

REPUBLIC OF KENYA



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[Signature]
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THE SENATE

TWELFTH PARLIAMENT (FIFTH SESSION)

THE STANDING COMMITTEE

ON

EDUCATION

REPORT ON THE SPECIAL NEEDS EDUCATION BILL, (SENATE BILLS
NO. 44 OF 2021)

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

March, 2022

PAPERS LAI:	
DATE	9/3/2022
TABLED BY	Sen. Milgo/Chair Educat
COMMITTEE	Education
CLERK AT THE TABLE	KANAKA MUYOKA DC-EG

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[Signature] 04/03/22

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ABBREVIATIONS AND ACRONYMS

COG	Council of Governors
TSC	Teachers Service Commission
KICD	Kenya Institute of Curriculum Development
KISE	Kenya Institute of Special Education
MOE	Ministry of Education
NGEC	National Gender and Equality Commission
KUB	Kenya Union of the Blind

PREFACE

The Standing Committee on Education is established pursuant to standing order 218(3) and the Second Schedule of the Senate Standing Orders. The Committee is mandated to “*consider all matters related to education and training.*”

Mandate of the Committee

Pursuant to the provisions of the Second Schedule of the Senate Standing Orders, the Standing Committee on Education is mandated *to consider all matters relating to education and training.*

1. Build capacity of Committee Members to undertake their roles in line with Article 96 of the Constitution;
2. Develop and facilitate the development of legal frameworks, policies and guidelines in the Education Sector (including but not limited to Early Childhood Development Education (ECDE) and Tertiary education (youth polytechnic);
3. Provide oversight for the Education Sector (Including not limited to ECDE and Youth polytechnics;
4. Facilitate budgetary resources toward the Education Sector (ECDE and youth polytechnic); and
5. Any matter that relates to education and training.

Membership of the Committee

- | | |
|---|---------------------------|
| 1. Sen. (Dr.) Alice C. Milgo, MP | - Chairperson |
| 2. Sen. (Dr.) Agnes Zani, CBS, MP | - Vice-Chairperson |
| 3. Sen. Mwangi Githiomi, MP | - Member |
| 4. Sen. Fred Outa, MP | - Member |
| 5. Sen. (Prof.) Kithure Kindiki, EGH MP | - Member |
| 6. Sen. (Prof.) Malachy Ekal, MP | - Member |
| 7. Sen. Falhada Dekow, MP | - Member |
| 8. Sen. (Dr.) Gertrude Musuruve, MP | - Member |
| 9. Sen. Seneta Mary Yiane, MP | - Member |

EXECUTIVE SUMMARY

Mr. Speaker Sir,

The Special Needs Education Bill, (Senate Bills No. 44 of 2021) seeks to provide a legal framework and ensure the actualization of the right to basic education for learners with disabilities in Kenya at all levels of education.

Mr. Speaker Sir,

The Special Needs Education Bill, (Senate Bills No. 44 of 2021) was read a First Time in the Senate on 8th September, 2021 and thereafter stood committed to the Senate Standing Committee on Education for consideration.

Pursuant to the provisions of Article 118 and standing order 140 (5) of the Senate Standing Orders, the Standing Committee on Education invited interested members of the public to submit their representations on the Bill.

Mr. Speaker Sir,

The Committee held a virtual public hearing on Thursday 7th October, 2021 and received both oral and written submissions from the Council of Governors (COG), the Teachers Service Commission (TSC), the National Gender and Equality Commission (NGEC) and Professor. Michael Ndurumo, HSC of the University of Nairobi amongst other stakeholders.

On behalf of the Committee and on my own behalf, I wish to sincerely thank all the individuals, groups and organizations that responded to our call and made their well-researched and eloquent submissions both orally and in writing.

I assure them that the Committee has reviewed every single one of the submissions received and has taken into account their views in the preparation of this report and amendments to be proposed during the Committee of the Whole.

Mr. Speaker Sir.

As I conclude, I want to thank all the Members of the Committee for their insightful contributions during the consideration of the Special Needs Education Bill and development of this report.

The Committee also thanks the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

The Committee further wishes to record its appreciation for the services rendered by the staff of the Senate that enabled expeditious consideration of the Bill and production of this report.

Mr. Speaker, Sir

Pursuant to standing order 213(6), it is my pleasant duty, on behalf of the Standing Committee on Education, to present the Report of the Standing Committee on Education on the consideration of the Special Needs Education Bill (Senate Bills No. 44 of 2021).

I thank you

Signed.....



.... Date...03rd March, 2022....

SEN. (Dr.) ALICE C MILGO, MP

CHAIRPERSON STANDING COMMITTEE ON EDUCATION

1. THE SPECIAL NEEDS EDUCATION BILL (*Senate Bills No. 44 of 2021*)

1.1. Background

The Special needs Education Bill, (*Senate Bills No. 44 of 2021*) seeks to provide for the education of learners with special educational needs and for the conduct of educational institutions in regard to learners with special needs.

The Bill is aimed at providing a proper legal framework in order to ensure the actualization of the right to basic education for learners with disabilities in Kenya at all the three levels of education in Kenya.

The Special Needs Education Bill was read at the Senate for the First Time on 8th September, 2021 and thereafter stood committed to the Senate Standing Committee on Education for consideration and facilitation of public participation.

1.2. Overview of the Bill

The Special Needs Education Bill creates provisions of law that obligate the National Government through the Ministry of Education and the County governments to carry out their duties in bringing the special needs education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disability from the education cycle.

The Bill is divided into 10 parts which includes consequential amendments to existing laws that may be affected by the implementation of this Bill upon its Assent.

