CHAPTER 5

THE RIGHT TO BASIC EDUCATION FOR CHILDREN WITH DISABILITIES

Silomo Khumalo and Tim Fish Hodgson
Education for children with disabilities followed a similarly racialised trend. White learners with disabilities had the potential benefit of higher-quality education in special schools designed for specific disabilities, with adequate resources and well-trained teachers. By contrast, for decades after special schools were opened for white children, black, Indian and coloured children with disabilities were left without any schooling at all. When ‘special schools’ were eventually established, it was often by faith-based missions and charities with inadequate resources and poorly trained teachers.

All in all, the Department of Basic Education (DBE) estimates that only 20% of children with disabilities accessed education during the apartheid era. Almost exclusively, these children accessed schooling through ‘special schools’, which admitted only children with disabilities and were further divided racially. After the transition to democracy there was therefore a double apartheid that needed to be resolved in the education system: a racial apartheid, and an interconnected disability apartheid.

Education White Paper 6, titled Special Education System (WP6), was a bold move towards resolving this dual discrimination in education. White Paper 6 is a policy developed by the Department of Basic Education, which envisions an inclusive education system premised on the principles of non-discrimination and the human dignity of all children. It seeks to remedy the problems inherited from the apartheid education system and eradicate all forms of barriers to learning. Despite this progress, a recent DBE progress report on the implementation of WP6 reports that there are still approximately 600 000 children with disabilities who are out of school. This high number indicates a crisis in the provision of basic education for children with disabilities. When the policy was first drafted, this number was estimated by the DBE to be 280 000 – less than half the current estimation.

The obvious question is: what has gone wrong? The purpose of the chapter is to try to answer this question, and to provide the necessary information for disability rights advocacy groups and communities to effect the right to basic education for children with disabilities.

The chapter provides a brief overview of the right to equitable access to quality basic education for children with disabilities in South Africa. It considers the South African inclusive education system envisaged in WP6, and the problems encountered and successes achieved in implementing it. The chapter discusses some of the cases and legal processes that have helped pave the way towards realising the right to basic education to which children with disabilities are entitled. Children with disabilities are simply children. They are therefore vulnerable to all of the other challenges in South Africa’s education system described in this manual, including those of infrastructure, access to learning materials, post provisioning, threats of violence, and lack of transport.

In an attempt to contribute to further mainstreaming disability rights in the education system, this manual attempts to deal with disability in each and every chapter. This chapter should therefore be read with the rest of the manual, in order to develop a full understanding of the specific and acute challenges faced by children with disabilities in receiving an equal education. It is hoped that this chapter will give the reader the tools for understanding disability and inclusive education when reading the rest of the manual.

**KEY TERMS: WHAT IS DISABILITY?**

Correct and accurate terminology is particularly important to disability rights activism. Incorrect terminology can be alienating for, and hurtful to, people with disabilities. Though people with disabilities do vary in their opinions, in the South African context, for example, there is a general preference not to be referred to as ‘handicapped’ or ‘disabled’ people, but rather as ‘people with disabilities’.

More recently, developments in the education policy environment in South Africa have also acknowledged the need to speak more broadly than just on disability, and acknowledge that inclusive education is premised on providing appropriate support for children with disabilities, children with other ‘barriers to learning’, and each and every child who as an individual may require focused, individualised support. The following definitions may be useful to the reader, in the context of this chapter and of the manual more broadly:

- **Disability** 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 approach to defining disability seeks to shift the focus from the so-called cause of disability towards the impact of a disability.

- **Medical model of disability** The medical model followed by the apartheid government assumed that disability is caused by the physical or intellectual impairment of an individual. It regarded people with disabilities as suffering from an inherent deficiency that requires or is capable of a medical cure or treatment. The medical model of disability has contributed to widespread stigma about people with disabilities as somehow sub- or inhuman, and in the context of education, as ‘ineducable’.

Under the medical model of disability, people are often isolated in specialised institutions such as ‘special schools’, away from ‘normal’ children.
Yoliswa developed an eye condition called glaucoma. This condition damaged her optic nerve, resulting in a total loss of her sight. According to the social definition of disability, Yoliswa’s glaucoma did not conclusively result in a disability by itself. The medical condition which caused Yoliswa to become blind combined with the lack of reading material in Braille (text specially modified to be read by a blind person) at her school to produce what we call a ‘disability’.

