



TOO MANY CHILDREN LEFT BEHIND

Exclusion in the South African
Inclusive Education System

With a focus on the Umkhanyakude District, KwaZulu-Natal

+SECTION27
catalysts for social justice

A SECTION27 Report by
Tim Fish Hodgson & Silomo Khumalo
July 2016

The Foreword to the SECTION27 Report on Umkhanyakude District, KZN

The SECTION27 Report and the rights-based approach to the education of children with disabilities is an eye opener to the challenges facing Special Schools and Full Service Schools in the Umkhanyakude District in particular and the whole of South Africa in general. The situation is more severe in Special and Full Service Schools attended by black learners and worse in the more deep rural communities with high levels of poverty and unemployment.

The report strikes at the core of the conditions in the Special and Full Service Schools in the District. Despite the fact that Inclusive Education and White Paper 6 have been on the table at implementation stage for over a decade now, the achievements are far below what should have achieved. It is interesting though, to note the passion and willingness shown by educators, Learner Support Assistants, Learner Support Educators, school counsellors, departmental officials and parents to make inclusive education work despite the numerous limitations.

More determination at the Government level in re-directing the resources in terms of budget allocation to give special attention to issues of transport, accommodation and teaching and learning devices will turn things around. Of course this **MUST** be accompanied by investment in the human personnel who must be equipped with sufficient skills, qualifications and competencies and remunerated appropriately. Despite the immense challenges that result in **Too Many Children Left Behind** it is gratifying to know that some schools prevail over the limitations and make inclusive education real and possible. The Somfula Full Service School is the only Secondary School in the District which distinguished itself and made a living testimony before it was even made a Full Service School as it made a breakthrough with Khulekani Ndwandwe who matriculated in 2006 despite the multiple disabilities he had and still has. This proved that with necessary support **Every Body Can Learn**.

This SECTION27 Report with its in-depth research and recommendations is highly commended with the hope and belief that it will receive immediate and appropriate attention from all relevant structures and levels. More **CAN** be done and **MUST** be done to make the goal of inclusive education realized. With **DETERMINATION** and **COURAGE** at all levels, **it shall be done**.

Mr VF Hlabisa
Somfula Full Service School

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Exclusion in the South African Inclusive Education System

With a focus on the Umkhanyakude District, KwaZulu-Natal

A SECTION27 Report^{*}

July 2016

Tim Fish Hodgson[†] and Silomo Khumalo^{††}

I. SUMMARY OF FINDINGS

In South Africa, basic education is a constitutionally entrenched right that has been described by the Constitutional Court as “immediately realisable”, and by the Supreme Court of Appeal as “a primary driver of transformation”. For decades, apartheid’s brutally segregated education system actively deprived black children in South Africa of an opportunity to receive quality education. For children with disabilities, racial apartheid in the education system was compounded by a second ‘disability apartheid’, which isolated children with disabilities to poorly funded special schools – that often treated them as incapable of being educated. This had a particularly dire effect on poor black children (with disabilities), who often had no opportunity to attend school at all.

South Africa’s inclusive education policy seeks to redress this situation, and accommodate all

^{*} Field Research, interviews and community engagements that have informed this report included the following SECTION27 employees in addition to the authors: Muhammad Zakeria Suleman, Ngqabutho Mpofu, Dlamini Siphelo Mbeki, Patrick Zaid Mdletshe, Violet Kaseke, Kate Paterson, Asiphe Funda, Simphiwe Sidu and Mark Heywood. SECTION27 was also assisted by student members of the University of KwaZulu-Natal (UKZN) (Howard College) and University of Witwatersrand branches of Students for Law and Social Justice.

Considerable inputs were made to written drafts of this report by SECTION27’s Advocate Faranaaz Veriava, who supervised the and directed the compilation of the report. Special thanks to Justice Zakeria Yacoob for his involvement in community engagements and guidance on SECTION27’s disability rights activism and research, and to Robyn Beere of Inclusive Education South Africa for significant insights about inclusive education.

Editing and editorial comments were provided by Kate Paterson, Luvo Nelani, Mark Heywood and Tina Power.

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children with disabilities in appropriate schooling – whether at separate special schools, in specially resourced full-service schools, or at local, neighbourhood mainstream schools.

This report is the product of over three years of research into barriers to accessing education for people living with disabilities in Manguzi in northern KwaZulu-Natal. Interviews were conducted with nearly 100 caregivers of children with disabilities between 2013 and 2015, with the final interviews quoted in this report undertaken between May and August 2015. In late 2015, after notifying the Umkhanyakude District Department of Education, SECTION27 visited all three special schools and 11 full-service schools in the district, interviewing principals, teachers and other staff.

The factual information provided by teachers, parents and learners is described as it was at the point of collection of the information. This may be subject to change and, we hope, improvement. We will continue to update this information on a regular basis and provide these updates both to the national and provincial departments of education, and publicly on SECTION27's website (www.section27.org.za).

This report documents widespread violations of the rights of children with disabilities in the Umkhanyakude District. These violations are so severe – twenty years into South Africa's constitutional democracy, fifteen years after the implementation of South Africa's inclusive education policy began, and five years before the policy's implementation range is supposed to be completed – that it is clear the dual racial and disability apartheid in South Africa's education system persists. These realities, described in detail in this report, exact a very heavy price on poor, black children with disabilities in the Umkhanyakude District, and amount to systemic violations of their constitutional rights to basic education, equality and dignity.

Voicing the concerns of teachers, principals and staff: victimisation and intimidation

At the centre of this report are the voices of parents, caregivers and staff at schools catering for children with disabilities. On the express wishes of the parents, caregivers and staff members, they have been anonymised. It is a significant concern that some staff members predicted clearly that if they spoke openly and publicly in the interests of their learners, they would be subjected to victimisation, intimidation and disciplinary action from state employees and government departments. Indeed, some staff members indicated that these consequences had resulted on previous occasions when they or their colleagues had spoken out about the poor conditions in their schools.

SECTION27 condemns such intimidation and victimisation, and whole-heartedly endorses the statement late in 2015 of Linda Hlongwa-Madlala, Member of the Portfolio Committee for Education, KZN Provincial Legislature, in response to such an incident of victimisation and intimidation of a teacher at Sisizakele Special School (one of the three special schools in the Umkhanyakude District discussed in this report):

“It’s wrong and against the law for the Department to expose an individual who raises concerns about wrongdoing. It exposes him to victimisation instead of focusing on investigating the concerns. They have put that educator in harm’s way now.”¹

SECTION27 thanks and applauds staff members at the three special schools and 11 full-service schools for speaking out, through their involvement in this report, in the best interests of children with disabilities in the Umkhanyakude District.

Inclusive Education in the Umkhanyakude District: the third-poorest district in South Africa

The Umkhanyakude District is the most northern of the 11 districts of the KwaZulu-Natal province, with a population of at least 644 196 people. It is a very poor, rural district with five local municipalities: Umhlabuyalingana, Jozini, The Big Five False Bay, Hlabisa and Mtubatuba. The poverty rate in the district is 72.1%, with 88.6% of people living off between R1 and R1 600 per month, including social grants. The unemployment rate in the district is 58.6%, and access to basic services is extremely low, with only 41.3% of people – the lowest percentage in the country – having access to electricity for lighting, 38.2% having no access to tap water, 45.3% using pit toilets, and a further 18.2% having no access to a toilet at all. On assessment in a recent report by the Institute of Race Relations, the District has therefore been described as the third-“worst place to live” in South Africa; or perhaps more appropriately, the third-poorest district in South Africa.²

As recently as 2002, there were no registered schools for children with disabilities in the Umkhanyakude District. A study completed in Manguzi in 2001 estimated that 53% of children with disabilities “did not attend school”; and of those who did, a further 53% “reported having difficulties at school”.³ Of all people in the district, 25.3% have no schooling at all; while 25.6% of people have a matric qualification, and a mere 4.6% have accessed higher education.

The report begins by setting the relevant context and background of inclusive education for children with disabilities; firstly in KwaZulu-Natal, and secondly in the Umkhanyakude District. In 2011, the KwaZulu-Natal Department of Education (KZN DoE) estimated that there are 37 768 learners with disabilities between the ages of 6 and 15 years that are not in school at all.⁴ According to more recent estimates, made by the Department of Basic Education (DBE) in a report released in November 2015, there could be as many as 182 153 children with disabilities in KwaZulu-Natal between the ages of 5 and 18, of which as many as 137 889 (76%) may not be receiving any schooling.⁵ A 2011 report on special schools in KwaZulu-Natal lists a variety of serious problems in the majority of special schools in the province, including insufficient assessment support, inadequate co-curricular, suitability of curriculum, lack of

¹ C Ndaliso, ‘Disabled KZN pupils beaten at school’, IOL (4 September 2015), available at <http://www.iol.co.za/news/crime-courts/disabled-kzn-pupils-beaten-at-school-1911024>.

² G Mackay & A Muresan, ‘All politics is local from Cape to Capricorn’, *South African Institute of Race Relations* (May 2016), p 12-13.

³ P Maclaren, B Zungu & S Rule, ‘District Disability Situation Analysis – Jozini-Umkhanyakude District #27’, KwaZulu-Natal (March 2002), Appendix 1A. On file with SECTION27.

⁴ KwaZulu-Natal Department of Education, ‘Annual Performance Plan 2011/12’, p 79.

⁵ Department of Basic Education ‘Report on the Implementation of Education White Paper 6 on Inclusive Education – An Overview for the Period: 2013 - 2015’ presented to the Parliamentary Portfolio Committee on Basic Education on 8 March 2016, available at <https://pmg.org.za/committee-meeting/22150/>, p 20-21.

training for teachers and principals, inadequate support staff, low levels of support from the district Department, inappropriate infrastructure, and little or no access to transport, assistive devices, and other resources.⁶

South Africa's inclusive education system: the wide gap between policy and reality

'Education White Paper 6: Building an Inclusive Education and Training System' (2001) divides schools in South Africa into three types: special schools, full-service schools, and ordinary ('mainstream') schools.⁷ According to the 'Screening, Identification, Assessment and Support Policy' (SIAS), learners are categorised as having high, moderate or low support needs in terms of learning.⁸ Generally, because of the way the system has been structured by the Department of Basic Education, children with disabilities are defined as having high or moderate support needs, and are required to attend special schools or full-service schools. A special school is a school that caters exclusively for children with disabilities, while a full-service school is a mainstream school that caters for a majority of learners with low support needs, and a smaller percentage of learners with disabilities, who have moderate or high support needs.

Despite the requirement, in terms of Education White Paper 6, for mainstream schools to reasonably accommodate the inclusion of children with disabilities (whether they have high, moderate or low support needs), this is simply not a realistic option for children in the Umkhanyakude District, as schools lack the resources, expertise and support to cope with children with disabilities. This is confirmed by the interviews conducted with parents and caregivers, whose children almost always start at their own communities' mainstream schools. This leaves only the 11 full-service schools and three special schools in the district as viable options for children with disabilities in the Umkhanyakude District. All three special schools in the District were started by community members, and were only taken over by the KwaZulu-Natal Department of Education (KZN DoE) after many years in operation. Historically, the very few children with disabilities who have attended school were forced to travel several hours to Estcourt, Nkandla or Pietermaritzburg, depending on their disabilities. The 11 full-service schools in the district, which were designated as such between 2007 and 2013, and have markedly varying ability to accommodate children with disabilities, are scattered throughout the district.

Vast numbers of children languishing in inappropriate schooling or with no schooling at all

The first serious problem uncovered by the report is the large number of children with disabilities in the District who do not enjoy any access to school at all, and may never have done so. This speaks to a direct failure on the part of the KZN DoE to mobilise "out-of-school learners" as a short-term goal, as required by Education White Paper 6, published in 2001. In

⁶ KwaZulu-Natal Department of Education & Miet Africa 'Special Schools Survey Report' (24 January 2011).

⁷ Department of Basic Education 'Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System' (2001), available at [http://www.education.gov.za/Portals/0/Documents/Legislation/White paper/Education White Paper 6.pdf?ver=2008-03-05-104651-000](http://www.education.gov.za/Portals/0/Documents/Legislation/White%20paper/Education%20White%20Paper%206.pdf?ver=2008-03-05-104651-000).

⁸ Department of Basic Education 'Policy on Screening, Identification, Assessment and Support' (2014), available at <http://www.thutong.doe.gov.za/ResourceDownload.aspx?id=48734>.

2014, SECTION27 learned of 17 out-of-school learners in KZN, and helped to facilitate their placement at Sisizakele Special School. During interviews conducted in 2015, 21 out of the 43 parents and caregivers of children with disabilities interviewed revealed that their children were not in school at all. A further 12 of these children were in mainstream schools that could not accommodate their needs, and three were in full-service schools, though their parents and caregivers believed they should be attending special schools. This leaves a mere 7 out of 43 children who were attending special schools.

The majority of parents and caregivers noted that their children were on 'waiting lists' at special schools; though sometimes denied by the KZN DoE in correspondence with SECTION27, this was acknowledged as recently as 2015 by the Department of Basic Education as a countrywide problem.⁹ All three special schools confirmed in interviews that they have substantial waiting lists. Children often languish on these waiting lists for years without any contact from schools or the district Department of Education.

A major concern raised in the interviews with parents and caregivers was the quality of schooling and care available to their children at special and full-service schools. Most parents and caregivers, when asked, could not explain what a full-service school was, or differentiate between full-service and special schools. This report therefore proceeds to detail concerns about the quality of education at the three special schools and the 11 full-service schools in the district.

No access to high schools for the significant majority of children with disabilities

All three special schools 'specialise' in education for children with severe intellectual disabilities. Though children with multiple disabilities may attend these schools, all children admitted to these schools (with some exceptions) have some form of intellectual disability. It is important to stress that in terms of South Africa's Constitution and a 2011 judgment of the High Court, children with extremely severe intellectual disabilities must be properly accommodated in the education system, and cannot be disregarded as ineducable or too costly to educate.¹⁰ The result of this singular specialisation in intellectual disabilities in the Umkhanyakude District is that children without intellectual disabilities – but with visual, hearing or physical disabilities, for example – must travel outside of the district if they need to attend special schools. Furthermore, all three schools offer an academic curriculum for grades R to 7 only. Any child with an intellectual disability wishing to attain a higher level of qualification than grade 7, or attain a National Senior Certificate, simply cannot do so in the Umkhanyakude District.

In addition, 10 of the 11 full-service schools are only primary schools. This means that out of the 14 schools in the district that cater for the learning needs of children with disabilities at all, only one – Somfula Secondary School – is a high school. According to the principals of the full-service schools, because of the vast geographic area covered by the district, and the distances between schools, Somfula does not even admit many children with disabilities who

⁹ See DBE Progress report, footnote 5 above, p 21-22, which also notes that "in terms of the South African Schools Act, Act 84 of 1996, no learners may be placed on waiting lists."

¹⁰ *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 (5) SA 87 (WC), available at <http://www.saflii.org/za/cases/ZAWCHC/2010/544.html>.

have completed grade 7 at the other 10 schools. The net result is that for the significant majority of children with disabilities who attend schools in the Umkhanyakude District, the completion of any high school grades and the achievement of a National Senior Certificate – one of the key aims of participation in the education system – is an unrealistic prospect.

Inflexible and undifferentiated curriculum: “Learners with barriers struggle a lot to pass”

Even within the ambit of the academic grades offered by the special schools, the failure to ensure effective curriculum delivery is a fundamental problem. Both White Paper 6 and the SIAS policy of the DBE require curriculum to be “flexible” and appropriately “adapted” or “differentiated” for children with disabilities. Despite this, teachers at both special and full-service schools complain about the rigidity of the CAPS curriculum, and the unwillingness of the district Department to accept the need for different approaches to teaching and learning at special and full-service schools.

At special schools, teachers struggle to teach the curriculum – both because they are hired without the requisite skills to teach learners with varying barriers to learning, and because their classes are simply too big to give children individual attention and support. All three special schools report having classes with as many as 20 children to one teacher, despite a ratio closer to 1:10 being desirable. Learners are forced to complete the curriculum in the same amount of time as children without learning barriers, and are compelled to write Annual National Assessments and common papers, which they are ill-equipped to do. If they were permitted to, given the current education available to learners, schools would repeat many learners in grade 1 or 2 for many years; but they are forced to make learners progress through grades by the stringently-applied rules of the Department of Education.

Principals at all three special schools bemoan the fact that there is too little time dedicated to skills training for children with severe disabilities who cannot cope with the academic curriculum, and that the Department makes it difficult for schools to hire teachers and other staff who could teach learners skills that would assist them with daily living and financial independence later in life.

Ultimately, the situation in the Umkhanyakude District is no different to that at national level, described by the Department of Basic Education in these stark terms:

“There is a serious concern about the standard of curriculum delivery in special schools. There is evidence that many are simply day care centres with little attention being given to ensuring that learners have access to the National Curriculum Statement on an equal basis with all other learners in the system.”¹¹

At full-service schools, where learners with disabilities are integrated into classes with other learners, many of the same challenges exist. Because classes are often as big as 50 learners with a single teacher, teachers struggle to give children the support that they need with the academic curriculum. Teachers bemoan the fact that they are not all provided with assistance in the form of practical and theoretical training in “curriculum differentiation”, which is essential in their classes.

¹¹ See DBE Progress report, footnote 5 above, p 34.

A Learner Support Educator is a specialist educator, highly-trained in a number of technical aspects of teaching and learning including inclusive education. The Learner Support Educator is supposed to provide essential support services in all schools including on how to effectively differentiate and adapt curricula and develop individualised support plans for learners that will allow them to learn and improve. There should ideally be one at each or at least many such posts throughout the district. Because the single Learner Support Educator in this district must cater for all its mainstream, full-service and special schools, the Learner Support Educator can provide next to no support to teachers or learners.

Learner Support Assistants, who operate Learner Support Centres at full-service schools, provide some support with remedial lessons, which vary in nature. However, they are not qualified teachers, and receive little or no training from the Department to assist with curriculum differentiation and individualised support plans. Though six schools have two Learner Support Assistants employed, five schools presently have no Learner Support Assistants at all. The net result is that teachers struggle to complete the curriculum; and according to one teacher, “Learners with barriers struggle a lot to pass.” Schools report that the prospect of passing is reduced further by the fact that inadequate accommodation is made for children with learning barriers in standardised testing and examinations.

Insufficient educators and professional staff: problems with post-provisioning

The issue of post-provisioning of both educator and non-educator staff is a major challenge at special and full-service schools.

At special schools, although there have been improvements on paper in the number of teachers allocated to schools as recently as 2014, teachers take a long time to actually be placed at the schools. Even with the increases in the number of teachers allocated to special schools, all three schools do not believe that they have sufficient teachers. Furthermore, teachers employed often have no experience or expertise in education for children with disabilities, and do not have the ability to teach both the academic curriculum and the skills the learners sorely need.

At full-service schools, principals report that the allotment of teachers in terms of their staff establishment does not take into account that there are children with disabilities at these schools. The result is that all schools suffer from a shortage of teaching staff. Principals also complain about being allocated teachers with no understanding of or interest in teaching learners with disabilities. Some teachers even discriminate against learners, calling them ‘lunatics’ and being impatient with them. Others do not last very long, and move on to other schools. Although the Department does provide training for teachers, schools are often asked to send representatives from the school, so not all teachers benefit from this much-needed training. Moreover, sometimes the training is overly theoretical, and also unhelpful. Teachers report that it needs to be more consistent and held at their schools.

Special schools lack the dedicated professional and non-professional non-educator staff essential to their operation. All three schools lack permanent posts for psychologists, social workers and occupational therapists, and are therefore reliant on inconsistent visits from and to clinics and hospitals for desperately needed services. None of the three schools have nurses, despite many children with disabilities needing to take medication regularly, and this activity needing to be professionally monitored. In all three special schools the majority of

their learners live full-time in school hostels, and are often very (or entirely) dependent on full-time care. As a result, schools report needing additional cleaners for hostels, twenty-four-hour house mothers, twenty-four-hour security, kitchen staff, bus drivers and additional maintenance staff.

In full-service schools, in addition to the absence of psychologists, physiotherapists and occupational therapists, principals emphasise the importance of Learner Support Educators and counsellors who are based at the school, or at least in each circuit. Both of these posts are based at the district office and are therefore of little support to the schools. That five schools currently do not have Learner Support Assistants also highlight the need for Learner Support Assistants to assist teachers to teach big classes of children in which children with disabilities are integrated. Some schools have indicated that Learner Support Assistants need to be trained teachers, or supported by the Department to obtain a formal qualification in education during their employment. Other principals indicate that at present, Learner Support Assistants endeavour to qualify of their own accord, and eventually leave because the salary for Learner Support Assistants is very low. They therefore recommend that Learner Support Assistants be paid and acknowledged as teachers, and supported in obtaining training and professional qualification as teachers.

Unacceptable and unlawful abuse, neglect and corporal punishment in special-school hostels

The lack of trained, paid house mothers is particularly urgent, given the widespread reports from caregivers that children are neglected, mistreated and abused by volunteer house mothers in hostels.

The report details shocking reports of abuse in hostels; theft, unlawful corporal punishment, and a widespread perception on the part of caregivers that their children will be abused and neglected if they are sent to stay in special schools.

Media reports confirm that this problem is widespread in KwaZulu-Natal, and the Department of Basic Education itself has admitted that it is endemic throughout South Africa, noting that there are:

“extremely poor conditions in many special school hostels. There is a high rate of child abuse in special school hostels. Especially learners who are deaf or intellectually disabled are doubly vulnerable. It is critical that the Hostel Policy for special schools is finalised to address all issues pertaining to accessibility of facilities, supervision, safety, etc.”¹²

SECTION27’s research confirms the depth of this problem in the Umkhanyakude District, and calls for urgent investigations into all allegations of abuse, the urgent completion and publication of the the ‘Hostel Policy’ mooted by the national Department of Basic Education, and the extension of protections provided by the Children’s Act to Child Youth Care Centres for special-school hostels.¹³

¹² See DBE Progress report, footnote 5, p 51.

¹³ Children’s Act 38 of 2005, ss 191-212.

Inadequate, unaccommodating infrastructure and poor service delivery

Both special and full-services schools in the district report serious problems with infrastructure and access to basic services.

Though all three special schools have only recently been built, and therefore appear impressive at first sight, schools often lack the furniture and facilities required for the education of learners with disabilities. In addition, some of the facilities provided – including workshops for practical skills training – remain unused, because of a lack of teachers equipped to provide skills training. Full-service schools report lack of classrooms, which results in multi-grade classrooms that must be shared by as many as 89 learners. Some complain about the quality and safety of mobile classrooms; for example, some have broken doors that blow over when it is windy. One school reports that the Grade Rs are forced to study under the trees. Several of the full-service schools were started by communities, under trees, and were later taken over by the Department. One school complains about the continued use of pit latrines. Some full-service schools do not have Learner Support Centres, which are required for Learner Support Assistants to do effective remedial work with children with disabilities.

When schools do operate Learner Support Centres, which include bathrooms and kitchen facilities, they must spend additional funds for basic services such as water and electricity. Many schools complain about a lack of funds for these basic services. Some full-service schools lack access to these basic services entirely. One school has never had access to electricity or running water. It therefore only has access to water when it rains. Another struggles to use computers, projectors, stoves and air conditioners in the persistent absence of electricity. The schools complain that without electricity, computers, photocopiers and other equipment that could be used to provide accommodations for children with disabilities are ineffective. At special schools, principals complain that basic services are “exorbitantly expensive” and that water provision is often interrupted because of malfunctioning systems and general water shortages, resulting in “unhygienic conditions”, particularly in hostels.

Though special schools make few complaints about “universal design”¹⁴ or the infrastructure which accommodates learners with disabilities, almost all full-service schools have major concerns about the basic accessibility of their premises. For example, schools often lack basic ramps and accessible toilets for children with physical disabilities. Even when there are ramps going into classrooms, learners in wheelchairs require the dirt ‘courtyards’ and open areas between classrooms and other buildings such as the Learner Support Centre or toilets to be paved, which is often not the case.

Trouble getting to school: dangerous, expensive and inappropriate learner transport

Transport for getting to school in the first place presents a similar obstacle for learners with disabilities. For example, children requiring wheelchairs in deeply rural areas in which there

¹⁴ Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, Government Notice R920 in Government Gazette 37081 of 29 November 2013, norm s 4(1)(b)(ii) read with 4(3)(c) available at <http://www.education.gov.za/Portals/0/Documents/Policies/Norms%20and%20Standards%20on%20School%20Infrastructure.pdf?ver=2015-02-04-090131-173>.

are no proper roads and no transport provided simply cannot attend school at all. At the special schools, the Department has provided funding for two small buses that transport a small proportion of learners to and from school each day. These are largely ordinary buses, not equipped specifically to accommodate learners who cannot sit up straight or who are in wheelchairs. Out of the 11 full-service schools, only two currently receive any form of direct support from the KZN DoE for learner transport. At one of these schools, only 120 children out of more than 1000 learners at the school benefit from this transport.

The special schools note that these buses often break down, which means learners who usually use the transport simply cannot come to school. In addition, the buses cover a limited area, and only specific routes, so even learners who live a similar distance away from the school but in a different direction are required to stay in hostels. Buses at both special and full-service schools leave learners at a central point in towns or villages; the learners – including those with disabilities – are then exposed to the risks of walking, despite ‘benefiting’ from Department-provided transport.

For the majority of learners at full-service schools, who do not benefit from any transport, their caregivers either pay for them to be brought to school privately through a system described as “*Umalume* Transport” (‘Uncle Transport’), or they walk to school. These ‘uncles’ are merely men with cars (often bakkies) who attempt to load as many children as possible into their vehicles and are often very uncaring and rude towards children with disabilities. Both of these options carry the risks of sexual violence, theft, and physical danger from accidents and wild animals. Real examples of these risks detailed in the report include encounters with snakes, rapes and attempted rapes, and children being killed in car accidents on dangerous roads.

Other children, including children with disabilities, must walk long distances on rough terrain, and arrive at school exhausted. It is not uncommon for children to walk more than 10 kilometres to school. Some children must walk through dangerous forests, or swim across rivers to get to school. When the rivers are too rough or the water level too high, these children cannot attend school.

Too little money: inconsistent, non-transparent and unreliable funding for inclusive education

At full-service schools, funding is a serious problem. Full-service schools report that though they are expected to accommodate children with disabilities, they are not provided with sufficient and consistent funding to do so. While some schools receive as much as R273 000 for this purpose, one school reports receiving as little as R22 000 from the KZN DoE for the purposes of inclusive education, as recently as 2014/15. The funding is also unreliable and inconsistent because it is not received each year. Some schools report that they do not receive the allocation as often as they are meant to. One school was designated a full-service school in 2011, but was first granted this allocation in 2014/15. The reasons that schools are or are not allocated these funds are not communicated to the schools; neither are reasons given for the amounts allocated. Many schools interviewed in November 2015 predicted that they

would not receive any funding for inclusive education in 2016, because by that late stage in the year they had still not received any documentation indicating that they would.

For all the full-service schools, stretching the little money received for inclusive education is difficult, because this funding must cover a variety of requirements – including support interventions for the school and outreach programmes for mainstream schools, capital allocations for assistive devices, district workshops, and running costs for Learner Support Centres such as water, electricity, stationery, telephone accounts and cleaning. Some principals report that their allocations are not enough to cover even one of these requirements, and they are thus forced to choose; for example, between essential assistive devices, and desperately needed training for teachers.

