
PRIVATE BAG - 00100
NAIROBI, KENYA.

When replying please quote

Ref.N°:CS/TSC/78/VOL.III

Date:23rd March 2023

RECEIVED
27 MAR 2023
P.O. BOX 41842-00100 NAIROBI

J. M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

(1) DSEC
Kindly deal
27/03/2023

(2) HOD-Ms. Kibaki
Kindly deal
27/3/2027

THE LEARNERS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO.4 OF 2023.)

We acknowledge receipt of your letter referenced SEN/SCE/CORR/2022/09 (iii) dated 15th March, 2023 contents of which we have duly noted.

Attached, find a matrix on our representations on the Bill for your review and consideration.

THE SENATE
RECEIVED
27 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

FRANKLIN K. CHOGE
FOR: SECRETARY/CHIEF EXECUTIVE
TEACHERS SERVICE COMMISSION

Encls.

(3) Mr. Rongera
Kindly deal.
Kobati
27/03/2023

THE SENATE
RECEIVED
27 MAR 2023
DIRECTOR COMMITTEE SERVICES
(DGAC)

TEACHERS SERVICE COMMISSION

COMMENTS ON THE LEARNERS WITH DISABILITIES BILL,2023
PRESENTED TO THE SENATE STANDING COMMITTEE ON EDUCATION
ON 24/3/2023

SN.	PROVISION	RECOMMENDATION	JUSTIFICATION
1.	**PART II** **5(b)-**Every learner with a disability shall have the right to: access information delivered in a suitable and legible media of instruction.	The clause be deleted. Add the words" access education by" before use of Kenyan sign language.... in clause(c).	This is already provided for under subsection (c) which provides that " Every learner shall have the right to access education by use of Kenyan sign language, braille and other specialized medium of instruction commensurate with the learner's educational needs at every level of education".
2.	**5(d)-** Every learner with a disability shall have the right to: access all school buildings and facilities with ease.	The clause be amended to "Right to access school facilities.	Majority of schools, especially those which are not specifically for Special Needs Education, may not be fully accessible to all learners with disability. It is therefore not tenable to assure their access to all school buildings.

3.	**5(e)-** Every learner with disability shall have the right to: admission on application to any institution of learning and access to an inclusive, quality and free basic education on an equal basis with others.	The clause be amended. The word "any" be replaced with "such appropriate".	While every learner has the right to education, it might not be possible to admit learners with disability in schools where there are no facilities to accommodate them.
4.	**5(f)-** Every learner with disability shall have the right to: equal access to play, recreation, leisure and sporting and other activities undertaken in the school system.	The clause be amended by deleting the word "equal" and replacing it with "access to appropriate facilities".	It is not always physically possible for learners with disability to access all recreation activities without modifying them to suit their needs.
5.	**5(g)-** Every learner with disability shall have the right to: equal treatment with other learners;	The Clause be amended to "protection from any form of discrimination".	Equal treatment may work against learners with disability. In some situations, they require special treatment.

6.	**6(3)-**Where a parent or a guardian is unable to meet the obligations specified under Subsection 1b such parent and guardian shall submit within prescribed time, the reason for the absence of the learner at a school or Institution of basic education.	The Clause needs to be amended as follows: Where a learner is absent, reason for such absence should be reported to the Headteacher. The word prescribed time be amended to "reasonable time".	It is not clear where such reason should be submitted. The timelines have not been clearly set.
7.	**GENERAL COMMENTS ON THE BILL**	Fundamental provisions relating to Bill are already provided in the Basic Education Act (BEA) (Part VI)	There is need to either amend the provisions of the Basic Education Act to enhance its provisions as proposed in this Bill or delete the provisions of the BEA altogether. The BEA being the primary legislation amending its provisions may be more prudent than enacting a new law.
8.		Overlap of functions between National and County Governments	There is need to clearly comb the Bill to remove any overlap of functions between the two levels of Government.

(022) 005

UNITED DISABLED PERSONS OF KENYA
The voice of persons with disabilities

P.O Box 13941-00800
Nairobi
Kenya.

Along Waiyaki Way
Opposite ABC Place
Orthopaedic Complex

Tel:+254 722 126 197
Email:udpk@udpkenya.or.ke
Website:www.udpkenya.or.ke

LWD BILL, 2023 - PWD – MRND **27TH MARCH, 2023**

THE CLERK SENATE
P.O BOX 41842 – 00100
NAIROBI.

MEMORANDUM FOR THE SENATE
THE LEARNERS WITH DISABILITIES BILL, 2023

Pursuant to Article 24 of the Convention on the rights of Persons with Disabilities [CRPD], Article 53 of the Constitution of Kenya, 2010, Basic Education Act, 2013.

Resolution of disability organizations on the Learners with Disabilities Bill, 2023

Subject: Enhancing Inclusive Education for Learners and trainees with Disabilities

WHEREAS Organizations of Persons with Disabilities (OPDs), through their umbrella body United Disabled Persons of Kenya (UDPK), on matters relating to access to education for learners with disabilities, has been made aware of a request for memorandum by the Senate for the consideration of the Learners with Disabilities Bill, 2023, pursuant to Provisions of Article 118 of the Constitution that makes a clarion call for parliament to facilitate public participation and involvement of the public in its legislative business.

WHEREAS Persons with disabilities in-person, through their respective OPDs or through the umbrella body have continually participated and provided their input on matters affecting them in line with Article 10 of the Constitution.

WHEREAS The government of Kenya has made progress in protecting the rights of persons with disabilities by ratifying the Convention on the Rights of Persons with Disabilities and committing to the agenda 2030 Sustainable Development Goals. The enactment of the Constitution of Kenya (2010) with a clear Article (54) on Persons with Disabilities and the Persons with Disabilities Act (2003) is a clear indication of the commitment to protect the rights of persons with disabilities. Article 54 (b) clearly

stipulating that all Persons with Disabilities are entitled to access to educational institutions facilities to the extent compatible with their interests.

WHEREAS Taking note of Article 43 (1) (f) that emphasizes that access to education is a basic human right and Article 53 that affirms that every child has a right to free and compulsory basic education, learners with disabilities still face barriers in accessing education opportunities on an equal basis with other learners.