The Special Needs Education Bill gives guiding principles on the rights of learners with special needs. The principles are guided in part by Article 53 of the Constitution as well as the principles of public participation and the rights of the parent and child as elaborated in the Constitution.

Additionally, the Bill contains the roles of the national government and the county governments as regards special needs education. It elaborates that the responsibilities of a county government shall be the implementation and effective and efficient delivery of special needs education with respect to the learning institutions falling within their mandate and that the county executive committee members are responsible for matters relating to education.

Moreover, the Bill talks about registration and management of special needs education centers within the country. It obligates that each county executive member creates a register of special needs education centers and provides and elaborate explanation on the processes of deregistration or closure of special needs institutions.

The Bill further explains the process of admission of a learner with special needs, the establishment of parents associations in special needs institutions and also outlines the responsibilities of governing bodies of special needs educational institutions for instance the County Education Board is obligated with the identification of children with special educational needs, their assessment and also the maintenance of a register of all learners with special needs in their area of jurisdiction.

2. Submissions from the Members of the Public

Pursuant to the provisions of Article 118 of the Constitution and standing order 140 (5) of the Standing Orders of the Senate, the Senate Standing Committee on Education invited interested members of the public and stakeholders to submit their representations on the Bill. The representations were to be made either orally during a virtual Committee meeting or through submissions of written memoranda.

The invitations for submissions were made vide advertisements which appeared in the Daily Nation and the Standard on Friday, 10th September, 2021. Subsequently, the Committee held a virtual public hearing on Thursday, 7th October, 2021.

The Committee received both oral and written submissions from the members of public and different stakeholders. These included the Council of Governors (COG), the National Gender and Equality Commission (NGEC), Teachers service commission (TSC), Professor Michael Ndurumo, HSC amongst others. These stakeholders registered their comments and proposed amendments which were captured and presented in the matrix below.

CLAUSE NUMBER	MARGINAL NOTE	COMMENT/KEY AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTIONS
Title of Bill		Prof. Michael Ndurumo Rename the bill to “Learners with Disabilities Bill, 2021”	Prof. Michael Ndurumo Reason: 1. Focus on the learners instead of the system. 2. Similar approach used by: a. the Persons with Disabilities Act b. the Individuals with Disabilities Education Act (IDEA) c. Americans with Disabilities Act (ADA) which start with the focus on persons	
General clauses	All marginal notes as they appear	Prof. Michael Ndurumo Replace the term Special Needs Education with Special Education in Parts and Clauses	Prof. Michael Ndurumo 1. Special Education is aligned with other systems of education such as Primary Education, Secondary Education, Tertiary Education, Teacher Education, and University Education. 2. Kenya Institute of Special Education still retains its name (since 1985). 3. Several Clauses in the Bill use the term, e.g., Special Education Board.	
General clauses	All clauses as they appear	Prof Michael Ndurumo Usage of correct terms as they appear	Prof Michael Ndurumo 1. Learner with special needs to read “learner	

			<p>with special educational needs”</p> <ol style="list-style-type: none"> 2. Special need schools to read “special school” 3. Advisory Board to read “Special Education Advisory Board” 4. Special needs service providers to read “special education service providers” 5. Specialized equipment and devices should deal with equipment, Braille, ICT gadgets, wheelchairs, and similar devices 	
Preliminary Part of Bill	All clauses under this part	<p><u>Prof Michael Ndurumo</u> Expand the scope of the Bill to include TVET Act and Universities Act</p>	<p><u>Prof Michael Ndurumo</u></p> <ol style="list-style-type: none"> 6. Some clauses in the bill use terms like “all levels” 7. A comprehensive Act gives direction and the type of governance up to university level. This would enhance visibility of special education in Kenya as it would require creation of a division headed by a director-general responsible for all levels of special education. 	
Preliminary Part of Bill	All clauses under this part	<p><u>Prof Michael Ndurumo</u> Define and Operationalize the Terms</p>	<p><u>Prof Michael Ndurumo</u> Under Preliminaries, indicate and define the categories of Learners with Disabilities. The list below by the Ministry of Education raises prevalence of disability in Kenya to 11% out of the expected 15% by the WHO (2011):</p> <ol style="list-style-type: none"> 1. Deaf and hard of hearing 2. Blind and low vision 3. Physical impairment 4. Cerebral palsy 5. Down Syndrome 6. Autistic Spectrum Disorders 	

			<ul style="list-style-type: none"> 7. Intellectual and cognitive disorders 8. Emotional and behaviour disorders 9. Specific learning disabilities 10. Speech and language disorders 11. Health impairments 12. Albinism 13. Deaf blindness 14. Multiple handicaps 	
Clause 2	Interpretation	<p><u>Kenya Union of the Blind</u> Proposed additional definition: “trainees with special needs”</p>	<p><u>Kenya Union of the Blind</u> The proposed additional definition is derived from the Policy on Education for Learners and Trainees with Disabilities.</p>	
		<p><u>National Gender and Equality Commission</u> Proposed amendment to definition of the term “advisory board” by substituting section 20 with 22</p>	<p><u>National Gender and Equality Commission</u> Provision on Advisory Board are captured in clause 22 and not 20.</p>	
		<p><u>National Gender and Equality Commission</u> Proposed deletion of the term “continuing education”</p>	<p><u>National Gender and Equality Commission</u> The interpretation of the term has been captured twice and with the proposed deletion we retain the remaining interpretation as follows; “continuing education” shall mean “adult and continuing education” as defined under section 2 of the Basic Education Act.</p>	
		<p><u>National Gender and Equality Commission</u> Proposed amendment to the term “learner with special needs” as follows— “Learner with special needs” includes learners with disability and gifted or talented learners.</p>	<p><u>National Gender and Equality Commission</u> Section 2 of the Basic Education Act 2013 provides that “special needs education” includes education for gifted or talented learners as well as learners with disability and includes education which</p>	

