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THE SPECIAL NEEDS EDUCATION BILL, 2021**A Bill for**

AN ACT of Parliament to provide: for the education of learners with special educational needs; for the conduct of educational institutions as regards special needs learners and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Special Needs Education Act, 2021. Short title.

2. In this Act— Interpretation.

“Advisory Board” means the Special Needs Education Advisory Board established under section 20 of this Act;

“continuing education” shall mean “adult and continuing education” as defined under section 2 of the Basic Education Act No. 14 of 2013.

“Cabinet Secretary” shall mean the Cabinet Secretary who is in charge of education;

“continuing education” has the meaning assigned to it under the relevant Act;

“county Board” Board established under the Basic Education Act, 2013;

“county government” has the meaning assigned to it under the Constitution of Kenya Act and the County Government Act, 2012

“educational institution” has the meaning assigned to institutions of basic education and training under the Basic Education Act; No. 17 of 2012.

“IEP” means a plan or program developed to ensure that a learner with an identified disability who is attending a primary or secondary educational institution and receives specialized instruction and related services. No. 14 of 2013.

“inclusive education” means education in a programme or institution not designed exclusively for learners with special education needs and includes integration in regular school, mainstream education, or

education in resource rooms or special classes with special service providers and related services provided at no cost to learners with disabilities at all levels of education;

“learner with special needs” means a person who is undertaking special needs education as defined under section 2 of the Basic Education Act, 2013;

“progreskelli Williams sive inclusion” has the meaning assigned to it by the UN Convention on the Rights of Learners with Disabilities” ratified by the Republic of Kenya. No. 14 of 2013

“related services” means services provided by special service providers including specialized equipment and devices such as orientation and mobility aids, wheelchairs, clutches, hearing aids, optic aids, braille and braille papers, large print papers and materials, and related aids and gadgets that enable a learner with special education needs benefit from education. No. 14 of 2013

“resource centre” means a county special education resource centre established pursuant to section 18 of this Act;

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

“special educational needs” means any learning needs which would not ordinarily be met by the regular services of an inclusive education or mainstream educational institution; No. 14 of 2013

“special needs school” shall mean an institution that is specially organized to make special educational provision for learners with educational needs and is for the time being registered as an educational institution under the Basic Education Act;

“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; and

“TVET” shall have the same meaning as a technical and vocational college, a technical trainer college or a vocational training centre as defined in section 2 of the Technical and Vocational Education and Training Act, 2013. No. 29 of 2013

PART II—OBJECTS OF THE ACT

3. The objects of this Act are to—

Objects of the Act.

- (a) provide a framework for the realisation of the right to education for all learners in Kenya with special needs;
- (b) provide a framework for the establishment of a comprehensive education system for the provision of education to persons with special needs;
- (c) provide a framework that will ensure equal access to education for learners with special needs;
- (d) provide standards which conform with international treaties and conventions which Kenya is a party to for the implementation of special needs education; and
- (e) eliminate exclusion and discrimination that hinders the right of access to education to learners living with special needs.

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

- (a) the right to free and compulsory basic special needs education pursuant to Article 53 of the Constitution;
- (b) co-ordinated 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 care givers 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.

5. Every special needs learner shall have the right to—

Rights of learners with special needs.

- (a) access a quality education;
- (b) access to information delivered in a suitable and legible media of instruction in their education;
- (c) use Kenyan sign language, braille in their education; and
- (d) access to all school buildings and facilities with ease.

PART III—THE ROLE OF NATIONAL AND COUNTY GOVERNMENTS

6. (1) The national and county governments shall to the extent of their constitutional mandate, promote the development and implementation of education for learners with special needs.

Responsibility of the Cabinet Secretary.

(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 special needs;
- (b) take measures to create opportunities and the 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 special needs education to learners in learning institutions falling within the mandate of the National Government pursuant to the Fourth Schedule to the Constitution;
- (d) conduct, at such intervals as may be necessary, a census of learners requiring special needs education including the number of such learners, the nature of their disability, their educational requirements and level of education and their geographic distribution;
- (e) maintain an inventory of the personnel and facilities available for the provision of education of learners with special education needs;
- (f) monitor and evaluate the implementation of policies, plans and strategies for the provision of special needs education at the National and county level 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) formulate a programme for the recruitment and training, including in service, of educational to learners with special educational needs;
- (i) ensure that the education curriculum and public examinations recognize and take account of the needs and circumstances of learners with special educational needs;

- (j) formulate programs and put in place structures for the provision of home based, non-formal, adult, continuing, alternative, free and appropriate public education;
- (k) collaborate with county governments and the relevant stakeholders—
 - (i) putting in place measures to address factors that hinder the realization of the right to special needs education; and
 - (ii) formulating the appropriate strategies in ensuring that quality special needs education is accessible to persons requiring special needs and who are marginalised or fall within the category of vulnerable persons; and
- (l) perform such other functions for the better implementation of this Act or as may be conferred on it under any other written law.