Zweli lives in a rural area in Kwalulu Natal. As a result of a car accident he is partially paralysed, and cannot walk. He therefore moves around using a wheelchair he received from his local hospital. Zweli’s local primary school does not have ramps that he can use to access classrooms or toilets. In addition, he lives three kilometres from school, there is no public transport system, and the roads are made of soft sand, which makes it difficult for him to use his wheelchair.

Tabane lives in Tshwane and has always attended her local school. Her teacher says that she is a ‘slow learner’, and that she struggles with reading, writing and counting. Her teacher says that she is a ‘slow learner’ and that she attended her local school. Her teacher says it difficult for him to use his wheelchair. As a result of a car accident he is partially paralysed, and cannot walk. He therefore moves around using a wheelchair he received from his local hospital. Zweli’s local primary school does not have ramps that he can use to access classrooms or toilets. In addition, he lives three kilometres from school, there is no public transport system, and the roads are made of soft sand, which makes it difficult for him to use his wheelchair.

The segregated apartheid education system has had a major impact on what South Africa’s inclusive education looks like today.

At the end of apartheid there were only about 380 special schools, which segregated learners with disabilities from the mainstream schooling system almost entirely. The current inclusive education framework seeks to convert some of these special schools to ‘resource centres’, intended to support the ‘full-service’ approach to the ‘high’, ‘moderate’ and ‘low’ levels of support that a child may need because of a ‘barrier to learning’.

The inclusive education approach followed today in South Africa is based on the social model of disability, and seeks to remove all barriers to learning. Though inclusive education systems vary depending on their context, the basic premise is the inclusion of people with disabilities in schools and classes with children who do not have disabilities. Inclusive education requires that the necessary support be provided for a learner in an ‘ordinary’ school to overcome barriers to learning caused by the medical condition/impairment, as well as by the learning environment.

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In the Words of Inclusive Education

White Paper 6:

White Paper 6: Learners who require low-intensive support will receive this in ordinary schools and those requiring moderate support will receive this in full-service schools. Learners who require high-intensive educational support will continue to receive such support in special schools.

In addition to WP6, the DBE has formulated various other guidelines and policies to explain how special, full-service and mainstream schools must operate. A convenient list of these documents is provided at the end of this chapter. The only other document we will discuss here is the Screening, Identification, Assessment and Support Policy (SIAS), which was published in 2014 and must be implemented in phases between 2015 and 2018 to give effect to WP6. The SIAS policy describes the specific type of support that must be provided to learners with high-level, moderate, and low-level support needs. These requirements cut across all learning barriers and disabilities.

Table 5.1: Types of schools that should accommodate children with disabilities and special learning needs in South Africa

<table>
<thead>
<tr>
<th>TYPE OF SCHOOL</th>
<th>WHAT IS IT?</th>
<th>SPECIFIC POLICIES AND GUIDELINES</th>
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| Mainstream/Oldinary School     | • A mainstream school is an ordinary neighbourhood school that all children attend.  
                                    • Mainstream schools are required to 'reasonably accommodate' children with disabilities.  
                                    • According to the SIAS policy, all children should attend their local neighbourhood school first, regardless of their disabilities.  | • Equality Act  
                                    • Lettie Hazel Oortman v Thomas Aquinas Private School  
                                    • Schools Act Section 12(4)                                                                                   |
| Full-Service School            | • Full-service primary and high schools are specially designated and converted mainstream schools that are specially resourced and equipped by government to accommodate learners with a wide range of disabilities and learning needs.  
                                    • They may accommodate learners with 'high' learning needs, but most often accommodate learners with 'moderate' or 'low' needs according to the SIAS policy.  | • Guidelines for Full-Service/Inclusive Schools (2010)  
                                    • Conceptual and Operational Guidelines for the Implementation of Inclusive Education  
                                    • Full-Service Schools (2005)                                                                                  |
| Special School                 | • Special schools are primary and high schools that are equipped to deliver a specialised education programme to learners requiring access to highly intensive educational support.  
                                    • Special schools are required to specialise in education for children with specific 'severe' disabilities. Children should only attend special schools once they have been screened through the SIAS policy process at a mainstream school, and should only be placed in special schools specialising in the accommodation of their particular disability.  
                                    • Children in special schools are often required to stay in hostels during the term because of the long distances between their homes and the special schools.  | • Guidelines to Ensure Quality Education and Support in Special Schools and Special-School Resource Centres (2014)  
                                    • Guidelines to Ensure Quality Education and Support in Special Schools and Special-School Resource Centres (2007) |
| Special School as a Resource Centre | • Some special schools in each province should be defined as 'resource centres' and equipped to provide significant support and a range of support services to other special schools, full-service schools and ordinary schools in their area.  
                                    • Resource Centres have various important support roles in terms of the SIAS policy, and should work closely with District-Based Support Teams.  | • Guidelines to Ensure Quality Education and Support in Special Schools and Special-School Resource Centres (2014)  
                                    • Conceptual and Operational Guidelines for the Implementation of Inclusive Education: Special Schools as Resource Centres (2005) |
The implementation of WP6 has been too slow. WP6 was first introduced in 2001 and 15 years later, there has not been much progress in the implementation of the inclusive education system.