NOW THEREFORE, the organizations of Persons with disabilities through their umbrella body UDPK hereby forwards its **MEMORANDUM FOR** the Learners with Disabilities Bill, 2023 as follows;

Comments on the Sections of the Bill that require adjustments				
No.	**Sections**	**Wordings from the Bill**	**Suggested reviews/corrections**	**Comments**
1.	Across sections	Special needs education	Inclusive education should be cited in some of the clauses	In line with Article 24 of the United Nations Convention on the rights of Persons with Disabilities [CRPD], the sector policy for learners and trainees with disabilities and best practice.
2.	Part 1: Preliminary(2)	Special Service Providers	Include Behavior Specialists in the list of Special Service Providers	Taking note of learners with Autism, Intellectual or Psychosocial disabilities in educational institutions.
3.	Rights of learners with disabilities (5) (c)	Use of Kenya sign language, braille...	Use of Kenya sign language, braille, alternative and augmentative and other specialized medium of instruction	Taking note of learners with Autism in educational institutions.
4.	Responsibility of the National government (7) (f)	Strategies for the provision of special need education	Strategies for the provision of Inclusive education	In line with Article 24 of the CRPD and Article 43 (1) (f) and 53 (1) (b) of the Constitution

5.	Responsibility of the National government (7) (i)	Including in service, of education to learners with disabilities	Including in service, of education to teachers of learners with disabilities.	In line with the Kenya Institute of curriculum development Act, 2013 (4) (d)
6.	Responsibility of the National government (7) (j)	Ensure that the education curriculum and public examinations recognize...	Ensure that the education curriculum, education assessments and public examinations recognize....	In line with Section (74) (1) of the Basic Education Act, 2013 and Section (4) (d) of the Kenya Institute of curriculum development Act, 2013
7.	Responsibility of the National government (7) (t)	Develop models and a curriculum for the delivery and a curriculum	Develop models and a curriculum for the delivery and an adapted curriculum	In line with Section (74) (1) of the Basic Education Act, 2013 and Section (4) (d) of the Kenya Institute of curriculum development Act, 2013
8.	Responsibility of the County governments (8) (2) (h)	At least one teacher who's able to assist learners with disabilities	At least one teacher who's competent to support and train learners with disabilities	In line with best practices for inclusion, CRPD Article 24
9.	Responsibility of the County governments (8) (2) (l)	Special education resource centers	Education and assessment resource centers	In line with the sector policy for learners and trainees with disabilities, 2018
10.	(19)	Conduct of special needs education service providers	Conduct of Inclusive education service providers	In line with best practice
11.	Conduct of special needs education service providers (19) (6) (a)	Registration of learners desirous of practicing as special service providers	Registration of Professionals desirous of practicing as special service providers or Registration of Professionals desirous of practicing as	In line with best practice

			inclusive education service providers	
12.	Establishment of Special Needs Education Advisory Board (23) (2)	Members appointed by the Cabinet Secretary from among persons appearing to the Cabinet Secretary to be qualified as having experience	Members appointed by the Cabinet Secretary from among persons qualified in inclusive education or having experience and capacity	In line with best practice
13.	Special needs education resource centres (24) (3) (c)	And supportive services to disabled children	And supportive services to children with disabilities	In line with best practice, Article 24 of the CRPD
Other Proposals				
14.	Learners with Autism, Intellectual and psychosocial disabilities		Construction of vocational training and sheltered workshops to allow stage based transition.	In line with the Competency Based Curriculum (CBC)
15.	Early Childhood Education		Inclusive pre-school programs and early intervention support to children and parents including training in sign language, assistive technology, tactile non-visual skills and braille.	In line with best practice, Article 24 of the CRPD
16.	School Infrastructure		Schools infrastructure be based on the principles of universal design including spaces for sports, recreation and leisure.	In line with best practice, Article 24 of the CRPD
17.	Teacher training		Principles of Inclusive Education be anchored in the	In line with best practice, Article 24 of the CRPD

			training programs of all teachers.	

Memorandum (MEMR) Submissions, THAT;

The tabulated changes be considered in the Learners with disabilities bill, 2023 for implementation.

Conclusion;

We thank you for the demonstration of good governance through the request for the submission of the memoranda.

Ms. Sally Nduta
Chief Executive Officer
United Disabled Persons of Kenya (UDPK)

Sign:  Date: 27th March 2023

We must empower every individual with a disability. To live with dignity in an inclusive society, William E. Lightbourne

THIRTEENTH PARLIAMENT | SECOND SESSION
STANDING COMMITTEE ON EDUCATION

STAKEHOLDERS ATTENDANCE REGISTER

AGENDA: .....

VENUE: VIP ANNEX II **DATE:** 29/03/2023 **TIME:** 0930hrs

NO.	NAME	ORGANIZATION	CONTACTS
1.	Cynthia Monyenye	NCPWS	0708262265
2.	Ahmed Sabdow (Chair Education Reforms)	NCPWD	0720353997
3.	Titus Yego Head of Education Unit.	NCPWD	0725 926 984.
4.	Tryphenah A. Mberke	KISE	0723084238
5.	Margaret M. Githang.	KISE	0722738259
6.	PETER SITIENEI	SPECIAL SCHOOL HEADS ASSOCIATION OF KENYA	0724280395

NO	NAME	ORGANIZATION	CONTACTS
7.	Anthony Mwangi	KISE	0721973368
8.	Wanda Adhiambo.	KISE	0707702977
9.	Grace Njambi	KISE	0714706915
10.	Peter Luthuli	KISE.	0722588490
11.	Zachary N. Muasya	KISE	0713554975
12.	Moses Ndarwa	KISE	0722833189
13.	Michael Mutunga Mutua	Bloom Garden Autism Academy	0722987077
14.	Joseph Kyalo Kalunda	Bloom Garden Autism Academy	0712170882.
15.	Joyner Okonjo	Bloom Garden Autism Academy	0713088068
16.	Dr. Norman Kiogora	KISE Director	0720398946
17.	Hamu Hassan	NCPWD	0716637222
18.	Ibrahim Alubaia	save the children	0722378582
19.			

NO	NAME	ORGANIZATION	CONTACTS
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			
29.			
30.			
31.			
32.			

NO	NAME	ORGANIZATION	CONTACTS
33.			
34.			
35.			
36.			
37.			
38.			
39.			
40.			
41.			
42.			
43.			
44.			
45.			

NO	NAME	ORGANIZATION	CONTACTS
46.			
47.			
48.			
49.			
50.			
51.			
52.			
53.			
54.			
55.			
56.			
57.			
58.			