Chronic underfunding is another problem for special schools around the country, including those in the Umkhanyakude District.¹⁵ As Human Rights Watch uncovered in 2015, too few – if any – of them are declared no-fee schools, and they are therefore unrealistically expected to supplement Department-provided funding with fee intake.¹⁶ This is particularly taxing on special schools in rural areas such as the Umkhanyakude District. The situation is exacerbated by hostel fees and transport fees that caregivers are expected to pay to special schools in order to cover the schools' costs of accommodating learners. Special schools complain about the inadequacy of the total funding provided, given the costs of operating a special school.

Ineffective and inactive support structures: negative attitudes, insufficient expertise and capacity

Finally, SECTION27's research reveals significant concerns about the ineffective or inactive support structures for inclusive education at provincial and district levels. Both District-Based Support Teams (DBST) and School-Based Support Teams (SBST) often seem to be incapable of performing the crucial support functions designated to them by government policies and guidelines. In the Umkhanyakude District, interaction and communication between the DBST and the SBSTs is inadequate and infrequent.

The DBST, like other examples of district and provincial officialdom, appears to lack the capacity and expertise necessary to guide SBSTs in the implementation of an inclusive education policy. Some even have a negative attitude towards the potential of children with disabilities to learn, and the importance of education that accommodates all barriers to learning.

More worrying still are the signs of intimidation and pressurisation of teachers who speak out publicly – in the media, or to NGOs – about the poor state of education provided to learners with disabilities, even after following appropriate channels without success.

¹⁵ Right to Education of Children with Disabilities Campaign 'Position statement on the implementation of White Paper 6' (March 2016), available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308R2ECWD.pdf>, p 5-6.

¹⁶ Human Rights Watch 'Complicit in Exclusion' South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities (August 2015), available at https://www.hrw.org/sites/default/files/report_pdf/southafrica0815_4up.pdf, p 24.

The conditions described in this report therefore amount to daily, systemic violations of the rights to basic education, equality and dignity of children with disabilities in the Umkhanyakude District.

Purpose of this report: working with government to build an inclusive education system

This report aims throughout to compare these devastating realities with the legislative, policy and constitutional framework, with which the Umkhanyakude District Department of Education, the KwaZulu-Natal provincial Department of Education and the national Department of Basic Education are legally required to comply. The intention is to provide an analysis of the conditions in full-service and special schools in the District, in order to assist the Department of Education (in consultation with people with disabilities, and Disabled People's Organisations) in developing a plan to provide children with disabilities access to quality education through direct and systemic improvements.

The constitutional framework includes the 'United Nations Convention on the Rights of Persons with Disabilities' (2007), which is binding on South Africa, and the South African Constitution; which read together, entrench the right to inclusive education for children with disabilities. The legislative framework includes the 'South African Schools Act' (1998), which requires the formation of an inclusive education system, and the 'Promotion of Equality and Prevention of Unfair Discrimination Act' (2002), which requires that children with disabilities must be reasonably accommodated. The policy framework includes the national Department's 'Inclusive Education White Paper 6' (2001) and its 'Screening Identification and Assessment Policy' (2014), and is supplemented by guidelines produced by the Department for full-service schools (2010) and special schools (2014).

In addition, it is hoped that this report will provide a clear, detailed case study that will assist in improving inclusive education systems on a national, provincial and district level. This is in response to the recognition early in 2016, by a broad range of South African and international civil society organisations and organisations of people with disabilities, that South Africa's inclusive education system remains in a state of 'crisis' a full 15 years after the adoption of the Inclusive Education White Paper, and a mere five years before its implementation is due to be completed in 2021.¹⁷

Inclusive education in crisis: rebutting the false 'good story' narrative, and revealing rights violations

Ultimately, the depressing impression created by this detailed investigation into the education system for children with disabilities in the Umkhanyakude District is that the

¹⁷ Joint Statement of Inclusive Education South Africa, SECTION27, Human Rights Watch and the Dullah Omar Institute: 'South Africa: Crisis for Children with Disabilities – Parliament Should Act Urgently to Mandate Inclusive Education' (14 March 2016), available at <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities>.

system is deeply inefficient and dysfunctional. It is not remotely inclusive of children with disabilities, in mainstream, full-service or special schools. The system does not even allow for the possibility of successful education and completion of a National Senior Certificate for children with disabilities. The appearance created is that the Umkhanyakude District Department and the KZN DoE either believe that many children with disabilities are 'ineducable', or do not value them enough to ensure that they are appropriately accommodated. As one teacher puts it:

“[F]ull-service and special schools are used as a dumping ground for learners who are not passing [in mainstream schools].”

Children with disabilities are children too. Though they require additional accommodations, efficiently adapted systems and structures, and increased consideration to access equal quality education, for them as much as their peers, in the words of the Supreme Court of Appeal, “it cannot be emphasised enough that basic education should be seen as a primary driver of transformation in South Africa”.¹⁸ This is particularly true for people with disabilities, for whom unemployment is epidemic and access to income and social services is limited, particularly in rural settings.

Regrettably, it is SECTION27's experience that national, provincial and local Departments of Education are all too often satisfied with extremely slow, incremental statistical improvements in the level and quality of education for children with disabilities. KwaZulu-Natal is a case in point, as it is often lauded by the Department of Basic Education as a success story, and a pioneer in the implementation of an inclusive education system.

This report adds to the growing evidence that this 'good story' narrative is a false one. As Govender concludes, though some groundwork was made early in implementing White Paper 6 in KZN:

“All factors considered, the KZN DoE's inclusive education story emerges as a tragic waste of resources and disservice to children ... [there is] a pattern of generalised indifference regarding inclusive education as a system-wide programme... [and the Department has a] questionable appreciation of the constitutional right of every child to quality public education.”¹⁹

The inclusive education system in South Africa is in a state of crisis. To turn around the fortunes of children with disabilities in the Umkhanyakude District, a truly inclusive education system consistent with the government's constitutional, legislative and policy obligations – and with children with disabilities' corresponding rights to basic education, equality and dignity – must be built. This is crucial, because as Deputy Chief Justice Moseneke emphasised in his final judgment for the Constitutional Court:

¹⁸ *Minister of Basic Education v Basic Education for All* (20793/2014) [2015] ZASCA 198; [2016] 1 All SA 369 (SCA) (2 December 2015), para 40, available at <http://www.saflii.org/za/cases/ZASCA/2015/198.html>.

¹⁹ L Govender, 'Building an inclusive system of education and training', *News24* (6 June 2014), available at <http://m.news24.com/news24/Archives/Witness/BUILDING-an-inclusive-system-of-education-and-training-20150430>.

“Public schools are not rarefied spaces only for the bright, well-mannered and financially well-heeled learners. They are public assets which must advance not only the parochial interest of their immediate learners but may, by law, also be required to help achieve universal and non-discriminatory access to education.”²⁰

Deputy Chief Justice Moseneke’s comment applies equally to mainstream, full-service and special schools. Access to education is neither universal nor non-discriminatory until it fully considers, accommodates and provides for the education of each and every child, regardless of their disabilities and special learning needs.

²⁰ Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another (CCT 209/15) [2016] ZACC 14 (20 May 2016), paras 32, 44, available at <http://www.saflii.org/za/cases/ZACC/2016/14.html>.

II. SUMMARY OF RECOMMENDATIONS

Below, we list eight key recommendations which are applicable across the entire report, and thereafter specify these ‘core recommendations’ in further detail at the end of the report.

As is noted throughout the report, the recommendations seek to assist government structures in the process of remedying daily, systemic violations of the rights to education, equality and dignity of children with disabilities in the Umkhanyakude District. They also seek to identify deviations from existing policy and legislative requirements, and draw attention to regulatory gaps that will need to be filled for meaningful change to occur.

1. Meaningful consultation with and participation of people with disabilities

All recommendations in this report and all actions taken by various levels and structures of government in implementing its recommendations *must* involve the central participation and choices of people with disabilities, in the **Umkhanyakude District** and throughout the country.

This is a requirement of the United Nations Convention on the Rights of Persons with Disabilities, but is also a critical necessity for the successful implementation of each and every one of these recommendations. Financial and practical support should be provided to the various Disabled People’s Organisations that are active throughout the district, in order to allow them to do so effectively. It is crucial, especially in the context of the rights of children with disabilities, that section 195 of the Constitution’s instruction to the public service that “people’s needs must be responded to, and the public must be encouraged to participate in policy-making” is fully complied with.

A non-exhaustive list of such organisations and their contact details is annexed to this report, marked ‘Annexure C’.

2. The urgent development of a turnaround plan and strategy by the KwaZulu-Natal Department of Education

The **KwaZulu-Natal Department of Education** should urgently devise a turnaround plan and strategy to improve the state of special and full-service schools in the Umkhanyakude District. This plan should be the product of meaningful consultation with relevant public stakeholders, including people with disabilities. On its completion and publication, it must be made publicly available and explained to the parents of children with disabilities and to Disabled People’s Organisations in the district, clearly and in understandable terms. Further recommendations are made about issues that the plan will need to address to effectively remedy current rights violations and deviations from legislative and policy requirements. These include matters relating to:

- + Curriculum delivery
- + Funding and fees
- + Post-provisioning for non-educator and educator staff
- + Transport

- + Infrastructure
- + Basic services
- + Abuse, neglect, maltreatment and corporal punishment
- + Hostel conditions
- + Effectiveness of government structures

Given the wide range of issues to be dealt with, a full audit of the conditions at the three special schools and 11 full-service schools in the district may assist in the process of devising a turnaround plan and strategy.

3. Recommendations for the national and provincial Departments of Education arising from the report

The **national Department of Basic Education** must have some involvement in this planning process; hold the **KwaZulu-Natal Department of Education** to account for failure to comply with national policies, guidelines and norms; and ensure compliance in this regard in the future. In addition, the **national Department of Basic Education** must expedite the process of:

- + Clarification and publication of the implementation plan described in Education White Paper 6 between 2016 and 2021, and what will fill the policy void when this time expires;

The **national Department of Basic Education** must ensure:

- + The publication of norms and standards for resourcing an inclusive education, which the SIAS policy described as an “immediate requirement” and as committed to by the Department of Basic Education in a meeting of the Portfolio Committee for Basic Education in March 2016;
- + The publication of norms and standards for post-provisioning for educator and non-educator staff for inclusive education, as required by the SIAS policy; and
- + The publication of a hostel policy for special schools, which was described by the Department of Basic Education in a meeting of the Portfolio Committee for Basic Education in March 2016 as “critical”.

The **Kwazulu-Natal Department of Education** must ensure:

- + The completion of the publication of a turnaround plan and strategy for all 11 full-service schools and all three special schools in the district, as recommended in this report;
- + The publication of a provincial transport policy, which takes into account the particular needs of children with barriers to learning and allows them to attend full-service and special schools. This process should ensure consistency with the ‘National Learner Transport Policy’; and
- + A documented clarification for full-service schools (including their principals, School-Based Support Teams and School Governing Bodies) of how their budget and subsidies for inclusive education are determined. This should include information on how funding allocations are to be determined; how they can be queried or altered; and how the absolute levels of funding are justified, given the constitutional obligations of the **KwaZulu-Natal Department of Education**.

4. Recommendations for the national and provincial legislatures arising from the report

Parliament and the **KwaZulu-Natal Provincial Legislature** should closely monitor the planning process recommended by this report, and hold the national and provincial executive to account biannually for progress in adopting practical changes, producing real and statistical improvements, and producing relevant, constitutionally informed policies through participatory processes.

In addition, **Parliament** and the **KwaZulu-Natal Provincial Legislature** must investigate the need for legislative amendments regarding special school hostels, to ensure that legislative protection is provided to meet at least the level covered by the minimum norms that apply to Child Youth Care Centres in terms of the Children's Act, which currently excludes school hostels.

Finally, **Parliament** and the **KwaZulu-Natal Provincial Legislature** must ensure the completion and implementation of recommendations in terms of the **KwaZulu-Natal Department of Education's** recommended report on both the living conditions in special-school hostels, and the widespread abuse, neglect and corporal punishment of children.

5. Urgent action to combat abuse, neglect and corporal punishment in special-school hostels

Both the living conditions in special-school hostels and the widespread abuse, neglect and corporal punishment of children at special schools *must as a matter of extreme urgency* be the subject of a separate investigation. A report from this investigation and detailed explanations of what measures will be taken must be made public as soon as the investigation is completed. Though the **KwaZulu-Natal Department of Education** must take charge of this process, because of the **national Department of Basic Education's** acknowledgment in March 2016 that there are "extremely poor conditions" and "an alarming number of cases of abuse" throughout the country, it must also play a key role, and may consider expanding the scope of this investigation.

6. Increased access to appropriate high-school education for children with disabilities

The **KwaZulu-Natal Department of Education** must urgently plan for and – as expeditiously as possible – ensure that meaningful, appropriate access to high school education is provided to children with disabilities in the Umkhanyakude District.

To begin with, an investigation should be undertaken with regard to adding high-school grades to Intuthuko Special School, Sisizakele Special School, and Khulani Special School.

In addition, the full designation and conversion of additional high schools throughout the district to full-service schools should be seriously and expeditiously considered.

7. Roll out of mobilisation and awareness campaigns on disability and inclusive education

The **KwaZulu-Natal Department of Education**, in coordination with the **Umkhanyakude District Department of Education**, must urgently implement the mobilisation and awareness campaigns required by White Paper 6. These campaigns must be focused on disability and

inclusive education throughout the district, and should be visible, clearly accessible, and be supplemented by extensive media campaigns including billboard adverts, community radio, and television messaging. These campaigns must be accompanied by emergency interim plans in order to ensure access for children with disabilities who are currently languishing out of school.

8. Strengthening government structures to ensure effective support is provided to schools

Effectiveness of, capacity and expertise within government structures – including the **Umkhanyakude District Department of Education**, the **Umkhanyakude District-Based Support Team**, and **School-Based Support Teams** at special and full-service schools – must be evaluated by the **KwaZulu-Natal Department of Education**. The **KwaZulu-Natal Department of Education** must ensure the capacitation of these structures with sufficient expertise and resources to undertake their functions effectively. The **KwaZulu-Natal Department of Education** should also investigate the activity and performance of SGBs at full-service and special schools in the district, and ensure that the powers and obligations of these SGBs to co-opt experts in terms of the Schools Act are utilised effectively.

III. GLOSSARY OF IMPORTANT TERMS AND CONCEPTS

Barriers to learning

Refers to difficulties that arise within the education system as a whole, a community context, the learning site, and/or within a learner his/herself, which prevent educational and social development for children. Children with disabilities often experience significant barriers to learning; but many other children experience such barriers too.

Children with disabilities

Disability is an umbrella term for impairments, activity limitations and participation restrictions. Disability is potentially an issue both at the level of a person's body and as a result of an unaccommodating social and physical environment. This report includes within this definition people with disabilities who are below 18 years old, or who are older than 18 years old but still require primary and high school education.

'Children out of school' or 'out-of-school children'

Children who do not attend school at all because they do not have access to an appropriate school that can accommodate their needs, either in their community or elsewhere. Children who are *in* schools that cannot accommodate their educational needs because of their barriers to learning or disabilities can also be described as being effectively 'out of school'.

CAPS Curriculum

The Curriculum and Assessment Policy Statement (CAPS) is the national curriculum for Grade R to Grade 12 learners in South Africa.

Curriculum Differentiation

The structuring and implementation of a flexible curriculum programme for learners based on their own individual and collective needs, taking into account their disabilities and barriers to learning.

District-Based Support Team

A district-based, government-operated entity that provides ongoing support to schools, teachers and learners, to address and accommodate for the barriers of learning of children in schools in a district. It comprises medical and educational professionals, experts and government officials.

Disabled People's Organisation

An advocacy organisation controlled by a majority of people with disabilities, at board and membership level. Disabled People's Organisations (DPOs) are formed and advocate for the rights of people with disabilities in a broad range of ways.

Mainstream school

Described in the Schools Act as an "ordinary" schools. Public neighbourhood schools are described in this report as 'mainstream schools' to mirror the terminology used by staff members at schools in the Umkhanyakude District. Mainstream schools are required to "reasonably accommodate" children with disabilities.

Full-Service School

A specially-designated, converted and resourced public mainstream primary or high school that caters for a majority of learners with low support needs, and a smaller percentage of learners with disabilities who have moderate or high support needs.

Special School

A public primary or high school that caters exclusively for children with high barriers to learning, including disabilities, and requiring continuous, highly intensive educational support.

Inclusive Education

An education system that enables educational structures, systems and learning methodologies to meet the different needs of all learners at all levels of the system, and in mainstream schools, full-service schools and special schools.

Inclusive Education White Paper 6

A Department of Basic Education policy framework that seeks to give effect to the Schools Act and the Constitution's requirements. It attempts to remedy the segregated education system inherited from the apartheid government, and build an inclusive education system within 20 years of its implementation, by 2021.

Learner Support Centre

Often, a separate structure to the school building. Provides a learning space and safe haven for children with disabilities at full-service schools, and houses facilities and resources for a range of support services.

Learner Support Assistant

A Learner Support Assistant supports teachers and children with barriers to learning in order to accommodate children's educational and social development in full-service schools. This may be done through remedial lessons after class, in class during teaching time, or through a 'pull-out' system during class time.

Learning Support Educator

A Learning Support Educator is a specialist position for a qualified educational professional who specialises in the education of children with high barriers to learning, including children with disabilities. Such assistance includes support in performing curriculum-differentiation tasks, and developing individual support plans for learners.

Learning and Teaching Support Material

Can include stationery and supplies, learning materials such as textbooks and workbooks, teaching and learning aids, technological assistive devices, and workshop equipment.

Post-provisioning

The process whereby the provincial Department of Education determines, annually, the number of state-funded educator and non-educator posts that are to be allocated to a particular public school.

Reasonable Accommodation

The consideration and adaption of conditions and environments through the provision of resources, infrastructure, materials, equipment and time, to enable children with different learning needs to perform equally in schools.

School-Based Support Team

A team comprising members of staff at a school and members of a school community, whose primary function is to put in place coordinated school, learner and teacher support services to accommodate the different learning needs of children with barriers to learning.

Screening, Identification, Assessment and Support Policy

A policy of the national Department of Education that directs the process of enrolment and admission of learners with barriers to learning, and explains whether they should attend mainstream, full-service

or special schools.

IV. BACKGROUND: THE UMKHANYAKUDE DISTRICT, AND INCLUSIVE EDUCATION IN KWAZULU-NATAL

Background to SECTION27's work in the Umkhanyakude District

1. SECTION27 began visiting Manguzi in early 2013. We were introduced to members of the local Disabled People's Organisation (DPO), Sipilisa Isizwe (SI), by healthcare professionals from Manguzi Hospital. We began to learn of the lived realities of people with disabilities in Manguzi.
2. In September 2013, a small delegation of SECTION27 staff, accompanied by recently-retired Justice Zak Yacoob and five students from the UKZN branch of Students for Law and Social Justice,¹ participated in a workshop with Sipilisa Isizwe members to unpack further the acute service-delivery problems facing people with disabilities in Manguzi. At this workshop, members of Sipilisa Isizwe chose to prioritise the dismal state of education for children with disabilities in the Umkhanyakude District, and requested further assistance and involvement from SECTION27 to realise the right to basic education of children with disabilities in Manguzi. Closing the workshop, Justice Yacoob emphasised the importance of struggles for social justice for people with disabilities being *led* by people with disabilities.

"I am hoping that the people themselves get stronger and they're able to organise themselves, able to understand more clearly what they need, and they're able to demand it. Because I believe that absent a strong civil society, government will never deliver properly, whoever that government will be."²

Justice Zakeria Yacoob, retired Justice of the Constitutional Court of South Africa

3. Following on from this workshop, Sipilisa Isizwe organised a community meeting, which was attended by over 250 people. Participants were predominantly people with disabilities.³ This community meeting was the start of a process of statement-taking in isiZulu from people with disabilities, describing their challenges in ensuring children with disabilities accessed quality basic education. Statements taken in isiZulu by SECTION27 throughout 2014 and 2015 form the core of this report, and are quoted anonymously throughout.⁴ The community began to meet more often in this period, sometimes with SECTION27. The most recent meeting was a Disability Indaba in Manguzi in November 2015, attended by approximately 200 people with disabilities from Manguzi and its surrounding areas.
4. On 23 January 2014, approximately 60 members of Sipilisa Isizwe picketed outside Sisizakele Special School in Bambanani to express their disappointment with the Umkhanyakude District Department of Education's failure to provide access to quality education for children with disabilities living in Manguzi. This picket was attended by the District Director of Education, Mr TJ Motha, who took down in writing the significant and various concerns of frustrated picketers. At this stage, SECTION27 also began discussing the dire conditions at Sisizakele Special School with the school's principal, Ms Jood.

5. On 20 February 2014, SECTION27 wrote to the KwaZulu-Natal Department of Education, on behalf of Sipilisa Isizwe and 20 caregivers of children with disabilities who at that point had no access to basic education. In this letter, SECTION27 urgently requested a plan on how these children and other children with disabilities would be accommodated at appropriate schools capable of realising their rights. No response was received to this letter, or to subsequent letters of 7 March, 24 April, or 30 June 2014.
6. On 29 September 2014, SECTION27 again followed up on these letters, requesting the immediate placement of 17 children between the ages of 7 and 16 years old, and the immediate placement of similarly situated learners in KwaZulu-Natal. On 21 October, Ms Thulani Cele, the School Liaison and Workflow Manager in the Office of the MEC for Education in KwaZulu-Natal, responded by letter to SECTION27 on behalf of the Office of the KZN Member of the Executive Council for Education. The letter detailed, in general, the measures taken by the provincial Department to provide access to education for children with disabilities between 2011 and 2014. The letter failed to directly address the situation of the 17 children represented by SECTION27 and similarly situated children throughout the province.
7. As a result, SECTION27's reply on 29 October threatened the institution with legal proceedings to fulfil the rights of learners with disabilities if its repeated requests were not met with appropriate action. On 11 November 2014 Ms Cele responded to SECTION27, inviting SECTION27 to workshop with the District and provincial Department of Education in the first week of December. The minutes of this workshop reflect that there are 10 full-service schools and three special schools in the district, and acknowledged the need for an additional special school; and that in 2015, an additional 150 learners would be admitted to Sisizakele Special School. It was further resolved that:
 - + Immediate steps would be taken by the Department to ensure that the 17 children represented by SECTION27 would be placed, either among the 150 new placements or through alternative means;
 - + Feedback would be provided by 31 January 2015; and
 - + The Department would arrange a workshop with Sipilisa Isizwe to discuss the needs of over-age learners in the Umkhanyakude District, and facilitate the participation of SI members in the District Disability Forum.
8. Of the 17 learners SECTION27 represented, 14 were placed at Sisizakele Special School at the beginning of the school year in 2015. Neither SECTION27 nor the Department of Education were able to contact the remaining three learners. To SECTION27's knowledge, to date there has been no plan made for the placement of similarly situated learners in Manguzi, its surrounding areas, and the rest of the Umkhanyakude District.
9. Sisizakele Special School remains severely under-resourced. Media reports quoting children and teachers in late 2015 indicate that they "are being beaten by their house

mothers and are living under appalling conditions”, and are being taught a “meaningless” curriculum.⁵ Ms Jood indicated in an interview that the effective result of SECTION27’s intervention was to the benefit of only the particular learners represented by SECTION27, and a substantial waiting list remains, including applications made several years ago.

10. It became increasingly clear to SECTION27 and Sipilisa Isizwe that to improve access to schools and the conditions at schools for all children with disabilities, an investigation was necessary to find every possible option for access to education for children with disabilities in the Umkhanyakude District. In desperation, members of Sipilisa Isizwe (supported by staff at Manguzi Hospital) opened a crèche for children with disabilities in Manguzi, in July 2015. By August 2015 it accommodated 50 children with a variety of disabilities, providing them with daily care and attempting some form of education. The crèche is run by members of the community, caregivers of the children who attend it, and members of Sipilisa Isizwe. More information about the crèche is provided in an annexure to this report.⁶ This crèche caters for children of varying ranges of disabilities, severities of disabilities, and ages.

“[My son] is at the crèche every day but goes home daily. He seems to have lightened up in the way he interacts with other kids. He seems happy to go to [the crèche] with other kids and interact with them. It seems like [he] is starting to feel like he is belonging there.”

Mother of child attending Manguzi crèche

11. This report is the product of the investigation that was conducted by SECTION27 in consultation with SI. It contains the findings of lengthy visits to the Umkhanyakude District in May, August and November 2015, as well as secondary research on the inclusive education system and the right to education of children with disabilities, both nationally and internationally. All in all, nearly 100 interviews were conducted with caregivers of children with disabilities in Manguzi, and meetings were held with principals and other staff of 11 full-service schools⁷ and three special schools,⁸ spanning the whole of the Umkhanyakude District.

Methodology

12. All interviews with caregivers were conducted by SECTION27 employees and facilitated through Sipilisa Isizwe. Caregivers were asked questions in isiZulu by SECTION27 staff, who translated into English for other SECTION27 staff members. When this was not done in the process of taking statements, the statements were translated afterwards. Though a broad range of issues were discussed,⁹ interviewers were instructed to allow interviews to follow the course set by the caregivers themselves, because of the personal and traumatic nature of many of these conversations. The multiplicity of issues raised in the report are therefore a direct reflection of the multiplicity of concerns expressed by caregivers.
13. Interviews at schools were organised through the principals of the schools. Principals determined which members of staff would participate in these discussions –

frequently Deputy Principals, Heads of Department, and members of School-Based Support Teams (SBST). The significant majority of staff interviewed spoke frankly and emotionally, in the best interests of the learners. They showed impressive commitment and compassion to the learners, even when they felt that the circumstances made it difficult for them to provide learners with quality education. Many of the staff interviewed gave meticulous detail of the challenges facing specific students, whose lives and learning barriers they had clearly taken time to understand.

14. The questions posed to members of staff were guided by the concerns raised by caregivers in SECTION27's interviews with them. Other questions were informed by desktop research on the challenges faced by inclusive and special schools around the country and throughout the world. Staff were also regularly given the opportunity to speak to concerns of their own that did not arise from questioning, and were specifically asked to do so at the beginning and end of all interviews.
15. In addition, SECTION27 commissioned two reports on budgeting for inclusive education. The first, a 2014 report, was compiled by Ms Penny Parenzee and pertains specifically to certain aspects of budgeting for inclusive education in KwaZulu-Natal, with further focus on special schools. The second, a 2015 report produced by Ms Debbie Budlender, is a comprehensive overview of budgeting for inclusive education, both nationally and provincially. These commissioned expert reports are annexed to this report, and are discussed briefly below.

Purpose of the report

**"You must not lock your children up [at home] just because they have disabilities."
Principal, full-service school, Umkhanyakude District**

16. This report is intended to provide a clear picture of the state of the inclusive education system in the Umkhanyakude District. It is hoped that it will provide a tool that will assist children with disabilities, caregivers of children with disabilities, school governing bodies, teachers, principals, non-educator staff and local government officials to advocate for the rights of children with disabilities.
17. The report also aims to elevate the often-marginalised voices of people with disabilities, express their personal and collective frustrations, and prioritise their needs, goals and suggestions. The mantra of many disability-rights groups ('Nothing About Us, Without Us!') and the broader constitutional philosophy of participatory democracy is therefore a guiding principle and animating purpose of the report.
18. The report will be sent to the Umkhanyakude District Department of Education, the KwaZulu-Natal Department of Education and the national Department of Basic Education in order to assist in the process of formulating, planning and implementing Education White Paper 6 throughout the district, the province and the country. It makes detailed recommendations with this purpose in mind.

