

Original Article

Legal Fragmentation and Teacher Protection in South African Inclusive Education Classrooms: A Critical Document Analysis

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Abstract

Inclusive education in South Africa is based on constitutional rights to equality, dignity, and basic education, with teachers as key implementers. However, Teacher responsibilities are clearly defined, but the legal protections supporting these duties are fragmented across various frameworks. This study examines the extent to which South African legal and policy instruments protect teachers as rights-bearing professionals in inclusive education. This study is guided by a qualitative research approach within a critical interpretivist paradigm. A qualitative critical document analysis was conducted across Constitutional provisions, including sections 10 (dignity), 22 (freedom of profession), and 23 (fair labor practices), together with legislation, education policies, professional regulations, and international rights instruments. The study reveals that South African teachers bear significant responsibilities for inclusive education, but the legal protections they have are inconsistent across constitutional, labor, professional, and policy frameworks. This tension is most pronounced when teachers support learners with undiagnosed learning difficulties, where institutional safeguards are limited and responsibility risks becoming individualized. The study affirms that teacher protection is not separate from learner rights but forms part of the institutional conditions necessary for inclusive education to succeed. It demonstrates that safeguarding teachers' dignity, safety, and professional agency is essential to ensuring that learners' rights to participation and support are

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meaningfully realized. Teacher protection should not be treated as a peripheral employment issue but as a substantive component of inclusive education, necessary for lawful, safe, and effective implementation. This study contributes to international rights scholarship by reframing the argument that protecting teachers' rights is critical to ensuring learners' rights to participation and equality in inclusive education.

Keywords: inclusive education, professional rights, substantive equality, teacher protection, Ubuntu philosophy

1. Introduction

Inclusive education in South Africa rests on a constitutional commitment to equality, dignity, non-discrimination and the right to basic education (Republic of South Africa, 1996). Education White Paper 6 subsequently established inclusive education as a systemic transformation agenda, requiring the education system to respond to learner diversity and remove barriers to learning and participation (Department of Basic Education, 2001). The Policy on Screening, Identification, Assessment and Support (SIAS) further assigns schools and educators responsibilities for identifying barriers, coordinating support and responding to diverse learning needs (Department of Basic Education, 2014). These instruments place teachers at the center of implementation. Teachers identify emerging difficulties, adapt classroom practices, participate in support structures, communicate with families and contribute to decisions concerning learner support. Inclusive education, therefore, depends substantially on what teachers are expected to do within ordinary classrooms.

Although Education White Paper 6 is a policy instrument rather than primary legislation, it serves as the principal framework for implementing inclusive education in South Africa. The SIAS Policy similarly functions as a binding departmental policy governing procedures for identifying, assessing and supporting learners who experience barriers to learning. Together, these instruments operationalize constitutional and legislative commitments to equality and education within schools.

This extensive responsibility creates an important legal question. South African education policy articulates numerous responsibilities towards learners. However, teacher protection is distributed across constitutional, education, labor, occupational health and safety, professional and administrative frameworks. The Employment of Educators Act 76 of 1998 regulates the employment relationship, the Labor Relations Act 66 of 1995 protects fair labor practices, the Occupational Health and Safety Act 85 of 1993 establishes duties concerning workplace health and safety, while the South African Council for Educators Act 31 of 2000 regulates professional conduct (Republic of South Africa, 1993, 1995, 1998, 2000). These instruments provide important protections, but they were not developed as a single legal framework

specifically addressing the risks teachers encounter when implementing inclusive education. The result is a fragmented legal architecture in which teacher responsibility and teacher protection do not always appear within the same regulatory conversation.

The consequences of fragmented protection are especially evident when teachers must exercise professional judgment in the absence of clear diagnostic information. Such circumstances raise questions about the limits of teacher responsibility and the availability of institutional support. The problem becomes more pronounced when teachers support learners whose difficulties remain undiagnosed. Such learners might experience persistent academic, behavioral, or participation difficulties without receiving formal identification or specialized intervention. Mosala and Sefotho's (2025) work on undiagnosed learning difficulties demonstrates how learners can remain in mainstream classrooms while their support needs go insufficiently recognized. This situation places teachers in a difficult position between professional responsibility and limited institutional capacity. The teacher is expected to respond to the learner's needs; the teacher's ability to do so depends on access to support teams, specialist services, parental cooperation, appropriate resources and workable institutional procedures. Where these conditions are absent, responsibility risks becoming individualized. The teacher becomes accountable for an inclusive outcome produced through a system over which the teacher does not exercise complete control.