THE SENATE STANDING COMMITTEE ON EDUCATION
STAKEHOLDER VIEWS ON THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
1.	Clause 1 - Title of the Bill	Kenya Institute of Special Education KESHO Kenya	• Proposes amendment of the short title of the Bill to "The Learners and Trainees with Special Needs and Disabilities Bill, 2023". • **Rationale:** To include learners who take the vocational path due to the nature of their disability.	
2.		KESHO Kenya	• Long title of the Bill be amended to include trainees with disabilities.	
3.	Clause 2 defines County Education Board.	Michael Ndurumo	• The term to be amended to refer to County Special Needs Education Board.	
4.	Clause 2 defines learners with disabilities.	National Council for Persons with Disabilities.	• The definition of learners with disabilities excludes learners who are not enrolled in special schools.	
5.		Kenya Institute of Special Education	• Sector policy 2018 defines it as a learner who has a "lack or restriction of ability to perform an activity in the manner within the range considered normal within the cultural context of the human being".	

ANNEX V

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
6.	Clause 2 defines special needs education.	National Fund for the Disabled of Kenya	• Proposes insertion of the word, "training" so as to read special needs education and training. • **Rationale:** Training is the development of skills and knowledge that relate to specific useful competencies.	
7.	Clause 2 defines a special needs school as an institution that is specially organized to make special educational provision for learners with disabilities and is for the time being registered as an educational institution under the Basic Education Act.	National Fund for the Disabled of Kenya	• The interpretation seems to perpetuate segregation that is currently practiced and termed as special needs education and goes against the principle of inclusive education.	
8.	Clause 2 defines special service providers.	United Disabled Persons of Kenya	• The definition of service providers should include behaviour specialists.	
9.		Bloom Garden Autism Academy	• The definition of service providers should include behaviour and sensory integration therapists.	
10.		National Fund for the Disabled of Kenya	• The definition of service providers should include psychologists, nutritionists, social workers, SNE educators with specialization to cater for various disabilities and medical	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			practitioners with specialization in different disabilities.	
11.		UoN African Women Studies Centre National Fund for the Disabled of Kenya	• Speech and language pathologists and therapists has been repeated in the definition.	
12.	Clause 2	University of Nairobi African Women Studies Centre	• Include the word multidisciplinary in the definition to mean involving the different disciplines dealing with disability including psychology, pediatrics, educationists.	
13.	Clause 3 provides for objects of the Act.	National Council for Persons with Disabilities.	• Proposes a framework for enabling learners to access assistive devices and technologies. • **Rationale:** To ease access to education.	
14.		Michael Ndurumo	• Amend clause 3(a) to include the words at all levels of education. • **Rationale:** To align it with clause 3(f).	
15.		UoN African Women Studies Centre	• Add a new objective of providing a framework for regular multidisciplinary assessment of learners with disability to determine their disability and learning needs. • **Rationale:** There should be continuous assessment of learners with disabilities	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			so that should one be healed from the disability they are graduated from their current category of learners with disability.	
16.		UoN African Women Studies Centre	• Add a new objective that targets empowering and supporting the family of the learner.	
17.	Clause 4 provides for guiding principles.	Council of Governors	• The principle of *best interest of the child* should be included.	
18.		Michael Ndurumo	• The principle of providing mechanisms for provision if education of learners at post-secondary institutions should be included.	
19.		Kenya Institute of Special Education	• Clause 4(c) should cover the sensitivity to the socio economic and social needs of the learner in addition to the cited cultural and developmental aspects.	
20.		UoN African Women Studies Centre	• Delete the word "cultural" in clause 4(c). • **Rationale:** African cultures are normally discriminative to PWDs.	
21.		Kenya Institute of Special Education	• Clause 4(e) should include access to education and career guidance.	
22.	Clause 5 provides for the rights of learners with disabilities.	Cosma Gatere (Coordinator, SNE	• Proposes that learners should be issued with a unique special needs'	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
		Citizen Action Group)	identification number (and later digital card) on first admission. • **Rationale:** The information to be relayed to a central database to aid in planning and improve monitoring and evaluation.	
23.	Clause 5(a) provides that learners shall have access quality education.	National Fund for the Disabled of Kenya	• Proposes an amendment to the provision to include the right to access inclusive, quality, free and compulsory education and training.	
24.	Clause 5(b) provides that learners shall have access to information delivered in a suitable and legible media of instruction.	Ministry of Education	• Delete clause 5(b). • **Rationale:** The provision is already covered in clause 5(c) which provides for the use of Kenyan sign language, braille and other specialized medium of instruction commensurate with a learner's educational needs at every level of education.	
25.		National Fund for the Disabled of Kenya	• Proposes deletion of the words, "suitable and legible" and substitution with the words "accessible and appropriate".	
26.	Clause 5(c) provides for the use of Kenyan sign language, braille and other specialized medium of instruction.	National Council for Persons with Disabilities & United Disabled Persons of Kenya	• The provision should include alternative and augmentative medium of instruction.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			• **Rationale:** To cater for leaners with autism.	
27.		National Fund for the Disabled of Kenya	• The provision should include alternative script, augmentative and alternative means of communication and orientation and mobility skills and to facilitate peer support and mentoring at every level of education.	
28.	Clause 5(d) provides for right to access by learners to all school buildings and facilities with ease.	Ministry of Education	• The provision be amended to refer to right to access school facilities. • **Rationale:** Majority of schools are not fully accessible to all learners with disabilities.	
29.	Clause 5(e) provides for right to access education by learners on admission to any institution.	Ministry of Education	• The provision be amended to refer to such appropriate institution rather than any institution. • **Rationale:** Despite the right to education, it might not be possible to admit learners in schools with no facilities to accommodate them.	
30.		Michael Ndurumo	• The provision of free education should include post-secondary education.	
31.		National Fund for the Disabled of Kenya	• The provision should include education at all levels.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
32.		Save the Children & Special Schools Heads Association of Kenya	• Insert a new provision to ensure that children with disabilities will be accorded education and training free of charge. • **Rationale:** To guarantee free education and training for children with disabilities.	
33.		Kenya Institute of Special Education	• Referral for institutional placement from a functional educational assessment and resource centre should be considered as an application for admission.	
34.	Clause 5(f) provides for right to equal access to recreation facilities.	Ministry of Education	• The provision be amended to refer to appropriate facilities rather than equal access. • **Rationale:** It is not always physically possible for learners to access all recreation facilities without modifying to suit their needs.	