7. (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 Part 2 of the Fourth Schedule to the Constitution.

Responsibilities
of county
governments.

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

- (a) implement the National policy and program on the delivery of special needs education in the county;
- (b) put in place the necessary infrastructure and establish the necessary education centres pursuant to its mandate under Part 2 of the Fourth Schedule to the Constitution for the delivery of special needs education;
- (c) ensure that there are in place, the necessary resources, including human resources necessary for the development of education centres and the administration of special needs education in the county;

- (d) collaborate with the Cabinet Secretary and such agencies and stakeholders in the county as are necessary in ensuring a co-ordinated approach in facilitating access to, and delivery of, special needs education in the county;
- (e) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the needs of learners requiring special needs education in the county;
- (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 special needs education in existing public learning institutions under the mandate of the county and for this purpose, ensure that every education centre has at least one teacher who is able to assist children requiring special needs education;
- (h) 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 in the county;
- (i) coordinate the activities of State organs, institutions, the private sector, non-governmental organizations and community based organizations involved in matters relating to special needs education;
- (j) develop models and a curriculum for the delivery of special needs education that caters for various categories of learners requiring special needs education;
- (k) 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.

PART IV—REGISTRATION AND MANAGEMENT OF SPECIAL NEEDS EDUCATION CENTRES

8. Each county executive committee member shall keep and maintain a register record of all special needs education institutions in the county including—

Register of special needs education centres.

- (a) public education centres that provide special needs education in the county;
- (b) the specific category of the special needs education that is offered in the said education centre; and
- (c) the specific category of resources required by the education centres.

(2) Any person may inspect the register and obtain a copy of, or an extract from the Registrar upon payment of such fee as the Registrar upon payment of such fee as the Register shall determine Registration.

9. (1) A person shall not offer special needs education services or establish or maintain a special needs education centre unless such person is registered in accordance with the Basic Education Act, 2013.

Registration of private special needs education centres.

(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.

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

Deregistration or closure of special needs education institutions.

- (a) give adequate written notice to the institution;
- (b) make arrangements for the transfer of the students and staff of the public institution; and
- (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 education institution.

11. An early childhood education or technical and vocational training centre may admit a learner with special education needs after—

Admission of a learner with special needs.

- (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.

12. (1) The following categories of learners shall be represented on the Board of management of an institute for learners with special education needs—

Special Schools Board.

- (i) one person elected from amongst parents of the learners at the education institution;
- (ii) one representative of the teaching staff at the education institution;
- (iii) one representative of the non-teaching members of staff at the education institution;
- (iv) two persons with experience in matters of special needs education and social work relating to special needs nominated by the County Governor on the recommendation of the County Education Board;
- (v) one public officer nominated by the county executive committee member within the county;
- (vi) the head teacher or the most senior teaching staff of the education centre, who shall be an ex officio member; and
- (vii) in the case of a sponsored education centre, one person nominated by the sponsor.

(2) The Board of management constituted under subsection (1) above shall have an odd number of members.

(3) The Cabinet Secretary may by notice in the Kenya Gazette determine the manner of election or appointment of such members of a public special needs education institution.

13. (1) Every special needs education institution shall establish an association of parents and guardians of special needs learners.

Establishment of Parents Associations.

(2) A Parents Association shall assist the board of governors of an education institution in the performance of its functions under this part and shall in particular—

- (a) advise the board of governors on matters relating to the welfare of learners and staff at the education institution;
- (b) help in creating a more positive approach in parent-child – teacher relationship;
- (c) assist in obtaining parents’ consent in the identification, evaluation, IEP development and educational placement of their children;
- (d) assist the board of governors in the development of resources and finances for the education institution; and
- (e) offer such other advice as it may be requested to give.

14. (1) The governing board of every special needs educational institution shall— Responsibility of governing bodies.

- (a) identify the needs of special needs learners in the institution and the resources necessary to ensure that they receive the appropriate and quality education;
- (b) secure the resources required by a learner who may require special needs education in the institution;
- (c) ensure that all instructors within the educational institution are aware of the needs of the special needs education learner;
- (d) ensure that the special needs education is delivered in accordance with the standards prescribed under this Act and by by the Cabinet Secretary and by the County Education Board;
- (e) 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 he will be educated; and
 - (iii) the efficient use of resources;

- (f) ensure 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.

15. Where a county education board is satisfied that the resources or facilities required for the delivery of special needs education are not available in an education institution in the respective county, it may arrange for the provision of that special educational provision after consultation with the parent or the guardian of the learner and the institutions in the area.