Inclusive Education in KwaZulu-Natal

19. The 2011/12 Annual Report of the KZN DoE notes that “it is estimated that there are 37 768 learners with disabilities between the ages of 6 and 15 years that are out of school.” The same report acknowledges that “these learners are largely those that the education system has not been catering for, as they require very high levels of support.”¹⁰
20. In addition, a 2011 special-schools Survey Report highlights a variety of challenges in the quality of education within special schools, including insufficient assessment support, inadequate co-curricular, suitability of curriculum, lack of training for teachers and principals, inadequate support staff, low levels of support from district Departments, inappropriate infrastructure, and little or no access to transport, assistive devices and other resources.¹¹ The endemic nature of these problems is confirmed by a 2011 Special School Audit Report titled ‘Special Schools Survey Report’.¹²
21. Apart from this, very little information is available or reported by the KZN DoE on inclusive education. There is next to no information about full-service schools in KZN available to the public. A survey of the KZN DoE’s lengthy annual reports dating back to 2010 indicates that reports on inclusive education never exceed more than a few pages, and provide little qualitative information. Usually, only quantitative descriptions of (for example) the number of designated full-services schools and special schools is provided in these reports, without sufficient explanation of context. Often the information in one annual report directly contradicts information provided in other annual reports.

Inclusive education in the Umkhanyakude District

22. The Umkhanyakude District is the most northern of the 11 districts of KwaZulu-Natal province, with a population of at least 644 196 people. It is a very poor, rural district with five local municipalities: Umhlabuyalingana, Jozini, The Big Five False Bay, Hlabisa and Mtubatuba.
23. Manguzi (otherwise known as Kwangwanase) is a small but growing rural town in the Umkhanyakude District. It forms part of Umhlabuyalingana municipality, which has a population of at least 156 736. Sipilisa Isizwe and Manguzi Hospital – SECTION27’s initial points of contact in the district – are based there. Sipilisa Isizwe has existed, in many forms, since the 1970s, and is itself made up of representatives from 48 isiGodis (village units) in Manguzi and its surrounding areas.

24. The district has an unemployment rate of 42.8%. 40.3% of people living there are under the age of 15, and 25% of people over the age of 20 have no schooling.¹³ Many people are forced to move elsewhere for employment opportunities, and others survive on subsistence farming and small-scale informal work, including selling their produce.¹⁴
25. A study completed in 2001 estimated a childhood disability rate of 6%. The study is rudimentary, and likely to be an underestimate. UNICEF estimated in 2011 that 11.2% of children in South Africa have disabilities, with this rate increasing in younger ages and in rural provinces.¹⁵ In KZN, for example, UNICEF's 2011 prevalence estimate stood at 13.3%.¹⁶
26. People with disabilities are disproportionately affected by broader social issues. Broadly, they have lower levels of education and income.¹⁷ The unemployment rate for people with disabilities is significantly higher. Studies indicate that disability rates are higher in rural areas than in urban areas.¹⁸ Because poor access to healthcare services and malnutrition are potential causes of disability, disability not only increases the chances of poverty, but poverty increases the chance of disability: "Disability is both a cause and a consequence of poverty".¹⁹
27. Reports by the Department of Basic Education (2007) and the South African Human Rights Commission (2004) confirmed both the dearth of special schools in rural areas across the country, and the deplorable conditions of the schools that do exist.²⁰ The Department of Basic Education's 2014 'Guidelines To Ensure Quality Education and Support in Special Schools and Special School Resource Centres' begins by accepting that "the quality of education offered in many of these special schools is very limited, and many learners enrolled in some of the schools never progress beyond Grade 1." The DBE's 2015 progress report on the implementation of White Paper 6 confirms that urban children attending special schools remain comparatively advantaged, and that "over 12 years [of the implementation of White Paper 6], the situation has changed very little in terms of achieving equity and redress".²¹
28. Our research in the Umkhanyakude District confirms both the problems of unavailability of special schools, and the low quality of education provided in these schools.
29. As recently as 2002 there were no registered schools for children with disabilities in the Umkhanyakude District. All three special schools in the district were started by community members, and only after many years were they taken over by the Departments of Education. For example, a Sisizakele Special School Committee began campaigning for the official opening of the school at least as early as 1993.²² Prior to

2002, the very few children with disabilities who did attend school were forced to travel several hours to Estcourt, Nkandla and Pietermaritzburg, depending on their disabilities. Caregivers often had to take long return trips, on various forms of public transport, simply to get their children to and from school each term. This could take up to five days of travelling.²³

30. As a result, hospital records indicate that in 2001, a mere 138 children with disabilities from the area were attending special schools outside of the district, and a further 28 were attending mainstream schools. At this stage, at least 870 other children with disabilities, who had been identified through hospital records, “were unable to access education due to disability”.²⁴ A study completed in Manguzi estimated that 53% of children with disabilities “did not attend school”; and of those who did, a further 53% “reported having difficulties at school”.²⁵
31. The Umkhanyakude District’s annual reports rarely report on education generally, and education for children with disabilities in particular. An assessment of annual reports since 2010 reveals a single reference to special-needs education, in 2013, in which it was noted that community members engaged mayors of local municipalities concerning “kids with special needs who cannot be accepted in schools, and special schools are very far.”²⁶ The only other meaningful references to disability are in relation to ad hoc workshops, and a note that a single annual Disability Forum meeting had been held in a particular municipality as planned.

Budgeting for special needs education in KwaZulu-Natal

32. According to an expert analysis conducted in 2014, “funding for special-needs education continues to be insufficient to ensure the right of special-needs learners to access basic education is upheld.”²⁷ In KwaZulu-Natal in particular, this report finds that allocations for special-needs education are “constantly underspent” and “shifted away from special needs to address overexpenditure” elsewhere.²⁸ In the context of KwaZulu-Natal, the considerable underspend has generally been directed to paying teachers’ salaries in mainstream schools.²⁹
33. KwaZulu-Natal is among the provinces with the highest annual allocations for special-needs education in absolute terms. However, despite the fact that KwaZulu-Natal has more children than any other province (23% of the total), allocation towards special-needs education is less than half that of Gauteng.³⁰ Moreover, as a percentage of the total education allocation in KwaZulu-Natal, special-school education amounts to a mere 2.0%, the fourth-lowest of all provinces, less than half of the percentage allocated in Gauteng (5.2%), and below the average percentage spend of 2.9%.³¹
34. Additionally, it is of concern that between 2014/15 and 2015/16 there was a planned decrease of 22.7% in this allocation, to be followed by another marginal decrease in

2016/17.³² This is particularly surprising given that KZN is predominantly a rural province, and that both disability prevalence and lack of access to education for children with disabilities are generally more severe in rural areas. As this report consistently asserts, more resources are therefore needed to realise the rights of children with disabilities in KwaZulu-Natal than in comparatively less rural provinces such as Gauteng.

35. More worrying still is where this decreasing allocation is directed, as 82% of the special-school education programme budget is to go towards “compensation of employees” (including Department officials and educator and non-educator staff) between 2014 and 2017.³³ In contrast with this high percentage to be spent on Department employees, between 2013 and 2016 KwaZulu-Natal has consistently budgeted the third-lowest rate for per-learner expenditure, consistently well below the provincial average.³⁴
36. The reports of both experts (Paranze and Budlender) conclude that there is regrettably little information on the specifics of budgeting for special-needs education. What information does exist is too often unclear or incomplete. As Budlender concludes, “The level of disaggregation and categories used in the budget votes also make it difficult, if not impossible, to identify the amounts spent on important areas such as [learning and teaching support materials], transport and training.”³⁵ This problem is exacerbated at a provincial level, because national Department reports often appear to merely omit some information on some provinces, without giving reasons for doing so.³⁶ Despite these challenges, an attempt is made throughout this report to link difficulties faced at schools to budgetary information provided by government departments, and in the expert analyses of Paranze and Budlender.

Key constitutional, legislative and policy documents

37. Overall, the legal framework to which the reality at full-service and special schools in the Umkhanyakude District can be compared can be summarized as follows.
- + **Constitutional framework:** includes the ‘United Nations Convention on the Rights of Persons with Disabilities’ (2007), which is binding on South Africa, and the South African Constitution; which, read together, entrench the right to inclusive education for children with disabilities.
 - + **Legislative framework:** includes the ‘South African Schools Act’ (1998), which requires the formation of an inclusive education system, and the ‘Promotion of Equality and Prevention of Unfair Discrimination Act’ (2002) that requires that children with disabilities must be reasonably accommodated.
 - + **Policy framework:** includes the national Department’s ‘Inclusive Education White Paper 6’ (2001) and its ‘Screening Identification and Assessment Policy’ (2014), and is supplemented by guidelines produced by the Department for full-service schools (2010) and special schools (2014).
38. For convenience, the contents of these constitutional, legislative and policy documents are detailed briefly.

The Constitution

39. The Constitution is the supreme law of South Africa. Conduct, legislation and policies inconsistent with its provisions are of no force or effect. The national, provincial and district Departments of Education must act consistently with the Constitution's requirements. For the present purpose, what is most important is that the Constitution entrenches an "immediately realisable" right to basic education for "everyone", which includes children with disabilities.³⁷ In addition, it prevents unfair discrimination, and presumes discrimination based on a listed set of categories, including race, gender and disability, to be unfair.³⁸ In terms of the same section, the state is required to take positive steps in terms of what is known as "affirmative action" to protect and advance groups "disadvantaged by unfair discrimination". These and all other constitutional obligations "must be performed diligently and without delay".³⁹

The United Nations Convention on the Rights of Persons with Disabilities

40. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which came into operation in 2007, sets out specific protections for people with disabilities. Article 24 of the UNCRPD deals specifically with education for children with disabilities, and entrenches in international law for the first time the right to an "inclusive education system". Because the UNCRPD is a binding treaty signed and brought into law by South Africa, the Constitutional Court has emphasised its importance in the promotion of the rights of persons with disabilities and in interpreting South African law, including the Constitution.⁴⁰

41. This right to inclusive education, the UNCRPD makes clear, means that "persons with disabilities are not excluded from the general education system" and must accordingly receive appropriate support within the general education system. The UNCRPD also specifies that the level of support provided by states, often in the form of a "reasonable accommodation", must put children with disabilities on an equal footing to other learners, both academically and socially, and may require "individualised support".

42. Finally, the Convention places special emphasis on children with disabilities being equipped with the ability to read, write and communicate, and develop other "life and social development skills"; and emphasises the need for teachers, professionals and staff working at all levels of education who are trained comprehensively – not only in specific skills such as braille and sign language, but also, for example, on "disability awareness" and "educational techniques and materials to support persons with disabilities".

South African Schools Act

43. The Schools Act is the law passed by Parliament that gives effect to the right to basic education. It establishes an education system that makes education compulsory for

all children between ages 7 and 15; which practically, today, means from Grade R until Grade 9, whichever occurs first.

44. The Schools Act applies equally to children with disabilities, and has various sections dealing with disability directly. Where it is necessary to make distinction between children with disabilities and other children, the Act refers to learners with “special educational needs”. For example, the Act indicates that a public school may be an “ordinary” mainstream school or a school for learners with special educational needs.
45. Even before White Paper 6 came into force in 2001, the Schools Act established the need for an inclusive education system; requiring that “where reasonably practicable”, learners with special needs must be provided education at mainstream schools with “relevant educational support services for such learners”.⁴¹ Importantly, the Act also requires that all “physical facilities” at mainstream schools are “accessible” to people with disabilities.

The Promotion of Equality and Prevention of Unfair Discrimination Act (Equality Act)

46. The Equality Act is an important law passed by parliament to combat discrimination and eliminate poverty. It specifies that denying to or taking away from any person with a disability any supporting or enabling facility to function in society amounts to unfair discrimination. It also considers a failure to eliminate obstacles that limit or restrict people with disabilities from enjoying equal opportunities as unfair discrimination.
47. For example, a court deciding whether there has been unfair discrimination against a child because of the conditions at and actions of a school will have to decide whether the school failed to take “steps to reasonably accommodate the needs” of the child/children with disabilities. This requirement has been confirmed by both the Equality Court and the Constitutional Court.⁴²
48. It is worth emphasising that in the case of *Oortman*, the Equality Court confirmed that the duty to make reasonable accommodations is placed firmly on *all* schools. Furthermore, the Court’s approach in this case confirms that this duty to make reasonable accommodations will be enforced strongly by courts, even if extensive accommodations – such as the building of new structures, the adaptation of school rules and procedures, and the training of teachers – are required to appropriately and reasonable accommodate a single child.⁴³

Inclusive Education White Paper 6

49. White Paper 6 is policy created by the national Department of Basic Education that aims to build an inclusive education system within 20 years of its implementation, by 2021. It sets out for the first time the way that this must be done, including through the roll-out initially of full-service schools, the strengthening of special schools, and the eventual accommodation of all learners even at mainstream schools.

50. Education White Paper 6 gives clear guidance to the national, provincial and district Departments of how this is to be done, and requires significant steps to “mobilise” out-of-school children and youth with disabilities; the “establishment” of District-Based Support Teams and School-Based Support Teams; and the training of teachers, principals, government officials and communities about the importance and nuances of inclusive education.
51. Crucially, White Paper 6 also explains how funding and planning for inclusive education systems will need be increased and improved in order to achieve its broad but detailed set of aims.

Policy on Screening, Identification, Assessment and Support (SIAS)

52. The SIAS policy has been envisaged since the inception of White Paper 6, and was recently approved and adopted by the national Department of Basic Education in its final form on 19 December 2014.
53. Most importantly, it contains clear guidelines on the enrolment and admissions of learners with barriers to learning, and explains when they should attend mainstream, full-service or special schools. It sets out in detail the accommodations that must be made and policies that must be enacted to ensure that all learners receive an equal and high quality of appropriate education, at whichever school they attend.
54. Another purpose of the SIAS policy is to provide for the standardisation of procedures and processes to identify and assess all learners requiring additional support. Streamlining this inclusive education system requires screening to be done by teachers and professionals at a child’s neighbourhood mainstream school, as a first port of call. A child may only be “transferred” to a full-service school or special school if a thorough assessment has been done in terms of the SIAS policy, and an attempt has been made within the school to accommodate the child’s special learning needs.

Guidelines to Ensure Quality Education and Support in Special Schools and Special-School Resource Centres

55. The 2014 Special-School Guidelines of the national Department of Basic Education indicate that they “provide guidelines for the system on the minimum standards that are required for any special school to function adequately and provide quality education, care and support to learners enrolled in these schools”.
56. Generally, the Special-School Guidelines emphasise that the national, provincial and district Departments of Education have “an obligation to monitor all special schools on a regular basis and provide the necessary support”. They make it clear that it is “imperative” that special schools both have an “understanding” of the structure of the inclusive education system, and are “familiar with” relevant policy, legislation and guidelines.

57. Specifically, as is detailed in the relevant sections of this report, the Guidelines set minimum standards with regard to issues in special schools, including:

- + admission of learners;
- + curriculum management and delivery;
- + teaching and non-teaching personnel supply and ratios;
- + infrastructure and hostel accommodation;
- + availability of material resources and assistive devices; and
- + transport.

Guidelines for Full-Service/Inclusive Schools

58. The Preamble to the Full Service Guidelines notes that the guidelines set criteria “for schools, districts and provinces against which to measure their progress towards inclusion”, and that the implementation of the guidelines is “one of the first steps towards eventually making all ordinary schools full-service/inclusive schools”.

59. The Guidelines define Full Service Schools as schools that are “first and foremost mainstream education institutions that provide quality education to all learners by supplying the full range of learning needs in an equitable manner”. Importantly, the Guidelines note that they provide “criteria or minimum standards” that a school “must comply with” in order to be considered a full-service school.

60. Specifically, as is detailed in the relevant sections of this report, the Guidelines set minimum standards with regard to issues in special schools including:

- + management and school development;
- + professional development of staff;
- + provision of ongoing support to schools;
- + assessment of learner needs;
- + curriculum delivery and differentiation;
- + teaching and classroom practices;
- + physical and material resources and accessibility;
- + the role of the district, provincial and national Department of Education in supporting full-service/inclusive schools; and
- + transport.

V. CHILDREN OUT OF SCHOOL

61. It is important to understand that a large number of children with disabilities simply do not attend school at all. There are multiple reasons for this; but many of them stem from parents’ genuine perception of the poor quality of education received by children with disabilities at full-service and special schools. This is deeply upsetting and distressing for parents and their children.

“I am upset that my son is not going to school and I am worried. When he wakes up and other children are going to school, he says he wants to go to school also.”

Mother of child with disability, Manguzi

62. Before discussing the many children who are literally ‘out of school’, we explain briefly why children with disabilities placed in inaccessible mainstream schools should effectively be considered out of school.

Accessibility of mainstream schools

63. The public inclusive education system in the Umkhanyakude District is made up of 11 full service schools and three special schools. Even though – in accordance with White Paper 6 and the Schools Act⁴⁴ – children with disabilities should be able to choose to attend their local mainstream schools, in reality this is not an option in the Umkhanyakude District. Reasonable or any other accommodation of children with disabilities is simply not available at mainstream schools in the district.
64. As a result, caregivers of children with disabilities repeatedly indicated to SECTION27 that their children had either been denied access to, been asked to leave, or were formally transferred out of local mainstream schools. This was despite their protestations that they would prefer their children to be appropriately accommodated at their neighbourhood schools. Many caregivers appeared not to even be aware of the existence of special or full-service schools, or that only certain special schools may be able to accommodate their own children’s particular disabilities.
65. For those children who continue to attend mainstream schools that are unable to accommodate their disabilities, these mainstream schools are at most ‘daycare centres’ of limited or no educational value. These children should for all purposes be considered alongside learners who are literally ‘out of school’.
66. Full-service and special schools are therefore currently the only schools catering for learners with disabilities in the Umkhanyakude District.

Children out of school

67. In our work with Siphilisa Isizwe, our interaction with parents of children with disabilities and health professionals at Manguzi Hospital, and our interviews with staff members at full-service and special schools in the Umkhanyakude District, we are often told that throughout the district there are many children with disabilities who are not accessing school at all.
68. In 2014, through engaging with the KwaZulu-Natal Department of Education and the Umkhanyakude District Department of Education, Siphilisa Isizwe and SECTION27 succeeded in having 14 children with disabilities placed at Sisizakele Special School. These children were part of a group of 17 children aged seven to 16 from the Manguzi area whose caregivers had been interviewed by SECTION27. Before this intervention, of the group of 17 children, eight were not in school at all, eight were attending mainstream schools, and one was attending a special school that was far away.⁴⁵

Waiting Lists: parents describe the trauma of attempts to get their children into schools

69. Of the 55 interviews conducted by SECTION27 in 2015 with caregivers of children with disabilities living in Manguzi and its surrounding areas, 43 of the children concerned were of schoolgoing age at the time of interview. Of these 43 children, 21 were not in school at all. A further 12 of these children were in ordinary schools, seven were in special schools, and three were in full-service schools. Twenty-two reported having been placed on waiting lists at a special school, the significant majority of these children being on the waiting list at Sisizakele Special School.

“My son is 11 years old and is presently in Grade 1 at Khulani Special School. He has both physical and intellectual disabilities. He gets very confused and forgetful. He also has difficulty with his speech, and speaks like a child who is learning to speak. He is not able to bath or dress himself. He needs assistance to use the toilet. He cannot read, write or count. He can only colour in pictures. He can walk but gets tired very quickly and falls.

“He was on the waiting list for Sisizakele Special School before the school was built, but I still have not heard from them.”

Parent of child with physical and intellectual disabilities, Manguzi

70. Some children who do not receive adequate support at mainstream schools and have been asked to leave those schools remain on waiting lists at Sisizakele for years.

“The doctors [at Manguzi Hospital] referred my son to Sisizakele, and I was told that he would be placed on a waiting list and I would receive a call. I have still not received a call. He was delayed in learning to walk and talk, though he will laugh sometimes. Now he can even bath himself. But he can’t read or write and is very slow at school, and still struggles to speak properly. The local school indicated that they couldn’t cope with him after he had been there for a year.

“He is eight years old. He has been out of school for more than two years. Both my son and I are hurt that he is not in school. It means that the teachers think my son is nothing compared to other people.”

Parent of child with physical and intellectual disabilities, Manguzi

71. A fifteen-year-old child’s mother has given up on having her admitted to Sisizakele Special School after three years on the waiting list. She has now accepted that her child will permanently attend a crèche near Manguzi, Hospital in the hope that she will acquire a skill that will allow her to make a living.

“My daughter is 15 years old. She was about five years old when she started walking. She had never crawled. She couldn’t even sit properly. She started talking a little later. She goes to Manguzi Hospital every month, and it has helped her to progress a lot. She spent five years in Grade 1 at an ordinary school, and then dropped out, because I could see she was struggling. She then stayed at home for two years, and I applied to Sisizakele Special School for her in 2013. She was put on a waiting list at Sisizakele.

“She now goes to a crèche near Manguzi Hospital. She is excited to be there, and was quite lonely at home by herself without other children. I want her to have a skill that she will be able to do well, so that if I pass away, my child will be able to have some way of making a living for herself.”

Parent of child with physical and intellectual disabilities, Manguzi

72. These stories are reflective of many other interviews conducted by SECTION27, and are commonly told in community meetings organised by Siphilisa Isizwe. They are almost certainly similar to the untold stories of the astonishingly high number of children with disabilities recorded by the DBE who are out of school in each province and throughout the country.

73. A common thread throughout SECTION27’s interviews with caregivers is that they experience long periods of time while their children are out of school during which they are simply not contacted by the Department of Education or the special schools who have placed them on waiting lists; not understanding why, or when it might end, is demoralising. Many caregivers eventually give up. As one mother of an eight-year-old boy with physical and intellectual disabilities painfully expresses:

“I don’t know if [my] son will be able to be helped at these [special] schools without me [around]. I don’t know why they didn’t accept him in the first place. I feel that I may be lacking somehow [because] I don’t know how to teach him, and so maybe a school will be able to help him learn.”

Parent of child with physical and intellectual disabilities, Manguzi

Children out of school in the KwaZulu-Natal province

74. The 2011/12 Annual Report of the KwaZulu-Natal Department of Education noted that “it is estimated that there are 37 768 learners with disabilities between the ages of six and 15 years that are out of school”. According to Department of Basic Education estimations detailed in a report produced in November 2015, there could be as many as 182 153 children with disabilities between the ages of five and 18 in KwaZulu-Natal, of which as many as 137 889 may be out of school.⁴⁶ Despite concerns about the accuracy of these estimates, SECTION27’s work in Manguzi confirms that there are many children with no access to school whatsoever.

75. It is also clear from multiple sources including the DBE progress report (2015), KZN DoE survey of special schools (2011), and KZN DoE special schools audit (2011) that many special schools continue to have lengthy waiting lists. The special school survey, for example, which involved Department officials visiting 71 special schools in the province, concluded that “most schools have a waiting list for learners, and this needs to be addressed”.⁴⁷ The special school audit found that of the schools considered eligible as pilots for special-school resource centres, “six of the nine schools reported having a waiting list”.⁴⁸

Urgent mobilisation required in terms of Inclusive Education White Paper 6

76. This situation requires an urgent implementation of White Paper 6's call for long-overdue campaigns to mobilise out-of-school learners. While the KZN DoE does undertake campaigns to mobilise out-of-school learners, these have consistently ignored learners with disabilities. For example, in 2014 an extensive drive was undertaken to ensure that learners of schoolgoing age do attend schools. Staff interviewed at schools for the visually impaired in KwaZulu-Natal indicated that this campaign neglected any focus or mention of children with disabilities. This appears to be confirmed by media released by the Department when the campaign was launched.⁴⁹

77. In 2007, research was conducted on access to schools for learners with disabilities in which experts were interviewed on inclusive education in provincial Departments of Education. It found that perversely, the failure to run mobilisation campaigns for children with disabilities may stem from provincial Departments officials' "fear of being unable to provide for such learners' needs", and that some provincial Departments lack the funding for even this fundamental aspect of White Paper 6.⁵⁰

"Full-service and special schools are used as a dumping ground for learners who are not passing [in mainstream schools]"

Teacher, member of School-Based Support Team, full-service school

78. Lack of resources and capacity to implement policy is a theme that runs through this report. In addition, as we shall see below, this research shows that provincial Departments may well understand just how poor the quality of education at special and full-service schools in KZN actually is. This poor quality creates the impression that the KZN DoE and Umkhanyakude Department of Education do not see the value of educating children with disabilities, and may see the schools as 'daycare centres' or 'dumping grounds' more than places of education and learning.

VI. CONDITIONS IN SPECIAL SCHOOLS

Background

79. There are three special schools in the Umkhanyakude District. All three schools – Intuthuko Special School, Khulani Special School and Sisizakele Special School – were founded by community members, with limited or little government support. Khulani Special School was founded in 2002, and only registered with the Department of Education in 2009.⁵¹ Sisizakele Special School Committee started campaigning for the official opening of the school at least as early as 1993.⁵² The school began operating in 2002, and was registered in 2003. A principal and two educators finally assumed duty at the school in 2005.⁵³ Intuthuko Special School was also started by community members, and was severely under-resourced until as recently as 2011.⁵⁴

80. In 2012, at the official opening of Khulani Special School, then-MEC for Education in KZN Mr Senzo Mchunu acknowledged that all of these schools for learners with disabilities in the Umkhanyakude District were “fully functional, but with very limited support staff and resources. House mothers and drivers are paid by SGBs at Khulani and Intuthuko.”⁵⁵ In its 2014/15 Annual Report, the KZN DoE announced that the reconstruction all three of these schools had been completed during that financial year, and that “this allowed the doors of education and culture to be opened to all, including learners with physical disabilities”.⁵⁶
81. As confirmed by the KZN DoE 2011 Special School Survey,⁵⁷ all three of these schools are intended primarily to ‘specialise’ in catering for children with severe intellectual disabilities. This is consistent with the DBE’s special-schools guidelines, which state that “special schools should be organised according to their programme of specialisation which entails specific curriculum delivery requirements”, and adds that “a special school may admit only learners who require support in the area of specialisation offered at the school”.⁵⁸ The idea is for a school to become a ‘centre of excellence’ in the provision of that specific form of support.⁵⁹
82. All three schools are exclusively primary schools. Indeed, as recently as 2015 both Sisizakele Special School and Khulani Special School catered only for learners between Grades R and 6.
83. Although these three schools also cater for learners with multiple and physical disabilities, the significant majority of learners in all three schools have some kind of intellectual disability. This means that the schools – by design – cater only for primary school children, predominantly with intellectual disabilities. This drastically limits access to education for all other children with varying disabilities in the district. These children must travel extremely far to access education that can cater for their high learning needs.
84. According to the DBE’s guidelines for special schools, “special schools should only admit learners who require high levels of support”.⁶⁰ According to the SIAS policy, although preference is still expressed for the accommodation of learners in mainstream and full-service schools, “a high level of support provision will be available at special schools”.⁶¹ Despite this, regrettably, caregivers and teachers still observe children with disabilities who do not have high levels of support needs being ‘dumped’ at special schools in the Umkhanyakude District.
85. The evaluation of the quality of services provided at special schools in the Umkhanyakude District should therefore commence with an understanding that there are both: 1) children who should be in special schools who are out of school (or receiving inappropriate schooling), and 2) children in special schools who ideally should not be placed in these schools.