			<p>provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners;</p> <p>The interpretation as given in the Bill calls for inference of these provision in Section 2 of the Act.</p> <p>The proposed interpretation by the Commission is very clear and to the point.</p>	
		<p><u>National Gender and Equality Commission</u> Proposed deletion of the term “Progressive inclusion” has the meaning assigned to it by the UN Convention on the Rights of Learners with Disabilities” ratified by the Republic of Kenya.</p>	<p><u>National Gender and Equality Commission</u> The term is not applied in the referenced UN Convention, the Basic Education Act and in substantive provisions of the proposed Bill</p>	
		<p><u>National Gender and Equality Commission</u> Proposed amendment to the term “resource centre” by renaming it to “education assessment and research center”</p>	<p>Clause 23. (1) The Cabinet Secretary shall establish a special needs education resource centre in every county and shall ensure that the centre is properly and adequately staffed with appropriate qualified personnel and equipment.</p> <p>Section 46 of the Basic Education Act provides as follows -; 46. (1) Subject to the Constitution and the provisions of this Act, it shall be the duty of every County Education Board in consultation with the relevant county government to provide for education assessment and</p>	

			research centers including a special needs service in identified clinics in the county.	
		<u>Council of Governors</u> County Executive Committee Member means the county executive committee member responsible for matters relating to education within each county;	<u>Council of Governors</u> Definition of the term County Executive Committee Member	
		<u>Council of Governors</u> Council means the National Council for Persons with Disabilities;	<u>Council of Governors</u> Definition of the National Council for Persons with Disabilities	
		<u>Council of Governors</u> Insert new definition 'communication includes languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia and written, audio, plain language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;	<u>Council of Governors</u> Definition of communication in the context of special needs education	
		<u>Council of Governors</u> Amendment to definition of "inclusive education" to read as follows— "inclusive education" includes educating learners with special needs in chronologically age-appropriate general and inclusive education classes in the schools or least restrictive environments and in	<u>Council of Governors</u> The definition does not capture the true definition of inclusive education and is not consistent with the purpose of integrating learners with special needs into the education system in the country.	

		regular classrooms and ensure that they receive specialized instruction delineated by their individualized education programs within the context of the core curriculum and general class activities regardless of types or severity of disabilities, to the maximum extent possible;		
Clause 3	Objects of the Act	<u>Prof Michael Ndurumo</u> Proposed amendment to clause 3(a)	<u>Prof Michael Ndurumo</u> Clause 3(a) relates to all learners with special educational needs. Hence supports the need for a comprehensive Act covering pre-school education to university education.	
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 3(b)	<u>Prof Michael Ndurumo</u> Insert special educational needs.	
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 3(c)	<u>Prof Michael Ndurumo</u> Insert special educational needs.	
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 3(d)	<u>Prof Michael Ndurumo</u> Insert special educational needs.	
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 3(e)	<u>Prof Michael Ndurumo</u> Insert learners with special educational needs instead of "living with special needs"	
		<u>Prof Michael Ndurumo</u> Proposed additional clause 3(f)	<u>Prof Michael Ndurumo</u> Add 3(f) transition to the next levels of education	
		<u>Prof Michael Ndurumo</u> Proposed additional clause 3(g)	<u>Prof Michael Ndurumo</u> Add 3(g) accountability to ensure quality education and related services	
		Clause 4	Guiding Principles	<u>Prof Michael Ndurumo</u> Proposed amendment to clause 4(a)
<u>Prof Michael Ndurumo</u>	<u>Prof Michael Ndurumo</u>			

		Proposed amendment to clause 4(b)	Amend by inserting the words 'special education'
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 4(d)	<u>Prof Michael Ndurumo</u> Amend by inserting the words 'and the role of the county government.... Through county and ward funds'
		<u>Prof Michael Ndurumo</u> Proposed amendment to clause 4(e)	<u>Prof Michael Ndurumo</u> Amend by inserting the words 'special education'
Clause 5	Rights of special needs learners	<u>National Gender and Equality Commission</u> Proposed amendment by inserting additional paragraphs— (e) admission to any institution of learning and access to an inclusive, quality and free primary and secondary education on an equal basis with others and not to be excluded from the education system on the basis of disability. (f) Equal access to play, recreation and leisure and sporting activities, including those activities in the school system. (g) Equal treatment with the rest of the learners. (h) Reasonable accommodation.	<u>National Gender and Equality Commission</u> The additional proposed rights are applicable in institutions that are inclusive and probabilities of discrimination of individuals with special needs is high.
		<u>Prof Michael Ndurumo</u> Comment	<u>Prof Michael Ndurumo</u> Note clause 5 uses word "every" to include students in tertiary, higher, and university education. Hence the need for a comprehensive Act.
		<u>Prof Michael Ndurumo</u> Proposed amendment	<u>Prof Michael Ndurumo</u> Insert the term "every learner with special educational needs"