Responsibility of
County Education
Boards.

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

Facilities in
institutions
providing for
special needs
education.

(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 special needs education facilities.

(3) An education institution shall not be registered to provide special needs education under this act unless it complies with the standards provided for under this section.

17. Where the Cabinet Secretary or a county board is satisfied that an educational institution is inappropriate for a special needs learner, the Cabinet Secretary or the county 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.

Provision of
special education
outside of an
education
institution.

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

Conduct of
special needs
education service
providers

(2) Subject to subsection (4) of this section, a person shall be entitled to be registered as a special service provider if —

- (a) they are above the age of 22 years;
- (b) they have been awarded a certificate of proficiency awarded by a professional body or institute of certified special services providers established under subsection (6);
- (c) they hold a qualification approved under subsection (3) by the Cabinet Secretary; and
- (d) they are not disqualified from being registered under subsection (4).

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

(4) A person shall be disqualified and no such person shall be eligible to be registered by the Board as a special service provider if—

- (a) they do not meet the requirements of subsection 2(a) to (c);
- (b) the person is declared bankrupt;
- (c) they are of unsound mind;
- (d) the Cabinet Secretary otherwise determines that the person shall not be registered, or
- (e) they are 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 formulated under subsection (6).

(5) Any 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 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 special educational needs, and such a code shall—

- (a) provide for any 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 facilitate 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) prescribe or provide for any other matters with respect to the provision of services which the Cabinet Secretary considers necessary or desirable to prescribe or provide for.

**PART V—IDENTIFICATION AND ASSESSMENT
OF CHILDREN WITH SPECIAL EDUCATIONAL
NEEDS**

19. 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.

Register of all learners with special educational needs.

20. (1) Every county board of education shall examine or cause to be examined—

Identification of children with special educational needs.

- (a) every child attending an educational institution within its area of jurisdiction; and
- (b) every child who is not in an education institution but who is suspected to have a learning difficulty or disabilities in order to determine whether such child has special educational needs
- (c) for the purpose of having such child enrolled in a special programme.

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

(3) A County 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.

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

(2) Pursuant to subsection (1), the county 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 in relation thereto 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 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 Board shall implement the educational provision determined in subsection (1).

(4) In the exercise of its powers under this part, the county 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 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 VI— INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION

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

23. (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.

Creation of
Special Needs
Education
Resource Centre.

(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 society and local communities;
- (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 special needs education in the county.

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

- (a) to provide expert economic and efficient diagnostic, therapeutic and corrective educational needs;
- (b) to provide corrective and supportive services for all children with special educational needs in the country;
- (c) to 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) to 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) to 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.

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

- (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.

25. (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.

Provision of materials and equipment

(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 conditions attached thereto;
- (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.

26. (1) The Cabinet Secretary may establish mechanisms providing for the co-ordination of the activities of county boards for the purpose of meeting the obligations in relation to the provision of education to children with special educational needs.

Establishment of county co-ordination mechanisms.

(2) The mechanisms in subsection (1) shall prescribe and provide for any matters which are required to be prescribed or provided for in relation thereto.

27. (1) Upon request of any person, the Cabinet Secretary may provide technical assistance in the formulation of any plan or subsequent report required pursuant to this Act.

Technical assistance and personnel training.

(2) The unit or units established under section 19 shall conduct an in-service training programme to any regularly employed teachers of special needs education institutions, which shall be deemed as eligible applicants for equipment, materials, supplies or devices.

(3) The training of teachers of special education in subsection (2) which shall be available subject to such conditions as the Cabinet Secretary may provide.

28. (1) No teacher or officer shall be appointed to teach or supervise the teaching of children with special educational needs unless such a person has passed proficiency and competency tests in the provision of such education.

Training of special needs education teachers.

(2) Proficiency and competency tests as per subsection (1) shall involve aptitude in one or more of the following—

- (a) sign language;
- (b) braille;
- (c) orientation and mobility;
- (d) speech therapy;
- (e) behaviour management; and
- (f) similar proficiencies and competencies as deemed necessary by the Ministry of Education.

(3) A certified teacher of special needs education shall hold a certificate or other award issued by an institution recognized as competent to issue such certificates by the Cabinet Secretary.

29. The Teachers Service Commission shall—

Role of the Teachers Service Commission.

- (a) ensure that trained special needs teachers and instructors are assigned to carry out their duties in special needs education schools;
- (b) ensure that the teachers posted to special needs education institutions are adequate in number as per the globally recommended teacher: student ratio;
- (c) grant special needs teachers with disabilities retirement upon reaching sixty-five years of age; and
- (d) ensure that teachers with disabilities are assigned assistants who shall be paid at a rate determined by the Commission

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

Training of non-teaching staff.