35.	Clause 5(g) provides for the right to equal treatment with other learners.	Ministry of Education	• The provision be amended to refer to protection from any form of discrimination. • **Rationale:** Equal treatment may work against learners with disabilities who in most cases require special treatment.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
36.	Clause 5(h) provides for the right to reasonable accommodation within the institution providing the special education.	National Council for Persons with Disabilities	• Define reasonable accommodation.	
37.		UoN African Women Studies Centre	• Delete the word reasonable and substitute it with appropriate. • **Rationale:** The word reasonable may not respond to the needs of the different categories of learners with disabilities.	
38.		Michael Ndurumo	• Delete reference to special education. • **Rationale:** to cover all institutions offering education to learners with disabilities.	
39.	Clause 5 – new provisions	National Council for Persons with Disabilities	• The rights of learners should also include– (a) Access to a curriculum that leads to recognition of potential, talents and physical capabilities. (b) Promote dignity of learners by imposing imprisonment for perpetrators of defilement, harassment, child abuse and neglect. (c) Facilitate learning of sign language.	
40.	Clause 6 provides for the responsibility of a parent or	Kenya Institute of Special Education	• There is need to recognize that other institutions also provide education for learners and trainees with disabilities for	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
	guardian of a learner with disability.		the purposes of completion of the child's basic education.	
41.	Clause 6(2)(a) provides that a parent shall admit or cause to be admitted their child to a school.	National Fund for the Disabled of Kenya	• Proposes the language used to read, *obligated to present a learner with disability to a learning institution for the purposes of education and training.*	
42.	Clause 6(2) provides that a parent or guardian who fails without reasonable cause to admit should provide reasons to the institution and County Director of Education.	Council of Governors	• The reasons should also be submitted to the CEC for Education in the respective county. • **Rationale:** Guided by Article 189 of the Constitution on cooperation and consultation between the two levels of government.	
43.		Angela Gatugu	• Insert a new provision to provide that where a learner above the age of 18 years cannot cope in the regular sector then a Power of Attorney is to be issued to the guardian.	
44.		National Council for Persons with Disabilities	• The responsibility of parents should include – (a) Attending parents meeting, counselling and other social support. (b) Providing basic needs and primary disability care.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			(c) Ensuring that a child is assessed, placed in a school and registered by the Council. • The proposed fine in clause 6(2) should be increased.	
45.		Bloom Garden Autism Academy	• The proposed fine in clause 6(2) should be increased to one hundred thousand shillings.	
46.		Action for Children with Disabilities	• It is unfair to criminalize the inability of a parent to enroll a child with disability in school.	
47.	Clause 6(3) provides that a parent shall submit reasons for the absence of a learner at a school or institution of basic education.	Ministry of Education	• The words prescribed time referred to in clause 6(3) should be substituted with reasonable time. • It is also not clear the reason for the absence of the learner at a school or institution should be submitted and the timelines have also not clearly set out.	
48.		UoN African Women Studies Centre	• Editorial - Delete "and" and substitute with "or".	
49.		Michael Ndurumo KESHO Kenya	• Delete the reference to basic education. • **Rationale:** The focus should be on all levels of education.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
50.	Clause 7(2)(b) provides that the CS shall take measures to create opportunities and an environment that enables the realisation of the right to special needs education by all persons requiring such education.	National Council for Persons with Disabilities	• Persons should be replaced with learners.	
51.	Clause 7(2)(c)	UoN African Women Studies Centre	• Delete the word necessary and substitute it with appropriate and adequate.	
52.		National Fund for the Disabled of Kenya	• The wording of this provision should be improved.	
53.	Clause 7(2)(d) provides that the Cabinet Secretary shall conduct, at such intervals as may be necessary a census of learners with disabilities at each level of education.	Cosma Gatere	• Proposes a timeline for the census that is, at least once every five years. • **Rationale:** To ensure the database is current.	
54.		UoN African Women Studies Centre	• The census should be done annually. • **Rationale:** Learners with disabilities are few and it is therefore possible to track and monitor their annual progress to ensure they do not fall out of the education system before completion.	
55.		Amnesty International	• The data collected should be disaggregated and should include	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			transition rates at different levels to enable tracking of learners. • **Rationale:** The amalgamation of the data will not be sufficient to support learning institutions preparing adequately for leaners.	
56.	Clause 7(2)(e) provides that the CS shall maintain an inventory of the personnel and facilities available for the provision of education to learners with disabilities.	Cosma Gatere	• Proposes that the inventory should be up to date.	
57.	Clause 7(2)(f)	United Disabled Persons of Kenya	• Inclusive education should be cited in some provisions including clause 7(f) to refer to strategies for the provision of inclusive education. • **Rationale:** This is in line with Article 24 of the United Nations Convention on the Rights of Persons with Disabilities, sector policies and best practice.	
58.	Clause 7(2)(h) provides that the CS shall ensure that educational institutions and	National Council for Persons with Disabilities	• Define the word tools.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
59.	parents have the necessary tools to support learners with disabilities.	Kenya Institute of Special Education	• Amended to provide for tools and equipment to support learners and trainees with special needs disabilities.	
60.		UoN African Women Studies Centre	• Amended to include guardians.	
61.	Clause 7(2)(i) provides that the CS shall formulate a programme for recruitment and training.	United Disabled Persons of Kenya	• The provision should refer to teachers and not the learners.	
62.	Clause 7(2)(j) provides that the CS shall ensure that the education curriculum and public examinations recognize and take account of the needs and circumstances of learners with disabilities.	Cosma Gatere	• Proposes that the CS in consultation with the Special Education Advisory Board should provide a special education curriculum and a standardized special education examination and certification system. • **Rationale:** To ensure such learners are fairly examined, assessed and certified and to ensure optimal transition rates and allow for smooth absorption of leaners with disabilities into the job market.	
63.		United Disabled Persons of Kenya	• The provision should include education assessments.	
64.		Kenya Institute of Special Education	• Administration of examinations to allow learners and trainees with special needs and disabilities to use assistive technology.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
65.	Clause 7(2)(k)	Michael Ndurumo	• Amend the provision to include technical, vocational and university education. • **Rationale:** To cover all levels of education and programmes.	
66.	Clause 7(2)(l)	UoN African Women Studies Centre National Fund for the Disabled of Kenya	• Editorial – Renumbering paragraphs (m) to (v)	
67.	Clause 7(2)(o) provides that the CS shall ensure adequate funding of education for learners with disabilities.	Save the Children & Special Schools Heads Association of Kenya	• Provision should be amended to read, *provide adequate capitation to public special needs schools taking into account the different needs of learners with disabilities.* • **Rationale:** Majority of special needs schools are underfunded.	
68.	Clause 7(2)(t)	UoN African Women Studies Centre	• The curriculum should be comprehensive and inclusive and target personnel from all the different disciplines that are involved with children for the identification of developmental challenges throughout a learner's lifespan	