		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 5(c)</p>	<p><u>Prof Michael Ndurumo</u> (c) Use Kenyan Sign Language, Braille, and other specialized medium of instruction commensurate with learner's educational needs</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 5(d)</p>	<p><u>Prof Michael Ndurumo</u> 5(d) Deaf learners shall use Kenyan Signed English as the language of instruction and communication with support of other media after class four and aligned with individual needs.</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 5(e)</p>	<p><u>Prof Michael Ndurumo</u> 5(e) access to all school buildings, information, and facilities with ease.</p>	
		<p><u>Council of Governors</u> Proposed amendment to clause 5(c) to read "use appropriated language, communication and assistive devices in their education"</p>	<p><u>Council of Governors</u> There are additional resources for special needs education other than Kenyan sign language and braille.</p>	
Clause 6	Responsibility of the Cabinet Secretary	<p><u>National Gender and Equality Commission</u> Amend the clause by inserting the following new paragraphs— (l) Ensure the establishment of a "National Referral Education Assessment and Research Center"; (m) Ensure adequate funding of special education; (n) Ensure quality education for persons with disabilities; (o) Ensure learners with disabilities are registered with the National Council for Persons with Disability;</p>	<p><u>National Gender and Equality Commission</u> The proposed national EARC will serve as a referral for the County and sub county EARC's. Some of the functions of the referral EARC will include-; a. provide expert, economic and efficient diagnostic, therapeutic and corrective educational needs b. carry out referral services from the counties Increased capitation will ensure quality education for learners with disability. Learners who are registered with the NCPWD are eligible for bursaries and assistive</p>	

		<p>(p) Ensure that the learners' transition from one level of education to the next including to institutions of higher learning;</p> <p>(q) Ensure there are available opportunities for attachment, apprenticeship, and internships for learners with special needs; and</p> <p>(r) Ensure establishment of at least one boarding institution in each County</p>	<p>devices, among other services.</p> <p>Transition for learners with special needs is often hampered by a number of problems including distance, accessibility, discrimination, lack of finances etc.</p> <p>Opportunities for internship, apprenticeship, and attachment prepare the learner for the job market.</p> <p>Boarding facilities will be appropriate for learners who are not able for one reason or other to commute daily.</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 6(2)(a)</p>	<p><u>Prof Michael Ndurumo</u> 6(2)(a)...provision of education to all learners with special educational needs at all levels of education, including vocational and technical institute, college, and university education.</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 6(2)(d)</p>	<p><u>Prof Michael Ndurumo</u> 6(2)(d) educational requirements, and human resource at all levels of education and</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 6(2)(j)</p>	<p><u>Prof Michael Ndurumo</u> 6(2)(j) online, virtual, free and appropriate...</p>	
Clause 7	Responsibilities of county governments	<p><u>National Gender and Equality Commission</u> Proposed amendment to insert additional responsibilities as follows-;</p> <p>(a) Work in collaboration with the Education Assessment Research Centres in the identification of children with special needs for the</p>	<p><u>National Gender and Equality Commission</u> The additional responsibilities will ensure the success of the special needs educations initiatives put in place.</p>	

		<p>registration and access to essential services</p> <p>(b) Facilitate capacity building and sensitization of parents and families of children with special needs</p> <p>(c) Provide appropriate locations for the establishment of Education Assessment Research Centres</p> <p>(d) Provide incentives for the development and management of special institutions</p> <p>(e) Allocate financial support for special early childhood programs.</p>		
		<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 7(1)</p>	<p><u>Prof Michael Ndurumo</u> 7(1) The county government and vocational and technical institutes, colleges, and universities shall be responsible for the implementation and effective delivery of</p>	
		<p><u>Council of Governors</u> Proposed amendment to clause 7(2)(f) as follows — ensure the proper identification of food insecure areas and vulnerable households to initiate appropriate programmes and eligible beneficiaries in relation to food security programmes and the correct application eligibility criteria;</p>	<p><u>Council of Governors</u></p>	
		<p><u>Council of Governors</u> Proposed amendment to clause 7(2)(j) by inserting</p>	<p><u>Council of Governors</u> The National Council of Persons with Disability is mandated to register and</p>	

		<p>the following new provision— Liaise with the Council to maintain a database of persons with disability in respective counties;</p>	<p>maintain a national database of persons with disabilities in the country. This clause proposes the establishment of a similar database which will be duplicating the existing role of the NCPWD. The proposal is to have the County Governments gain access to the database established by the Council.</p>	
		<p><u>Council of Governors</u> Proposed deletion of clause 7(2)(j)</p>	<p><u>Council of Governors</u> The Basic Education Act mandates the Kenya Institute of Curriculum Development to develop, review and approve curricula and curriculum support materials for all levels of education in the country</p>	
Clause 8	Register of special need education centres	<p><u>Council of Governors</u> Insert the following clause where applicable:</p> <p>(d) any other information necessary on the management of all special needs institutions in the county</p>	<p><u>Council of Governors</u> The County register record of all special needs education institutions should be comprehensive in the scope of the data captured in the said register</p>	
Clause 9	Registration of private special needs education centres	<p><u>Prof Michael Ndurumo</u> Proposed amendment to clause 9(1)</p>	<p><u>Prof Michael Ndurumo</u> Proposed amendment to Basic Education Act, 2013, TVET Act, 2013, and Universities Act 2012 (or 2021).</p>	
Clause 10	Deregistration or closure of special needs education institutions			
Clause 11	Admission of a learner with special need	<p><u>National Gender and Equality Commission</u> Proposed amendment by inserting a new subclause (2) as follows— (2-)The principal manager or head of an education institution may require any person attending the special educational institution or</p>	<p><u>National Gender and Equality Commission</u> The assessment is important for appropriate placement and so should not be a stand-alone provision. This provision creates the nexus between the EARC's and admission to the educational institution.</p>	