**PART VII—DEVELOPMENT AND FACILITATION
OF SPECIAL NEEDS EDUCATION**

31. (1) The Ministry of Education through the Cabinet Secretary shall facilitate registered educational institutions on an equitable basis in order to ensure the proper exercise of the rights of learners with special educational needs to education and the redress of fast inequalities in the promotion of education.

Funding of special needs educational institutions.

(2) The Cabinet Secretary shall on an annual basis, provide sufficient information to registered educational institutions referred to in sub-section (1) to enable them to prepare their budgets for the next financial year.

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

Procedures and processes for funding of special needs education.

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

(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 governing body of a special education institution may appeal to the Cabinet Secretary against the termination or reduction or funding or subsidy unless the reason for such termination reduction is the continuation of section 38.

33. The governing body of a public education institution shall take all reasonable measures within its means to supplement the resources supplied in every financial year in order to improve the quality of education provided by the education institution.

Responsibility of governing bodies.

34. The governing body of an education 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 the guidelines determined by the Cabinet Secretary.

Financial records and statements.

35. (1) A private education 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 following financial year.

Disqualification from receiving funding.

(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.

36. 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 special education needs attending or intending to attend universities and other tertiary education institutions.

Levy of Fees.

PART VIII— QUALITY ASSURANCE AND STANDARDS OF SPECIAL NEEDS EDUCATION

37. (1) The Cabinet Secretary shall appoint officers who with respect to special education institutions, have the authority to—

Quality assurance in special needs education.

- (a) inspect the institution and report to him with respect to the institution or any aspect thereof;
- (b) inspect any ongoing developments on matters of teaching and special matters of service delivery gaps in special needs institutions;
- (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; and
- (d) may temporarily remove any books or records for the purpose of inspection of audit.

(2) The manager of a special education institution shall on a request by an officer appointed under this

section, produce all documentation on the facilities, records, accounts, books and other materials belonging to the institution that the officer may reasonably require for the purpose of the inspection of the special education institution or audit of its accounts.

38. (1) Each county executive committee member shall ensure that the special needs education is delivered in accordance with the standards that may be prescribed by the Cabinet Secretary and such other standards as may be prescribed in county legislation.

Role of the county government in quality assurance.

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

- (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 education institutions falling within the mandate county government;
- (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 and advice the above-mentioned institutions accordingly; 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 IX—MISCELLANEOUS PROVISIONS

39. The principal manager or head of an education institution may require any person attending the special educational 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 provided that 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 congruent to the learner’s special needs.

Assessment.

40. Where a special educational institution is established on land owned by the Government including land held in trust by a county government, the education 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.

Right of special needs education institutions on public land.

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

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

(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.

42. 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.

Private special education institutions.

43. (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 special education as eligible to receive funding or to be declared to be a public special education institution.

Declaration of eligibility as special education institutions.

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

44. (1) Any person who having charge of a learner is required to attend compulsory special education may apply to the Cabinet Secretary for the registration of the learner to receive education at home. Registration of home-based special education learners.

(2) The Cabinet Secretary shall register 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.

45. Government financial aid may be applied for and may be paid by the Ministry or any county board or resource centre or other entity approved by the Cabinet Secretary to receive aid for each of the following elements— Government financial aid to institutions catering for special educational needs.

- (a) the education of learners with special education needs in the regular programmes of the county or entity;
- (b) the education of learners with special education needs in special classes, schools and programmes designed to meet their special needs and the furnishing or corrective or remedial services;
- (c) the furnishing of transportation.

46. The Cabinet Secretary, in consultation with relevant stakeholders, may make subsidiary legislation to provide for such matters as the Cabinet Secretary considers necessary for the better carrying into effect of the provisions of this Act. Regulations.

47. Any person who— Offences.

- (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.
- (c) denies or prevents any child who is in need of special education from receiving or gaining access to such education;
- (d) prevents a county board from assessing or examining children in or out of school with a view to determining whether or not they are in need of special education services; or
- (e) 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 such fine and imprisonment.

(2) 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.

PART VIII—TRANSITIONAL PROVISIONS

48. The Acts specified in the First Schedule are amended in the manner specified in that Schedule. Consequential amendments.

FIRST SCHEDULE

Delete section 52 and substitute therefor with the following new paragraph— The Technical and Vocational Education and Training Act., 2013.

- (1) Admission of students into technical and vocation 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 special needs students are taken into consideration and lower the entry grade for such students.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Object and Reasons for the Bill

Education is a fundamental right that is enshrined in the Constitution of Kenya. 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 of the Kenyan Constitution 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 and special needs 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 special needs learners.

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 special needs learners 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 23rd April, 2021.

GETRUDE MUSURUVE,
Senator.

MARAGRET KAMAR,
Senator.