This study, therefore, examines legal protection for South African teachers working in inclusive education classrooms through critical qualitative document analysis. It analyses constitutional provisions, legislation, education policies, professional regulations and related legal instruments to establish what protections teachers receive, what responsibilities they carry and where tensions emerge between the two. The study argues that teacher protection should be understood as part of the infrastructure of inclusive education rather than as a separate employment concern. Protecting teachers does not diminish learners' rights. It creates the institutional conditions required for teachers to exercise their professional duties lawfully, safely and effectively. A credible, inclusive education system must therefore protect the learner's right to support while also protecting the teacher who is responsible for providing that support.

This study is guided by a rights-based professional protection framework that integrates “substantive equality” (Fredman, 2016), “institutional theory” (Amenta & Ramsey, 2010), and “Ubuntu philosophy” (Kamga, 2018). The framework begins from the premise that inclusive education creates reciprocal rights and responsibilities. Learners possess rights to equality, dignity, participation and educational support, while teachers possess professional and employment rights that must be protected as they fulfill their educational responsibilities (Republic of South Africa, 1996). Substantive equality is important because identical expectations placed on teachers do not yield fair outcomes when schools differ substantially in learner needs, resources, specialist support, and working conditions (Fredman, 2016). Institutional theory further directs attention to the structures through which teacher responsibilities are organized, monitored and supported (Amenta & Ramsey, 2010). The framework,

therefore, examines whether legal duties assigned to teachers are accompanied by corresponding institutional protections, resources and mechanisms for professional support.

Ubuntu provides the philosophical foundation for understanding the relationship between teacher protection and learner inclusion (Kamga, 2018). An Ubuntu-informed approach views education as a relational responsibility involving learners, teachers, families, schools and communities. Protecting teachers, therefore, does not compete with protecting learners. Teacher dignity, safety, and professional agency are among the conditions required for meaningful learner support. The framework conceptualizes inclusive education through four interconnected dimensions: teacher responsibility, teacher rights, institutional protection and learner outcomes. Teacher responsibility concerns the duties imposed through education law and policy. Teacher rights concern dignity, fair labor practices, safety, professional autonomy and procedural fairness. Institutional protection concerns resources, support structures, workload arrangements, referral mechanisms and employer accountability. Learner outcomes concern participation, support, educational access and belonging. The framework examines whether the shift from legal obligation to classroom practice is adequately protected. It also investigates whether teachers are expected to carry inclusive education responsibilities without corresponding institutional safeguards.

Ubuntu extends beyond learner support to encompass the dignity and well-being of teachers. An Ubuntu-informed workplace recognizes that teachers should not bear educational responsibilities in isolation. Supporting teachers through appropriate resources, professional development, safety measures and institutional assistance reflects the relational values of mutual respect, care and shared responsibility. Teacher protection is therefore consistent with Ubuntu's commitment to human dignity and collective flourishing.

The objective of this study is to critically examine the extent to which South African constitutional, legislative, labor, occupational health and safety, and professional frameworks protect teachers. Furthermore, it will explore how these frameworks support the implementation of inclusive education in mainstream classrooms. The study specifically analyses how legal and policy instruments define teacher responsibilities and establish professional and workplace protections. The study examines how these instruments allocate institutional obligations and address potential tensions between teachers' duties towards diverse learners. It also considers their own rights to dignity, safety, fair labor practices, professional support, and procedural fairness. Particular attention is given to the position of teachers supporting learners with undiagnosed learning difficulties. In these cases, responsibility for identifying and addressing learning barriers often arises before a formal diagnosis or specialist intervention. The study seeks to determine whether the existing legal architecture provides teachers with sufficiently clear and enforceable protections. It aims to assess whether these protections enable teachers to fulfill their inclusive education responsibilities without transferring systemic shortcomings onto individual teachers.