69.	Clause 7	National Fund for the Disabled of Kenya	• The National government should provide vocational centres with technical trainers to offer vocational	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			skills to learners with disabilities where they cannot transit to institutions of higher learning.	
70.	Clause 8(1) provides that CECs shall be responsible for institutions falling within the mandate of counties.	Save the Children & Special Schools Heads Association of Kenya	• County government roles should be limited to facilities within the mandate of counties.	
71.	Clause 8(2)(b) provides that the CEC shall put in place the necessary infrastructure and establish the necessary education centres.	Amnesty International	• Proposes that all learning institutions be required to adopt a universal design to facilitate the integration of learners with disabilities into society. • **Rationale:** The current infrastructure does not support the movement and accommodation of learners. This proposal will enable all schools to be prepared for future integration.	
72.	Clause 8(2)(e) provides that the CEC shall undertake and participate in the collection, preparation, production and dissemination of data and information on the needs of learners with learners with disabilities.	UoN African Women Studies Centre	• The data should be disaggregated by sex and category of a learner's disability.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
73.	Clause 8(2)(h) provides that the CEC shall ensure that every education centre under the mandate of the county has at least one teacher who is able to assist learners with disabilities.	United Disabled Persons of Kenya	• The teacher should be competent to support and train learners with disabilities.	
74.		Amnesty International	• Proposes that curriculum for teachers should include disability awareness. • **Rationale:** A survey carried out by Amnesty International found that over 59% of schools which had learners with special abilities had no teachers who had any training on special needs.	
75.	Clause 8(2)(k) provides that CECs shall liaise with the National Council for Persons with Disabilities to maintain a database of learners with disabilities in the county.	Action for Children with Disabilities	• Data meant for education planning should remain centralized at the national level and not with the Council. However, counties can maintain their own databases for their planning. • **Rationale:** Ministry uses NEMIS for data of all school going children while KISE maintains data for all children with disabilities who have undergone assessment. The Council only keeps data of children with disabilities who have been registered with the Council.	
76.	Clause 8 - New provision	Action for Children with Disabilities	• CECs should be responsible for ensuring early identification and assessment of children with disabilities.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
77.		National Fund for the Disabled of Kenya	• Proposes that county governments should– (a) increase the number of EARCs and equip them; and (b) sensitize communities on disabilities and the right to education for persons with disabilities.	
78.	Clause 9(1) provides that CEC shall keep and maintain a register of all educational institutions that provide education to learners with disabilities in the county	Council of Governors	• The CEC should only keep and maintain a register for educational institutions under the management of the county. • **Rationale:** CEC is only responsible for educational institutions under the mandate of counties that is pre-primary education and vocational training centres.	
79.		Bloom Garden Autism Academy	• The register should include particulars of private educational institutions. • **Rationale:** This data will assist the government in formulating the national strategy and plan of action for learners with disabilities. Whilst some learners attend private schools, to mitigate costs they opt for therapies provided by public institutions such as KISE, KNH and Mbagathi hospital.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
80.		Save the Children & Special Schools Heads Association of Kenya	• This role should be undertaken by the County Education Boards and the Ministry and not by counties through the CEC.	
81.	Clause 9(1)(c) refers to the category of resources required by an educational institution.	Kenya Institute of Special Education	• Resources also relate to human as well as materials required by the educational institution.	
82.	Clause 10(1)	Bloom Garden Autism Academy	• Editorial – the reference should be to or instead of and.	
83.	Clause 11 provides for deregistration or closure of special needs educational institutions.	Bloom Garden Autism Academy	• The provision refers to public institutions only. • **Rationale:** There are private institutions that ought to be equally regulated to protect the learners attending those institutions.	
84.	Clause 12 provides for admission of a learner with disability after assessment or test.	Michael Ndurumo	• Reference to early education should be substituted with basic education.	
85.		National Fund for the Disabled of Kenya	• The provision should include all levels of education and not only an ECDE or a vocational training centre as currently proposed in the Bill.	
86.		Bloom Garden Autism Academy	• Assessment before attending or applying for admission to an institution should be mandatory.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			• **Rationale:** Assessment is a key step prior to admission to ensure the learner is properly placed. It is currently being practiced and a good number of schools do not admit learners without the KISE assessment report. • However due to the backlog at KISE, assessment can be opened up to include private assessment by qualified persons.	
87.		Action for Children with Disabilities	• The pre assessment is discriminatory since regular learners are not subjected to such procedures prior to admission. The EARC report is enough to provide information on the leaner's capabilities and needs.	
88.	Clause 13(1) provides for the board of management of an educational institution for learners with disabilities.	Council of Governors Save the Children Special Schools Heads Association of Kenya Action for Children with Disabilities	• There is no need for a separate board. The current boards should include a representative of learners with disabilities. • **Rationale:** The formation of the Board should be guided by the Basic Education Act, 2013	
89.		Kenya Institute of Special Education	• Constitution of the board should be in tandem with the Basic Education Act, 2013.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
90.		National Council for Persons with Disabilities	• The board should include a person with disability.	
91.		Amnesty International	• There should be a member of the community and/or a representative from a special interest group in the management of the board. • **Rationale:** Community engagement in decision-making ensures that the bottlenecks within the community that hinder learners' participation are eliminated.	
92.		Michael Ndurumo	• The board should include two professionals with disabilities and representatives of TVETs and universities.	
93.		Bloom Garden Autism Academy	• There is need for clarification on whether this will apply to private institutions.	
94.	Clause 14	Michael Ndurumo	• Replace special needs with disability • **Rationale:** The term special needs is becoming obsolete and would open doors for persons who do not have a disability.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
95.	Clause 15(2)(b)	Michael Ndurumo	• Replace the term parent-child-teacher relationship with parent-learner-teacher relationship,	
96.	Clause 17 provides for facilities in institutions providing for special needs education.	National Fund for the Disabled of Kenya	• Proposes the substitution of the terms used to reflect adherence to universal design principle of accessibility, usability and inclusion as well as reasonable accommodation.	
97.	Clause 19 provides for registration of special service providers by the Special Needs Education Advisory Board.	Cosma Gatere	• Proposes that the CS should consider an appeal from the decision of the Board within fourteen days.	
98.		United Disabled Persons of Kenya	• The providers should be referred to as inclusive education service providers.	