Hundreds of thousands of children remain out of school, and those who do attend schools complain about serious problems relating to the quality of education that children with disabilities receive in many – if not most – special, full-service and mainstream schools throughout the country. The education system for children with disabilities is seriously still very reliant on special schools. Children with disabilities are still required to leave their families and communities to attend far away special schools and live in hostels under poor conditions.

Families are often required to pay school fees, hostel fee and transport fees that they cannot afford for their children to attend faraway special schools. They complain bitterly about not being able to see their children during school holidays, and miss them dearly.

The DBE has published progress reports on the implementation of WP6 in 2015 and 2016 that detail some other serious problems. They honestly and bluntly identify a situation which many activists working on inclusive education and disability rights describe as a ‘crisis’.

### SOME OF THE MOST SIGNIFICANT PROBLEMS NOTED IN THE DBE REPORT INCLUDE:

- Neither teachers, nor principals, nor district and provincial officials understand the essence of the White Paper, its intention, or how to execute its directives.
- There are at least 231 vacancies in inclusive education directorates at provincial and district level.
- Many special schools are simply ‘day-care centres’. The national curriculum is not being taught to learners effectively, in an appropriate manner.
- The hostels are in extremely poor condition.
- There is a high rate of child abuse in the hostels.
- There aren’t enough teachers.

These problems point to the systematic failure of the department to realise the right to access quality basic education for children with disabilities in South Africa.

Worse still, at the moment the department – at national, provincial and district level – seems to lack the expertise and resources to turn this situation around. This is despite a Constitution that guarantees the right to basic education for all children, including children with disabilities. In the pages following is a brief discussion of the legal and policy framework that informs the right to education for children with disabilities in South Africa. We discuss South Africa’s Constitution, international law, the Schools Act, and the Equality Act, and then explain what is required by WP6 and the SUAS policy.
THE SOUTH AFRICAN SCHOOLS ACT

The Schools Act is the law passed by parliament to give effect to the right to basic education. It establishes an education system that, in practice, makes education compulsory for all children between the ages of 7 and 15, which generally means from Grade R until Grade 9. However, if a learner turns 15 before they finish Grade 9, they can still legally leave school, because the Schools Act says that children must be in school until they finish Grade 9 or until they turn 15, whichever occurs first. This requirement for compulsory education applies equally to children with disabilities. Moreover, this requirement does not mean that children over 15 years of age or who have completed Grade 9 no longer have a right to continue with their schooling if they choose to do so. Importantly, for various social and systemic reasons, children with disabilities and barriers to learning in particular are often ‘over age’ for their grade, and these children should also be allowed to continue to attend school, despite being older than 15. Children with disabilities also have an equal right to basic education beyond the compulsory ages and grades of schooling, including being afforded the opportunity to complete their matriculation qualification. The Schools Act applies equally to children with disabilities, and has various sections dealing with disability directly. Where it is necessary to distinguish 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.