2. Literature Review

2.1 Teachers as rights-bearing professionals in inclusive education

Inclusive education literature has traditionally positioned teachers as central agents of educational transformation. This position is understandable because teachers translate legislation and policy into classroom practice. South Africa's Education White Paper 6 places educator development and support at the center of the transition towards an inclusive education system (Department of Education, 2001). SIAS similarly requires educators to participate in identifying barriers to learning and facilitating appropriate support (Department of Basic Education, 2014). Literature, therefore, establishes a strong professional responsibility for teachers. International scholarship, however, increasingly challenges approaches that place responsibility for inclusion primarily on individual teachers. Florian and Black-Hawkins (2013) argue for an inclusive pedagogy in which teachers extend learning opportunities rather than designing separate responses for selected learners. Ainscow (2020) similarly locates inclusion within wider institutional processes involving cultures, policies and practices. These perspectives shift attention from teacher effort alone towards the conditions under which teachers work.

This distinction matters in South Africa. Teachers operate within classrooms shaped by large learner numbers, unequal resources, limited specialist services and diverse learning needs. In many public schools, overcrowded classrooms and high learner-teacher ratios limit opportunities for individualized support and continuous monitoring of learner progress. These conditions may undermine the policy's inclusive intentions by reducing teachers' practical capacity to implement differentiated instruction and timely interventions. Engelbrecht et al. (2016) identify the complexity of implementing inclusive education in South African schools and highlight the importance of teachers' beliefs, competence, and systemic support. Donohue and Bornman (2015) likewise identify significant implementation challenges despite the country's progressive, inclusive education policy framework. Mosala and Sefotho's (2025) work adds an important dimension concerning learners whose difficulties remain undiagnosed. Their research on legal frameworks and teacher empowerment positions teachers as important actors in recognizing and supporting learners whose learning difficulties might not receive formal diagnostic recognition (Mosala & Sefotho, 2025b). Such learners pose particular professional demands because teachers often have to address observable learning barriers before specialized assessment becomes available. Literature, therefore, establishes teachers as rights-bearing professionals rather than merely policy implementers. Teachers possess professional, employment, and constitutional rights alongside their responsibilities towards learners. This dual position provides an important foundation for examining whether the legal framework adequately protects teachers while requiring them to implement inclusive education.

2.2 Teacher responsibilities under the inclusive education policy

South African inclusive education policy establishes extensive responsibilities for teachers. Education White Paper 6 requires transformation in curriculum, assessment, teaching approaches, educator development and support systems (Department of Education, 2001). SIAS provides a more specific framework for identifying barriers, assessing support needs and coordinating interventions (Department of Basic Education, 2014). Teachers, therefore, occupy an important position within the institutional chain through which learner support is initiated. SIAS specifically requires teachers to identify barriers to learning, document support needs, implement initial classroom-level interventions, engage parents and refer learners to the School-Based Support Team where additional support is required. These responsibilities place teachers at the entry point of the formal support process. The literature supports the importance of teacher responsibility. Forlin & Chambers (2011) found that teacher preparation and professional confidence influence the implementation of inclusive practices. Loreman (2007) similarly identifies teacher competence and school-level conditions as important components of successful inclusion. These studies demonstrate that inclusive education requires teachers to possess the knowledge and practical skills to respond to learner diversity. The South African evidence presents a more complex picture. Engelbrecht & Savolainen (2018) argue that teacher development remains central to the sustainability of inclusive education, particularly when teachers are uncertain about how to address diverse learning needs. The problem, therefore, extends beyond whether teachers accept inclusion. It concerns whether teachers receive the professional preparation, institutional support, and resources required to fulfill their responsibilities.

This issue becomes more complex when teacher responsibilities are interpreted alongside learner rights. Teachers must support learners' educational participation while respecting dignity, confidentiality, equality and non-discrimination. They must also comply with professional standards and school procedures. In practice, these responsibilities intersect with parental expectations, institutional policies and resource limitations. Mosala and Sefotho's (2025b) research on teacher empowerment through legal frameworks is particularly relevant here, as it connects teachers' responsibility to knowledge of the legal environment in which inclusive education operates. Their work suggests that legal awareness forms part of teacher capacity. A teacher who understands the scope of professional responsibility, learner rights and available institutional mechanisms is better positioned to respond to learning difficulties within lawful professional boundaries. Literature, therefore, reveals an important imbalance. Teacher responsibility receives substantial attention in inclusive education discourse, whereas the legal conditions that protect teachers as they exercise those responsibilities receive comparatively less scholarly attention. This imbalance provides an important rationale for the present study.