		<p>applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement provided that the report submitted by a medical practitioner or an assessment centre shall not be used as the sole basis for placement of a learner to an educational programme or institution which may not be congruent to the learner's special needs.</p>		
		<p><u>Council of Governors</u> Amend clause 11 as follows— 'An early childhood education or vocational training centre may admit a learner with special education needs after—'</p>	<p><u>Council of Governors</u> Vocational Training Centres are managed by the County Governments whereas Technical and Vocational Training Centres are managed by the National Government through the Ministry of Education.</p>	
Clause 12	Special Schools Board	<p><u>National Gender and Equality Commission</u> Proposed amendment to clause 12(1) (i) by deleting the word "one" and replacing it with "two".</p>	<p><u>National Gender and Equality Commission</u> The learners are the major stakeholders in school and need wider representation through their care givers. The proposed composition is skewed and it is heavy on others.</p>	
		<p><u>Prof Michael Ndurumo</u> Amendment to clause 12(1)-(17)</p>	<p><u>Prof Michael Ndurumo</u> Review the clauses to include management of post-secondary special education programmes.</p>	
		<p><u>Council of Governors</u> Amend clause 12(1) to read as follows</p>	<p><u>Council of Governors</u> The proposed composition is to maintain consistency with the schools Boards of</p>	

		<p>'The following categories of learners shall be represented on the Board of management of an institute for learners with special education needs—</p> <p>(a) six persons elected from amongst parents of the learners at the education institution to represent parents of the learners in the school or local community</p> <p>(b) two persons with experience in matters of special needs education and social work relating to special needs nominated by the County Governor on the recommendation of the County Education Board;</p> <p>(c) one representative of the teaching staff in the school elected by the teachers;</p> <p>(d) one representative of the non-teaching members of staff at the education institution;</p> <p>(e) one public officer nominated by the county executive committee member within the county;</p> <p>(f) in the case of a sponsored education centre, one representative of the sponsors of the school;</p> <p>(g) the head teacher or the most senior teaching staff of the education centre, who shall be an ex officio member; and</p> <p>(h) a representative of the students' council who shall be an ex officio member'</p>	<p>Management established by the Basic Education Act No. 14 of 2013.</p>	
Clause 13	Establishment of Parents Associations			

Clause 14	Responsibility of governing bodies	National Gender and Equality Commission Proposed amendment by adding an additional responsibility as follows— “Provide reasonable accommodation according to the individual learners”	National Gender and Equality Commission Appropriate reasonable accommodation is necessary for the success of the learners individually and collectively.
Clause 15	Responsibility of County Education Boards		
Clause 16	Facilities in institutions providing for special needs education		
Clause 17	Provision of special needs education outside of an educational institution		
NEW PART	PART VI—INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION	Prof Michael Ndurumo Add new part ‘PART VI SPECIAL EDUCATION SERVICE PROVIDERS’	Prof Michael Ndurumo Transfer here functions delineated in Clause 18(1)-18(6)
Clause 18	Conduct of special needs education service providers		
NEW PART	IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS	Prof. Michael Ndurumo Add new PART V ‘SPECIAL EDUCATION ADVISORY BOARD’	Prof. Michael Ndurumo Transfer here functions delineated under ‘INSTITUTIONAL MANAGEMENT OF SPECIAL EDUCATION’
Clause 19	Register of all learners with special educational needs	Prof. Michael Ndurumo Use term Special Educational Needs instead of Special Needs	Prof. Michael Ndurumo 1. Clause 19 uses the term special educational needs to focus on the type of educational services a student with a disability requires. 2. Special educational needs is unambiguous and gives instant recognition of the type of educational services required by a student with a disability, e.g., a deaf student sign language, interpreter, remedial speech, etc.

		<p><u>Council of Governors</u> Every County Education Board shall liaise with the Council to maintain a register of all learners with special needs in their area of jurisdiction who are receiving domestic, medical, institutional or other special education services outside of regular school programmes as well as special needs learners who are not receiving any special education services.</p>	<p><u>Council of Governors</u> The National Council of Persons with Disability is mandated to register and maintain a national database of persons with disabilities in the country. This clause proposes the establishment of a similar database which will be duplicating the existing role of the NCPWD. The proposal is to have the County Education Boards gain access to the database established by the Council.</p>	
Clause 20	Identification of children with special educational needs			
Clause 21	Assessment of special education needs			
Clause 22	Establishment of the Special Needs Education Advisory Board	<p><u>National Gender and Equality Commission</u> Amend sub-clause (2) by inserting the following words after the word “members” the following “from the Curriculum Developers, the teachers employers, examiners, representatives of persons with disabilities and the County Government”</p> <p>The Advisory Board shall consist of a chairperson and six other members from the Curriculum Developers, the teacher’s employers, examiners, representatives of persons with disabilities.</p>	<p><u>National Gender and Equality Commission</u> The Ministry of Education already has a Directorate of Special Needs Education that is functional.</p> <p>The advisory board proposed to be established needs to be independent of the ministry and should consist of persons who have expertise on special Education including KICD, TSC, KISE, KNEC, KASNEB etc.</p>	