The Equality Act is an important law passed by parliament in order to combat discrimination and eliminate poverty. It says that not supporting people with disabilities, or not giving them the facilities they need to function equally in society, is a form of unfair discrimination. If people with disabilities can’t enjoy equal opportunities – because the obstacles that restrict or limit them have not been removed – that is also unfair discrimination. The Equality Act is an important law passed by parliament in order to combat discrimination and eliminate poverty. It says that not supporting people with disabilities, or not giving them the facilities they need to function equally in society, is a form of unfair discrimination. If people with disabilities can’t enjoy equal opportunities – because the obstacles that restrict or limit them have not been removed – that is also unfair discrimination.

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 or children with disabilities. These considerations were explored in the Oortman case discussed in the case law section below.

THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (EQUALITY ACT)

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THE LETTER OF THE LAW – SCHOOLS ACT, SECTION 12(4)

‘The Member of the Executive Council must, where reasonably practicable, provide education for learners with special educational needs at ordinary public schools and provide relevant educational support services for such learners.’
education system years before the publication of an inclusive education policy in the form of WP6.

The Act also requires that all 'physical facilities' at mainstream schools are 'accessible' to people with disabilities. For more about the law on school infrastructure and the effect of inadequate infrastructure on children with disabilities, see the chapter in the manual on infrastructure.

**School Governance**

The Act sets out some special rules for Representative Councils of Learners (RCLs) and School Governing Bodies (SGBs) at special schools.

A provincial minister may exempt a school from having an RCL by public notice if it is 'not practically possible' as a special school (Section 11). At special schools, unlike at mainstream schools, learners are only required by the Act to participate as members of the SGB where 'reasonably practicable'. It is important to note that these recommendations could potentially limit the rights of learners with disabilities, and should only be implemented cautiously. (See sidebar.)
Abuse in hostels: mobilising to move forward

Because of the long distances between children’s homes and special schools, many children with disabilities who attend special schools report serious problems with inadequate facilities, to bring them in line with the inclusive education approach. Unfortunately, many special schools report serious problems that have not been adequately addressed since the publication of WPS. Common problems include:

- Inadequate teaching and support staff
- Insufficiently flexible curriculum
- Inappropriate infrastructure
- Poor living conditions and abuse of children in hostels
- Lack of access to learning and teaching resources and assistive devices
- Chronic underfunding
- Abuse, corporal punishment and neglect in special school hostels
- Lengthy waiting lists to even get into special schools.

One of the most urgent problems caused by a failure to strengthen special schools consistently with WPS is the high rate of child abuse in special-school hostels.

Mobilising to move forward: join the Right to Education for Children with Disabilities Campaign

Disability rights organisations – such as the South African National Council for the Blind, and DEAFSA – consider the strengthening of special schools to be vital. The Right to Education for Children with Disabilities Campaign is a coalition of organisations working towards a complete implementation of WPS. The campaign wants special schools to be strengthened, full-service schools to be expanded and improved, and children with disabilities to be included in neighbourhood schools. It has produced a list of demands for the improvement of the inclusive education system that cover many of the issues described in this chapter; it is included in this report’s reference list. Justice Zakeria Yacoob, himself a blind man, wrote a foreword to a 2015 report written by SECTION27 on system failures in the education system: I have had the privilege and the benefit of being educated at a school where the necessary facilities were largely available. I am pleased to say that if the facilities at the school at which I was a pupil had been as paltry as in most of the schools described in the report, I would never have completed school successfully. I therefore make every effort to ensure that the concerned authorities treat this matter as one of urgency, and not to let the lives of a whole generation of blind children, mainly African and poor blind children, go to waste.

Children, parents, School Governing Bodies and active organisations are encouraged to join this campaign, and assist it in advocating for the education rights of children with disabilities throughout South Africa.

3. Establishment of full-service schools

Full-service schools are mainstream schools equipped and catered to for the full range of learners’ needs. They should receive support in the form of physical and material resources, professional development of staff, and special attention from the district support teams. The DBE has developed guidelines for full-service schools that detail how they should operate. WPS aimed to begin with 30 schools and 500 mainstream primary schools converted to full-service schools by 2021. During this time, it was hoped that the DBE would be able to develop models for system-wide application of full-service schools, so that they can realise its commitment to a fully inclusive education system. But the reality is that many full-service schools are not yet really mainstream schools equipped to cater for the full range of learners’ needs.