2.3 Legal protection and teacher vulnerability in inclusive classrooms

Teacher protection is generally addressed through employment and professional law rather than through inclusive education scholarship. South African teachers operate within a legal framework encompassing constitutional rights, labor protections, occupational health and safety requirements, professional regulation and education legislation (Republic of South Africa, 1993, 1995, 1998a, 2000). The Constitution provides the broader foundation through rights to equality, dignity and fair labor practices, while employment legislation establishes specific protections governing the employment relationship (Republic of South Africa, 1996). The legal framework is therefore substantial, yet its relevance to inclusive education requires closer examination. A teacher supporting a learner with significant learning or behavioral needs might simultaneously encounter professional duties, occupational risks, parental disputes, disciplinary expectations and institutional limitations. These circumstances create legal and professional complexity because the teacher's actions affect both learner rights and professional obligations. The literature on teacher well-being reinforces this concern. Skaalvik and Skaalvik (2017) demonstrate the relationship between teacher stress, emotional demands and working conditions. In inclusive classrooms, these pressures might increase when teachers lack specialist support or face substantial learner diversity. Such pressures should not be interpreted merely as problems of individual well-being. They also raise questions about institutional responsibility and the adequacy of workplace protections.

A practical example illustrates this tension. A teacher may be expected, under an inclusive education policy, to support a learner who is displaying persistent academic and behavioral difficulties despite the absence of a specialist assessment. While inclusive education policy encourages continued support and accommodation, labor and employment law do not necessarily provide corresponding mechanisms to reduce workload, provide specialist assistance, or clarify liability when interventions prove unsuccessful. The result is not a direct legal contradiction but a disconnect between educational expectations and available institutional protections.

South African scholarship similarly identifies the relationship between teacher capacity and systemic conditions. Engelbrecht et al. (2016) argue that inclusive education requires collaboration and support rather than expecting individual teachers to carry the full burden of implementation. This position is consistent with the systemic orientation of White Paper 6, which envisages support structures extending beyond individual classrooms (Department of Education, 2001). Undiagnosed learning difficulties provide a particularly important case. Mosala and Sefotho (2025) demonstrate how learners whose difficulties remain unidentified might experience academic vulnerability within mainstream schooling. The teacher is often the first professional expected to recognize the problem. However, the legal framework does not necessarily provide a single, clear pathway that explains the limits of teacher responsibility when formal identification, specialist assessment, or parental

cooperation is unavailable. Literature consequently reveals a significant conceptual gap. Teacher vulnerability is often discussed in terms of workload, stress, or professional competence, while legal scholarship focuses on employment rights and professional regulation. The intersection between these areas remains underdeveloped. Inclusive education requires an analysis of what happens when teachers are legally responsible for supporting learners within conditions where the institutional protections surrounding that responsibility are unclear or fragmented.

2.4 Gaps in the literature

Three gaps provide the rationale for this study. First, the inclusive education literature pays considerable attention to teachers' responsibilities, attitudes, competencies, and pedagogical practices, but considerably less to teachers as rights-bearing professionals. The teacher frequently appears as the implementer of learner rights rather than as a professional whose own rights require protection. Second, South African legal scholarship tends to examine educator employment, labor relations, professional misconduct and workplace regulation separately from inclusive education. This separation obscures the interaction between teacher protection and inclusive education responsibilities. A teacher might simultaneously operate under education law, labor law, professional regulation and occupational health and safety requirements, yet these frameworks are rarely examined as an integrated system. Third, limited attention has been given to teachers supporting learners with undiagnosed learning difficulties and whether existing legal frameworks adequately protect teachers undertaking these responsibilities. While recent scholarship explores teacher empowerment and legal literacy, insufficient attention has been paid to whether institutional protections align with the responsibilities assigned to teachers.