99.		Council of Governors Action for Children with Disabilities	• The mandate of Advisory Board should not be in contradiction with the mandate of the Directorate of special education in the Ministry and other agencies such as KISE.	
100.		KESHO Kenya	• The Bill should provide for the formal employment of service provides as civil servants. • Further, teachers trained in SNE should be recruited and deployed for that purpose instead of teaching regular	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			classes. TSC has only recruited SNE teachers once in 2015	
101.		Save the Children & Special Schools Heads Association of Kenya	• Synchronize institutional mechanisms provided for in the Basic Education Act, 2013.	
102.		Michael Ndurumo	• Move this provision to Part V of the Bill which deals with management of special needs education.	
103.		Emma	• There should be clarification on which office is mandated to assess and place learners with disabilities to special schools.	
104.	Clause 19(6)(b) provides that the CS shall maintain a code of conduct to provide for the formation and recognition of a professional association or institute of certified special services providers to train or regulate the training of special services providers.	Kenya Institute of Special Education	• The proposed bodies would standardize practice of special needs education and therefore proposes that KISE be the body that will certify such teachers.	
105.	Clause 21 provides for identification of children with disabilities while clause 22	Cosma Gatete	• Proposes that the Board should also serve as a Tribunal to consider appeals from decisions made under the Act.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
106.	provides for assessment of special education needs.	Action for Children with Disabilities	• The County Education Board in collaboration with the Ministry of Health should identify, locate and assess all children right from birth.	
107.	Clause 23 provides for the establishment of the Special Needs Education Advisory Board within the Ministry of Education.	Council of Governors	• The composition of the Board and qualifications for appointment should be clearly set out.	
108.		Michael Ndurumo	• The Board should be referred to as the Special Needs Education Board.	
109.		Kenya Institute of Special Education	• The function should be nested within the current county education boards but have a seat reserved for the representative of the EARC office.	
110.		Michael Ndurumo	• There should be provision for the appointment of a Director General of Special Needs Education.	
111.		UoN African Women Studies Centre	• The Board should comprise – (a) Three persons with disabilities drawn from the different categories of disabilities. (b) Three specialists drawn from a representative of pediatrics, a psychologist, a representative of curriculum developers; and	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			(c) A parent or guardian.	
112.		Bloom Garden Autism Academy	• The Board should have diverse membership from other sectors such as private sector, academia, KISE, medical practitioners in the special needs space and parents or guardians of persons with special needs.	
113.		Angela Gatugu	• Proposes that the resource centres should adopt programs that are linked to the County Education Boards.	
114.	Clause 24 provides for the establishment of a special needs education resource centre in every county by the Cabinet Secretary.	Emma	• All sub counties should have resource centres and the officers should be deployed by the Ministry of Education.	
115.		Bloom Garden Autism Academy	• Will the services to be offered by the centres free? If not, can the Act provide that they will be provided at a reasonable fee to avoid exploitation by those running the centres.	
116.		Bloom Garden Autism Academy Action for Children with Disabilities	• It will be more beneficial if therapies can be provided within learning institutions rather than at the proposed resource centres. • **Rationale:** When therapies are taken closer to learners, it is possible to	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			increase the frequency and intensity of those services for maximum gains.	
117.		Action for Children with Disabilities	• Counties should support existing EARCs as opposed to the establishment of special needs education resource centres.	
118.		Kenya Institute of Special Education	• In clause 24(2), shadow teachers should be substituted with learner support assistants. • Further, additional therapies are required beyond physio while providing habilitation and rehabilitation services.	
119.	Clause 24(3)(c)	United Disabled Persons of Kenya	• The reference to disabled children should be amended to refer to children with disabilities.	
120.		Kenya Institute of Special Education	• The clause needs to adopt to the disability etiquette.	
121.	Clause 25(a) provides that the CS shall ensure that there is adequate infrastructure for learners in special needs schools.	Kenya Institute of Special Education	• Recommends that special needs education in regular schools should also be supported. • **Rationale:** In view of the SDG 4 where inclusive education is preferred.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
122.		National Fund for the Disabled of Kenya	• The infrastructure should be adequate and accessible.	
123.	Clause 25(b) provides that the facilities and amenities in the learning institutions should be friendly for use by learners.	National Fund for the Disabled of Kenya	• The facilities and amenities should be accessible and appropriate for use.	
124.	Clause 25(c) provides that the CS shall ensure that all special needs schools have school transport for learners.	Bloom Garden Autism Academy	• Making it mandatory may be difficult to implement as most parents/guardians prefer private transport arrangements depending on the needs and/or severity of the learner's disability.	
125.	Clause 26 provides that the CS may establish a unit for development, production, procurement and distribution of special equipment, material, supplies and devices for use in the education of learners with special educational needs.	Emma	• Proposes that support staff assisting teachers should have at least some sort of training on special needs.	
126.		Save the Children & Special Schools Heads Association of Kenya	• The role of the CS in this provision should be mandatory.	
127.		Kenya Institute of Special Education	• Proposes that KISE be allowed to be the production centre. • **Rationale:** KISE workshops have been upgraded and there is also need to centralize production, distribution and	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			maintenance of specialised materials and assistive devices.	
128.	Clause 28 provides that non-teaching professional staff and persons providing special needs services should be properly qualified.	Michael Ndurumo	• The title of Part V should be substituted with Management of Special Education.	
129.	Part V (clauses 23 to 28) Institutional Management of Special Education.	Angela Gatugu	• Proposes that at least 2% of the state budget allocated for primary and secondary education should be earmarked for the development and implementation of specific disability related programs in schools.	
130.	Clause 29 provides for funding of special needs educational institutions.	National Fund for the Disabled of Kenya	• Typographical error - deletion of the words "fast inequalities" and substitution with "vast inequalities".	
131.		Cosma Gatere	• Proposes establishment of the Special Education Trust Fund to provide for allocation of funds for special education. • All learners with disabilities entering tertiary institutions should get automatic grants (not loans) from the Higher Education Loans Board.	
132.		Council of Governors	• The funding should also cater for institutions under the management of	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			counties including the provision of capitation grants.	
133.		National Council for Persons with Disabilities.	• There should be capitation to all learners in special schools. • **Rationale:** To cushion parents from the high cost of special education.	
134.		Save the Children & Special Schools Heads Association of Kenya	• Rephrase the provision to guarantee differentiated unit costs for different category of learners and provide a minimum package for schools with few learners. • **Rationale:** There is need to move away from flat rate capitation.	