The establishment of full-service schools means that children with low and moderate support needs should have the opportunity to attend schools in their neighbourhoods. However, because full-service schools are currently often far away from children’s homes, they are either totally inaccessible or require children to travel far at their own expense each day, or to seek accommodation outside of their homes.

Mobilising to move forward: what can we do?

Communities can advocate to provincial departments of education that the full-service schools in their area are not really mainstream schools designed to cater for learners with disabilities. This is especially important if there are no high schools in a particular district that are full-service schools.

The 2010 guidelines for full-service schools, which are included in the reference list at the end of this chapter, set clear standards for what conditions and resources children, teachers, principals and learners should be able to expect at full-service schools. It is important to use community meetings, municipal disability forums, school governing body meetings, parent-teacher meetings and traditional leaders’ forums as platforms from which to insist that the promises of these guidelines are kept.

If assistance is required, communities, parents and schools may also want to contact Independent Education South Africa, which is an organisation with a lot of experience in working at improving how full-service and mainstream schools accommodate children with disabilities in South Africa.
Recognising the difficulty that many schools would have in ensuring inclusivity, WP6 sets up support structures for the implementation of inclusive education. At school level, this includes ‘Institutional-Level Support Teams’ – sometimes called ‘School-Based Support Teams’ – and at district level, ‘District-Based Support Teams’. In 2005, the Department of Basic Education produced guidelines indicating the roles and responsibilities of both the district and school support structures.

**School-Based Support Teams**

These often include teachers, support staff, heads of department, principals and deputy principals. It is these teams’ role to develop expertise on accommodating learners with learning barriers, and to lead the way in school-support efforts. According to WP6, these teams may also be supported by experts from the local community, district support teams, and higher education institutions. It is important that these teams provide support not only to learners, but also to teachers, principals and the school more broadly.

**District-Based Support Teams**

District-Based Support Teams are crucial to the implementation of WP6. They are made up of staff from provincial district, regional and head offices, and from special schools. WP6 says that District-Based Support Teams must provide a ‘full range of education support services’ to both School-Based Support Teams and schools themselves. They must work closely with School-Based Support Teams, in particular to identify and address learning needs and to accommodate a range of learning difficulties.

**Mobilising to move forward: what can we do?**

Communities should make sure that all schools, especially full-service schools, have School-Based Support Teams that meet regularly and are equipped with the expertise to support learners with disabilities, and that schools have constant interaction with the District-Based Support Team. Parents and SGB members might even volunteer to be put on School-Based Support Teams, and to assist these teams in bringing problems to the attention of district officials.

Communities can also advocate to make sure that District-Based Support Team hire enough experts and specialists and monitor progress at schools closely and frequently.

**5. AWARENESS AND TRAINING OF TEACHERS**

WP6 emphasises the need for extensive training of teachers, so that they have the skills to teach children with barriers to learning. These skills include:

- understanding of disability and learning barriers
- understanding how policies about education for children with disabilities work
- training in how to differentiate the curriculum for children with disabilities and learning barriers
- training in specific skills that are required for the education of children with specific disabilities at their schools.

These skills are often not taught in education, and teachers who graduate from universities do not necessarily have them.

**Practical examples**

The DBE reports that many teachers who teach visually impaired children cannot read and write Braille at an acceptable standard; and many teachers who teach learners with hearing impairments cannot speak sign language.

Schools for children with intellectual disabilities also report that teachers often do not have the skills to teach the academic curriculum to children with the range of disabilities at their schools. They also often don’t know how to teach children practical skills such as woodworking, dressmaking, bricklaying and art – subjects that would allow children to be self-sufficient when leaving school.

Teachers at full-service and special schools report that their training is often overly theoretical and insufficiently frequent. Their training doesn’t show them how to differentiate curricula or develop individualised support plans, so despite their best efforts, they don’t actually know how to teach children with disabilities. (See sidebar on the left.)

**6. FUNDING AND NORMS AND STANDARDS**

An inclusive education system that addresses the history of neglect of children with disabilities needs extra funding. WP6 suggests sources for additional funding, including a conditional grant (which was to have been implemented by 2006). This grant would:

- Be used in both special and full-service schools to provide facilities and necessary material resources to accommodate children with disabilities

- Provide some of the non-educational resources necessary to allow access to the curriculum, such as medication, wheelchairs, crutches, hearing aids, guide dogs, interpreters and voice-activated computers, and social workers.