This is the central gap addressed by the present study. The issue is not whether teachers should support diverse learners. They should. The issue is whether the state and the education system provide teachers with sufficiently clear rights, procedures, resources, and institutional protections to fulfill those responsibilities.

The present study addresses these gaps through a critical analysis of South African constitutional, legislative, labor, occupational health and safety, professional, and inclusive education documents. It shifts the analytical question from 'What must teachers do?' towards a more demanding question: 'What legal protection does the education system provide teachers while requiring them to do it?' This shift positions teacher protection as a substantive component of inclusive education rather than a peripheral employment concern.

3. Methodology

This study is guided by a qualitative research approach within a critical interpretivist paradigm (Thanh & Thành, 2015). A qualitative approach was appropriate because the study sought to examine how South African legal and policy

instruments construct teacher rights, professional responsibilities and institutional protections within inclusive education. The study did not treat legal and policy documents as neutral texts. They were examined as institutional instruments that distribute rights, responsibilities, authority and accountability among teachers, schools, education departments, learners and parents. A qualitative critical document analysis design was utilized. Document analysis provides a systematic method for examining written sources and identifying their meaning, purpose, assumptions and institutional implications (Morgan, 2022). Critical document analysis was particularly appropriate because the study examines a potential tension between the responsibilities assigned to teachers and the protections available to them. The design enabled comparison across legal and policy instruments rather than examining individual documents in isolation.

The documentary corpus consisted primarily of authoritative South African constitutional, legislative, labor, occupational health and safety, professional and inclusive education instruments. International instruments were included where they provided relevant normative standards concerning education, disability, professional rights and non-discrimination. The principal documentary corpus comprised: Constitution of the Republic of South Africa; Labour Relations Act 66 of 1995; Basic Conditions of Employment Act 75 of 1997; Employment of Educators Act 76 of 1998; Occupational Health and Safety Act 85 of 1993; South African Schools Act 84 of 1996; South African Council for Educators Act 31 of 2000; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; Promotion of Administrative Justice Act 3 of 2000; Children's Act 38 of 2005; Education White Paper 6; Policy on Screening, Identification, Assessment and Support; South African Council for Educators Code of Professional Ethics; relevant Department of Basic Education inclusive education guidelines; Convention on the Rights of Persons with Disabilities; Convention on the Rights of the Child. The documents were classified according to their primary regulatory function. Constitutional instruments were examined for fundamental rights and principles. Legislation was examined for legally enforceable duties and protections. Education policies were examined for professional responsibilities and implementation expectations. Professional instruments were examined for standards governing educator conduct.

Purposive selection was used to identify documents directly relevant to teacher protection and inclusive education (Ahmad & Wilkins, 2024). Documents were included only if they satisfied three criteria: (1) they imposed obligations on teachers or educational institutions, (2) they conferred rights, protections, or procedural safeguards upon educators, and/or (3) they regulated inclusive education or learner support processes. Primary legal and policy sources were prioritized because the study investigates the formal architecture through which teacher rights and responsibilities are established. Secondary literature was used to interpret and contextualize the documentary findings rather than to replace primary legal evidence.

Data collection involved systematic retrieval, reading, and examination of the selected documents. Official versions of legislation and government policies were

prioritised to preserve the authoritative wording of the relevant provisions. Each document was first examined in its entirety to establish its purpose, scope, authority and relationship to teacher protection or inclusive education. Relevant provisions were then extracted and organized into an analytical dataset. The extraction process focused on textual references to: teacher rights; professional duties; employer obligations; learner rights; inclusive education; barriers to learning; learner support; reasonable accommodation; workplace safety; fair labor practices; professional accountability; disciplinary procedures; teacher workload; institutional support; referral mechanisms; parental responsibilities; procedural fairness. The researcher also recorded contradictions, overlaps, omissions and differences in terminology between documents. This approach enabled the analysis to identify both explicit protections and areas where teacher protection was insufficiently articulated. A document extraction matrix was developed. For each document, the researcher recorded the title, legal status, year, regulatory purpose, teacher responsibilities, teacher rights, institutional duties, support provisions and enforcement mechanisms. These entries formed the basis for subsequent thematic coding.

