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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

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

Short title.

2. In this Act —

Interpretation.

“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.

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 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.

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 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

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

Rights of learners with disabilities.

- (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.

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

Responsibility of parents.

- (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 subsequent 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.

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.

Responsibility of the National government.

(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.

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

Responsibilities of county governments.

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

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 —

Register of special needs educational institutions.

- (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.

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

Registration of private special needs educational institutions.

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.

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

Deregistration or closure of special needs educational institutions.

- (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.

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

Admission of a learner with disability.

- (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.

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

Board of management.

- (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.

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

Functions of board of management.

- (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.

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

Establishment of a parents' association.

(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.

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

Responsibility of County Education Boards.

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

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.

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 education facilities for learners with disabilities.

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.

Provision of special needs education outside of an educational institution.

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.

Conduct of special needs education service providers.

(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

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.

Register of learners with disabilities.

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

Identification of children with disabilities.

(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.

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.

Assessment of special education needs.

(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

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

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.

Special needs
education
resource centres.

(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.

25. 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.

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. 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 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.

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.

Establishment of county co-ordination mechanisms.

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.

Training of non-teaching staff.

PART VI – DEVELOPMENT AND FACILITATION OF SPECIAL NEEDS EDUCATION

29. The Cabinet Secretary shall –

Funding special needs educational institutions.

(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.

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.

Funding special needs education.

(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.

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

Responsibility of governing bodies.

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

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.

Financial records and statements.

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.

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.

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.

Levy of fees.

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

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

Quality assurance in special needs education.

- (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.

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.

Role of 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 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

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.

Assessment.

(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.

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.

Educational institutions on public land.

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.

Prohibition of alienation of land used by public special educational 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.

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.

Private special needs education institutions.

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.

Declaration of eligibility as special educational institution.

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

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.

Registration of home-based learners with disabilities.

(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.

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—

Government financial aid.

- (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.

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

Regulations.

45. (1) A 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.

(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.

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

Consequential amendment.

No. 29 of 2013.

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.