<p>“[I]t is not always the case that mainstream schools should be referring learners to special schools, and they should sometimes instead be trying to accommodate them. But the</p>

mainstream schools don't even try. When some learners are sent to [our school], they don't even have a learner profile or an exercise book."

Teacher, full-service school

86. What follows is a description of broad issues raised by staff members of all three special schools, during interviews with SECTION27 about the quality of education received by learners at special schools.

Curriculum delivery

87. The DBE's Progress Report on the Implementation of White Paper 6 dated November 2015 notes:

"There is a serious concern about the standard of curriculum delivery in special schools. There is evidence that **many are simply daycare centres**, with little attention being given to ensuring that learners have access to the National Curriculum Statement on an equal basis with all other learners in the system."⁶²

DBE Progress Report, November 2015

88. The three special schools in the Umkhanyakude District are no exception to this frank admission by the Department of Basic Education.
89. Appropriate curriculum for a special school depends on the range of disabilities catered for by a school, and on a learner-by-learner basis, the particular learning needs of specific children. White Paper 6 clearly identifies the risk of exclusionary, inflexible curricula, noting that "curricula create the most significant barrier to learning and exclusion for many learners". It stipulates that a curriculum must be "accessible" to "all learners".⁶³
90. Curriculum delivery is a complicated matter at special schools throughout the country. It should be emphasised that the observations below are particular to special schools for learners with intellectual disabilities.

Difficulties with academic curriculum content

91. In schools specialising in education for learners with intellectual disabilities, schools note that a flexible and multipronged curriculum that includes academic and skill training is desirable. With regard to the academic curriculum, one teacher noted that "ideally the CAPS curriculum should be properly adapted for use at [schools like ours], but at present teachers do their best to adapt it as they can while teaching". Learners, however, often struggle with academic curricula, and often do not follow or forget lessons taught. The teacher noted that "we teach [something] today and they forget it all tomorrow. You have to repeat often". A media report quoting a teacher at Sisizakele Special School noted that the curriculum is often "meaningless" to children.⁶⁴

92. One school indicated that the Department and other state institutions sometimes do not understand the need for flexibility in academic curricula, and warn the school that 'policy is policy'. A principal from another school expressed frustration with the limited ability to deviate from the academic curriculum, saying that the vision of the school is "that at the exit age of 21, the child must exit the school with a skill she excels in and can make use of to make a living. Teaching the academic curriculum is of limited value. [Even if you teach it] some learners reach the exit age without being able to write their names".
93. The same principal expressed frustration at learners being required to write Annual National Assessments (ANAs), concluding that "there is no single learner at the school who can write ANAs ... the learners are here because they cannot cope with the academic curriculum". The ANAs are compulsory national, standardised tests written by learners on "languages and mathematics in the intermediate phase (Grades 4 to 6), and in literacy and numeracy for the foundation phase (Grades 1 to 3)."⁶⁵ Schools report that their performance is measured against their learners' performances in the ANAs.

The need for practical training to supplement the academic curriculum

94. Although learners struggle with inflexible academic curricula, and "it is very difficult to teach CAPS" to some learners, one principal noted the need for all learners to do some academic curriculum, even if they struggle, because of the necessity of basic numeracy and literacy socially, and even in executing practical skills. For example, he noted that "maths skills such as measurements are essential, even for practical skills such as dressmaking". However, this curriculum should be supplemented by equipping learners with a wide range of practical skills.
95. Though newly-built facilities for special schools include multipurpose classrooms and workshops for the teaching of skills, these are often underutilised. Currently, schools offer different ranges of skills training. These vary from school to school, depending on the availability of sufficiently equipped teachers – even within districts. For example, one school offers sewing, art, information technology, beadwork and dresswork. In order to more fully and appropriately teach learners using available resources, schools variously indicate needs for teachers equipped with the ability to teach skills such as bricklaying, art, speech, drama, home economics, woodwork, claywork, plumbing, hairdressing, carpentry, painting, garment-making, sewing, beadwork and building.

Access to both primary-school and high-school grades

96. As is also the case with regard to full-service schools, it is crucial to point out that none of these schools offer a full high-school curriculum, and therefore learners are forced to leave the school or continuously repeat Grade 7 as the highest academic level they can achieve. This is despite the fact that schools give examples of learners who have the intellectual capacity to progress further academically.

"Some learners leave the school, and then find somewhere to do grade 7, and then receive further education. Others cannot, because they are fully dependent and would require another special school to do so, even if they could cope with the content of higher grades. [There are] three children currently at the school who have the potential to go to Grade 7 after being educated at [our special school]; but because they are in wheelchairs, they cannot be taken to another school."

Head of Department, special school, Umkhanyakude District

The impact on curriculum delivery

97. What emerged clearly from SECTION27's interviews with caregivers and staff at special schools is that some caregivers and teachers are losing confidence in their children's educability. Worse still, media reports reveal that Department officials sometimes appear to have the attitude that children with disabilities cannot learn.⁶⁶ This view contrasts dramatically with the one repeated throughout White Paper 6, which emphasises that at the core of the concept of "inclusive education" is the knowledge that "all children and youth can learn, and that all children and youth need support".⁶⁷

"The officials' disregard of special children and their needs left me dejected. Statements like 'We do not expect teachers and engineers to come out of this school', by one of the officials, hurt me the most."⁶⁸

Teacher, special school

98. Finally, it is an inescapable conclusion that the failure to understand and implement White Paper 6 has created this gap between policy and reality in South Africa, and discourages caregivers, learners and staff at schools that are supposed to specifically cater for and understand the needs of children with disabilities. Ultimately, a learner at Sisizakele Special School sums it up in the following manner.

"Everything is bad at this school. The curriculum in this school is holding me back. My caregivers are looking for a school for me in the mainstream."

Learner, Sisizakele Special School

Special School Guidelines and SIAS: the requirement for flexible academic and skills curricula

99. The SIAS policy emphasises the importance of the curriculum. It indicates that the "main focus of the policy" is to "manage and support teaching and learning processes for learners who experience barriers to learning within the framework of the National Curriculum Statement Grades R to 12."⁶⁹ The special school guidelines indicate that "Certification at least at Grade 9 level, and as far as possible at Grade 12 level, should form part of the curriculum package of all special schools".⁷⁰ The guidelines also highlight the need for curriculum advisors and circuit managers to "have the knowledge and skills to support special schools".⁷¹

100. The special school guidelines clearly state that principals of special schools must ensure that “The National Curriculum Statement is the norm in their schools”, and notes that deviation from it requires “approval of the provincial Department of Education.”⁷² It continues to explain that this will require a focus on “differentiation and adaptation so that learners can access the National Curriculum Statement”, which will include “individual support plans” and also emphasise “knowledge *and* skills”.⁷³ In the specific context of children with “severe intellectual disabilit[ies]”, the policy makes it clear that “the development of literacy and numeracy should form part of everyday teaching for learners”,⁷⁴ and that skills development must be “linked” to academic curriculum, and approved and supervised.
101. The current failure to provide children with disabilities with meaningful access to the CAPS curriculum therefore contradicts the core of the DBE’s policy framework, and amounts to a violation of the learners’ right to basic education, which the UNCRPD explains requires “effective individualised support measures ... in environments that maximise academic and social development”.⁷⁵ This type of holistic education requires an appropriate combination of both skills and academic education for children with intellectual disabilities, which considers their individual barriers to learning.
102. The following sections describe particular challenges at special schools that lead to this despondency, and prevent children from accessing quality education at special schools in the Umkhanyakude District.

Post-provisioning

103. Inadequate post-provisioning for both educator and non-educator staff at special schools is a problem for special schools throughout the country.⁷⁶ The SIAS policy states that “the development of norms and standards for resourcing an inclusive education and training system *is an immediate requirement* for the successful implementation of the policy.”⁷⁷ These norms are required to cater for the particular post-provisioning needs of special schools.⁷⁸ In the continued absence of such norms, the problems detailed below persist.

Shortage of educator posts

“A special school should ideally have a learner-teacher ratio of about 1:10, but it is currently closer to 1:20, on average.”

Principal, special school, Umkhanyakude District

104. One principal described educator post-provisioning as a “major issue”. All three schools noted that their staff establishments were adjusted to reflect additional posts late in 2014. However, the adjusted posts seldom materialise expeditiously into actual teachers present at the school. There are always significant time delays. For example, one school reports being short several teachers for several years before the adjustments in 2014, and remains short of teachers despite these adjustments. A head of department at another school indicated that even with these adjustments, “there

are not enough teachers for the children at the school”, and that some classes have more than 20 learners per teacher.

105. Another school reported being short of as many as nine teachers that reflect on the staff establishment provided by the KZN DoE.

“The delay in appointing teachers is frustrating, but it is hoped that it is because the Ward Manager understands the school’s needs.”

Principal, special school, Umkhanyakude District

106. One school noted that this problem is more acute in the lower grades, into which many learners – regardless of age – tend to be admitted, and in which they spend several years. As a result, this school finds it difficult to admit children in lower grades. A head of department at the school described a teacher-learner ratio of 1: 21 in lower grades, and a 1: 9 ratio in Grade 6.

Impact of shortage of educators on the quality of education

107. The effect of the lack of teachers is to compromise the quality of education available to learners. Learners with severe and varying intellectual disabilities, in particular, require the individual attention of teachers in order to learn effectively.
108. This is what is contemplated by the SIAS policy, which requires “individual support plans”, to be designed by teachers in consultation with caregivers and School-Based Support Teams “for learners who need additional support or expanded opportunities”.⁷⁹ This kind of support is not possible when teachers do not have the relevant skills and have large numbers of learners in each of their classes.

Requests for teachers with specific specialities and skills

109. Schools also report that the delays with the appointment process are extended even further when the school “request[s] teachers with specific skills for specific positions”. Teachers often arrive at the school with no knowledge of special-needs education, and none of the skills that are needed by the school for the education of children with intellectual disabilities. They must therefore learn “on the job”, with little support or training from the Department of Education. Schools also note that both an active interest and the requisite knowledge are absolutely necessary.
110. Schools have also requested teachers with the ability to do skills or vocational training as well as the academic curriculum. One principal commented that “[i]t does not [even] take an academic teaching qualification to teach practical skills; and the school actually only needs teachers who teach skills, at this point”. While this is concerning, because academic qualification is needed if children are to succeed academically, his frustration highlights the importance of teachers who can also teach skills at special schools.

111. A common complaint is that Department officials sometimes refuse requests for “flexibility” in appointments from special schools; or even if they do understand the schools’ requests, they cannot comply with them. Teachers emphasise that the ability to teach skills would permit learners with disabilities who struggle to progress with the full academic curriculum to learn something that could allow them to be self-sufficient when leaving school. This echoes the concerns of the caregivers interviewed in Manguzi.

“These kinds of skills will enable learners to make a living for themselves after school.”

Teacher, special school, Umkhanyakude District

112. Ultimately, the low quality of education and support provided at the schools becomes evident to parents – who believe in the potential of their children to be successfully educated.

“I know my child is very intelligent, and he can learn a lot from school. There is no school close to where we live and that can accommodate his needs. He is always staying at home, and I know that this is starting to affect him.”

Mother of child with disability, Umkhanyakude District

Requirements of the special-school guidelines

113. The special-school guidelines are emphatic that “all personnel in special schools must be thoroughly screened to ensure suitability to work with children who require high levels of support.”⁸⁰ This requires “personnel with the appropriate qualifications” and “a positive attitude towards people with disabilities”. This includes principals, teachers and school management. Even administrative personnel are required to have a “basic understanding” of disability, inclusive education policy, and special schools’ roles in implementing it.⁸¹
114. The guidelines say that “all teaching personnel should possess at least a first degree or diploma, which includes training on special needs and inclusive education”. Teachers who are appointed without this qualification “must undertake such training with immediate effect” by arrangement of the school, in a “time period of not more one year”.⁸² All teachers at special schools are required to have a range of knowledge including the ability to differentiate and adapt curriculum, develop and manage individual support plans, and the knowledge and ability to implement SIAS.⁸³ SIAS itself requires that the Post Provisioning Norms (PPN) at a school catering for learners with high support needs is “reviewed” to take into account “the specialised nature of support and admission”.⁸⁴

Shortage of professional and non-professional non-educator staff

115. There is a range of non-professional non-educator staff that special schools regard as necessary for their efficient functioning, and for the delivery of quality education to children with disabilities. These include additional cleaners for hostels, twenty-four-hour house mothers, twenty-four-hour security, kitchen staff, bus

drivers, and additional maintenance staff. These requirements, many of which arise because the majority of learners at special schools stay in hostels on location, are extremely costly but absolutely essential. Given the difficulties in covering the costs of these positions from the funding provided by the KwaZulu-Natal Department of Education, one special school's school governing body funds more than 25 such positions.

116. Furthermore, the schools all describe a severe shortage of *professional* support staff positions such as nurses, physiotherapists, occupational therapists, speech therapists, social workers and psychologists. None of the schools have permanent appointments in these positions. Schools sometimes obtain support from clinics and hospitals, who allow their staff to make visits to schools. However, this type of visit is infrequent and inconsistent, and the skills of professionals are needed on a regular basis. For example, a boy who becomes frustrated and violent requires a social worker or psychologist's care consistently. Staff at one school indicated that "the school has a lot of 'cases' that require social workers". According to school staff, the KZN DoE is well aware of this need, and a social worker is sent from the Special Needs Education Section of the district Department; but infrequently.

"The school needs more house mothers, because on weekends, some teachers have to stay at school to look after boarding learners because house mothers have to go home. The school is also in serious need of an occupational therapist. The school also needs a nurse visiting the school regularly, because some of the learners are on chronic medication. At the moment, someone at the clinic has just trained the house mothers to give the children their medication."

Principal, special school, Umkhanyakude District

117. One school, for example, indicated that at the time of SECTION27's visit, neither an occupational therapist nor a social worker had visited from the nearest hospital for at least six months.
118. These shortages appear to be a serious problem throughout KwaZulu-Natal, with Govender, for example, noting in 2014 that there are "gross shortages of teacher aides, therapists and support staff at special schools".⁸⁵

Requirements of the special school guidelines

119. Acknowledging the special significance of non-teaching personnel at special schools, the guidelines note that the Department of Basic Education will produce norms and standards to determine the "allocation" of non-teaching personnel; but acknowledges that they "should include but not be limited to" therapists, counsellors, social workers, nurses and psychologists, house mothers, assistant house mothers, drivers, cleaners and security guards.⁸⁶ These are also requirements in terms of SIAS.⁸⁷

120. Importantly, the position of a house mother is considered a skilled position, and the guidelines require that “house mothers employed in schools catering for learners with physical disabilities and cerebral palsy should possess a minimum qualification” in health or social/home-based care.⁸⁸
121. Finally, the guidelines acknowledge that it is “imperative” that “all special-schools’ personnel” engage in relevant, ongoing, continuous professional development “at school and externally”.⁸⁹ SIAS itself requires “intensive induction programmes”, “ongoing specialist monitoring, supervision and training of staff”, and “training programmes sourced within departmental structures or externally”.⁹⁰ The DBE progress report on the implementation of White Paper 6 confirms that “continued professional teacher development is a critical need for the successful implementation of inclusive education”.⁹¹
122. The UNCRPD requires states, as part of their duty in terms of children with disabilities’ education rights, “to train professionals and staff who work at all levels of education”.⁹² Both SIAS and the guidelines, in the absence of a constitutional challenge to their validity, commit the Departments of Education and the schools themselves to their more detailed constitutional standards.⁹³

Transport

123. Schools report that the provincial Department of Education has funded the procurement of two buses for each school. This is absolutely necessary, because learners come to school from extremely far away, and learners with disabilities are exceptionally vulnerable when attempting to take public transport. Not all learners benefit from this government transport. Safety is a major concern for caregivers, as one mother bemoaned.

“The problem with the school is that it is very far. I have to hitchhike with my [two] children to take them [to school] and otherwise it is very expensive. It is difficult getting there because transport is expensive and the school is far. I can’t be involved in my child’s life because it’s far. I can’t help my child if something is stolen from him, or he is being hit or something.”

Mother of child with disability, Manguzi

124. Problems are caused when buses break down or do not travel all the way to children’s homes directly, or even to their home towns or villages.
125. Another principal indicated that this problem arises because the buses only cover two routes, spanning a maximum of 50 kilometres from the school. This allows approximately 30 learners only to travel home from school each day. Other learners who live an equal distance away – even along tarred roads towards a major town, but in another direction – do not benefit at all from the buses, and must stay in hostels. When the buses break down, “learners simply cannot come to school”. The same school notes that in 2014, “the school was without a bus for approximately three months”. Furthermore, the school has concerns for the safety of learners who can

only be dropped off at a central point in town; parents and children are left to absorb the cost and risk of getting children back to their homes.

126. One school notes that of its two buses, only one bus “has space for a wheelchair to be stored, and safety belts which strap learners with disabilities in safely”. The school’s other bus is “just a normal bus”, and therefore is not appropriate for the transport of many learners with severe disabilities. Additionally, allegations have been made in special schools in other districts that buses are used by members of school staff for private use.⁹⁴

Special-school hostels, distance from home, and costly transport

127. All learners who live outside the area that the transports covers must stay in school hostels. These hostels are far from the homes of caregivers, who then are saddened by the fact that they can seldom see their children.

“The only problem is the distance, as it costs R160 for a return trip and it is a 2.5-hour trip to the school. This means that I only see him in the school holidays. I would like a closer school, where he can come home every day.”

Mother of child with disability, Umkhanyakude District

“Khulani is very far away from where I live. It costs me R400 to travel from my home to school. In addition I pay school fees of R600, and R300 for groceries for [my child], which I am struggling to afford.”

Mother of child with disability, Umkhanyakude District

“Either a school in Manguzi or transport for caregivers to go visit at Khulani [during the term] would help [my child] to visit me. It would also help if there could be funding for the children to come and go back every week, or every month, to visit home.”

Mother of child with disability, Umkhanyakude District

128. Parents are not hopeful that the Department will provide financial support for the transport costs of getting their children to and from special schools, because of previous interactions with Department officials.

“I also don’t think the government will ever agree to pay for transport between here in Manguzi and Sisizakele Special School. This is based on a meeting with Department officials, in which we were told that the government doesn’t have money for transport.”

Mother of child with disability, Manguzi

129. In special schools, the concern about inadequate transport is connected very closely to parents’ concerns about how seldom they can see their children. These concerns are significantly increased by the terrible conditions children often endure in underequipped hostels. The DBE’s progress report on the implementation of White Paper 6 notes that “many learners in special schools spend an unreasonable amount

of time on the road. Furthermore, the costs for special schools to provide transport constitute one of the most serious challenges that they face.”⁹⁵

The National Learner Transport Policy, and the right to learner transport

130. The ‘National Learner Transport Policy’, published late in 2015 by the Departments of Basic Education and Transport, acknowledges that “the current learner transport system does not make sufficient provision for the transportation of learners with physical disabilities.”⁹⁶ The policy applies to all learners between grades R and 12, explicitly including learners with disabilities.⁹⁷ It also highlights the particular challenges and dangers faced by learners in rural areas in accessing transport to schools, and acknowledges the long distances they have to walk to and from school – including before and after accessing vehicles for transport.
131. According to this policy, “needy” learners identified by schools must have their transport to and from school “subsidised”; and in this determination, “priority must be given to learners with disabilities, taking into consideration the nature of the disability”.⁹⁸ Adherence to principles of “universal design” is a requirement for vehicles used in the learner transport system, and generally the policy requires that “all processes involved, from planning to implementation, must take cognisance of the needs of learners with disabilities, and meet the required support needs”.⁹⁹
132. The special-school guidelines acknowledge that provincial Departments of Education should (as part of their comprehensive learner transport system) cater as far as possible for learners with disabilities. These systems, it indicates, should comply with the standards of “universal design”.¹⁰⁰ However, given the lengthy processes involved in the formulation of learner transport in South Africa both nationally and provincially, the guidelines note that “in the short term”, in the absence of such policies, “special schools must provide transport for all learners who require transport to and from school”, and that such transport must be “accessible for all learners to be transported”. The guidelines qualify this further: to all learners living within 40 kilometres of, or more than one hour’s travel from, the school.¹⁰¹
133. The cautious approach taken by the guidelines has proved sensible, given that the National Learner Transport Policy, though published in 2015, will only have its implementation costed and budgeted for by December 2016; and therefore, its implementation is likely to still be only a distant reality in places such as Umkhanyakude District.¹⁰² In the interim, the guidelines specifically note the need for the re-evaluation of transport subsidies for special schools, to allow for the meeting of these requirements in the short term.¹⁰³
134. A judgment of the Eastern Cape High Court in 2015 confirmed that the right to basic education includes a right to “transport to and from school at State expense in appropriate cases”.¹⁰⁴ The Court held that provincial policies on transport should be flexible, take into account the learner’s circumstances, and calculate the distance a learner must travel from school to home, and not just to a central location in their town or village. It concluded that failure to provide transport places “a great burden,

both physical and psychological” on a child.¹⁰⁵ It is therefore clear that the Department’s failure to provide transport violates the rights of children with disabilities in the Umkhanyakude District to basic education and safety and security.

Conditions in hostels, and abuse and neglect of learners

Parents’ desire for children to attend schools that are near their homes

135. In interviews with SECTION27, many caregivers – because of both the distance between their homes and special schools, and the conditions found at special-school hostels – made clear and emotional pleas for a special school closer to their homes in Manguzi.

“The problem in Manguzi, when we give birth to a disabled child we feel like we are left alone, as caregivers. Because we have to take the children far, and our children want us to be close to them every time.”

Mother of child with disability, Manguzi

“I need [my child] to be in a school nearby, because I want to help him. Sometimes he has fits at night, and I need to help him by holding him. I need to be close. I am worried if he is far away, he will hurt himself. It is very important for him to be at school here in Manguzi – not Sisizakele or Khulani. I don’t know what is happening to our children in far-away schools.”

Mother of child with disability, Manguzi

136. The majority of learners in all three schools are compelled by the distance between their homes and their schools to stay in hostels. These learners only return home during their holidays.
137. One school indicates that boarding learners are required to pay fees to cover the costs of basic necessities such as food. Proper nutrition and tailored diets are crucial for children with disabilities, and require careful consideration. For example, some learners with physical disabilities react badly to certain foods, and autistic children have special dietary requirements. Some schools get assistance from dieticians at hospitals to address this difficulty, but special dietary requirements place a financial burden on schools’ already-strained resources.

Understaffing, poor conditions and abuse in special-school hostels

138. All schools report the need for additional house mothers and improved training of house mothers, who are often no more than unpaid volunteers from within the community. One principal noted that the absence of house mothers results in teachers having to fill the gap of afterschool care for children. This reinforces the point that there are learners attending schools who are totally dependent and require continuous or constant care, day and night.

139. Some caregivers are also concerned that unpaid or poorly-paid house mothers (or other children) may steal from their children.
140. In addition, in the absence of nursing staff, untrained house mothers are required to ensure that learners take their medication. One school notes that a local clinic provided some informal training for house mothers, to assist in this process.
141. Finally, the treatment of children with disabilities in hostels throughout the country, and in the Umkhanyakude District in particular, has come under considerable scrutiny in recent times. The DBE itself has acknowledged various serious problems in special-school hostels, including “extremely poor conditions” and “an alarming number of cases of abuse”.¹⁰⁶
142. The situation in the Umkhanyakude District (and KwaZulu-Natal more broadly) is no exception. Media reports in September 2015 on Inkanyiso Special School in the Zululand District (which neighbours the Umkhanyakude District) indicate that “the provincial education department is investigating claims by 12 teachers that children in the hostel are being physically and sexually abused”.¹⁰⁷ Some caregivers in Manguzi interviewed by SECTION27 either have children attending Inkanyiso Special School, or are attempting to have their children enrolled there, in the hope of accessing better schooling than they can in the Umkhanyakude District, and to avoid lengthy waiting lists. The reports also noted learners falling pregnant as a result of abuse, inadequate cleaning, learners not having access to sufficient food, and learners eating while sitting on the floor because of a lack of furniture. Repeated complaints, initially made by teachers in 2014, finally led teachers to the media in frustration.

“We are worried that nothing is being done about the situation. We were told they would report back to us on 1 April [2015], but we’ve still heard nothing. The conditions at the hostel are bad. The furniture is broken, there’s no proper cleaning. The children eat on the floor, and the food is bad. They get sick.”¹⁰⁸

Teacher, Inkanyiso Special School, Zululand District

143. On a visit to Sisizakele Special School in August 2015, a teacher told SECTION27 that “children are currently sleeping on mattresses on the ground that have been bought for them by their caregivers”. Media reports in October 2015 about Sisizakele Special School, quoting teachers and learners at the school, contain serious allegations that children living in hostels “are being beaten by their house mothers, and are living under appalling conditions”. Specific problems alleged include the absence of beds in hostels for the last two years, poor maintenance, and unhygienic living conditions.¹⁰⁹

Parents’ serious concerns about the treatment of their children in special-school hostels

144. Parents spoken to by SECTION27 confirm that their children are frequently sick, both at school and when they return home for holidays. This was also confirmed by reports given to a principal at a full-service school in the district.

"After being referred to a Special School, the parent will bring [her child] back after a while, even though she knows that it doesn't help her daughter to be here. Some caregivers say their children were 'sick' at the special school. Some caregivers say children are not treated well at the special school".

Principal, full-service school

145. These media reports about abuse and neglect also validate, and are corroborated by, the perception that many caregivers interviewed by SECTION27 hold about children being abused or mistreated in hostels or at special schools in the Umkhanyakude District. Below are a few of the many examples from our interviews.

"I have heard that that school does not treat children well. There was a meeting in the Municipality this month where people were saying that children were being treated badly at Sisizakele. I don't think I would even send [my child], there even if the child was accepted at the school."

Mother of child with disability, Umkhanyakude District

"The care at [Khulani Special School] is poor. There is one volunteer house mother to 20 children. I arrived there a number of times and found my child walking around with no shoes, and lots of his clothing was missing. I am terribly stressed, because he is far away and I cannot check up on him regularly."

Mother of child with disability, Umkhanyakude District

"I am upset that my son is not going to school, and I am worried. When he wakes up and other children are going to school, he says he wants to go to school also. I am worried that if I send him to Sisizakele, that there is a problem at the school. There was a child next door who was going to Sisizakele, but just came back; because he was receiving improper care, and being abused there."