The documentary data were analyzed using critical thematic analysis informed by Braun & Clarke's (2006) approach and Morgan's (2022) principles of document analysis. The analysis proceeded through five stages. First, the researcher repeatedly read the documentary corpus to establish familiarity with its content. Second, relevant provisions were coded according to their substantive meaning and institutional function. Third, related codes were grouped into analytical categories. Fourth, categories were compared across constitutional, legislative and policy instruments. Fifth, broader themes were developed by examining the relationships among teacher responsibility, teacher rights, and institutional protection. The analysis was guided by five questions: What legal and professional responsibilities are assigned to teachers implementing inclusive education? What explicit rights and protections are afforded to teachers? What responsibilities are assigned to schools and education authorities in supporting teachers? Where do teacher responsibilities and legal protections converge or diverge? What gaps, contradictions or ambiguities emerge within the legal framework? The analysis moved beyond identifying whether a provision existed. It examined whether the provision provided a meaningful mechanism for protecting teachers in the circumstances in which inclusive education is implemented.

Critical analysis was used to examine the relationship between formal legal protection and institutional practice (Sankofa, 2022). The analysis considered both the presence and absence of legal provisions. Particular attention was given to situations where: teachers carry direct responsibility for learner support but depend on external specialists; teachers are accountable for professional decisions but have limited institutional authority; learner rights impose obligations on teachers without clearly corresponding employer responsibilities; professional accountability exists alongside inadequate resources; occupational risks intersect with inclusive classroom responsibilities; parents, schools, and teachers hold overlapping responsibilities for

learner support. This approach allowed the study to identify potential structural tensions rather than treating legal provisions as independent statements.

A cross-document comparison was conducted to examine how teacher protection changes across different areas of South African law and policy. The analysis followed four interconnected levels: Constitutional level: What fundamental rights protect teachers as employees and professionals? Employment and labor level: What protections govern the teacher's employment relationship? Professional level: What duties and standards govern educator conduct? Inclusive education level: What responsibilities are teachers expected to fulfill when supporting diverse learners? These levels were then compared with institutional responsibilities assigned to schools and education departments. This comparison was important because teacher protection does not exist within a single legal instrument. A teacher's legal position is constructed across multiple regulatory systems. The study, therefore, examined whether these systems operate coherently when applied to inclusive education.

The study addressed credibility, dependability, confirmability and transferability in accordance with established qualitative research principles (Admed, 2024). Credibility was strengthened through documentary triangulation. Constitutional provisions, legislation, education policies and professional instruments were compared rather than relying on a single source. Dependability was supported through a systematic record of document selection, extraction, coding and thematic development. An analytical audit trail was maintained to document decisions made throughout the research process. Confirmability was addressed by grounding interpretations in the specific provisions of the documentary corpus. The study distinguished between explicit legal requirements and the researcher's interpretation of relationships between provisions. Transferability was supported through detailed reporting of the documentary corpus, selection criteria and analytical procedures. The study does not claim statistical generalisability. Its purpose is analytical, namely to provide a critical understanding of how legal protection for teachers is constructed within the South African inclusive education framework.

The study involved no human participants and relied exclusively on publicly available legal, policy and professional documents. No personal data was collected. Ethical rigor was maintained through accurate representation of legal and policy provisions, appropriate citation and careful distinction between documentary evidence and interpretation. Legal provisions were not selectively presented to support predetermined conclusions. The analysis also recognized that teacher protection and learner protection are interconnected. The study therefore avoided framing teachers' rights against learners' rights. Instead, it examined whether the legal system creates conditions in which teachers are sufficiently protected to fulfill their responsibilities towards learners.

The strength of this study lies in analyzing teacher protection and inclusive education together, rather than separately, through the lens of labor law and educational policy. This approach stresses the critical intersection in the classroom where teacher responsibility and protection meet. The methodology investigates

whether South Africa's legal framework provides teachers with adequate clarity, support, and protection to implement inclusive education. It emphasizes that insufficient legal clarity and institutional resources can shift the responsibility of implementation from the education system to individual teachers. Thus, the analysis examines whether South African law either hinders or reinforces this shift in responsibility.