NEW PART	PART VII— DEVELOPMENT AND FINANCING OF SPECIAL NEEDS EDUCATION	Prof Michael Ndurumo Create new Part VII 'SPECIAL EDUCATION RESOURCE CENTRES'	Prof Michael Ndurumo Transfer here functions delineated in Clause 23(1)- 23(4)	
Clause 23	Creation of Special Education Resource Centres	National Gender and Equality Commission Propose to Amend sub clause (1), by substituting the term "Education Resource Centre" with "Functional Education Assessment Research Centres" and insert after the word "County ", the following "Sub Counties"	National Gender and Equality Commission To align with the terminology in The Basic Education Act Section 46 which is "Education Assessment Research Centres" Many counties currently don't have functional EARC's.	
		Council of Governors Proposed amendment — The Cabinet Secretary shall, in consultation with the county governor, establish a special needs education resource centre in every county and shall ensure that the centre is properly and adequately staffed with appropriate qualified personnel and equipment.	Council of Governors There is need for intergovernmental consultation in the execution of the special needs education function as disability mainstreaming is a shared function.	
NEW PART		Prof Michael Ndurumo Create new part 'IMPLEMENTATION MECHANISMS'	Prof Michael Ndurumo Transfer here Clauses 24-30	
Clause 24	Infrastructure			
Clause 25	Provision of materials and equipment in special needs education			
Clause 26	Establishment of county co-ordination mechanisms			
Clause 27	Technical assistance and personnel training			
Clause 28	Training of special needs education teachers	Teachers Service Commission Proposal that this clause be rewritten or deleted	Teachers Service Commission Under Article 237, TSC has the mandate to only register trained Teachers.	

			<p>Registration of Teachers is already provided for under Section 23 of the TSC Act Teaching without a registration certificate is already an offence under section 44 of the TSC Act. This Section connotes posting of an officer to teacher in SNE Institution which is contrary to the TSC Act. It is only registered teachers who can undertake Curriculum delivery.</p>	
Clause 29	Role of the Teachers Service Commission	<p>Teachers Service Commission Proposed deletion of clause 29(a)</p>	<p>Teachers Service Commission This role is already provided for at Article 237 (2) (c) of the Constitution and Regulation 63 (3) of the Code of Regulations for Teachers. (CORT) The CORT provides that the "Commission may on appointing a teacher, post the teacher to serve in any educational institution in which it considers the Teacher qualified to teach."</p>	
		<p>Teachers Service Commission Proposed deletion of clause 29(b)</p>	<p>Teachers Service Commission Employment and posting of teachers is subjected to budgetary provisions appropriated by the National Assembly. Creating a statutory/legal obligation on the Commission in matters related to budgetary provisions may not be tenable and will expose the Commission to numerous litigations.</p>	
		<p>Teachers Service Commission Proposed deletion of clause 29(c)</p>	<p>Teachers Service Commission This is clause is already provided for at section 15 (6) of the Persons with Disabilities Act and Regulation 161(2) of CORT</p>	

			and is already being implemented.	
		<u>Teachers Service Commission</u> Proposed deletion of clause 29(d)	<u>Teachers Service Commission</u> This is also provided for under Regulation 95 of the Code of Regulations for Teachers and is also already being implemented. It is also advisable that issues relating to the terms and conditions of employment and Remuneration to comply with the Constitutional provisions under Article 234 of the Constitution.	
Clause 30	Training of non-teaching staff	<u>National Gender and Equality Commission</u> Amend by inserting an additional sub-clause as follows— 2. The Ministry shall establish a register of all the non-teaching staff and put in place mechanisms for their supervision.	<u>National Gender and Equality Commission</u> The mechanism is crucial to monitor cases of abuse and violation of the rights of learners with special needs and more so in residential institutions. This provision will require either guidelines or regulations detailing the recruitment process which includes vetting, the registration and black listing of offenders etc.	
Clause 31	Funding of special needs educational institutions			
Clause 32	Procedures and processes for funding of special needs education			
Clause 33	Responsibility of governing bodies			
Clause 34	Financial records and statements			
Clause 35	Disqualification from receiving funding			
Clause 36	Levy of Fees			
Clause 37	Quality assurance in special needs education			
Clause 38	Role of the county government in quality assurance	<u>Prof Michael Ndurumo</u> Proposed clause 38(2)	<u>Prof Michael Ndurumo</u> Add the Universities Act.	

Clause 39	Assessment	<u>National Gender and Equality Commission</u> Proposed deletion of clause 39 and amendment of clause 11 by inserting the deleted provisions of clause 39	<u>National Gender and Equality Commission</u> Inserted under Clause 11 on admission to an institution.	
Clause 40	Rights of special needs education institutions on public land			
Clause 41	Prohibition of alienation of land used by public special needs educational institutions			
Clause 42	Private special needs educational institutions			
Clause 43	Declaration of eligibility as special needs education institutions			
Clause 44	Registration of home-based special education learners			
Clause 45	Government financial aid to institutions catering for special educational needs	<u>Prof Michael Ndurumo</u> Proposed amendment to clause 45	<u>Prof Michael Ndurumo</u> Amend to include learners in vocational, institutes, colleges, and universities	
Clause 46	Regulations	<u>Prof Michael Ndurumo</u> Proposed general amendment	<u>Prof Michael Ndurumo</u> Amend to include learners in vocational, institutes, colleges, and universities	
Clause 47	Offences	<u>National Gender and Equality Commission</u> Proposed amendment to ensure that the offences are aligned with section 92 of the Basic Education Act, 2013— 92. Any person who commits an offence under this Act for which no other penalty is provided is liable— (a) in the case of a first conviction, to a fine not exceeding two hundred thousand shillings or a term of imprisonment not	<u>National Gender and Equality Commission</u> The Basic Education Act and other laws referenced to are the primary legislation and so the sector law should be aligned. The Basic Education Act also has provision for an Education Appeals Tribunal which should also be referenced to in the proposed Bill. The penalties need to be 1. Proportional to the offence or breach and	