This conditional grant was never set up – funding for inclusive education has largely been haphazard and inconsistent. This has resulted in a serious challenge to the implementation of WP6, particularly in poorer provinces. As discussed in other chapters of the handbook, the DBE has also not drawn up norms and standards for funding of inclusive education, or norms and standards for post provisioning in special and full-service schools. This is a legal requirement in terms of the SIAS policy, as detailed below.

**Mobilising to move forward: what can we do?**

To increase available funding, communities and schools should advocate for the setting up of the conditional grant, and the finalisation of the norms and standards for the funding of inclusive education and post provisioning, as legally required by the SIAS policy. These policies are the responsibility of the national Department of Basic Education. On a more local level, it is important to monitor and understand where the money that the school receives is being spent. The best way to do this may be to attend SGB meetings, and request this information. Schools can also ask community members to assist them in lobbying provincial departments of education for additional allocations of resources.
Expertise of various medical professionals, barriers to learning, with the help of to screen and assess learners to identify it is then the responsibility of every school. Screening and Assessment can be organised by the school itself. It takes place at this school, and should take place as far as possible, both parents and your child’s learning needs better. It should be explained to parents of children with disabilities what can we do?

Parents of children with disabilities must always take their children to neighbourhood mainstream schools first, and insist that their child is admitted to the school. After that, it is the school’s responsibility to ensure the child is screened formally, following the requirements of the SIAS policy. Communities should make sure that all principals, SCBs and School-Based Support Teams know about and implement the SIAS policy. If they need support from the District-Based Support Team or medical professionals at local hospitals and clinics, they must get this support. Again, parents of children with disabilities must insist on taking their children to neighbourhood mainstream schools first, and insist on their child’s right to be admitted and that the SIAS policy is followed before they are transferred to any other special or full-service school.

Accommodation, placement and referral is it only when a child’s neighbourhood mainstream school cannot provide the appropriate support, after attempting to do so, that a learner can be transferred to a special or full-service school. This means that usually, the child must be admitted to a school and start attending classes while the screening and assessment process is under way. The school should be able to indicate how it has attempted to accommodate a child or why it cannot do so before referring her to another school. If a referral is necessary, it should be explained to you, as a parent or caregiver, why your child is being referred to the school in question; what type of school it is (full-service or special school); and how it will be able to accommodate your child’s learning needs better.

Parent involvement in the process is also important to remember that as far as possible, both parents and child should have a say in where the child goes to school. Parents should be made to make inputs to this process. The SIAS policy must be followed by all schools. If a school does not do any formal assessment in terms of the SIAS policy, then you have a right to insist that the school does so, and may complain to the school governing body or district department of education that this has not happened.

It is possible that schools have not yet been appropriately informed about and trained on the SIAS policy, so it is important to insist that it is followed. The SIAS policy itself includes standard forms that can be used in the identification and referral process if necessary. If you are concerned that the process is not being followed, you may want to have a look at the SIAS policy and get the assistance of a local legal advice office or a human rights organisation. If a parent is presented with forms that they do not understand, the school, and those conducting the assessment of the child, must explain the forms to the parents and assist parents to fill them in.

Mobility to move forward: what can we do?

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The Department of Basic Education’s Screening, Identification, Assessment and Support (SIAS) policy was approved and adopted on 19 December 2014. Its purpose is to provide for the standardisation of procedures and processes to identify and assess all learners requiring additional support. The SIAS policy provides a useful guide for schools, parents and learners on how to identify particular barriers to learning, and decide the level of support that is needed. Most importantly, it also contains clear guidelines on the enrolment and admission of learners with barriers to learning.

QUESTION: My child has a disability, and is approaching school-going age. What must I do to make sure she goes to a school that can accommodate her learning needs?

ANSWER: The SIAS policy requires that every child, irrespective of her disability, must be admitted to their neighbourhood, mainstream school. The screening and identification process will then take place at this school, and should be organised by the school itself.

