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**REPUBLIC OF KENYA**

**THIRTEENTH PARLIAMENT | SECOND SESSION**

**THE SENATE**

**THE STANDING COMMITTEE ON EDUCATION**

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

*Approved*  
*[Signature]*  
02/05/23  
*DSS*

**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,  
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*[Signature]*

April, 2023

*Forwarded and recommended  
for approval for tabling  
02/05/2023*

TO THE HONORABLE  
MEMBERS OF THE HOUSE OF REPRESENTATIVES  
AND SENATORS OF THE LEGISLATURE  
OF THE STATE OF CALIFORNIA  
IN SENATE

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## 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 7<sup>th</sup> 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.

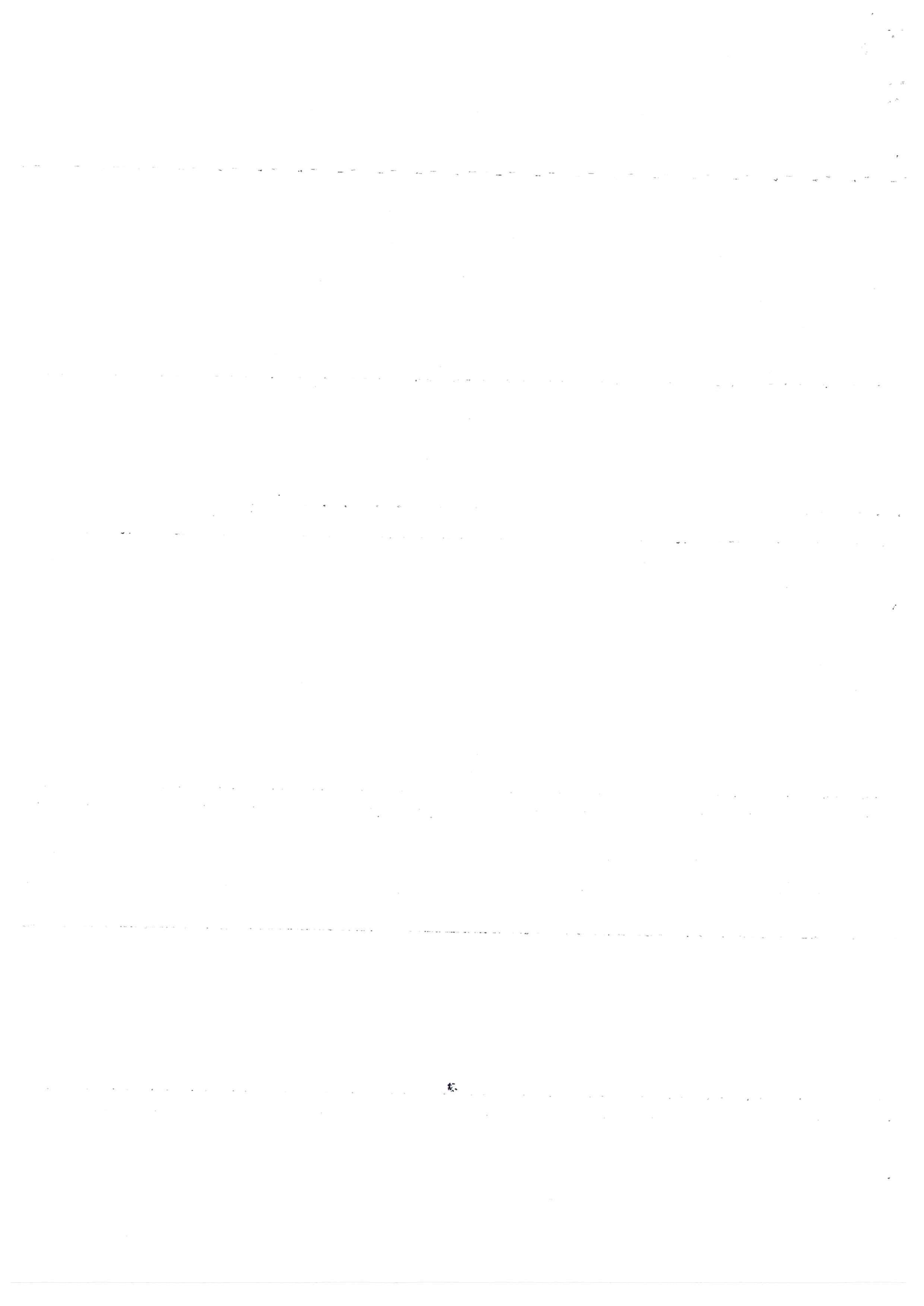
**Mr. Speaker, Sir**

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..... 25<sup>th</sup> / 11 / 2023 .....

for SEN. JOE NYUTU, MP  
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 7<sup>th</sup> 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 I**, 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, 11<sup>th</sup> March, 2023 (Annex 3).

The deadline for submission of views was Monday, 27<sup>th</sup> 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, 29<sup>th</sup> 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*”