		<p>exceeding twelve months, or both; and (b) in any other case, to a fine not exceeding three hundred thousand shillings or a term of imprisonment of not exceeding twelve months or both.</p>	<p>2. not to cause undue suffering to the learner and to the caregiver.</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed general amendment</p>	<p><u>Prof Michael Ndurumo</u> Amend to include learners in vocational, institutes, colleges, and universities</p>	
		<p><u>Prof Michael Ndurumo</u> Proposed general amendment</p>	<p><u>Prof Michael Ndurumo</u> Amend clause 47(a)-47(e) replace word child/children with learner/learners</p>	
Clause 48	Consequential amendments	<p><u>Prof Michael Ndurumo</u> Proposed general amendment</p>	<p><u>Prof Michael Ndurumo</u> Amend to include learners in vocational, institutes, colleges, and universities</p>	
Proposed additional clauses	Clause on Disaster Risk mitigation	<p><u>Kenya Union of the Blind</u> A proposed clause to include Disaster Risk Reduction</p>	<p><u>Kenya Union of the Blind</u> The Bill should include provisions that promote inclusive disaster risk mitigation efforts in special schools and units.</p>	
Proposed additional definition	Definition	<p><u>National Gender and Equality Commission</u> “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.</p>	<p><u>National Gender and Equality Commission</u> Reasonable accommodation in all aspects of life is what enables persons with special needs to fully enjoy the available rights on the same basis and proportions as others.</p>	
Proposed additional definition	Definition	<p><u>National Gender and Equality Commission</u> “Special needs” means various difficulties including physical,</p>	<p><u>National Gender and Equality Commission</u> For clarity purposes of the target beneficiary. The proposed additional term</p>	

		emotional, behavioural, or learning disability or impairment that cause an individual to require additional or specialized services or accommodations such as in education or recreation.	‘Special needs’ is an independent stand-alone description denoting impairment or disability.
Proposed additional clause	Responsibility of parents	<p><u>National Gender and Equality Commission</u> Responsibility of Parents-;</p> <p>(1) It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child to a school as the case maybe, for the purposes of completion of the child’s basic education.</p> <p>(2) It shall be the duty of a parent or a guardian to ensure that the child attends school regularly as a pupil for the purposes of physical, mental, intellectual or social development of the child.</p> <p>(3) A parent or a guardian who fails to take his or her child to school as required without a reasonable cause commits an offence and shall be liable to a warning in the first instance and a fine not exceeding five thousand shillings for subsequent instances.</p> <p>(4) Parent or guardian will be expected to present within a reasonable time a reason to the satisfaction of the</p>	<p><u>National Gender and Equality Commission</u></p> <p>It is of utmost importance to include parents or guardians (or both) of the special needs learners who are the primary caregivers and to also regularly consult with them on any issues that need attention.</p> <p>It is also imperative to understand the various challenges the caregivers go through and not to subject them to penalties or consequences which they cannot afford or which will occasion unnecessary pain to the children.</p>

		institution and County Director of Education for the absence of his or her child at a school or institution of basic education.		
General Comment		<p>Teachers Service Commission Fundamental provisions relating to the SNE are already provided in the Basic Education Act (Part VI)</p>	<p>Teachers Service Commission There is need to either amend the provisions of the Basic Education Act to enhance its provisions as proposed in this Bill or delete the provisions of the BEA altogether. The BEA being the primary legislation amending its provisions may be more prudent than enacting a new law</p>	
General Comment		<p>Teachers Service Commission Overlap of functions between National and County Governments</p>	<p>Teachers Service Commission There is need to clearly comb the Bill to remove any overlap of functions between the two levels of Government</p>	

3. COMMITTEE OBSERVATIONS

The Committee made the following observations based on deliberations of the Bill and stakeholder input during public hearing and analysis of written submissions-

- 1) That, the Special Needs Education Bill, 2021 creates provisions of law that obligate the National Government through the Ministry of Education and the County governments to carry out their duties in bringing the special needs education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disability from the education cycle;
- 2) That, there is need to strengthen the mandates of institutions obligated to address issues affecting learners with disabilities and special needs such as Educational Assessment and Resource Centers (EARCs);
- 3) That, there is need to make provisions that will align the Special Education within all levels of Education, from primary to tertiary institutions;
- 4) That there is need to propose amendments that will explicitly provide for the roles of both the National and county governments to ensure the implementation and effective delivery of quality education for learners with special needs and disabilities.

4. COMMITTEE RECOMMENDATIONS

Based on the foregoing, the Committee therefore recommends that the following amendments be moved during the Committee of the Whole Stage-

1. CLAUSE 3

THAT clause 3 be amended—

- (a) in paragraph (a) by inserting the words “in all educational levels” immediately after the words “all learners in”; and
- (b) by inserting the following new paragraphs immediately after paragraph (e)—
 - (f) ensure a full transition for all learners with special education needs through all levels of education; and
 - (g) ensure accountability for quality special needs education and related services.

2. CLAUSE 4

THAT clause 4 be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) the right to free, compulsory and affirmative special education pursuant to Article 53 of the Constitution;
- (b) by deleting paragraph(d) and substituting therefor the following new paragraph—
- (c) and
- (d) in paragraph(e) by deleting the word “needs” appearing immediately after the word “special”

3. CLAUSE 5

THAT clause 5 of the Bill be amended—

- (a) by deleting paragraph (c) and substituting therefor the following new paragraph—
 - (c) use Kenyan sign language, braille and other specialized medium of instruction commensurate with the learner’s educational needs in all levels of education;
- (b) by inserting the following new paragraphs immediately after paragraph(d)—
 - (e) admission to any institution of learning and access to an inclusive, quality and free primary and secondary education on an equal basis with others and not to be excluded from the education system on the basis of disability;
 - (f) equal access to play, recreation and leisure and sporting activities, including those activities in the school system;
 - (g) equal treatment with the rest of the learners; and
 - (h) reasonable accommodation within the educational institutions providing special education.