Mother of child with disability, Umkhanyakude District

Children's constitutional right to be free from abuse, corporal punishment, maltreatment and degradation

146. Child abuse in the form of physical or psychological abuse is a serious criminal offence. The Constitutional Court has categorically ruled that the School's Act's ban on corporal punishment at all schools is reasonable and justifiable, because it protects the rights of learners.¹¹⁰ The Constitution specifically gives all children the right to "be protected from maltreatment, neglect, abuse or degradation" of any kind, and the positive right to "appropriate alternative care when removed from the family environment".¹¹¹ This is undoubtedly the position of children living in special school hostels, often too far away from home for their caregivers to even visit them. The UNCRPD places a specific obligation on states to "take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities" from abuse and neglect "both within and outside the home".¹¹²

147. The Children's Act was passed by Parliament in order to give effect to the constitutional rights of children, including specifically protecting them from abuse and neglect.¹¹³ However, the protection provided by minimum norms that apply to Child Youth Care Centres (CYCCs) specifically excludes school hostels and other facilities attached to a school in circumstances where learners require additional protection.¹¹⁴ Strangely, although the SIAS policy acknowledges "physical, emotional and sexual abuse" as a barrier to learning of itself, it does not deal at all with the prevention of such abuse at schools themselves.¹¹⁵
148. The special-school guidelines require that "particular care must be taken to ensure that hostel accommodation is appropriate, clean and should not offend the dignity of the learner".¹¹⁶ Apparently cognisant of the increased risk of abuse to children with disabilities, the guidelines note that all special schools "must put measures in place to ensure that no form of abuse takes place at any time by anyone".¹¹⁷ "Constant supervision" by "appropriate adults" for learners in hostels is therefore required.¹¹⁸
149. Urgent steps must be taken by the Umkhanyakude and KwaZulu-Natal Departments of Education to prevent the ongoing abuse and neglect of children with disabilities at special schools and within special-school hostels in the district. In addition, this is clearly a nationwide problem, with the Department of Basic Education acknowledging as recently as March 2016, in its presentation to the Portfolio Committee on Basic Education in Parliament, that special-school hostels are in "extremely poor conditions", and that there are "an alarming number of cases of abuse". This same report concludes that "it is critical that the Hostel Policy for special schools is finalised to address all issues pertaining to accessibility of facilities, supervision, safety, etc".¹¹⁹
150. The situation described above clearly amounts to multiple violations of the constitutional right of children with disabilities to be free from abuse and neglect, and their right to safety and security of person, which includes both bodily and psychological integrity.¹²⁰

Basic services

151. Given the schools' limited budgets, water and electricity have been described as "exorbitantly expensive". A special school is hit particularly hard by a water shortage, because, for example, some of the learners use nappies, and require water for regular changing and cleaning.
152. Media reports note that Sisizakele Special School has often struggled with malfunctioning water systems, which creates challenges for operating laundry machines and cleaning.¹²¹ This results in the conditions being very "unhygienic". In May and June 2015, staff members at Sisizakele noted that "water was not working at all, and this caused a big problem for the school".

153. The community surrounding Khulani has a serious challenge as a result of lack of access to water. The result is that “the school sometimes goes for days without water”. The lack of water forces Khulani Special School to use water from the river for cooking – they cannot drink this water, because it is too dirty. A borehole was dug at the school, but this is not a viable option because there is salt in the underground water on the school property. The school does have water tanks, but they “often” remain empty.
154. The ‘Minimum Uniform Norms and Standards for Infrastructure’ published in 2013 by the Minister of Basic Education indicate that electricity and water provision for schools must be prioritised for completion in all schools by 2020 at the latest.¹²² Water must be of sufficient quality and quantity for “drinking, personal hygiene, and where appropriate, for food preparation.”¹²³ Though the Norms do not take into account the specific needs of special schools and children with disabilities with regard to water and electricity, it is clear that for these learners’ rights to be meaningful, they must include additional provision of funds for water and electricity for hostels, and the particular additional requirements of children with disabilities, including sufficient water to take medication at school and to prepare suitable, appropriate meals at the hostels, and 24-hour access to electricity in hostels.¹²⁴

Funding

155. ‘Complicit in Exclusion’, a 2015 report authored by Human Rights Watch, found – astonishingly – that “no special schools are currently listed in any ‘no-fee’ schools list produced by the government”.¹²⁵ The DBE progress report on the implementation of White Paper 6 contemplated the formation of a policy that will focus specifically on the funding of special and full-service schools, and will “also provide for the voluntary classification of special schools as no-fee schools, as well as provide for compensation to special schools as reimbursement for the exemption of school fees”.¹²⁶
156. Both the policy and the listing of special schools as no-fee schools is crucial. At present, special schools complain bitterly of insufficient funding. The unrealistic expectation that special schools in poor rural areas such as the three in the Umkhanyakude District will be able to fund part of their costs through fees merely reduces funding allocated to these schools, and hampers the delivery of quality education. Ultimately, the DBE progress report is correct to acknowledge that “given the enormity of the support needs” the “spending is by far not enough”, and “inconsistently allocated and spent”, and that this results in “a very poor situation, especially in the poorer provinces”, in both special and full-service schools.¹²⁷
157. In addition to school fees, caregivers of children who attend special schools in the Umkhanyakude District, who are often totally reliant on government grants, are required to pay significant transport and hostel fees in order get their children to school and cover the schools’ costs of accommodating them. Special schools also complain about the inadequacy of the absolute level of the funding provided, given the costs of operating a special school.

VII. CONDITIONS AT FULL-SERVICE SCHOOLS

“The problem is that the school is often treated equally [by the KZN DoE] like any other school; and actually, it requires special support.”

Principal, full-service school

158. Education White Paper 6, which created full-service schools, explains that “full-service schools ... are schools ... that will be equipped and supported to provide for the full range of learning needs among all our learners.”¹²⁸ These, the White Paper indicates, will be designated and established by the incremental conversion of mainstream schools. The plan was then to take the lessons learned from the designated full-service schools into consideration for the “system-wide implementation”. This is intended to ensure the success of the goal of “full inclusion”.¹²⁹ The goal of making “all” mainstream schools full-service schools is repeated in the DBE’s 2010 ‘Guidelines for Full Service/Inclusive Schools’ (FS Guidelines).¹³⁰
159. Full-service schools therefore have a crucial role to play in the transformation of the education system into an inclusive system, and are a “beacon of the transformation process in education” and a “place where learners and educators feel safe and supported”.¹³¹
160. The SIAS policy indicates that “the roles and functions of schools that have been designated as full-service schools will also be outlined in the school-funding and post-provisioning norms”.¹³² These norms have yet to be produced or published. The clearest definition of what a full-service school should be is provided by the FS Guidelines, which defines them as “first and foremost mainstream education systems”, that “irrespective of disability or differences” are equipped to provide “the full range of learning needs in an equitable manner”.¹³³
161. The only other information provided by White Paper 6 is that the “support [full-service schools]” will receive will include physical and material resources, as well as professional development for staff.¹³⁴ The need for departmental support for full-service schools is reiterated in the FS Guidelines, which provide “criteria or minimum standards” that a “school must comply with” to be considered a full-service school.¹³⁵ While not all full-service schools will be permanently equipped to provide for the needs of all learners, the FS Guidelines note that all full-service schools “should have the potential and capacity to develop and provide [all forms of learner support]”.¹³⁶
162. Although in practice, in the Umkhanyakude District, full-service schools are conceived of as accommodating learners with low and moderate support needs, the FS Guidelines clearly contemplate these schools being able to support learners with high support needs, including those in wheelchairs or who are completely blind or deaf.¹³⁷ They state specifically that “learners with moderate, high or very high support needs can be supported at full-service schools”.¹³⁸

163. However, it should be noted that the DBE progress report on the implementation of White Paper 6 cautions that though full-service schools should be all-inclusive, “full-service schools should never be seen as a new type of special school that draws learners from afar”.¹³⁹

Primary and secondary education

164. Of the 11 full-service schools in the Umkhanyakude District visited by SECTION27, only a single school – Somfula Full-Service School – is a High School. This situation is compounded by the fact that none of the special schools offer a high-school curriculum, or grades past Grade 7.

“It would be so much better if there was a full-service high school [in the area]. Children go to mainstream and do not cope, and mostly drop out. The teachers at high schools complain about these learners. There should be one full-service high school for every full-service primary school in the district. This is a great problem.”

Teacher, member of School-Based Support Team, full-service school

165. As a result of its distance from the vast majority of full-service primary schools, there is “no major influx” of learners to the school from the ten full-service primary schools in the district. The school indicates that most of the children attending the school who have special learning needs were already attending the school or neighbouring schools; and that “once the school started doing proper screening, it realised that there were actually many learners with disabilities and learning barriers at the school that were not being accommodated, and were invisible to the school.”

166. Although there are over 1 000 children in Somfula, each year only approximately 50 are children with disabilities. The importance of this cannot be overemphasised. The result is that in the entire district, the vast majority of children with disabilities and special learning needs have no access to secondary education at all. By and large they cannot write National Senior Certificate examinations, and are therefore stripped of opportunities for further education at tertiary institutions, for which a National Senior Certificate is most often a requirement.

167. This is the cause of great frustration and sadness for many teachers at full-service primary schools, who do their utmost to ensure the academic success of their learners.

168. Finally, despite the attempts of full-service primary schools to continue to support their learners once they move to mainstream high schools, learners are stigmatised and demoralised at schools that do not cater for or understand their needs. As one principal put it:

“[For] a child with a disability, when she or he leaves the [full-service primary school] there is a high chance that she or he will be frustrated for the rest of his or her life. They go from being accepted to being something different, and so they cannot accept themselves.”

Principal, full-service school

169. When a child is in a mainstream high school, the principal at one full-service primary school says he personally goes to that mainstream school and speaks to the school principal, to ask her or him to provide some support to the learner; but he fears he can only do so much to help. This frustrates the principals and teachers, who are concerned for the well-being of their learners even after they leave their schools.

170. The UNCRPD makes it clear that persons with disabilities have a right to access quality, inclusive education, on both the primary and the secondary education level, “on an equal basis with others in the communities in which they live”.¹⁴⁰ The denial of access to high schools that are full-service schools in the Umkhanyakude District is a departure from the DBE’s policy on inclusive education, and a violation of the constitutional right of children with disabilities to basic education.

Infrastructure and basic services

171. In addition to the ordinary infrastructure needs of mainstream schools, full-service schools are equipped with Learner Support Centres. These centres, which are often separate structures to the school building, provide homes and safe havens for children with disabilities at full-service schools, and house a range of support services to be provided at these schools, including remedial classes led by Learner Support Assistants. One Learner Support Assistant describes how children at her school feel about the Learner Support Centre:

“The children love the Learner Support Assistants and coming to the Learner Support Centre. They even leave their teachers to come find us. They love us!”
Learner Support Assistant, full-service school

172. Though the structures of the Learner Support Centres and the furniture and equipment in them vary, they are generally made up of a number of rooms, including meeting rooms and classrooms, kitchens, healthcare centres, space for Learner Support Assistants’ desks, private rooms for medical and other consultations, and toilets. One principal describes the Learner Support Centre at the school in the following terms “it has an activity room... it also has a room with a sofa in it for learners to relax or take naps, and three toilets, one of which is specifically for learners with disabilities.” At many schools, the Learner Support Centre also plays the additional function of a meeting room for the Circuit and district officials, and a place for counsellors and Learner Support Educators to consult with learners and teachers when they come to the school.

173. Two schools, designated as full-service schools in 2013, do not have Learner Support Centres at all. As will be detailed below, many other schools lack the necessary staff to use Learner Support Centres effectively. Lack of funding for schools, also discussed below, makes Learner Support Centres difficult and costly to maintain.

“The school has to stretch its norms and standards funding to run the Learner Support Centre, especially when it is not allocated any money in a particular year. But it is not possible to do this while doing as much training, for example, as there should be.”

Principal, full-service school

174. Some schools that do have a Learner Support Centre lack access to the basic services, such as water and electricity, required to make them fully operational. One school has never had access to electricity or running water. It therefore only has access to water when it rains. Another struggles to use computers, projectors, stoves and air conditioners in the absence of electricity.

“The school has no water or electricity, and it has never had any of the two. The school uses solar panels for a little bit of electricity, and JoJo tanks for water; so if there is no rain, the school has no water... If the computers [for the Learner Support Centre] eventually arrive, it will be difficult to use them since there is no electricity – even the new fridge has been in the Learner Support Centre [for some time], but impossible to use...”

Principal, full-service school

175. At the same time, the lack of electricity causes direct challenges to teaching and learning, and is therefore a barrier to access to education.

“If we had computers, the learners would be able to search on the internet and find the careers they like”.

Teacher, full-service school

176. Schools that have fully functional Learner Support Centres, running water and reliable electricity indicate that this in turn increases the costs for them, since the same small allocation that is used for all accommodations for learners’ special learning needs must be used to pay for additional electricity and water costs. Another school also has no electricity or running water – only a borehole created at the school’s own expense, which the school must buy petrol for in order to utilise.

177. In addition to the infrastructure requirements detailed in the Minimum Uniform Norms and Standards for Infrastructure discussed above, the FS Guidelines set specific standards for “physical and material resources”. The infrastructure norms generally require that classrooms and access to electricity, water and sanitation must be available by 2020 at the latest.¹⁴¹ The FS Guidelines require that “the school has enough classrooms for the recommended teacher: learner ratio”, and that all classrooms are accessible for all learners.¹⁴²

178. It is notable that the norms do not detail any particular requirements with regard to Learner Support Centres. The guidelines note that the “initial steps in the development of the targeted [full-service] schools include the upgrading of the physical infrastructure”, but no mention is made of Learner Support Centres.¹⁴³ This despite their clearly important practical role in full-service schools in KwaZulu-Natal

at the time the norms were published. Govender notes – specifically in the context of full-service schools in KZN – that:¹⁴⁴

“Utilised and managed effectively, the full-service school’s support centre would be a hub of organised activity every day, supporting the children, selected by the LSTs, both from that FSS and neighbouring schools. Activities, including areas such as literacy, numeracy, career-selection skills, and speech and language therapy and hearing screening, would result in services aimed at remediation and support being brought to children in their own locality.”

Logan Govender, educational psychologist, member of Concerned Educational Professionals

Universal Design

179. In addition to problems relating to Learner Support Centres, full-service schools report issues relating to the appropriateness of their design for learners with disabilities. Although all schools are required to comply with the requirements of “universal design”, this is even more pressing at schools required to cater specifically for the needs of children with disabilities. Though most schools report that some effort has been made to equip their schools with the necessary accommodations, such as ramps and toilets for learners with disabilities, some still report inadequate accommodations. For example, even if there are ramps going into classrooms, learners in wheelchairs require the courtyards and open areas between classrooms, and between the classrooms and other buildings such as the Learner Support Centre or toilets, to be paved.

180. This is not the case at some schools. One school describes a whole set of issues with infrastructure, including the need for more ramps. Another indicates that learners find it difficult to move around, because the school is built on a slope.

181. A few schools also make general complaints about infrastructure that would apply to mainstream schools and are independent of the fact that the school caters for any learners with disabilities. One school describes the dire state of its infrastructure in the following terms:

“A hall that was demolished at the school has not been replaced, despite the Department promising to do so. The school also has 12 pit latrines that are full and need to be replaced, and needs four more classrooms to be built and the replacement of makeshift ‘park homes’, which are in bad condition and currently used as classes. One has a big wooden door that is broken completely and falls down to the ground if it is windy. The door is off of its hinges and must be carefully removed and replaced each time it is opened and closed.”

Teacher, member of School-Based Support Team

182. Other full-service schools suffer from serious overcrowding, due to a lack of classrooms at the school. Although this situation would be a problem at any school, it is even more severe in the context of schools in which there are children with

disabilities in all classes who need individualised attention and support from teachers.

“A serious problem the school suffers from is the shortage of classrooms. The school needs at least eight new classrooms urgently, because some classes are overcrowded; for instance, in Grade 4 there are 87 learners sharing one classroom, and in Grade 9 there are 89 learners sharing one classroom.”

Principal, full-service school

“The school does not have a library, or enough classes; so Grade Rs study under a tree, and Grades 7 and 2 are accommodated in one class. There are 128 learners in this classroom in total.”

Principal, full-service school

183. The Minimum Uniform Norms and Standards for Infrastructure require that physical infrastructure at all schools complies with the principles of “universal design”. The FS Guidelines mention in the context of full-service schools that this requires at least accessible classrooms, adequate toilet facilities, ramps and stair lifts.¹⁴⁵ Even before the publication of the norms, the Schools Act required that provincial Departments of Education “take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.”¹⁴⁶

184. It is arguable that children with disabilities have a right to be prioritised in the process of implementation of the norms and standards, because these children’s access to quality education will often depend on the accessibility of classrooms and the rest of a full-service school’s grounds. This is why the FS Guidelines require schools to conduct “a full access audit of the building and school grounds, involving the learners” and also require that full-service schools are allocated the “necessary resources to create safe and accessible infrastructure for effective learning to take place in the classroom and the broader school environment.”¹⁴⁷

Funding

185. Funding is a major problem expressed by principals at full-service schools. By and large, the KZN DoE treats the schools in the same way as mainstream schools, despite the need for increased funding in terms of the SIAS policy to accommodate the higher learning needs of children with disabilities. Although some additional funding is provided to these schools for inclusive education, it is inconsistent, varies from school to school, and is wholly insufficient to accommodate the needs of learners.

“Funding is not reliable, I must say.”

Principal of a full-service school in the Umkhanyakude District

Funding for inclusive education is inconsistent and inadequate

186. Principals state that in theory, the school is given a contribution from the KZN DoE, which is supposed to cover a variety of costs including support interventions for the

school and outreach programmes for mainstream schools, capital allocations for assistive devices, district workshops (which are partially funded by the schools), and running costs for Learner Support Centres, such as water, electricity, stationery, telephone accounts and cleaning. Principals report that each of these individual interventions could potentially take up the full allocation in a given year, so schools are often forced to choose between which expense to fund, or stretching its ordinary allocation in terms of the Norms and Standards Funding, which does not consider the high level of support needs of children at full-service schools.

187. One school indicated that it was allocated only R10 000 for assistive devices. This was only enough to purchase “minor things” such as wheelchairs, crutches, glasses and hearing aids. The principal of this school indicated that more money would be needed to buy other devices, including “Go Talks” to allow learners with speech problems to communicate effectively with teachers and other learners. But because of “limited funds”, the learners must go without these devices. Another school used up R40 000 of its R140 000 allocation to purchase vital assistive devices and forewent additional “necessary” training for teachers as a result. A teacher at a school that was recently designated as a full-service school notes that the school doesn’t know how much to pay for, where to buy, or who to buy assistive devices from, because “the support system is new”. Yet another school indicates that “most of the money is spent on workshops for other mainstream schools” who require the support. The absolute lack of money frustrates Learner Support Assistants:

“The school’s budget for inclusive education simply does not allow for these expensive devices [we need] to be purchased, and leaves the [Learner Support Assistants] frustrated and less capable of properly assisting learners with disabilities.”

Learner Support Assistant, full-service school

188. Some teachers recommended that it “is also important that the money that is provided for inclusive education is less specifically ring-fenced”. This would allow schools to tailor the little money provided to their specific needs, and prioritise urgent needs that arise for specific learners better.

Funding for inclusive education varies from school to school

189. The disparities between the funding of different full-service schools is a source of major frustration for principals. While some schools get as much as R273 000, one school reports receiving as little as R22 000 from the KZN DoE, as recently as 2014/15. At the school that reports the highest allocation, the principal notes: “I have fought for the money.”
190. Schools do not understand what accounts for variance in allocations. However, one principal indicated that it cannot be the number of learners with special learning needs. This school has over 200 learners with special learning needs, and received only R123 000 in 2013/14. One principal also indicated that it cannot be the case that the allocation depends on whether the school has a Learner Support Centre, or how long the school has been a full-service school. This school most recently received

R77 000, has been a full-service school since 2008, and has a functioning Learner Support Centre.

191. Although many of the schools were designated full-service schools as early as 2007, the earliest any school reports having received an allocation is 2009. With the exception of one full-service school, all of the schools report not receiving this crucial allocation for inclusive education each year. For example, a school that was designated a full-service school in 2011 and had a Learner Support Centre completed in 2013 received an allocation for the first time in 2014/15. Other schools who received their first allocations in 2009 and 2010 report that they receive their allocations so seldom, they are more often without them.

Schools never know if they will receive funding for inclusive education

192. Schools are provided with no information about why these funds are or are not allocated in a particular year. One principal noted that the school knows it will not receive anything for 2015/16, because at the time of the interview (November 2015) they had received no paperwork from the KZN DoE and “the fact that you have not got an allocation on paper, it means we are receiving nothing”. The majority of the schools interviewed in November 2015 reported that they had received no indication about funding that would be provided for 2015/16.
193. Budgeting for the rights of children with disabilities is a constitutional obligation in terms of the immediately realisable right to a basic education.¹⁴⁸ Failure to increase funds for inclusive education ultimately costs the DBE money, as it has accepted that a reliance on special schools alone for education of children with disabilities is extremely costly.¹⁴⁹ In addition, as early as in White Paper 6, the Department acknowledged that “additional funding will be required for ‘special-needs’ education” in the short term in order to build an inclusive education system, initially through the roll-out of full-service schools.¹⁵⁰

Post-provisioning

194. The SIAS policy rightly notes that “the development of norms and standards for resourcing an inclusive education and training system *is an immediate requirement* for the successful implementation of the policy.”¹⁵¹ The norms further specify that as a component of this “immediate requirement”, “post-provisioning norms and standards will make provision for all categories of staff required in an inclusive education system”.¹⁵² It is important to note that these provisioning norms will need to include not only norms for non-educator posts that are specific to special and inclusive schools, but also the distinct approach to educator-provisioning that is necessary to accommodate the learning needs of children with disabilities, most particularly at full-service and special schools.

Shortage of educator posts to accommodate learners with barriers to learning

195. All 11 schools registered clear complaints about the calculation of the number of educator posts to which they are entitled. A principal captures the issues succinctly:

“The school has a challenge of insufficient educator and non-educator staff posts on its PPN. The PPN does not calculate the number of posts allocated to the school taking into account that there are learners with disabilities at the school at all. It is treated as a mainstream school for this purpose.”

Principal, full-service school

196. Despite the fact that there are existing weighted ratios applied by the KZN DoE for children with disabilities in the context of special schools, no such weighting takes place with regard to children with disabilities in full-service schools. Regardless of disability and unique-learning needs at full-service schools, principals report that “all of the learners merely count as a single learner for the purposes of the staff establishment”.

197. As a result, most schools report classes in excess of the recommended learner/teacher ratios at mainstream schools, despite catering for high proportions of children with disabilities. It is not uncommon for schools to have classes that have over 50 learners for one teacher, who teaches without a class assistant. One school has a Grade 1 class with 84 learners, and a Grade 5 class with 90 learners, due to shortages of teachers. At other schools, as noted previously, class sizes are even bigger because of limited classroom space.

Challenges to teaching and learning in big classes

198. Schools complain that big classes are an even more serious issue at schools where learners have learner barriers “because they cannot be given the attention they need by teachers”. This is because “learners are mixed” in classes in accordance with the purpose of inclusive education. Children with learning barriers ideally require constant “specific and individual attention”. This specific individual attention may be related to adapted pedagogy, or even simple practical accommodations. One teacher gave the following examples of accommodations:

“Speaking loudly in a class where there is a learner with a hearing impairment, making a learner with visual impairment sit in front of the class, and walking around the class to draw the attention of learners who have learning challenges. In addition, teachers are required to give extra time to learners with learning barriers, to go through the lesson again to ensure that learners are coping with the curriculum.”

Teacher, full-service school, Umkhanyakude District

199. Though the percentage of children with disabilities and learning difficulties in each class and school varies, SECTION27 was given examples of classes with over 50 learners, of which as many as between 10 and 20 have special-learning needs. One teacher said that her Grade 6 class consists of 31 children, of which 15 have learning barriers and/or disabilities.

200. One principal indicated that a useful reform would be if the learner/teacher ratio at full-service schools could be adjusted to be closer to one teacher to 25 learners, because in his school, one in every five learners on average has a disability or learning barrier. He describes the skewed ratio as “our major problem”. Another principal describes the current situation as “very challenging”. Several schools indicate having communicated this problem to the KZN DoE and the district Department of Education. Ultimately, the challenges in teaching translate to challenges for children with disabilities in progressing academically, because “learners with learning barriers need more and more constant support”.

Teachers’ lack of expertise, and difficulties teaching children with barriers to learning

201. Principals of full-service schools, like their contemporaries at special schools, complain about the quality of the teachers allocated to them. They believe that by and large they are merely “allocated surplus teachers” in the same fashion as mainstream schools, and the result is that new teachers have “no particular interest, skill and passion for teaching learners with disabilities.” Sometimes, ill-equipped teachers express open contempt for children with disabilities and discriminate against them, one teacher even going so far as to call learners with intellectual disabilities “lunatics”.

“I would like to see my school, and others that are similarly positioned, have more freedom and autonomy in selecting and interviewing the teachers that join our schools, so that we could hire teachers with relevant experience and expertise.”

Principal, full-service school

“New teachers join the school, they have to be taught everything about inclusive education from scratch. It’s a problem having to teach learners and also teach new teachers about the school and inclusive education [at the same time], because the learners [with disabilities] need more ‘care and love’”.

Principal, full-service school

202. One principal, who has a postgraduate qualification in inclusive education himself, raised concerns about the quality of teaching of inclusive education in universities. He notes, for example, that the inclusive education curriculum at the University of Zululand (the nearest university), as with other universities, is “purely theoretical, and not practical.” This means that apparently, even teachers joining a full-service school “do not have any practical knowledge or skills of inclusive education”.

203. The placing of teachers without expertise causes problems not only for those teachers, but for the morale of the staff at the schools, who work hard to accumulate expertise in inclusive education in order to provide their learners with quality education. Some schools say that new teachers resign “very quickly”, because they “cannot cope”.

“They just complain about the learners, saying that they’re too naughty and things like that. Some will take sick leave and just never return.”

Teacher, member of School-Based Support Team, full-service school

204. This problem has an even worse effect when it comes to the appointment or promotion of teachers to positions of leadership, such as head of department or deputy principal. One teacher asked, “How can educators do their level best without the support of an HOD, because the HOD has no knowledge of what is going on?” Despite this, some schools are left perplexed by the appointments and promotions made by the Department, which seem to ignore the expertise of teachers:

“I wish our Department, when it comes to placing of educators, should consider the knowledge required at a full-service school. The Department does not want to promote teachers within the school, and that is why the Deputy Principal and HOD posts are not filled. This gives us so much stress, because we are working hard.”

Teacher, member of School-Based Support Team, full-service school

The inadequacy and inconsistency of teaching training

205. Though the district and provincial Departments of Education do provide ad hoc assistance to the schools in the form of training sessions, schools uniformly agree that this training is not enough, is often only general, and does not always benefit all teachers, because schools are asked to nominate only specific teachers to travel to attend workshops. Ideally, schools say, all teachers should receive consistent and comprehensive training that takes place at or near to the school.

“We get training, but it is not enough – we need to learn more. The only workshop the teachers had at the school was in 2012. Only some teachers go to district workshops, and so this does not benefit all the other teachers. We would prefer if there were more workshops done at the school, for all the teachers. There are no teachers with any special qualification on teaching learners with disabilities or on inclusive education at our school.”

Principal, full-service school

206. The FS Guidelines stress the importance of quality instruction in full-service schools, noting that “without effective instruction, learning is likely limited. For learners with disabilities, this is particularly true”.¹⁵³ Educators must be “prepared to teach all learners who walk through their doors”, and be committed to providing individual accommodations for learners’ needs.

Non-educator posts

207. Schools catering for learners with disabilities require a variety of specialist and non-specialist non-educator staff. Some of the specialist non-educator staff are the same as those required at any school, such as psychologists, social workers, counsellors and occupational therapists. The only difference in full-service schools is that the need for these positions is much more urgent in schools in which there are learners with disabilities and special needs. The unavailability of non-educator support staff increases the difficulty of implementing the new SIAS policy, which requires screening and support to be provided at schools.