135.	Clause 30 provides for funding special needs education.	National Council for Persons with Disabilities.	• The performance of a learner should be considered during selection and placement when transitioning to other levels of education.	
136.		Kenya Institute of Special Education	• Private institutions should be excluded in funding from the government and instead funds available be used to upgrade the existing public institutions and also establish more educational institutions.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
137.	Clause 33(2)(a) provides that any private educational institution which receives funding from the National Government and demands levies or fees from a learner with special education needs shall be disqualified from receiving financial assistance from the Government.	Bloom Garden Autism Academy	• Clarification needed on whether this completely bars private institutions from charging school fees.	
138.	Clause 37 provides for assessment of learners before placement.	Cosma Gatere	• Proposes that the application should be to the Board. • **Rationale:** The Board is more accessible.	
139.	Clause 42(1) provides that a person may apply to the CS for registration of a learner to receive education at home.	KESHO Kenya	• Learners in home-based programs should be closely monitored. • **Rationale:** The focus has always been on school-based programmes thus disadvantaging learners in home-based programs.	
140.		Angela Gatugu	• Proposes the setting up of a disability affairs secretariat in the national government with the mandate of providing technical assistance and coordination to the implementation of programs in the field of disability.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
141.	General comments	Angela Gatugu	(a) Proposes the setting up of disability counseling centers in major towns and cities across the state. (b) Proposes the establishment by the national government of a special needs trust for learners with disabilities. (c) Proposes the provision of modules for learners with disabilities at the middle health training institutions and higher levels of medical training. (d) Proposes that county governments should – (i) provide employment opportunities and internship placements for trained learners with disabilities who meet the minimum requirements; and (ii) organise yearly activities in observance to various international days to honour learners with disabilities.	
142.	General comments	Ministry of Education	(a) There is need to amend the Basic Education Act, 2013 to enhance its provisions rather than enacting a new law. (b) Consideration of the proposed roles of both the National and county	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			governments to avoid overlap of functions.	
143.	General comments	Kenya Institute of Special Education	(a) Kenya Institute of Special Education to be made a body corporate in the Bill to among others, help to strengthen the assessment and rehabilitation services. (b) County Special Education Resource Centres (SERCs) to be adequately and directly funded by the MoE. Also there is need to have the SERCs defined - whether it has a relationship with EARC. "Special" in the name may be stereotypical and can be better renamed to avoid the labeling of the centers as places for those with disabilities only. (c) KISE as National Assessment Centre to devolve assessment and rehabilitation services to regions for all categories of special needs and disabilities. (d) KISE to also manage the SERCs services in the country. The national and regional centers to undertake the role of monitoring and evaluation on implementation of these provisions. (e) Structures be instituted for multidisciplinary approach in	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			assessment of learners with special needs and disabilities including but not limited to assessment officers, teachers, parents, counsellors, therapists, social workers and nutritionists. (f) Enhance use of assistive technology and devices at the regional and county SERCs in collaboration with KISE ARC. This will minimize disparity in service provision and data management. (g) All co-curricular activities for learners and trainees with disabilities to be adequately supported to cater for other extraneous needs such as guides and appropriate adaptations. (h) The programs should also ensure structures are in place for talent capture and development. (i) Remove the age limit of eighteen years in provision of capitation for learners and trainees with special needs and disabilities.	
144.	General comments	National Council for Persons with Disabilities	(a) The government should set up special schools, special ECDE and special	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			tertiary institutions in every sub county as model institutions. (b) All learning, social facilities and amenities should be disability friendly. (c) ECDE teachers should be acquainted with basic sign language training. (j) out in place framework for identification of disabilities at early stages before ECDE.	
145.	General comments	United Disabled Persons of Kenya	(a) Construction of vocational training and sheltered workshops to allow transition. (b) Inclusive pre-school programs and early intervention support to parents and children. (c) School infrastructure should be based on universal design. (d) Inclusive education should be anchored in training programs for teachers.	
146.	General comments	Amnesty International	(a) Inclusion of special needs children should also include enhancing and renovating the already existing schools and making them accessible for the children to acquire education without being secluded.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			(b) Introduce a proper institutional framework to govern and implement provisions of the Bill. (c) Establish safeguarding guidelines and frameworks to provide a safe and secure learning environment for learners with disabilities both at home and at school.	
147.	General comments	Action for Children with Disabilities	(a) Proposes prohibition of abandonment, detention and other forms of abuse to a learner with disability. (b) There is need to substitute the use of outdated terms and concepts as follows- (i) education institution instead of education centre (ii) special needs education institution instead of special education institution (iii) learning support assistant instead of teacher aide or shadow teacher (iv) Education Assessment & Resources Centres (EARCs) instead of Special Needs Education Resource Centre	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			(v) Learner instead of pupil or student (vi) Regular learner instead of normal learners	
148.	General comments	National Fund for the Disabled of Kenya	(a) Need for consistency in the terminologies used especially where special needs and special education as well as learners with disabilities and learners with special needs are concerned. They should not be used interchangeably. (b) Need for the National government to ensure appropriate teacher-learners ratio. (c) Allocation of extra time for learners with disabilities during testing and examination. (d) Adequate remuneration of special education teachers, teacher aides and provision of shadow teachers in inclusive settings.	
			(e) Staffing and equipping of EARC centres.	
149.	General comments	Emma	(a) There should be guidelines on how learners with intellectual challenges exit special schools to join vocational and TVET institutions.	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			(b) Each disability should have its own separate school compound to avoid behavioral issues.	
150.	General comments	Paddy Gikunda	(a) Special schools should be registered as per the disability. (b) The Directorate of Special Needs should start from the grassroot. (c) The rights of learners with disabilities should be prioritized. (d) KNEC should consider other forms of examining learners with special needs.	
151.	General comments	Njeri Ndehi	(a) Learners with disabilities should be integrated into normal classroom learning. (b) Schools should register the learners as a separate examination centre but with exams still being done in the same school. **Rationale:** To allow more time for such learners to complete exams. Currently candidates who have disabilities only get thirty minutes extra time. (c) Exams should also be geared towards supporting the disability. For example,	