4. CLAUSE 6

THAT clause 6 of the Bill be amended—

- (a) in sub-clause(2)(a) by inserting the words “at all levels of education” immediately after the words “learners with special needs”;
- (b) in sub-clause(2)(d) by inserting the words “at all levels of education” immediately after the words “census of learners”;
- (c) in sub-clause(2)(j) by inserting the words “online, virtual” appearing immediately after the words “continuing, alternative”; and

(d) in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (l)—

- (m) ensure the establishment of a “National Referral Education Assessment and Research Center”;
- (n) ensure adequate funding of special education;
- (o) ensure quality education for persons with disabilities;
- (p) ensure learners with disabilities are registered with the National Council for Persons with Disability;
- (q) ensure that the learners’ transition from one level of education to the next including to institutions of higher learning;
- (r) ensure there are available opportunities for attachment, apprenticeship, and internships for learners with special needs; and
- (s) ensure establishment of at least one boarding institution in each County.

5. CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by inserting the following new paragraphs—

- (l) work in collaboration with special education resource centres in the identification of children with special needs for the registration and access to essential services;
- (m) provide incentives for the development and management of special needs education institutions; and
- (n) provide appropriate locations for the establishment of centres for assessing special education needs learners;

6. CLAUSE 8

THAT clause 8 of the Bill be amended in sub-clause (1) by inserting the following new paragraph—

- (d) any other information necessary on the management of all special needs institutions in the county.

7. CLAUSE 9

THAT clause 9 of the Bill be amended in sub-clause (1) by inserting the words “the Technical and Vocational Education and Training Act, 2013 and the Universities Act, 2012” appearing immediately after the words “the Basic Education Act, 2013”.

8. CLAUSE 11

THAT clause 11 of the Bill be amended by inserting the following new sub-clause—

- (2) The principal manager or head of an education institution may require any person attending the special educational institution or applying for admission to the institution to undergo an assessment by a licensed medical practitioner or an educational assessment centre to determine the nature and the severity of the disabilities for the purpose of appropriate educational placement provided that the report submitted by a medical practitioner or an assessment centre shall not be used as the sole basis for placement of a learner to an educational programme or institution which may not be congruent to the learner’s special needs.

9. CLAUSE 12

THAT clause 12 be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause—

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

- (a) six persons elected from amongst parents of the learners at the education institution to represent parents of the learners in the school or local community;
- (b) two persons with experience in matters of special needs education and social work relating to special needs nominated by the County Governor on the recommendation of the County Education Board;
- (c) one representative of the teaching staff in the school elected by the teachers;
- (d) one representative of the non-teaching members of staff at the education institution;
- (e) one public officer nominated by the county executive committee member within the county;
- (f) in the case of a sponsored education centre, one representative of the sponsors of the school;
- (g) the head teacher or the most senior teaching staff of the education centre, who shall be an ex officio member; and
- (h) a representative of the students' council who shall be an ex officio member.

10. CLAUSE 19

THAT clause 19 of the Bill be deleted and substituted therefor with the following new clause—

Register of all learners with special educational needs	19. Every County Education Board shall maintain a register of all learners with special educational needs in their area of jurisdiction who are receiving domestic, medical, institutional or other special education services outside of regular school programmes as well as special educational needs learners who are not receiving any special education services.
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11. CLAUSE 28

THAT clause 28 of the Bill be deleted.

12. CLAUSE 29

THAT clause 29 of the Bill be deleted.

13. CLAUSE 47

THAT clause 47 of the Bill be amended by inserting the following new sub-clause—

- (3) Nothing in this section shall preclude a person found liable to penalties under this section from liability under section 92 of the Basic Education Act, 2013.

14. NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 5—

Responsibility
of parents

- 5A.** (1) It shall be the duty of every parent or guardian to admit or cause to be admitted their child to a school as the case maybe, for the purposes of completion of the child's basic education.
- (2) It shall be the duty of a parent or a guardian to ensure that their child attends school regularly as a pupil for the purposes of physical, mental, intellectual or social development of the child.
- (3) A parent or a guardian who fails to take their child to school as required without a reasonable cause commits an offence and shall be liable to a warning in the first instance and a fine not exceeding five thousand shillings for subsequent instances.
- (4) Every parent or guardian will be expected to present within a reasonable time a reason to the satisfaction of the institution and County Director of Education for the absence of their child at a school or institution of basic education.

15. CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting the definition of the term "advisory board" and substituting therefor the following new definition-
"Advisory Board" means the Special Education Advisory Board established under section 22 of this Act;
- (b) by deleting the definition of the term "continuing education" and substituting therefor the following new definition-
"continuing education" shall mean adult and continuing education as defined under section 2 of the Basic Education Act.
- (c) by deleting the definition of the term "learner with special needs" and substituting therefor the following new definition-
"learner with special needs" means a person who is undertaking special needs education as defined under section 2 of the Basic Education Act and includes learners with disability and gifted or talented learners;
- (d) by deleting the definition of the term ""resource centre" and substituting therefor the following new definition-
"education assessment and research centre" means a county special education resource centre established pursuant to section 18 of this Act;

(e) by inserting the following new definition immediately after the definition of the word “county board”-

“county executive committee member” means the county executive committee member responsible for matters relating to education within each county;

(f) by deleting the definition of the word “progreskelli Williams sive inclusion”

16. SHORT TITLE

THAT the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short title

1. This Act may be cited as the Learners with Disabilities Bill, 2021