208. The SIAS policy requires support teams at circuit level for schools catering for learners with “moderate” support needs, such as the majority of those at full-service schools; and initially, requires monthly visits (which will later change to interventions each term) by “transversal teams”, which include:

- + Occupational therapists;
- + Speech therapists;
- + Audiologists;
- + Physiotherapists;
- + Psychologists;
- + Learning Support Teachers; and
- + Counsellors.

209. Of the 11 full-service schools in the district, none has a permanent position for any of these categories at their school. One principal notes that he thinks that there is “not even one occupational therapist in the district”. The school therefore pays for occupational therapists when they need them, “because at the [public] hospital it can take up to a year to be seen”. Another principal indicates that there is a need for a nurse at full-service schools to provide medical care for children with disabilities.

210. In 2014, Govender (an educational psychologist) noted that this problem existed throughout KZN, indicating that “the entire province has just around five therapists, 11 social workers, and under 20 educational psychologists, ultimately catering for some two million children.”¹⁵⁴

211. Many principals are particularly adamant about the need for social workers and counsellors for schools, because they are only available at district level, only visit the school on average once a term, and cannot respond quickly to requests and problems that arise regularly. One principal indicated that the counsellor who is located at the district level services not only full-service schools, but is “shared by all schools in the district”, including special and mainstream schools. When asked, one principal merely stated: “All full-service schools have school counsellors”, because this would increase the number of learners with disabilities the schools could accommodate.

212. One principal expressed some concern about the expertise of the counsellors to deal with issues impacting on children with disabilities, noting that “school counsellors themselves are underskilled, and sometimes teachers know more than them.”

Learner Support Assistants

“If we are helping learners as Learner Support Assistants, we are also teaching them”.

Learner Support Assistant, full-service school

The role of Learner Support Assistants

213. A Learner Support Assistant,¹⁵⁵ a position not specifically mentioned in the SIAS, is a person who has been employed by the KZN DoE to fulfil a number of key functions in full-service schools. Before proceeding to describe what Learner Support Assistants do in schools, it is crucial to distinguish them from traditional “teacher and class assistants” as described by the SIAS policy. Whereas teachers and class assistants can generally be understood to supply in-class assistance to teachers – and do so, at some special schools in South Africa – none of the Learner Support Assistants at full-service schools in the Umkhanyakude District fulfils this function.

214. Though full-service schools utilise Learner Support Assistants differently, and there appears to be no prescribed manner in which they are required to operate, all full-service schools understand themselves to be entitled to two Learner Support Assistants, who in addition to their educational functions, staff and manage Learner Support Centres.

215. Learner Support Assistants are crucial in providing both group and individualised support for learners, both during and after school hours. Some of the schools use Learner Support Assistants to provide “remedial lessons” after school for children with high learning needs. These lessons are sometimes revision or repetition of lessons taught in class, or educational games to emphasise key curriculum content.

“The [30-minute] remedial lessons are an attempt to go over the curriculum with the learners again, sometimes using materials that are very useful, which are provided by the hospital. Sadly, the school does not receive all the materials it needs for these remedial lessons, and has not received them through the KZN Department; and only on an ad hoc basis through Manguzi Hospital.”

Principal, full-service school

216. Other schools use a ‘pull-out’ system, in which individual children are taken out of their classes on a regular basis for additional support from Learner Support Assistants. Schools report that teachers “interact with the Learner Support Assistants to take the learning forward. Some of the learners do progress” as a result of this interaction. Generally, one Learner Support Assistant will be delegated to assist with learners in the foundation phase, and the other will assist with learners in the intermediate phase. Some schools have discontinued the ‘pull-out’ system, and Learner Support Assistants try to rotate attendance in different classes to assist learners.

217. Another school that uses Learner Support Assistants by deploying them in classes to assist teachers observes that they are so useful in this way that “preferably, the school would like to have Learner Support Assistants for each and every grade there is at the school”, at the very least.

Shortage of Learner Support Assistants at schools

218. Despite this ubiquitous understanding, only six out of the 11 full-service schools currently have Learner Support Assistants employed at their schools. Of the remaining

five full-service schools, four have not had any Learner Support Assistants since they were designated full-service schools. Two schools have been waiting since 2011 for the placement of Learner Support Assistants.

219. The principal at one these schools says this is a “big problem”; she follows up regularly with the Department, and is just told to “wait”. The final school had two Learner Support Assistants, who both left the school in 2015 after qualifying as educators and being placed elsewhere. Although the Learner Support Assistants are highly valued by the school for their contribution, they have limitations as to what kind of support they can provide, because of their lack of professional qualifications.

220. Although only one school reported Learner Support Assistants having actually left, others indicate that they fear that when Learner Support Assistants qualify, they will ultimately leave for “better jobs”.

221. A principal from one school that does not have Learner Support Assistants says that their absence “makes teaching difficult”. Another principal agrees about the need for more than two Learner Support Assistants per school, and emphasises that they are more useful than teacher or class assistants.

“The remedial lessons are an attempt to give learners with disabilities more time and love. The learners are provided with emotional, moral and educational support – which is much needed, given their disabilities. For example, one learner at the school who has a physical disability cannot walk properly, but he loves to dance. We give him some time to dance, and this makes him very happy. In the absence of social workers, we end up also trying to fulfil the important role of social workers.”

Learner Support Assistant, full-service school

What qualifications should Learner Support Assistants have?

222. The minimum requirement for a Learner Support Assistant appears to be a matriculation certificate, and no experience is required in either teaching generally or teaching children with disabilities. Although many Learner Support Assistants study towards their teaching degrees while employed as Learner Support Assistants, none of them are supported by the Department of Basic Education, the KZN DoE, or the district Department in doing so. All do so “of their own accord and on their own time and money”.

223. The principal and Learner Support Assistants at one school agreed that “it would be good if all Learner Support Assistants who were available as learner support had teaching qualifications”. When the qualification is combined with the practical experience of teaching, Learner Support Assistants who have been studying towards their teaching degrees are emphatic about how useful the qualification is to them.

“My studies have cleared up a lot of things and have given me a perspective on how to deal with learners generally, and with learners with disabilities. It helps because [after studying] we do have a clear understanding of how to deal with the learners with barriers now. So if we become teachers here, it will be an easy job.”

Learner Support Assistant, full-service school

The inadequacy of training provided for and compensation of Learner Support Assistants

224. According to Learner Support Assistants interviewed, although they receive some training from the Department, the training is often too generalised. What they require is disability-specific training of wide variety, because they interact with children with various and multiple disabilities:

“We want the workshop content to be developed and vary, so that they can be able to take specific skills acquired into the school and be able to assist learners with varying disabilities. For example, [we want] training in South African Sign Language for hearing-impaired learners; and skills training, such as drawing, would be very useful to assist the Learner Support Assistants to help learners with disabilities.”

Learner Support Assistant, full-service school

225. In addition, in the absence of counsellors and social workers at schools, Learner Support Assistants end up fulfilling the role of providing psycho-social support to learners, which they are ill-equipped to do.

“It is not easy for us to deal with learners and provide support, because there is a lot of poverty in the area. There is a lot of poverty and communicable diseases. So it is not easy for us to deal with those learners. Because when we deal with the learner at school, when he comes in the morning he is hungry. When he gets back home in the afternoon he is still hungry. He doesn’t have anything to eat. And so that is also a barrier. Some learners eat only once a day, at school, through the National School Nutrition Plan. In the morning you find the learner sleeping in class. No concentration. Because he is hungry.”

Learner Support Assistant, full-service school

226. Furthermore, Learner Support Assistants are paid basic salaries that do not compensate them anywhere near the level of what teachers are paid, regardless of their qualifications.

The failure of policy to recognise and clarify the unique and important role of Learner Support Assistants

227. Neither SIAS nor the FS Guidelines refer specifically to the position of Learner Support Assistant. However, SIAS does note that post-provisioning norms and standards will be created that include posts for “teacher and class assistants”.¹⁵⁶ The FS Guidelines require that “teacher assistants” are appointed to full-service schools, and given “clearly-identified roles”. These teacher assistants are described as “school-based staff who do not necessarily work with individual learners”. The duties contemplated by the

guidelines, which appear to closely approximate how Learner Support Assistants are used by full-service schools, include:

- + Assisting in identifying individual and collective barriers to learning;
- + Consulting with educators, the Learning Support Educator and other professionals to implement programmes to address barriers to learning;
- + Consulting with educators, the Learning Support Educator and other professionals to assess learner performance;
- + Participating in evaluating the effectiveness of education programmes and related interventions; and
- + Developing relationships with learners and being advocates for their inclusion.

228. Given the important roles allocated to teacher assistants, Learner Support Assistants – as the only current teacher assistants at full-service schools in the Umkhanyakude District – are indispensable. The absence of more detailed descriptions of their roles in post-provisioning norms is therefore regrettable.

229. The KZN DoE and Umkhanyakude District Departments of Education’s collective failure to ensure that each school has at least two Learner Support Assistants at all times seriously compromises the quality of education received by learners with disabilities, and thereby violates their right to basic education.

Learning Support Educators

“There is a need for both Learner Support Assistants and Learning Support Educators, because both have different sets of skills required by a full-service school.”

Principal, full-service school

The Role of Learning Support Educators

230. Like ‘Learner Support Assistant’, ‘Learning Support Educator’¹⁵⁷ is a post that is not specifically defined in the SIAS policy. Schools know little detail about the role of Learning Support Educators, because there is a single Learning Support Educator in the entire Umkhanyakude District. This Learning Support Educator must service all the special, full-service and mainstream schools in the district.

“There is a Learning Support Educator and school counsellor based at the district offices, but for the use of all schools in the Umkhanyakude District – not even just full-service schools. The basing of the Learning Support Educator and school counsellor at district offices is confusing. It is not clear to me what they are doing, and when or what their specific roles are.”

Principal, full-service school

231. What is clear to schools is that the Learning Support Educator is a specialist position for a qualified professional who specialises in the education of children with high learning needs, including children with disabilities. Principals envision a large role in

their schools for Learning Support Educators, including assisting in producing individualised learner-support plans and assisting with curriculum differentiation – both tasks that teachers and Learner Support Assistants are underequipped to fulfil without assistance.

The infrequent support of Learning Support Educators, and their rare presence at schools

232. Some schools report that the district-based Learning Support Educator is in direct contact with Learner Support Assistants at their school. All schools report that the Learning Support Educator only visits their school from “time to time”. When asked to approximate how regularly the Learning Support Educator visits their school, the responses vary from “about once a month” to “maybe once a term”, “at least twice a term” and “the school must phone them to come”.

233. Principals all bemoan the infrequency of the Learning Support Educator’s visits to their schools, and the minimal support that can be provided because of this. It is therefore a common request from schools that each school must have both permanent Learner Support Assistants and a Learning Support Educator, located at their school. One principal said that what schools need most is “Learner Support Educators and Learner Support Assistants at the school permanently”. Indeed, Learning Support Educators are so crucial that another principal indicated that “without this kind of support at the school, some children have to be sent to special schools.”

234. Despite this need described by schools, and conveyed regularly to the district Department of Education, only one school reported any attempt made by the Department to ensure that a Learning Support Educator was placed at their school.

“A post for a Learner Support Educator was advertised, but was never filled. The Department says it has no money every time I write a letter to the Department inquiring about when the vacancy will be filled... The lack of a Learner Support Educator and a counsellor is a serious problem for the school.”

Principal, full-service school

235. Worryingly, one principal – who has an Honours degree in inclusive education, and nearly 10 years of experience at a full-service school – expressed some doubt about the quality of support that the Learning Support Educator is capable of providing to his school, noting that “sometimes the Learning Support Educators and school counsellors themselves are underskilled. Sometimes teachers know more than them.”

Non-compliance with Full-Service School Guidelines: the need for more Learning Support Educators

236. The position of Learning Support Educator is not covered at all in the SIAS policy. The FS Guidelines, however, describe Learning Support Educators as playing “a crucial role in facilitating support at schools”, and indicate that full-service schools themselves

“may also designate a Learning Support Educator”.¹⁵⁸ The duties that the guidelines contemplate for a Learning Support Educator include:

- + Consulting and working with other educators and staff, caregivers and outside agencies;
- + Co-ordinating the work of institution-level support teams; and
- + Supporting educators’ personal growth and professional development.

237. Though the guidelines do contemplate the option of “itinerant” Learning Support Educators who serve the needs of a “cluster” of schools, there is no indication that a single Learning Support Educator should be spread as thin as supporting an entire district.¹⁵⁹ However, it is very clear that large full-service schools who admit “more than 500 learners” should have their own dedicated Learning Support Educator “who is trained to support the implementation of inclusive education”.¹⁶⁰

238. As detailed and explained by the schools, the provision of only one Learning Support Educator for the entire Umkhanyakude District is clearly insufficient, and compromises full-service schools’ ability to identify, assess and accommodate learners with disabilities, thereby violating their right to basic education.

Curriculum delivery

“There are learners with barriers who cannot understand when you teach. You need your own standards and lessons for them. This means we need our curriculum to be differentiated for them.”

Teacher, full-service school

239. All learners at full-service schools cover the full CAPS curriculum, like learners at any mainstream school. This is desirable for children with high learning needs, because one of the aims of schooling for them, as it is for all other children, is the ultimate achievement of a National Senior Certificate.

The need for flexible curricula and curriculum differentiation

240. However, because learners have diverse learning styles and needs, curriculum differentiation is required to ensure that all children have equal access to the academic curriculum. This is directly addressed in the SIAS policy. Curriculum differentiation is a specialist skill that involves “modifying, changing, adapting, extending and varying teaching methodologies, teaching strategies, assessment strategies and the content of the curriculum” to accommodate learners.¹⁶¹ The SIAS policy highlights “Inflexible curriculum implementation at schools” as a barrier to learning that requires accommodation, and identifies “curriculum differentiation to meet the individual needs of learners” as a priority support-provision area.¹⁶²

241. It is concerning that these policy requirements are not the reality at full-service schools. Teachers at these schools described the curriculum as “inflexible”, “rigid” and

“not simplified”. This causes challenges for teaching and learning, especially for children with disabilities. Teachers noted that this is also very important for children with more minor learning barriers, or merely varying levels of cognitive ability.

“One of the biggest difficulties the school faces is the rigid curriculum. It is not flexible enough to accommodate learners with disabilities. This causes prejudice to learners with disabilities, that they are expected by the Department to meet the same requirements as the other learners despite clear barriers to learning, which make this difficult.”

Principal, full-service school

Curriculum differentiation and individualised support

242. It is important to note that from the perspective of full-service schools in the Umkhanyakude District, effective curriculum differentiation is not a once-off task but a continuous and daily activity for all teachers. The curriculum must be individualised depending on a particular learner’s learning needs. Schools also report adjusting and adapting testing techniques, for example to accommodate learners who struggle to complete exams in the available time, or learners who cannot draw or write properly.

243. Many principals from full-service schools report difficulty in completing the CAPS curriculum on time, because of a combination of big classes, the attention teachers need to give to learners with learning barriers, and the inability of teachers to effectively differentiate the curriculum.

244. Teachers emphasised the difficulty of curriculum differentiation in the context of full-service schools because of the range of disabilities and learning barriers that may exist in each class. This makes skilfully-crafted individual support plans a necessity, rather than a luxury; which takes a lot of extra time for teachers that they may not have, even if they are properly skilled and equipped.

“The school actually needs individual plans for learners with barriers. Some learners can speak, but not write. But the system says that all learners must write – but this is not possible. It is not a flexible curriculum. Simplifying the curriculum is possible, but not at the pace required for curriculum delivery.”

Teacher, full-service school

Curriculum differentiation and compulsory testing through Annual National Assessments

245. The difficulty in ensuring an appropriately adapted and differentiated curriculum is most pronounced when it comes to standardised testing through common papers and Annual National Assessments, which are a constant source of stress for full-service schools. By and large, principals report that learners with barriers struggle to pass. Extra time is needed for many learners; and examinations need to be simplified, for example

for children who cannot write but can speak. As a result, it is very difficult for learners to perform well in the ANAs; which can be demoralising, for both learners and teachers.

246. It is important to emphasise that it is not an absolute inability to be educated of children with barriers to learning that makes it difficult for them to succeed. It is often the unaccommodating environment and barriers to their learning created by an inflexible curriculum and assessment methods that results in children's failure to succeed academically. Schools can provide endless examples of this. Some require as little as just having more time; others require more.

"ANA doesn't cater for learners with any intellectual challenges. They [the Department] just say we can get extra time; but that doesn't solve the problem with the curriculum. The curriculum does not work for these learners, and they simply cannot cope. Teachers are constantly forced to adapt the curriculum themselves, in class. There are also challenges with learners with other disabilities. For example, there are some learners with vision problems who cannot read on white paper, because it is too bright for them and hurts their eyes. The ANAs come on white paper. Another example is a learner who cannot read, but can respond correctly when spoken to."

Principal, full-service school

247. Schools report that the expectations of the district Department – with regard to their performance on ANAs, and the general pace of delivery of the curriculum – are unrealistic. One teacher remarked that "The district just expects the same standards for everything, including ANA results, for full-service schools and even special schools." Another principal notes that more generally, "the school must still meet all the deadlines, and the district will expect you to be at the same level as mainstream schools." These unrealistic expectations are compounded by the fact that the different subject advisers convey conflicting messages to schools in different meetings and workshops.

Curriculum differentiation and inadequate teacher training

248. While there appears to be a multiplicity of messages from subject advisers, principals and teachers also complain about the sporadic provision of training for teachers to perform the function of curriculum differentiation, and the lack of monitoring of schools in the area.

"More workshops are needed [on curriculum differentiation] to better equip teachers, and better monitoring of the implementation of the content of the workshops is also necessary. There are challenges that come from the lack of monitoring in all the schools in the area."

Principal, full-service school

249. One principal believes that the insufficiency of the training appears to date back to the roll-out of the CAPS curriculum, which the principal says took place over the course of only one week. This is despite the fact that the CAPS curriculum is generally seen as

requiring the curriculum to be taught to learners much faster than the previous curriculum.

“The general problem is that whenever the DBE introduces a new curriculum, they provide training for one week, and then expect teachers to be trained at a high level and ready to teach. This is not enough time or training, and so there are inherent challenges faced by teachers in delivering the curriculum, while they are expected to still meet deadlines.”

Principal, full-service school

250. A third principal is despondent about whether there is any value to workshops on curriculum differentiation, given the challenges the school faces in merely completing the curriculum as it is.

The impact of inflexible curricula on teaching and learning

251. The curriculum also places a burden on the schools themselves, who have to find ways to expand teaching time. Some teachers must repeat lessons to ensure that all learners are coping with the curriculum. In some cases, the schools themselves rearrange their entire timetables to accommodate the learning needs of children with barriers to learning.

252. The net effect for children with learning barriers at full-service schools is that for them, curriculum delivery is severely compromised; along with their own ability to progress academically.

“The inflexible curriculum at the school has meant that some learners, particularly those with learning barriers, spend more than one year in the same lower grade. For instance, there is an 18-year-old learner in Grade 6 who has anger management issues because he is so old, and bullies others in class and is sometimes teased by others for his age.”

Principal, full-service school

253. The problem of over-age learners is common and is not only a social problem but an educational one. A teacher explains the predicament she is faced with, on a practical level, on a day-to-day basis in class.

“You’ll find that in a classroom, for example Grade 3, only 5% of the learners are at the level of being a Grade 3 learner. Some are Grade 2 or Grade 1 level, and others even Grade R level. But because of the Department’s rule that learners cannot fail a phase twice, they are just pushed on to the next grade. This is a challenge for teachers, because this Grade 3 class cannot be taught Grade 3-level work, and the teacher must try and work out a lower level that fits most learners best. If the learners are not coping, they must be taught other work. Before the rule came in, some learners were taken back to Grade 1 for the extra support they needed. But this also placed stress on the educators in the lower grades, because of even more learners in *their* classes.”

Teacher, full-service school

"The teachers struggle to finish teaching the syllabus in the allocated time, because learners with barriers need extra time for them to keep up. However, the school does try to mitigate this problem by having morning classes every day, in the second and third term of each year. This means that schools start at about an hour earlier than usual every day."

Principal, full-service school

254. Not all schools retain their faith in the feasibility of the fundamental principles of inclusion, in the face of these trying circumstances. One principal indicated that he thinks that it would be better if children with learning barriers were placed in a special class.

"I would rather the learners were separated, and have teachers with special skills teach learners with disabilities and special needs separately. Giving these learners one-on-one focus is difficult under the current conditions that teachers are facing at [my school]. The school struggles a lot to finish the curriculum, because more time has to be given to learners with disabilities and learning barriers. "

Principal, full-service school

255. Despite all of these challenges, generally teachers and principals interviewed by SECTION27 display a remarkable resilience, a detailed knowledge of specific children with disabilities and learning barriers at their schools, and a sense of pride in these learners' achievements. One teacher insisted that the solution was individual attention for individual learners, and that "we can't leave [learners with barriers] behind". They celebrate successes, such as learners who were previously sent to special schools coping with the content of the academic curriculum.

The requirement of a "flexible", differentiated curriculum: guidelines for full-service schools

256. The DBE's FS Guidelines reiterate White Paper 6's concern that curriculum is "one of the most significant barriers to learning" for children with disabilities. Potential problems with curriculum delivery highlighted by the guidelines include content, methods of teaching, pace of teaching and time available, and learning materials and equipment available.¹⁶³ The guidelines stress the importance of a "flexible" curriculum, and note the importance of the role of the District-Based Support Team in ensuring that the curriculum remains flexible.

257. The guidelines therefore require that "inclusive schools should know how to differentiate the curriculum and use a variety of approaches".¹⁶⁴ They also require that educators must "receive training and ongoing support" to ensure that they are capable of making the curriculum accessible. The guidelines also describe as a "hallmark" of full-service schools that they provide "individualised instruction and support to learners."¹⁶⁵

258. In reality, SECTION27's research reveals, teachers and schools in Umkhanyakude District have little ability to differentiate curriculum for the variety of learning barriers present in their schools, and cannot provide children with the individualised attention

and support they are entitled to. This inhibits their access to the curriculum, which is a violation of the right to basic education of children with disabilities.

Transport

“If there was sufficient transport for learners, there would be more learners with disabilities enrolled at the school.”

Principal, full-service school

259. Out of the 11 full-service schools in the district, only two have any access to transport provided by the KZN DoE. Of these two, one school – which has more than 1 000 learners – has a bus that transports 120 learners to and from school each day, on a specific route. The second school shares a single bus with 7 other schools in its area, and the principal must provide a list with only the very neediest learners on it to share the use of this bus. Many of the learners that are placed on this list refuse to use the bus, because they say that they are bullied by older children from high schools that also use the bus.

“It is more important to have transport, because there are learners with disabilities at the school. There is a Grade 4 learner who is epileptic, and he does not want to walk so far and so will fight with his parents. There is another learner in the school who has a physical disability who walks far to school, and sometimes when she arrives she will complain that she feels sick and so she can’t learn. This child has a limp, and must walk 10 kilometres to school. One side of her body does not work properly.”

Principal, full-service school

260. The nine remaining schools have no transport provided for their learners, and are not given any money to assist learners in getting to and from schools. From the outset, it is important to note that schools are clear that the KZN DoE has been made well aware of their desperate need for transport.

261. One principal noted that the most the Department has done is try to provide some bicycles. In 2013, at this school – to get to which some learners must walk over 12 kilometres each day, and cross a river in the process – the principal physically showed visiting Department officials children crossing the river, and provided the officials with a full list of learners in need of transport.

262. Another principal indicated that since 2010, he has written to the Department “many times” about the “urgent” need for transport.

The vulnerability of children with disabilities who are not provided with transport to school

263. Though principals are clear that transport is a “big issue” generally, they emphasise that the bigger challenge is posed to learners with disabilities. Some children cannot physically get to school without transport.

“As a result [of the lack of transport provided by the KZN DoE], I myself have been transporting learners with disabilities in my own private car, because they cannot drive their wheelchairs on the gravel.”

Principal, full-service school

“X is a child who comes from a deeply rural area further away than the [nearest] town, and from [our school]. He has an intellectual disability, and is famous in his area. This means he manages to get a lift every day from home to [town]. The problem is that he often struggles to get a lift from [town], and is therefore forced to walk six kilometres by himself to get to school. He loves school, and wants to come every day, but this is a big hurdle for him. Many parents are using their grant money for transport to and from school. This means that the school would like to be assisted with transport by the Department, or possibly accommodation – a hostel for children living in deep rural communities.”

Learner Support Assistant, full-service school

264. Many learners with disabilities travel longer distances than learners in mainstream schools because they try to find a school that can properly accommodate their learning needs. Many different schools observe learners travelling more than 30 kilometres each way every day to attend a full-service school. These children are often specifically referred to faraway schools, in terms of the SIAS policy, by the Department itself.

265. This places an additional burden on caregivers, and is a further barrier to access to education for children with disabilities. Unsurprisingly, it is a common observation of principals that learners with disabilities drop out because of transport costs and difficulty in getting to school. Various principals also expressed a belief that more children with disabilities would attend their schools if the KZN DoE provided safe and efficient transport.

266. In the absence of hostels or state-provided accommodation at far-off schools, and to avoid the expenses of travelling long distances each day, many schools report children with disabilities seeking out rented accommodation, away from their families, close to full-service schools. Other learners simply drop out, because the school is too far away. This leads several principals to question whether small hostels at full-service schools for children with disabilities would be sensible.

267. One principal noted that these children lack the care and support of loving caregivers, which is even more necessary for children with disabilities. Ultimately, this is another transport-related reason for dropping out.

Expensive and dangerous public transport

268. These issues that are specific to children with disabilities exacerbate the already existing challenges faced by the majority of learners in KZN, who are also not provided with any support to get to school.

269. The first challenge is financial: since many caregivers are unemployed, and totally reliant on social grants, they struggle to pay for daily transport for their children. One principal noted that the most she can do for caregivers with regard to transport is to assist them with applying for grants. Even with this accomplished, she noted, it is not easy for caregivers to pay.

270. A second problem is the quality of transport that caregivers can afford to pay for. Caregivers who do pay for private transport generally do so through an informal, relatively unreliable, unregulated and often unsafe system known in the area as 'Umalume transport' ('uncle transport'). Some schools estimate that as many as 80 or 90% of learners get to school in this way. This system involves whichever 'uncle' in a certain area has a bakkie or car rounding up as many children as possible – either by prior arrangement, or along the road – and taking them to school. The unreliability of this system is a particular problem for learners with disabilities, being even more vulnerable than other children.

“This is a burden on them and their families, because they have to pay for transport from social grants. Can you imagine that? And if the money is not there on the day, then the taxi drivers ['bad uncles'] will just leave them at the bus stop. A child will pitch up at school at 9am, having walked.”

Principal, full-service school

Long, tiring and dangerous walks to full-service schools: violence, rivers and exhaustion

271. Another difficulty, in the absence of transport being provided, is the sheer distance that many children who walk must travel to school. It is common for children to have to walk more than five kilometres to school in the morning, only to have to repeat this on the trip home after school. Some schools report that learners walk as far as 10 kilometres either way.