WHAT HAPPENS NEXT? Screening and Assessment is it then the responsibility of every school to screen and assess learners to identify barriers to learning, with the help of their School-Based Support Teams and the District-Based Support Team. To do this, the school might need to call on the expertise of various medical professionals, including occupational therapists, psychologists and social workers. Through a process spelled out in the SIAS policy, the appropriate support for each individual learner is determined by the school. The purpose of this process is to determine whether the local neighbourhood school can make provision for the needs of a particular child.

RELEVANT CASE LAW

Lette Hazzel Oortman v Thomas Aquinas Private School

Lette Hazzel Oortman’s daughter Chelsea, who is in a wheelchair, attended a private school in Witbank. Although the school took many actions to accommodate Chelsea, she still experienced such serious problems at school that she dropped out. Her mother approached the Equality Court, which focuses on equality and discrimination issues. Thomas Aquinas, the school Chelsea was attending, had made sure that all her classes were on the ground floor, had ensured that she had access to a toilet, had provided her with a wheelchair and a special table, and had even made plans to ensure that she could use the school tuck shop. However, she still encountered other problems at the school, which resulted in her dropping out:

- Infrastructure: A high step in front of all classrooms and toilets. Without ramps, Chelsea could not enter these rooms without assistance. The library was on the first floor, and the only way to get to it was up a staircase.
- Sanitation: The toilet allocated to Chelsea, which was a ‘normal’, unmodified toilet, was locked most of the time, and she often had to ask a teacher to unlock the door. She could not reach the wash basin to wash her hands.

- Teachers: These problems meant Chelsea needed a lot of help from her teachers to get around on a daily basis. Chelsea complained that her teachers were not always helpful, and some became ‘impatient’ with her. None of her teachers had any training in working with or teaching children with disabilities.

The Equality Court made its decision in terms of the constitutional right to equality and the Equality Act. The Equality Act defines as ‘unfair discrimination on the ground of disability’ any ‘failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities, or failing to take steps to reasonably accommodate the needs of such persons’. The judgment noted that there were at this time no other schools in Witbank at all for children with disabilities.

The judgment read: ‘Several praiseworthy steps were taken by [the school] to accommodate Chelsea, but unfortunately not all reasonable steps were taken to remove obstacles to enable her to have access to the classes, toilet and washbasin.’ Noting that the steps needed to accommodate Chelsea would not be expensive, the court found that the school had unlawfully failed to take ‘necessary and reasonable steps’ to ‘remove the building’ in order to do so. The judge encouraged the principal to have ‘discussions’ with the teachers who were impatient, and acknowledged that it was within the principal’s power to ‘instruct some teachers to attend a course on how to work with disabled persons’.

FURTHER READING

- Investigate the strained relationship on the basis of her disability, the judge decided that the school must:
  - Not refuse to readmit Chelsea
  - Take reasonable steps to remove obstacles to her education, including building ramps and an appropriate toilet and washbasin
  - Investigate the strained relationship between Chelsea and some of...
Children with severe [...] and profound intellectual disabilities [...] were explicitly excluded from admission to special schools in terms of Department of Education policy. 

There are a few important things to notice about this case. First, the Equality Act and the Constitution prohibit discrimination by both the government (as we will see) and private entities (for example, private schools (for example, Intellectual Disability Western Cape Forum for Education Rights Handbook – Education Rights in South Africa – Chapter 5: The Right to Basic Education for Learners with Disabilities)).

The government's policy at the time was to accommodate children with 'moderate' intellectual disabilities in special schools. Their disability was determined based on an IQ of between 30 and 70. Children with severe intellectual disabilities (defined as having an IQ of between 20 and 35) and profound intellectual disabilities (an IQ of lower than 20) were explicitly excluded from admission to special schools in terms of Department of Education policy. This policy has since been replaced with the SIAS policy described above.

The Forum argued that the exclusion of children with severe and intellectual disabilities contradicted WP6, and refused to admit children (negative obligation) to existing schools within the existing schooling system. The judge said: 'reasonable accommodations' from even very serious educational needs may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. From what has been set out in the judgment, it must in my view also follow that the children's rights to dignity have been infringed, since they have been marginalised and stigmatised. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation.