THE LEARNERS WITH DISABILITIES BILL, SENATE BILLS NO. 4 OF 2023				
	CLAUSE	**STAKEHOLDER**	**PROPOSED AMENDMENT**	**COMMITTEE RESOLUTION**
			dyslexic children should be allowed to type or read out their answers. (d) Recognise and accommodate the various learning disabilities including ADHD, dyslexia and autism.	

ANNEX V1

RE: COMMITTEE STAGE AMENDMENTS TO THE LEARNERS WITH DISABILITIES BILL, 2022 (SENATE BILLS NO. 4 OF 2023)

NOTICE is hereby given that Sen. Joe Nyutu, Chairperson of the Senate Standing Committee on Education, intends to move the following amendments to the Learners with Disabilities Bill, Senate Bills No. 4 of 2023, at the Committee Stage –

CLAUSE 3

THAT clause 3 of the Bill be amended in paragraph (a) by inserting the words "through all levels of education" immediately after the words "learners with disabilities".

CLAUSE 4

THAT clause 4 be amended in paragraph (c) by deleting the words "cultural and" appearing immediately after the words "sensitive to the"; and

CLAUSE 5

THAT clause 5 of the Bill be amended –

(a) by deleting paragraph (b);

(b) in paragraph (c) by inserting the words "augmentative and alternative communication" immediately after the words "Kenyan sign language";

(c) in paragraph (f) by inserting the word "appropriate" immediately after the words "equal access to"; and

(d) inserting the following new paragraph immediately after paragraph (f) –

(fa) protection from any form of discrimination;

CLAUSE 6

THAT clause 6 of the Bill be amended –

(a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) present their child for admission to a school as the case maybe, for the purposes of completion of the child's education; and

(b) by deleting subsection (3) and substituting therefor the following new subsection –

(3) Where a parent or a guardian is unable to meet the obligations specified under subsection (1), such parent or guardian shall submit within the prescribed time, the reason for the absence of the learner at a school or an educational institution.

CLAUSE 7

THAT clause 7 of the Bill be amended in subsection 2 by -

(a) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) put in place appropriate and adequate infrastructure, facilities and human resource necessary for the effective and efficient delivery of education to learners with disabilities in learning institutions falling within the mandate of the National Government;

(b) deleting the words ", at such intervals as may be necessary, a" appearing immediately after the word "conduct" in paragraph (d) and substituting therefor the words "an annual"; and

(c) deleting paragraph (h) and substituting therefor the following new paragraph –

(a) ensure that educational institutions, parents and guardians have the necessary tools to support learners with disabilities;

CLAUSE 8

THAT clause 8 of the Bill be amended in subsection 2 by deleting the words "learners with" appearing immediately after the words "the needs of" in paragraph (e).

CLAUSE 9

THAT clause 9 of the Bill be amended in subsection (1) by inserting the words "and private" immediately after the words "public" in paragraph (a).

CLAUSE 12

THAT clause 12 of the Bill be amended by deleting subsection (1) and substituting therefor the following new subsection –

12. (1) An educational or training institution may admit a learner with disability after –

CLAUSE 13

THAT the Bill be amended by deleting clause 13.

CLAUSE 14

THAT the Bill be amended by deleting clause 14.

CLAUSE 15

THAT clause 15 of the Bill be amended by deleting the words "parent-child-teacher" appearing immediately after the words "positive approach in" in paragraph (b) and substituting therefor the words "parent-learner-teacher".

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT clause 24 of the Bill be amended –

(b) in subclause (2) by deleting the words "shadow teachers" appearing immediately after the word "providing" in paragraph (c) and substituting therefor the words "learner support assistants"; and

(c) in subclause (3) by deleting the words "disabled children" appearing immediately after the words "supportive services to" in paragraph (c) and substituting therefor the words "children with disabilities".

CLAUSE 25

THAT clause 25 of the Bill be amended by deleting the word "friendly" appearing immediately after the words "in the county are" in paragraph (b) and substituting therefor the words "accessible and appropriate".

CLAUSE 26

THAT clause 26 of the Bill be amended by deleting the words "special equipment" appearing immediately after the words "and distribution of" in subsection (1) and substituting therefor the words "assistive devices".

CLAUSE 28

THAT the Bill be amended by deleting clause 28 and substituting therefor the following new clause –

Training of auxiliary staff.

Every special needs education institution shall ensure that its auxiliary staff and any person providing special needs services within its premises are properly qualified in their special areas.

CLAUSE 29

THAT clause 29 of the Bill be amended by deleting the word "fast" appearing immediately after the words "the redress of" in paragraph (a) and substituting therefor the word "vast".

CLAUSE 42

THAT clause 42 of the Bill be amended –

(a) in subclause (2) by deleting the word "education" appearing immediately after the words "curriculum at special" in paragraph (b)(i) and substituting therefor the word "educational".

(b) By inserting the following new subclause immediately after subclause (3) –

(3) Any person authorized by the County Education Board shall be entitled to have access at any reasonable time to a home under this section in order to monitor the special educational provision made under subsection (1).

CLAUSE 2

THAT clause 2 of the Bill be amended –

(a) by deleting the definition of the words "Advisory Board" and substituting therefor the following new definition —
(b) by deleting the definition of the words "special needs education" and substituting therefor the following new definition —

"special needs education" includes education and training for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address

the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners;

(c) by deleting the definition of the words "special needs school" and substituting therefor the following new definition —

"special needs school" means an institution that is specially organized to make special educational provision for learners with disabilities and is for the time being registered or accredited as an educational institution under the Early Childhood Education Act, the Basic Education Act, the Technical and Vocational Education and Training Act, the Universities Act or any other Act of Parliament; and

No. 3 of 2021.
No. 14 of 2013.
No. 29 of 2013.
No. 42 of 2012.

(d) by deleting the definition of the words "special service providers" and substituting therefor the following new definition —

"special service providers" means any person providing specialized, supplementary and related services to learners with special education needs and includes braille readers and technicians, sign language instructors and interpreters, orientation and mobility specialists, physiotherapists, occupational therapists, speech and language pathologists and therapists, counsellors, behaviour specialists, sensory integration therapists, psychologists, nutritionists, social workers and with learner support assistants.

(e) by inserting the following new definition in the proper alphabetical sequence –

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