272. Regardless of distance, children who walk to school must brave rough, rural terrain and dangerous roads. A large number of children, from at least three, schools report that they must cross rivers on their way to school every day. Some children wade or swim across the rivers, others cross using handmade boats, which schools do not regard as safe.

273. Although the necessity to cross rivers exacerbates the threat of heavy rain, rain and bad weather more generally threaten school attendance for all learners who walk to school.

“When it rains, more than half of the school will be empty. This is because there is no money for transport, and learners have to walk to school. Luckily, it doesn't rain for long or very often.”

Principal, full-service school

274. Even when the weather is good, learners who must walk through forests are exposed to threats from wild animals, including snakes, and are also exposed to threats of sexual and other physical violence from adults and other children on their way to school. This threat is particularly acute for young girls, and given the disproportionate threat of sexual violence to young girls with disabilities, should be treated with even more urgency with regard to full-service schools. Schools cite various examples of sexual assaults on the way to school in their and other nearby communities.

“The lack of transport is a major problem for the school, because some learners walk through dense bush on their way to and from school. As teachers we can do and say nothing more, besides telling the learners to walk in groups. A learner from another [nearby school] was raped while walking alone through the dense bush. It is not something that happens often, but the teachers are scared for their learners [at our school]. The children are not scared of snakes when walking through the bush; they would gang up on a snake and kill it, even here at school.”

Teacher, full-service school

275. When there are roads available, and children walk or get lifts on them, the roads present dangers of their own. In addition to the possibility of accidents caused by cars overloaded with schoolchildren, and unroadworthy cars carrying schoolchildren, sometimes the roads are in such poor condition that they are themselves dangerous. Many schools have significant stretches of dirt roads with enormous potholes littered across them that must be navigated in order to arrive at the schools.

The right to transport to full-service schools

276. Children at full-service schools have the same needs and rights to transport as those in mainstream schools, as detailed above. In addition, in order to attend full-service schools, learners with disabilities have a particular need for government-subsidised transport, given the likelihood that full-service schools will be further from their homes, and that disabilities increase their vulnerability while travelling to school. The DBE progress report on the implementation of White Paper 6 accepts that “only if this issue [of transport] could be resolved, can a fully inclusive education system materialise”, and accepts that learners are prevented from enrolling in full-service schools that have been upgraded, because they do not have transport.¹⁶⁶ This is clearly confirmed by SECTION27’s research in the Umkhanyakude District.

277. The FS Guidelines acknowledge this particular need from the outset, noting “accessibility via public transport” as one factor required to be complied with, even to be designated a full-service school.¹⁶⁷ The guidelines acknowledge transport as a “serious barrier” for children with disabilities.¹⁶⁸ The guidelines also require transport to be provided for all learners with disabilities, for all school-day activities and trips.¹⁶⁹ The guidelines describe it as “critical” that arrangements are made to “ensure that learners with disabilities can travel to and from school”, and that full-service schools must “negotiate with District Offices to arrange accessible transport” for children with disabilities in their catchment area.

278. The guidelines also emphasise that “transport subsidies must be one of the components of the budget of a full-service/inclusive school”, and that these subsidies could include fees for public transport, salaries for drivers or for the purchase, maintenance and running costs of vehicles.¹⁷⁰ The widespread absence and inadequacy of the provision of transport for learners with disabilities at full-service schools in the Umkhanyakude District is therefore both a disappointing departure from the DBE’s guidelines, and a violation of these children’s rights.

VIII. SCHOOLS’ RELATIONSHIPS WITH SUPPORT STRUCTURES

“There are a number of things we need to fix in this school, but we rely on the Department.”
Principal, full-service school

“The key to reducing barriers to learning within all education and training lies in a strengthened education support service.”
Inclusive Education White Paper 6

279. Read together, White Paper 6, SIAS and the guidelines for special and full-service schools require the creation and strengthening of support structures that are crucial in assisting the implementation of inclusive education in full-service and special schools throughout the country. During SECTION27’s research, it became clear that some of these essential support structures were either completely inactive, underequipped, or provided insufficient support to the 11 full-service and three special schools in the Umkhanyakude District.

280. Before some observations are made, it should be emphasised that the vast majority of school staff described their relationships with the district and provincial Departments of Education as professional and respectful, despite their clear concerns about the effectiveness of the support received.

Inactive or ineffective structures

281. In our research, at various points SECTION27 interacted with many staff members who explained that they formed part of what they described as either Institutional-Level Support Teams (ILST), or School-Based Support Teams (SBST). These terms are used interchangeably in some Department policies and guidelines, and are indistinguishable. These support teams, it was explained, had a particular mandate to support teaching and learning at special and full-service schools.

282. Although these staff members were particularly knowledgeable, it is of concern that none of them appeared to have any knowledge of many of the relevant guidelines and detailed policies on inclusive education. The two significant exceptions in this regard were a broad understanding of Education White Paper 6, and of the

newly-formulated SIAS policy, which staff members were generally very enthusiastic about. Very little mention was made of District-Based Support Teams (DBST).

283. As has already been noted, the single Learning Support Educator in the district does not have sufficient time to pay attention to each school's needs; and according to some principals, is also lacking in the requisite expertise. When asked about support given from the district Department, staff members could only give details of this Learning Support Educator and a district-based counsellor.

District-Based Support Teams

284. DBSTs are contemplated by White Paper 6 and described by the SIAS policy as "a key component in the successful implementation of an inclusive education support system".¹⁷¹ DBSTs are the backbone of the SIAS policy. The policy gives DBSTs the responsibility for "the final ratification, monitoring and quality assurance of the support programmes".¹⁷² DBSTs are also tasked with setting up supporting School-Based Support Teams (SBSTs).¹⁷³
285. According to the DBE's 2005 Guidelines for District-Based Support Teams, DBSTs are supposed to provide both classroom and organisational support to educators and learners.¹⁷⁴ These guidelines also make it clear that provincial Departments of Education have the obligation to identify, establish and support DBSTs.¹⁷⁵ The DBE Special School Guidelines describe the major roles of DBSTs as "Classroom-Based Support", "Institutional Support", "Administrative Support" and "Psycho-Social, Environmental and Health Support".¹⁷⁶
286. The SIAS policy suggests that the DBST will be compromised in terms of curriculum and school managers, human resource planning and development co-ordinators, social workers, therapists, psychologists and other health professionals. It is obvious from a variety of the schools' complaints detailed in this report that the DBST in the Umkhanyakude District either does not have many of these positions filled, or does not have the capacity to interact with schools as regularly as is necessary.

School-Based Support Teams/Institutional-Level Support Teams

287. SIAS defines an SBST as a "school-level support mechanism" whose primary function is to "put in place co-ordinated school, learner and teacher support services".¹⁷⁷ The Guidelines for DBSTs indicate that the "core purpose of [SBSTs] is to support the teaching and learning process" directly through various means. These include designing and assessing support programmes, inside and outside of classrooms, for teachers, caregivers and learners. Its responsibilities include "drawing in resources", "curriculum support", and "developing strategies" to address barriers to learning.¹⁷⁸

288. SBSTs take on even more significant roles at full-service schools, where – according to the FS Guidelines – they are, for example, required to assist with curriculum differentiation, creation and administration of individual support plans, and the implementation of SIAS.¹⁷⁹ The importance of SBSTs is confirmed by SECTION27’s research. Schools often describe SBSTs as the central (if not the only) support structure for the teaching of children with barriers to learning, and for their learning experience.
289. Although the precise membership of SBSTs is not rigidly prescribed, SIAS indicates that SBSTs could include teachers from the school, teachers with experience in teaching learners with barriers to learning, members of school management, other staff at the school, and learner representatives.¹⁸⁰ For the purpose of particular engagements, these core members are to be supplemented by community members, members of the DBST, and teachers from other special and full-service schools.¹⁸¹ At full-service schools in the Umkhanyakude District, members of SBSTs – although often still decrying their lack of capacity and expertise to undertake their roles – often have the most formal or experience-based knowledge of overcoming barriers to learning in their schools. Many seemed to have detailed knowledge about specific learners’ particular barriers, and about what is being done to accommodate them in their school.
290. Although the precise relationship between SBSTs and DBSTs is not clear, SBSTs are required to report steps taken and progress made to the DBST. DBSTs are clearly required to provide whatever support they can to SBSTs, and to provide schools, teachers and learners with any support that cannot be provided by SBSTs.¹⁸² In reality, SECTION27’s research reveals that SBSTs often feel isolated from the DBST, and assume almost complete responsibility for providing the support functions required by schools.
291. Because of the significant role expected to be played by SBSTs, especially in full service schools, the FS Guidelines acknowledge that “staff provision must ensure that there are additional staff or reduced teaching loads” of members of SBSTs in full-service schools.¹⁸³ As described in detail above, in the Umkhanyakude District the failure to provide full-service schools with any additional educator staff to accommodate the fact that they cater for many learners with barriers to learning places further strain on teachers who are members of SBSTs.

Lack of expertise

292. The DBE progress report on the implementation of White Paper 6 notes a “substantial number of 231 vacancies” in provincial and district Departments of Education for the six provinces in which information was available. The report concludes that this “needs to be addressed through rigorous budgeting and filling of posts as a critical priority”.¹⁸⁴ This serious understaffing goes some way towards explaining the lack of expertise possessed by the provincial and district Departments of Education in KwaZulu-Natal, including the DBST.

"The Department understands the theory of inclusive education and what it might require; but practically, sometimes the district comes up short in providing practical assistance to the school."

Principal, full-service school

293. It appears that most officials are not hired with any expertise, and only acquire this 'theoretical' understanding of inclusivity through their training once they have already been hired. Some staff at schools questioned why the real experts with experience in schools – teachers, principals, and other staff – were not hired for these posts. In addition, the effort to gather expertise on the job is not uniform.

"The district is trying; it's only a matter of trying, though – there is no expertise. The SNES (Special Needs Education Section) do try. They attend the workshops, and learn with the school. It would help if the Department hired people from schools with existing expertise. The issue with inclusive education is that it's not moving the way it is supposed to be. I'll just cite one example. When we attend inclusive education workshops ... [as full-service schools] ... in most cases, those meetings are to be attended by our circuit managers; but [they do not come]. So this makes them blank. And if they are blank, how will they support?"

Principal, full-service school

Inadequate support

294. Because of their lack of capacity and expertise, it is unsurprising that schools complain about the quality of support that they receive from the Departments of Education. However, some schools say that the problem goes even further, because Department officials do not seek to assist constructively, but rather aim to criticise schools that are trying hard to succeed against the odds.

"The Department officials don't come to render support. They come to find mistakes. Not to develop ourselves. We always raise issues as educators, but are not attended to."

Principal, full-service school

295. Other schools are merely despondent, because they have simply accepted the reality that the support they receive will be insufficient.

Negative attitude about ability to learn

296. Media reports, which have been confirmed by SECTION27's interviews with schools, suggest that Department officials are not always positive about the ability of children with disabilities to succeed in their education. As Human Rights Watch's report observed, this demotivates teachers, and obstructs progress in the improvement of the inclusive education system; and ultimately, has a negative impact on the quality of education accessed by children with disabilities.¹⁸⁵

"The officials' disregard of special children and their needs left me dejected. Statements like 'We do not expect teachers and engineers to come out of this school', by one of the officials, hurt me the most."¹⁸⁶

Teacher, special school

297. The need for an attitudinal shift is acknowledged by SIAS, which identifies negative attitudes as a potential barrier to learning, on both a departmental and an educator level.¹⁸⁷

Pressure on whistleblowers

298. Given the dire circumstances described at many of the 11 full-service and three special schools in the Umkhanyakude District, and the inadequate responses of the Departments of Education, it is unsurprising that some teachers feel compelled to speak out publicly. They do so in the best interests of their learners and other children with disabilities all over the country, and should be protected from victimisation if and when they do so.

299. Unfortunately, both SECTION27's experiences and the media reports confirm that the provincial and district Departments of Education place significant and consistent pressure on staff at schools in the Umkhanyakude District not to speak to either the media or NGOs about their complaints. This is despite these staff members' persistent attempts to complain through departmental channels. Mr Mthenjwa, a teacher at Sisizakele Special School who spoke out about the conditions at the school in late 2015, is reported to have said "he felt his life and job were at stake".¹⁸⁸ The Department appears to have deliberately revealed his identity publicly, to place pressure on him. SADTU and a member of the KZN provincial legislature have strongly condemned these forms of intimidation against 'whistleblowers' such as Mr Mthenjwa.

"It's wrong and against the law for the Department to expose an individual who raises concerns about wrongdoing. It exposes him to victimisation, instead of focusing on investigating the concerns. They have put that educator in harm's way now."

Linda Hlongwa-Madlala, member of the Portfolio Committee for Education, KZN Provincial Legislature¹⁸⁹

"When a person and/or employee raises concerns about the appalling working conditions in their workplaces, including schools, such people need to be protected from possible attack by management or their colleagues..."

"The issue now is, how do we protect the teacher from victimisation and attack by the employer who fails to deal with the conditions at their school? This is bad... such that the teacher can end up applying for a transfer, or for constructive dismissal, which the employer will have to pay dearly for. It's the learners who suffer, as they lose dedicated teachers."

Nomarashiya Caluza, KZN Provincial Secretary, SADTU¹⁹⁰

IX. CONCLUSION: THE FALSE ‘GOOD STORY’ NARRATIVE IN INCLUSIVE EDUCATION

300. KwaZulu-Natal is often lauded as pioneering success story in the implementation of an inclusive education programme in South Africa, by both the provincial and the national Departments of Education.
301. Govender concludes that though some groundwork was made early in implementing White Paper 6 in KZN, “all factors considered, the KZN DoE’s inclusive education story emerges as a tragic waste of resources and disservice to children” Worryingly, he observes “a pattern of generalised indifference regarding inclusive education as a system-wide programme”, and concludes that the Department has a “questionable appreciation of the constitutional right of every child to quality public education”.¹⁹¹
302. Regrettably, the findings of this report confirm Govender’s observation that the education system is failing children with disabilities in KwaZulu-Natal, and that a lack of proactive and systemic efforts on the part of the national, provincial and local Departments of Education are contributing to this crisis.
303. Inactive and ineffective government structures – that often appear to be occupied by government officials with either negative attitudes about inclusive education, or simply a lack of expertise on inclusive education – result in schools receiving inadequate support. The result is that a system that is intended to include children with disabilities and accommodate their barriers to learning ultimately compounds their social exclusion, replicating it in the environment of special and full-service schools in the Umkhanyakude District.

X. RECOMMENDATIONS

These recommendations should be read with the list of eight ‘core’ recommendations listed in the section on the ‘Summary of Recommendations’ above.

A. GATHERING ACCURATE INFORMATION, AND TRANSPARENT REPORTING

- + The **KwaZulu-Natal Department of Education** should develop a turnaround strategy and plan to ensure the constitutionally-required improvement of the conditions and state of special and full-service and special schools in the **Umkhanyakude District** as soon as possible. This plan should provide the Department, schools, civil society actors, Disabled Peoples Organisations and the public with the accurate information required to fully and effectively ensure the realisation of the rights of learners with children with disabilities;
- + It is imperative that the **KwaZulu-Natal Department of Education** has access to and makes available up-to-date information about the state of education for learners with disabilities in the **Umkhanyakude District**, as elsewhere. This information must include detail on, among other things, budgeting and planning for the improvement of the inclusive education system in the **Umkhanyakude District**;
- + When reporting on the number of learners with disabilities who are out of school in particular, the **Department of Basic Education** should exercise caution in ensuring that it applies a clearly-stated definition of disability. The frequent publication of inconsistent and high numbers of out-of-school learners makes policy engagement difficult for government departments, experts and civil society organisations; and
- + Reporting on the number of out-of-school learners with disabilities should where possible be segregated by specific disability and severity of disability, as well as including information on existing waiting lists at public special schools.

B. MOBILISATION OF CHILDREN OUT OF SCHOOL

+ Urgent Compliance with White Paper 6

There is an urgent need for the mobilisation of out-of-school children in the Umkhanyakude District, in terms of Inclusive Education White Paper 6, and their placement at appropriate schools through the processes detailed in the SIAS policy.

+ Emergency Interim Plan for the Umkhanyakude District

Since many children with disabilities in the **Umkhanyakude District** have been languishing out of school for years, the **KwaZulu-Natal Department of Education** must make an emergency interim plan to provide all children with some form of appropriate education while it is busy crafting short-, medium- and long-term goals to fully satisfy its constitutional, legislative and policy obligations.

+ Capacitation of the Umkhanyakude District-Based Support Team

The **KwaZulu-Natal Department of Education** must equip the **Umkhanyakude District-Based Support Team**, including providing it with the support of specialists, to perform all support functions required by policy and law to special and full-service schools. This

should include capacity to audit schools in the district, in order to determine which learners who are currently in schools are inappropriately placed.

+ **Continuous, consistent and consultative awareness campaigns**

The **KwaZulu-Natal Department of Education** must work with the **Umkhanyakude District Department of Education** and Disabled People's Organisations throughout the district to organise ongoing and repeated awareness campaigns about schooling for and the rights of children with disabilities within South Africa's inclusive education system. These awareness programmes must be supplemented by extensive media campaigns, including billboard adverts, community radio and television messaging that is clearly accessible throughout the **Umkhanyakude District**. Simple messaging – that children with disabilities *can* be educated – must be used.

C. THE PROVISION OF HIGH-SCHOOL EDUCATION FOR CHILDREN WITH DISABILITIES

+ **Conversion of high schools to full-service schools:**

The **KwaZulu-Natal Department of Education** must urgently plan for and implement a programme designed to convert additional high schools throughout the **Umkhanyakude District** into full-service schools. This process should be implemented gradually, beginning immediately, cognisant of the fact that each year that passes is an unconstitutional violation of the equal rights of children with disabilities to progress through primary and secondary schools that can effectively accommodate their learning needs.

+ **Assessing the need for high-school grades in special schools:**

The **KwaZulu-Natal Department of Education** must urgently evaluate the need and practicability of the inclusion of high-school grades at Intuthuko Special School, Sisizakele Special School and Khulani Special School. It cannot be assumed and accepted that children with intellectual disabilities cannot progress through secondary education. The turnaround strategy and plan recommended by this report should make recommendations in this regard.

D. IMPROVING THE CONDITIONS AT SPECIAL SCHOOLS

The **KwaZulu-Natal Department of Education** should, as part of its turnaround plan and strategy, plan for the improvement of conditions at Intuthuko Special School, Sisizakele Special School and Khulani Special School. Ensuring that the conditions at special schools comply with the requirements of the SIAS policy and the Special School Guidelines is absolutely essential, and a part of the government's constitutional obligation in terms of the right to basic education.

The **KwaZulu-Natal Department of Education's** report should consider the startling conditions detailed in this report, including investigations, findings and recommendations to improve upon the following circumstances:

1. **Curriculum Delivery:** Generally, curricula at special schools must comply with the requirement of flexibility in the SIAS policy. This requires flexibility of content, time, teaching methods and assessments. Most pressing, the following steps must be taken:
 - + All teachers should be trained practically in the skill of curriculum differentiation;
 - + Both academic and skills training should be incorporated comprehensively in the curriculum; and
 - + The **Umkhanyakude District-Based Support Team** and subject advisers should be equipped to provide unique and specific support to special-school staff. In this regard, the **Umkhanyakude District-Based Support Team** must include members who are people with disabilities, including community members.

2. **Post-Provisioning:**
 - + Post-provisioning norms for both educator and non-educator staff in special and full-service schools must be completed through a consultative process and published as soon as possible, in line with the requirements of the SIAS policy;
 - + The **KwaZulu-Natal Department of Education** cannot continue to simply note vacancies in specialist positions in its annual reports, and must develop a turnaround plan to budget and fill all such vacancies;
 - + The post-provisioning norms should provide special schools with autonomy to select teachers with the skills that they require. In the absence of post-provisioning norms, the **KwaZulu-Natal Department of Education** should allow special schools, in consultation with **District-Based Support Teams**, to make their own appointments, through their own selection processes, in order to ensure that teachers with the relevant expertise, skills and interest are hired;
 - + Teachers require constant and comprehensive practical training, funded by the **KwaZulu-Natal Department of Education**, that will assist them in teaching learners with disabilities;
 - + Additional housemothers should be trained in disability awareness, inclusive education and basic nursing skills, and immediately employed in hostels where there are shortages; and
 - + Lines of constant communication between parents and house parents must be developed to maintain trust and foster accountability on the part of house parents. This may require house parents being provided with phones and airtime by the **KwaZulu-Natal Department of Education** (or being permitted to use school phones) to contact parents regularly in order to update them on things happening to and with their children, including sickness, injury and academic progress.

3. **Transport:** in accordance with the Special School Guidelines, “special schools must provide transport for all learners who require transport to and from school” within a 40-kilometre radius of the school, and cannot continue to provide such transport only on selected routes. Additionally:

- + No parent whose child attends a special school should be compelled to pay transport fees for themselves or their children, just to get their children to far-off special schools that their children are compelled to attend;
- + In the specific case of Manguzi, which is just out of the 40-kilometre radius for Sisizakele Special School, the **Umkhanyakude District Department of Education** should petition the **KwaZulu-Natal Department of Education** to allow for transport between Manguzi and Sisizakele Special School every day, because of the significant number of children with disabilities whose access to quality education would be significantly increased by this availability. This should be done after consulting Siphilisa Isizwe;
- + The **KwaZulu-Natal Department of Education**, in the adaptation of its provincial transport policy in compliance with the National Learner Transport Policy, and after consultation with Disabled Peoples Organisations and various disability-sector representatives, should consider:
 - During school holidays, the provision of occasional transport home for children living in special-school hostels; and
 - During term time, the provision of occasional transport to schools for parents to visit their children who are living in special-school hostels.

4. Basic Services

- + The **KwaZulu-Natal Department of Education's** investigation of special schools should include an investigation into the availability of basic services listed in the Minimum Uniform Norms and Standards for Infrastructure, including in particular water and electricity.
- + Particular focus should be placed on the accounts detailed in this report of serious water shortages and malfunctioning at both Sisizakele Special School and Khulani Special School;
- + The **KwaZulu-Natal Department of Education** must ensure, in consultation with Disabled People's Organisations, principals of special schools, and school governing bodies of special schools, that its implementation plan for the Minimum Uniform Norms and Standards for Infrastructure accommodate the particular and additional needs of special schools. These needs necessarily include, for example, additional budget for water and electricity, because the majority of learners live on school premises in hostels throughout the year.

5. Funding and Fees

- + The **national Department of Basic Education** should investigate the Human Rights Watch's finding that "no special schools are currently listed in any 'no-fee' schools list produced by the government";
- + No child attending a special school should have to pay school, transport, hostel or any other fees as a requirement for their admission and attendance;
- + The **KwaZulu-Natal Department of Education** should review the sufficiency of the funding it provides to special schools, including those in the **Umkhanyakude District**, in light of its assessment of the current conditions in special schools in terms of this report's recommendations, and more generally. This review should be informed by

budget experts, experts in inclusive education, and human rights lawyers with expertise in the state's constitutional obligations in terms of the rights to basic education and equality.

E. CHILD ABUSE, NEGLECT, MALTREATMENT AND CORPORAL PUNISHMENT, AND HOSTEL CONDITIONS

1. Abuse, Neglect, Maltreatment and Corporal Punishment

The problems of abuse, neglect, maltreatment and corporal punishment occur nationwide, and media reports indicate that they are a major concern in the **Umkhanyakude District** and other districts in KwaZulu-Natal. Crucial and target interventions by all levels of government are therefore required:

- + **Parliament:** Parliament must consider the amendment of the Children's Act to allow for the minimum norms that apply to Child Youth Care Centres to apply to special-school hostels;
- + **National Department of Basic Education:** The Department of Basic Education must ensure compliance with its own recommendation, presented to the **Portfolio Committee for Basic Education** in March 2016, that "it is critical that the Hostel Policy for special schools is finalised to address all issues pertaining to accessibility of facilities, supervision, safety, etc". This process is extremely urgent.
- + **Provincial Department:** In the absence of a national policy, the **KwaZulu-Natal Department of Education** must take immediate steps to form a plan to combat abuse, neglect, maltreatment and corporal punishment of children with disabilities at special schools. The current situation is unconscionable and unlawful, and cannot be permitted to persist even for the remainder of the 2016 school year;
- + **District-Level Measures:** The **Umkhanyakude District Department of Education** and the **Umkhanyakude District-Based Support Team** in particular must ensure training of all educator and non-educator staff at special schools, including hostel staff, about the prohibition on corporal punishment and the rights of children; and
- + **Parliamentary Accountability:** The National and KwaZulu-Natal Legislatures' Portfolio Committee on Education should require bi-annual reports from the **KwaZulu-Natal Department of Education** on child abuse, neglect, maltreatment and corporal punishment of children with disabilities in special-school hostels in the **Umkhanyakude District** and throughout the province.

2. Conditions in Hostels

Hostel conditions at special schools are a cause for serious concern. Urgent steps must be taken to compile a full review of the conditions in special-school hostels, and a plan must be put in place to assess and redress reports of corporal punishment, abuse and neglect.

- + After this investigation, the **KwaZulu-Natal Department of Education** and the **Umkhanyakude Department of Education** must, where appropriate, take disciplinary steps and/or lay criminal charges against staff guilty of child abuse or corporal punishment; and

- + After this investigation, the **KwaZulu-Natal Department of Education** and the **Umkhanyakude Department of Education** must, where appropriate, make recommendations about the living conditions in hostels – in particular, specific complaints highlighted in this report about children sleeping on the floor and on mattresses bought by their parents; children eating on the floor or not being provided with food; children regularly being allowed to become sick or injured without appropriate medical attention or informing their parents; and general unhygienic conditions must be investigated and reported on.

F. IMPROVING THE CONDITIONS AT FULL-SERVICE SCHOOLS

The **KwaZulu-Natal Department of Education** should urgently devise a turnaround strategy and plan to ensure the improvement of the unlawful conditions in the 11 full-service schools in the **Umkhanyakude District**. The Department's report should consider the startling conditions detailed in this report, including investigations, findings and recommendations to improve upon the following conditions:

1. Infrastructure, universal design and basic services

- + The **KwaZulu-Natal Department of Education** should ensure that all full-service schools have Learner Support Centres built within two years of their designation as full-service schools. The schools in this report who do not yet have Learner Support Centres should have them built as soon as is practicable;
- + Funding should be provided to full-service schools each year by the **KwaZulu-Natal Department of Education** for the operation and upkeep of Learner Support Centres including furniture, computers, kitchen equipment, water and electricity;
- + To comply with the requirements of the Schools Act and the Minimum Uniform Norms and Standards for Infrastructure, all full-service schools' infrastructure must comply with the principles of 'universal design';
- + The **KwaZulu-Natal Department of Education's** turnaround strategy and plan for full-service schools suggested in this report should, in consultation with Disabled Peoples Organisations and School Governing Bodies, evaluate classrooms, halls, entrances, stairs, ramps, courtyards, toilets, furniture, recreation facilities and all other physical spaces at full-service schools, to ensure that they comply with the standards of universal design and that they "reasonably accommodate" the requirements of learners at the school.