In court, the government also argued that ultimately, the exclusion of children with severe and profound intellectual disabilities could be explained by the fact that no amount of education could assist these children, and that the special care centres were sufficient for their development. The Court decided that the government was infringing the constitutional rights of children with severe and profound intellectual disabilities. This is because it was both failing to provide schooling (positive obligation) and refusing to admit children (negative obligation) to existing schools within the existing schooling system. The judge said:

As I have attempted to show, there is in my view no valid justification for the infringement of the rights of the affected children to a basic education and to equality. From what has been set out in the judgment, it must in my view also follow that the children’s rights to dignity have been infringed, since they have been marginalised and stigmatised. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation. The failure to provide the children with education places them at risk of neglect, for it means that they often have to be educated by parents who do not have the skills to do so, and are already under strain. The inability of the children to develop to their own potential, however limited that may be, is a form of degradation.

The Court granted an order in favour of the Forum that provides extensive protection for the rights of children with intellectual disabilities. The order is important because it shows how far courts will go in requiring 'reasonable accommodations' from even ordinary schools. The government was instructed by the court to take reasonable measures to give effect to the rights of children with severe and profound intellectual disabilities, including:

- Ensuring that every child in the Western Cape who is severely and profoundly intellectually disabled has affordable access to a basic education of an adequate quality
- Providing adequate funds to organisations that provide education for severely and profoundly intellectually disabled children in the Western Cape at special care centres.
- Providing access to schools with the use of adequate facilities and adequate staff who are properly trained, paid and accredited
- Providing appropriate transport for the children
- Planning and providing for the training of persons to provide education for children with severe and profound intellectual disabilities.

The Western Cape Intellectual Disability Forum is therefore a good example of the use of litigation in order to protect children’s rights to basic education.

Mobilising to move forward: what can we do?

The Legal Resource Centre has noted that there are many positives for children with intellectual disabilities in the Western Cape that came out of this case after the judgment. This is because the provincial government officials and various NGOs within the Forum were able to work well together in monitoring, implementing and evaluating the implementation of the judgment. This happened because the order that the court made included a ‘structural interdict’ which required the government to report back to it on progress in implementing the judgment, and allowed for the participation of the Forum in this process.

Both of these cases illustrate the power of community activism, to contribute to the improvement of access to quality inclusive education for children with disabilities.
CONCLUSION

This chapter aimed to give the reader an understanding of the importance of a truly inclusive education system in South Africa, in which each and every child can find a place to have her needs appropriately accommodated. As we have illustrated, there is a place for special, full-service and mainstream schools in this kind of education system, and all three types of schools must be strengthened, resourced and supported by national, provincial and district departments of education.

The lack of capacity of the national, provincial and local departments of education and their collective failure to implement even the short-term aims of WP6 – including even basic short-term goals, such as the establishment of a conditional grant, and the execution of comprehensive mobilisation campaigns for out-of-school learners – is of serious concern. Communities and schools must put pressure on the government to ensure that the core aspects of WP6 are implemented as soon as possible. The same is true of the SIAS policy discussed above, and the various guidelines produced by the national Department of Basic Education – including guidelines on Special Schools, Full-Service Schools, and District-Based Support Teams. This chapter may be most effectively used by reading it together with the chapter in this book on mobilisation strategies (Chapter 21), bearing in mind that because children with disabilities are just like any other children, general advocacy of strategies such as protest, social audits, media articles, lobbying parliament and the departments of education, and (where necessary) litigation is equally relevant.

Throughout this chapter, in boxes headed ‘Mobilising to move forward’, we have provided some ideas for parents, teachers, principals, learners and SCBs about actions they can take to ensure that children with disabilities can access their right to quality inclusive education. The best plans and strategies are those that follow the disability-rights movement slogan ‘Nothing about Us without Us’, and are formed at school or community level to respond directly to the urgent needs of children with disabilities, as expressed by them, their parents, and disabled people’s organisations. Above all of this, most importantly, there must be a societal shift in the understanding of disability and people with disabilities as ‘others’ who are fundamentally different. Both personally and interpersonally, this will take daily activism and introspection in each and every one of our lives, towards thinking, acting and shaping our surroundings in a way that is more conscious of the complexities of disability, and of the many challenges faced by people with disabilities.

Systemically, the first step in this direction is a truly inclusive education system, grounded in the constitutional rights to basic education and equality. To build an inclusive South Africa, we must first build an inclusive education system.

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