2. Funding

- + The **KwaZulu-Natal Department of Education** must provide a documented explanation detailing the method by which additional funding for inclusive education is provided to specific full-service schools;
- + The **KwaZulu-Natal Department of Education** must provide sufficient financial support to full-service schools to cater for at least the following:
 - The operation of Learner Support Centres;
 - The hiring of additional professional staff;
 - The adequate compensation of Learner Support Assistants at a level which acknowledges their skill and importance;

- The payment of travel and accommodation fees, where necessary, for all teachers to attend training on inclusive education, including curriculum differentiation;
 - The provision of assistive devices for learners; and
 - The purchase of other equipment and/or materials necessary for the reasonable accommodation of children with disabilities at the school.
- + The **KwaZulu-Natal Department of Education** must provide this additional funding to full-service schools timeously, reliably and annually.

3. Post-provisioning, Learner Support Assistants, and Learner Support Educators

- + Post-provisioning norms for both educator and non-educator staff in special and full-service schools must be completed through a consultative process and published as soon as possible, in line with the requirements of the SIAS policy;
- + The post-provisioning norms should provide full-service schools with a significant degree of autonomy to select teachers with the skills that they require. In the absence of post-provisioning norms, the **KwaZulu-Natal Department of Education** should allow full service schools, in consultation with District-Based Support Teams, to make their own appointments, through their own selection processes, in order to ensure that teachers with the relevant expertise, skills and interest are hired;
- + All teachers require constant and comprehensive practical training funded by the **KwaZulu-Natal Department of Education** that will assist them in teaching learners with disabilities; and
- + An intensive and comprehensive training workshop on practical aspects of inclusive education policy implementation, disability awareness and curriculum differentiation should be made compulsory for teachers and learner support assistants at full-service schools in the **Umkhanyakude District**. If necessary, to provide for the degree of 'catch-up' training needed, this could take place over a school holiday period; and
- + The turnaround strategy and plan for full-service schools recommended by this report should include investigation and recommendation on the number of Learner Support Educators and Learner Support Assistants that should be permanently present at, or available to, each school and circuit of schools in the **Umkhanyakude District**. It is recommended that each should have *at least* two Learner Support Assistants, and each circuit should have *at least* one permanent, dedicated Learner Support Educator.
- + The evaluation of Learner Support Educators and Learner Support Assistants should include an evaluation of their level of remuneration, and a determination whether this is an obstacle to employment and retention of these crucial positions; and
- + Learner Support Assistants should be remunerated in accordance with their qualifications and experience. All Learner Support Assistants should be required to study towards qualifying as educators specialising in inclusive education, and should be assisted financially, practically and in any other way necessary by the school – and by the district, provincial and national Departments of Education – in achieving this qualification. When they have qualified as teachers, all efforts should be made to retain them at the same school, or another full-service school, as either teachers or Learner Support Assistants, remunerated in accordance with their qualifications.

4. Curriculum Delivery

Levels of curriculum delivery must meet the standards set out in the SIAS policy and the Full-Service School Guidelines. The following principles are crucial:

- + **Flexibility:** the approach to the curriculum, including teaching pedagogy and content, remedial instruction and assessment, must be flexible. Flexibility includes requirements for curriculum differentiation and individualised support.
- + **Curriculum Differentiation:** “Inclusive schools should know how to differentiate the curriculum and use a variety of approaches.”
- + **Individualised Support:** It is a ‘hallmark’ of full-service schools that they provide “individualised instruction and support”.

To ensure that teachers can be equipped to effectively teach classes that include learners with a wide range of barriers to learning, the following measures must be taken:

- + The **Umkhanyakude District-Based Support Team**, led by a Learner Support Educator, should ensure that they visit each full-service school at least once a month, with the primary objective of providing teachers with support in developing and improving curriculum differentiation skills and individual support plans;
- + All teachers at full-service schools and all Learner Support Educators must be trained in curriculum differentiation and the production of individualised support plans, and be able to contact the District-Based Support Team and a Learner Support Educator for advice on a continuous and ad hoc basis;
- + In addition to the termly visits contemplated for the **Umkhanyakude District-Based Support Team**, the support team must randomly visit full-service schools and sit in classes in order to assess attempts at curriculum differentiation, and identify where improvements can be made through the intervention of the Support Team;
- + The production of individualised support plans, and the ability to differentiate curriculum, should form part of the performance indicators of each teacher at a full-service school, and their performance should be evaluated based on the production of these plans under the direct supervision of **School-Based Support Teams**. The purpose of this is to identify where assistance can be provided to improve performance, rather than to take any punitive action at all against low-performing teachers, on this aspect;
- + Each child who has been identified through the SIAS policy as having low, moderate or high support needs must have an individualised support plan that is scrutinised alongside that child’s termly report cards, and made available to the child’s teachers and parents at their request;
- + Where no (or minimal) improvement in the education of a child with barriers to learning is recorded over a full year, then the intervention of the **Umkhanyakude District-Based Support Team** should be compulsory. Children with barriers to learning cannot be allowed to repeat grades, or simply be pushed forward without clear improvement, without the intervention of the **Umkhanyakude District-Based Support Team**; and
- + The **Umkhanyakude District-Based Support Team** should be able to call on the support of professionals and skills that they lack from the **KwaZulu-Natal Department of Education**, when their interventions fail to achieve improvements in the level of education of children with barriers to learning at full-service schools.

5. Transport

All children with barriers to learning who are referred to full-service schools through the SIAS policy have a right to have access to appropriate transport to and from school daily, funded by **KwaZulu-Natal Department of Education**. To ensure that this is made a reality, the following steps are recommended:

- + The **KwaZulu-Natal Department of Education**, in the amendment of its transport policy to bring it in line with the *National Learner Transport Policy*, should take the opportunity to expand upon the Full-Service School Guidelines provisions on access to transport for learners. These amendments must reflect a clear plan about how all children with learning barriers who have been referred to full-service schools will receive Department-funded transport to and from school each day;
- + The **KwaZulu-Natal Department of Education** should adopt an interpretation of the National Learner Transport Policy which understands that determinations of “needy learner” and “nearest appropriate school” must acknowledge that the nearest appropriate school may be far away for learners with barriers to learning, and that all such learners should be assumed to be “needy”;
- + Either within its learner transport budget or within its inclusive education budget, the **KwaZulu-Natal Department of Education** must budget for the additional costs that will accrue as a result of the provision of transport to learners with barriers to learning who will have to travel to full-service schools from multiple and far-off destinations because of the long distances between full-service schools;
- + As an interim measure, while this policy process is taking place, the **KwaZulu-Natal Department of Education** must provide schools with buses to transport learners with learning barriers when they live more than five kilometres away from the full-service school they attend, and/or provide additional funding to full-service schools to cover the transport costs of these learners to and from school each day;
- + All **KwaZulu-Natal Department of Education**-provided or -funded transport must meet the standards of ‘universal design’; and more particularly, accommodate the needs of learners using that transport. Examples of such accommodations include special seats to allow learners to sit up straight, space to store wheelchairs, and drivers who can communicate with hearing-impaired children and help children with physical disabilities get on and off vehicles, and sit comfortably; and
- + The **KwaZulu-Natal Department of Education** should consider that dropping children with disabilities off at central locations will often defeat the purpose of accommodating their disabilities on those vehicles, and render them vulnerable during the remainder of their trip.

G. CONSOLIDATING GOVERNANCE STRUCTURES TO IMPROVE THE INCLUSIVE EDUCATION SYSTEM

In addition to the specific recommendations made for clear legislative and policy formulation and implementation actions on the part of governmental structures, the following general recommendations are made:

- + **KwaZulu-Natal Department of Education:** there needs to be a reversal of the growing “pattern of generalised indifference regarding inclusive education as a system-wide

programme” in Kwazulu-Natal. All vacant posts in the inclusive education directorate must be filled as soon as possible, and the inclusive education directorate should not be sidelined or marginalised in major departmental campaigns and operations. Inclusive education is just education; and all educational issues have bearing on children with barriers to learning.

- + **Umkhanyakude District Department of Education:** the district Department of Education must take responsibility for equipping the **Umkhanyakude District-Based Support Team** with the capacity, in terms of human and financial resources, to support its efficient functioning. In addition, the district must take responsibility for monitoring curriculum delivery to children with barriers to learning and disabilities in the district.
- + **District-Based Support Team:** District-Based Support Teams have a central role in the operation of inclusive education systems. In addition to their role in terms of the screening, identification and assessment of learners, ‘support’ is one of this team’s primary roles that has been sorely lacking. The primary focus in the **Umkhanyakude District-Based Support Team** must be to support **School-Based Support Teams** and teachers in producing individualised support plans for learners, and differentiating curricula in their classes.
- + **School-Based Support Teams:** Members of **School-Based Support Teams** must be relieved of teaching time, where possible, to allow them to effectively perform their roles as members of **School-Based Support Teams**. In addition to ongoing practical training, one of the major things that can be done to support **School-Based Support Teams** is therefore the employment of additional teaching staff, and the increased allocation of educator and non-educator staff, at special and full-service schools.
- + **School Governing Bodies:** Often absent from the discussions SECTION27 engaged in with principals and teachers were meaningful contributions from School Governing Bodies. The following is recommended:
 - The **KwaZulu-Natal Department of Education** and the **Umkhanyakude District Department of Education** should investigate the activity and performance of SGBs at full-service and special schools in the district;
 - This investigation should include a determination of SGBs are enforcing the special provisions of the Schools Act allowing SGBs (and requiring them, in the context of special schools) to co-opt “a person or persons with expertise regarding the special education needs of such learners”, as well organisations of parents of learners with special education needs; organisations of people with disabilities and people with disabilities;
 - This investigation should make recommendations about how the SGBs, in addition to their ‘ordinary’ functions, could interact with the **Umkhanyakude District-Based Support Team** and **School-Based Support Teams** to improve learner performance and protect the rights of learners;
 - Finally, this investigation should determine whether SGBs require financial support to allow them to meet, given the extremely large distances between parent’s homes and special and full-service schools; and
 - SGBs require constant and comprehensive practical training funded by the **KwaZulu-Natal Department of Education** that will assist them in fulfilling their duties effectively. SGB members could possibly be included in teacher training

and meetings with the Umkhanyakude District-Based Support Team, where appropriate.

XI. ENDNOTES AND ANNEXURES

“Annexure A” Manguzi Creche

“Annexure B” List of Schools

“Annexure C” Non-Exhaustive list of DPOs and CSOs to consult.

“Annexure D” Parenzee Report? Budlender Report?

¹ This group included two totally blind people, Justice Zak Yacoob and SLSJ member Silomo Khumalo.

² Muhammad Zakaria Suleman & Jean Elphick, *Daily Maverick* (4 December 2013), ‘Know Your Constitution: People with disabilities – hidden, but not unheard’ available at <http://www.dailymaverick.co.za/article/2013-12-04-know-your-constitution-people-with-disabilities-hidden-but-not-unheard/#.VqYlqVN96b8>.

³ Id.

⁴ The bulk of the interviews were held throughout 2014, in May 2015, August 2015 and November 2015.

⁵ SECTION27 Statement (11 September 2015), ‘SECTION27 urges KZN DoE to take action on disabled school reports’, available at <http://section27.org.za/2015/09/section27-urges-KZN-DoE-to-take-action-on-disabled-school-reports/>.

⁶ See ‘Annexure A’ for more details on the Manguzi Creche.

⁷ See ‘Annexure B’ for a list of the full-service and special schools visited.

⁸ Id.

⁹ Not all issues discussed with school staff and parents appear in this report, though an attempt has been made to ensure that the issues raised repeatedly – or stressed as very important, even once – are covered.

¹⁰ KwaZulu-Natal Department of Education, ‘Annual Performance Plan 2011/12’, p 79.

¹¹ KwaZulu-Natal Department of Education & Miet Africa, ‘Special Schools Survey Report’ (24 January 2011).

¹² KwaZulu-Natal Department of Education & Miet Africa, ‘Special Schools as Resource Centres Pilot Project: Special School Audit Report’ (March 2011).

¹³ For more information, see the official website of the Umkhanyakude District Municipality: <http://ukdm.gov.za/index.php/en/> and <http://www.localgovernment.co.za/districts/view/21/uMkhanyakude-District-Municipality>.

¹⁴ P Maclaren, B Zungu & S Rule, ‘Situational Analysis on Disability in Jozini-Umkhanyakude District #27, KwaZulu-Natal’ (March 2002), p 16 [Situational Analysis]. On file with SECTION27.

¹⁵ Department of Social Development; Department of Women, Children and People with Disabilities; UNICEF ‘Children with Disabilities in South Africa: A Situation Analysis 2001-2011’ (2012), available at http://www.unicef.org/southafrica/SAF_resources_sitandisability.pdf, p 10.

¹⁶ Special Schools as Resource Centres Pilot Project: Special School Audit Report above n 12, p 29.

¹⁷ Situational Analysis above n 14, p 19.

¹⁸ Id.

¹⁹ Id, p 19-20.

²⁰ Department of Basic Education, ‘Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres’ (2014), p 1 [Special Schools Guidelines].

²¹ Department of Basic Education, ‘Report on the Implementation of Education White Paper 6 on Inclusive Education – An Overview for the Period: 2013-2015’, presented to the Parliamentary Portfolio Committee on Basic Education on 8 March 2016, available at <https://pmg.org.za/committee-meeting/22150/>, p 48.

²² Situational Analysis above n 14, p 32.

²³ Id, p 33.

²⁴ Id, p 34.

²⁵ Id, Appendix 1A, ‘Information on types of disabilities and prevalence’, p 4.

²⁶ Umkhanyakude District Municipality, ‘Umkhanyakude District Municipality Annual Report 2013/2014 FY’, p 37.

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- ²⁷ P Parenzee, 'Brief Overview of resource allocation/expenditure on special needs education: focus on KZN Department of Education & Sisizakele Special Needs School' (2014), p 3. On file with SECTION27.
- ²⁸ Id.
- ²⁹ Id, p 14.
- ³⁰ Id.
- ³¹ D Budlender, 'Budgeting for Realising the Right to Basic Education for Children with Disabilities in South Africa' (2015), p 23, available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308leftinthedarkannexureC.pdf>.
- ³² Id, p 9.
- ³³ Id, p 26.
- ³⁴ Id, p 35.
- ³⁵ Id, p 38.
- ³⁶ DBE Progress Report above n 21.
- ³⁷ Constitution, section 29.
- ³⁸ Constitution, section 9.
- ³⁹ Constitution, section 238.
- ⁴⁰ *De Vos NO and Others v Minister of Justice And Constitutional Development and Others* (CCT 150/14) [2015] ZACC 21; 2015 (2) SACR 217 (CC); 2015 (9) BCLR 1026 (CC) (26 June 2015), available at <http://www.saflii.org/za/cases/ZACC/2015/21.html>.
- ⁴¹ South African Schools Act No. 84 of 1996, section 12(4).
- ⁴² *MEC for Education: Kwazulu-Natal and Others v Pillay* (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007), available at <http://www.saflii.org/za/cases/ZACC/2007/21.html>
- ⁴³ *Pillay; Lettie Hazel Oortman v Thomas Aquinas Private School* (Equality Court, Witbank) Case No 1:2010.
- ⁴⁴ *Lettie Hazel Oortman v Thomas Aquinas Private School* (Equality Court, Witbank) Case No 1:2010.
- ⁴⁵ South African Schools Act No. 84 of 1996, section 12(4).
- ⁴⁶ SECTION27 letter to KZN DoE dated 29 September 2014. On file.
- ⁴⁷ DBE Progress Report above n 21, p 17.
- ⁴⁸ Special School Survey Report above n 11, p 17.
- ⁴⁹ Special Schools as Resource Centres Pilot Project above n 12, p 37.
- ⁵⁰ TF Hodgson & S Khumalo, 'Left In The Dark: Failure to Provide Access to Quality Education to Blind and Partially Sighted Learners in South Africa' (2015), available at <http://www.sancb.org.za/sites/default/files/S27-left-in-the-dark-2015-accessible.pdf> [Left in the Dark Report].
- ⁵¹ Id.
- ⁵² KwaZulu-Natal Department of Education, 'Speaking Notes for MEC for Education in KZN, Mr Senzo Mchunu, on the Occasion of the Official Handover of Project and Sod-Turning Event at Khulani Special School in Umkhanyakude' (8 June 2012, Khulani Special School), available at <http://www.kzneducation.gov.za/Portals/0/speeches/2012/Khulani%20Special%20School.pdf>.
- ⁵³ Situational Analysis above n 14.
- ⁵⁴ Email correspondence with Lerato Jood, principal of Sisizakele Special School, 2014.
- ⁵⁵ C Mdletshe, 'Nokuphila jets out to the Special Olympics' (17 June 2011), available at <http://www.sowetanlive.co.za/news/2011/06/17/nokuphila-jets-out-to-the-special-olympics-in-greece>.
- ⁵⁶ See note 51 above.
- ⁵⁷ KwaZulu-Natal Department of Education 'Annual Report 2014/15'.
- ⁵⁸ Special School Survey Report above n 11, p 4. Although this survey uses the term "severely mentally handicapped".
- ⁵⁹ Special Schools Guidelines above n 20, p 6.
- ⁶⁰ Id, p 7.
- ⁶¹ Id, p 6.
- ⁶² Department of Basic Education, 'Policy on Screening, Identification, Assessment and Support' (2014), p ix.
- ⁶³ DBE Progress Report above n 21, p 34 [SIAS Policy].
- ⁶⁴ Department of Basic Education, 'Education White Paper 6 – Special Needs Education – Building an Inclusive Education and Training System' (2001), p 31 [White Paper 6].
- ⁶⁵ C Ndaliso, 'Disabled KZN pupils beaten at school' (4 September 2015), available at <http://www.iol.co.za/news/crime-courts/disabled-kzn-pupils-beaten-at-school-1911024>.
- ⁶⁶ Department of Basic Education website, available at <http://www.education.gov.za/Curriculum/AnnualNationalAssessment.aspx>.
- ⁶⁷ Ndaliso above n 64.

⁶⁷ White Paper 6.

⁶⁸ Id.

⁶⁹ SIAS Policy above n 61.

⁷⁰ Special Schools Guidelines above n 20, p 10.

⁷¹ Id.

⁷² Id, p 8.

⁷³ Id, p 9.

⁷⁴ Id.

⁷⁵ United Nations Convention on the Rights of Persons with Disabilities (2007) [UNCRPD], Article 24(3)(e), available at <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁷⁶ Left in the Dark Report above n 49.

⁷⁷ SIAS Policy above n 61, p 20.

⁷⁸ Id in full: "Post-provisioning norms and standards will make provision for all categories of staff required in an inclusive education system, including itinerant learning support, therapeutic and psycho-social support professionals, as well as teacher and class assistants, therapy assistants, technicians, interpreters and facilitators."

⁷⁹ Id, p ix.

⁸⁰ Special Schools Guidelines above n 20, p 10.

⁸¹ Id, p 14.

⁸² Id, p 13.

⁸³ Id.

⁸⁴ SIAS Policy above n 61, p 16.

⁸⁵ L Govender, 'Building an inclusive system of education and training' (6 June 2014), available at <http://m.news24.com/news24/Archives/Witness/BUILDING-an-inclusive-system-of-education-and-training-20150430>.

⁸⁶ SIAS Policy above n 61, p 11.

⁸⁷ Id, p 16.

⁸⁸ Id, p 14.

⁸⁹ Id, p 15.

⁹⁰ Id, p 16.

⁹¹ DBE Progress Report above n 21, p 43.

⁹² UNCRPD, Article 24(4).

⁹³ Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) ; 2010 (4) SA 1 (CC) (8 October 2009), paras 50-70, available at <http://www.saflii.org/za/cases/ZACC/2009/28.html>.

⁹⁴ P Harper, 'Hostel hell for disabled children' (20 September 2015), available at <http://city-press.news24.com/News/Hostel-hell-for-disabled-children-20150919>.

⁹⁵ DBE Progress Report above 21, p 51.

⁹⁶ Department of Basic Education, National Learner Transport Policy (2015), p 25, s 3.9.

⁹⁷ Id p 14, s 1.3.

⁹⁸ Id p 22, s 3.3.1.

⁹⁹ Id p25, s3.9.

¹⁰⁰ Special School Guidelines, p 18.

¹⁰¹ Id.

¹⁰² Department of Basic Education Presentation to Parliamentary Portfolio Committee on Basic Education (8 September 2015), available at <https://pmg.org.za/committee-meeting/21467/>.

¹⁰³ Special School Guidelines, p 18.

¹⁰⁴ Tripartite Steering Committee and Another v Minister of Basic Education and Others (1830/2015) [2015] ZACGHC 67; 2015 (5) SA 107 (ECG); [2015] 3 All SA 718 (ECG) (25 June 2015), available at <http://www.saflii.org/za/cases/ZACGHC/2015/67.html>.

¹⁰⁵ Id.

¹⁰⁶ DBE Progress Report above n 21.

¹⁰⁷ Harper above n 94.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Christian Education South Africa v Minister of Education (CCT4/00) [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000), available at <http://www.saflii.org/za/cases/ZACC/2000/11.html>.

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- ¹¹¹ Constitution, section 28(1)(d).
- ¹¹² UNCRPD Articles 16, 23(3), Preamble (q).
- ¹¹³ Children's Act 38 of 2005, section 2(b).
- ¹¹⁴ Id ss 191-212.
- ¹¹⁵ SIAS Policy above n 61, s 5(2)(b), p 5.
- ¹¹⁶ Special School Guidelines, p 16.
- ¹¹⁷ Id.
- ¹¹⁸ Id.
- ¹¹⁹ DBE Progress Report above n 21.
- ¹²⁰ Constitution ss 12, p 28.
- ¹²¹ C Ndaliso above n 64.
- ¹²² Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, Government Notice R920 in Government Gazette 37081 of 29 November 2013, norm s 4(1)(b)(ii) read with 4(3)(c).
- ¹²³ Id, Norm 11(1).
- ¹²⁴ Both the Preamble to the Minimum Uniform Norms and Standards for Public School Infrastructure and Regulation 18 give a strong indication that the particular needs of people with disabilities should be considered in the interpretation of the Norms.
- ¹²⁵ Human Rights Watch, 'Complicit in Exclusion – South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities' (August 2015), available at https://www.hrw.org/sites/default/files/report_pdf/southafrica0815_4up.pdf, p 24 [Complicit in Exclusion].
- ¹²⁶ DBE Progress Report above n 21, p 45.
- ¹²⁷ Id.
- ¹²⁸ White Paper 6, p 22.
- ¹²⁹ Id.
- ¹³⁰ Department of Basic Education, 'Guidelines for Full-Service/Inclusive Schools' (2010), Preamble [FS Guidelines].
- ¹³¹ Id, p 9-10.
- ¹³² SIAS Policy above n 61, p 20, s 18.
- ¹³³ FS Guidelines at p 7.
- ¹³⁴ White Paper 6 at p 22.
- ¹³⁵ FS Guidelines, p 1.
- ¹³⁶ Id, p 8.
- ¹³⁷ See for example FS Guidelines at p 10 s 3.3.13.
- ¹³⁸ Id, p 25 s 8.1.
- ¹³⁹ DBE Progress Report above n 21, p 17.
- ¹⁴⁰ UNCRPD Article 2(b).
- ¹⁴¹ Minimum Uniform Norms and Standards for Public School Infrastructure above n 122.
- ¹⁴² FS Guidelines, p 37 s 12.1.2.
- ¹⁴³ Id, p 3.
- ¹⁴⁴ Govender above n 85.
- ¹⁴⁵ FS Guidelines, p 37.
- ¹⁴⁶ Schools Act, s 12(5).
- ¹⁴⁷ Id.
- ¹⁴⁸ Basic Education For All and Others v Minister of Basic Education and Others (23949/14) [2014] ZAGPPHC 251; 2014 (4) SA 274 (GP); [2014] 3 All SA 56 (GP); 2014 (9) BCLR 1039 (GP) (5 May 2014), para 43, available at <http://www.saflii.org/za/cases/ZAGPPHC/2014/251.html>.
- ¹⁴⁹ DBE Progress Report above n 21.
- ¹⁵⁰ White Paper 6, p 37.
- ¹⁵¹ SIAS Policy above n 61, p 20.
- ¹⁵² Id in full: "Post-provisioning norms and standards will make provision for all categories of staff required in an inclusive education system, including itinerant learning support, therapeutic and psycho-social support professionals, as well as teacher and class assistants, therapy assistants, technicians, interpreters and facilitators."
- ¹⁵³ FS Guidelines, p 33 s 10.1.
- ¹⁵⁴ Govender above n 85.
- ¹⁵⁵ Id. referred to by Govender in this article in the context of KZN as 'pupil support assistants'.

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- ¹⁵⁶ SIAS Policy, p 20, s 19.
- ¹⁵⁷ Id, referred to in this article by Govender as a ‘pupil support educator’.
- ¹⁵⁸ FS Guidelines, p 21 s 7.1.3.
- ¹⁵⁹ Id, p 23 s 7.2.3. ii.
- ¹⁶⁰ Id, p i. Although this section refers to “Learning Support Teacher”, if it is read with section ii it is clear that no distinction is made between ‘Learning Support Teacher’ and ‘Learning Support Educator’. The phrase ‘Learning Support Teacher’ is not used or defined anywhere else in the guidelines or the SIAS policy.
- ¹⁶¹ Defined in the SIAS policy at p viii:
“Curriculum differentiation – Curriculum differentiation is a key strategy for responding to the needs of learners with diverse learning styles and needs. It involves processes of modifying, changing, adapting, extending and varying teaching methodologies, teaching strategies, assessment strategies and the content of the curriculum. It takes into account learners’ levels of functioning, interests and backgrounds. Curriculum differentiation can be done at the level of content, teaching methodologies, assessment and learning environment.”
- ¹⁶² SIAS Policy, p 8.
- ¹⁶³ FS Guidelines, p 29, s 9.1.
- ¹⁶⁴ Id, p 29, s 9.2.
- ¹⁶⁵ Id, p 30 ss 9.4.5. and 9.5.
- ¹⁶⁶ DBE Progress Report above n 21, p 51.
- ¹⁶⁷ FS Guidelines, p 10.
- ¹⁶⁸ Id, p 39.
- ¹⁶⁹ Id, p 15, s 4.2.3.
- ¹⁷⁰ Id, p 39.
- ¹⁷¹ SIAS policy, p 38, s 11(1).
- ¹⁷² Id, p 34, s 34(13).
- ¹⁷³ Id, p 32.
- ¹⁷⁴ Department of Basic Education, ‘Conceptual and Operational Guidelines for the Implementation of Inclusive Education: District-Based Support Teams’ (June 2005), p 6 [DBST Guidelines].
- ¹⁷⁵ Id, p 20.
- ¹⁷⁶ Special School Guidelines, Annexure 1, p 24-5.
- ¹⁷⁷ SIAS Policy, definitions section.
- ¹⁷⁸ Id.
- ¹⁷⁹ See generally FS Guidelines, p 21-3.
- ¹⁸⁰ SIAS policy, p 29-30.
- ¹⁸¹ Id.
- ¹⁸² Id.
- ¹⁸³ FS Guidelines, p 23.
- ¹⁸⁴ DBE Progress Report above n 21, p 44-5.
- ¹⁸⁵ Complicit in Exclusion above n 124, p 60.
- ¹⁸⁶ Id.
- ¹⁸⁷ SIAS Policy, pp 12-13, 38.
- ¹⁸⁸ Ndaliso above n 64.
- ¹⁸⁹ Id.
- ¹⁹⁰ Id.
- ¹⁹¹ Govender above n 85.