4. Results

The analysis found that legal protection for teachers in South Africa's inclusive education is scattered across various policies, highlighting a gap between the legal framework and teachers' practical clarity about their roles.

Theme 1: Teachers possess constitutional and professional rights

The first theme stresses that teachers are not just implementers of learner rights; they are professionals with rights protected by the South African Constitution, which guarantees the right to choose a profession and ensures fair labor practices.

“Every citizen has the right to choose their trade, occupation or profession freely.”
(Republic of South Africa, 1996, s. 22)

This provision establishes professional freedom as a constitutional right, while recognising that professional practice may legitimately be regulated.

“Every worker has the right to fair labour practices.”
(Republic of South Africa, 1996, s. 23(1))

The provision is important because teachers in inclusive education retain their constitutional labour rights, linking their responsibilities to learners with their rights as employees. The constitutional framework also protects dignity:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”
(Republic of South Africa, 1996, s. 10)

This protection applies to interactions among teachers, school management, parents, and education authorities, emphasizing that teacher accountability is linked to teachers' constitutional dignity. The Employment of Educators Act shows educator employment is governed by law. Its stated purpose includes the regulation of the:

*“ . . . conditions of service, discipline, retirement
and discharge of educators. . . ”*
(Republic of South Africa, 1998, p.1).

Teachers have legally protected professional interests and responsibilities towards learners. Thus, teacher protection is essential and forms part of the legal framework governing education.

Theme 2: Inclusive education places substantial responsibilities on teachers

The second theme emphasizes teachers' responsibilities in inclusive education, as outlined in White Paper 6, which presents it as a comprehensive commitment. It states:

*“ . . . all children and youth can learn and that
all children and youth need support.”*
(Department of Basic Education, 2001, p. 6)

The policy further defines inclusion through institutional responsiveness:

*“ . . . enabling education structures, systems and
learning methodologies to meet the needs of all
learners.”*
(Department of Basic Education, 2001, p. 55)

It also requires transformation of classroom practice:

*“ . . . changing attitudes, behavior, teaching
methodologies, curricula and the environment to
meet the needs of all learners.”*
(Department of Basic Education, 2001, p. 16)

Most importantly, the policy positions participation as an outcome of inclusion:

*“ . . . maximising the participation of all learners
in the culture and the curricula of educational
institutions and uncovering and minimising
barriers to learning.”*
(Department of Basic Education, 2001, p. 16)

Teachers must adapt to diverse learners' needs, focusing on support across contexts rather than relying solely on a standard curriculum or diagnosis. Teachers must maintain profiles and consult parents before referring to the SBST. Inclusive education is not just an institutional goal; it imposes specific responsibilities on teachers, especially those with undiagnosed learning difficulties, who play a crucial role in identifying and supporting these learners.

Theme 3: Teacher protection depends on institutional support

The third theme reveals that the inclusive education framework itself recognizes that teachers cannot implement inclusion in isolation. White Paper 6 explicitly acknowledges the need for different levels and forms of support:

“An inclusive education and training system is organized so that it can provide various levels and kinds of support to learners and educators.”
(Department of Basic Education, 2001, p. 16)

This finding challenges the view of teachers' responsibility, as the policy does not regard teachers as the sole providers of inclusive education. The policy further acknowledges the importance of system capacity:

“Believing in and supporting a policy of inclusive education are not enough to ensure that such a system will work in practice.”
(Department of Basic Education, 2001, p. 16)

It consequently calls for attention to existing resources and institutional capacity:

“. . . we will evaluate carefully what resources we already have within the system and how these existing resources and capacities can be strengthened and transformed. . .”
(Department of Basic Education, 2001, p. 16)

The DBE's support-team framework includes School-Based Support Teams for schools and District-Based Support Teams for professional assistance. The DBE explicitly describes the purpose of these structures as:

“District-based Support Teams (DBST) – Groups of departmental professionals whose responsibility it is to promote inclusive education through training, curriculum delivery,

*distribution of resources, identifying, assessing
and addressing barriers to learning, leadership
and general management.”*

(Department of Basic Education, 2014, p. 7)

It further indicates that:

*“School Based Support Teams (SBST's) – Teams
established by schools. . . whose primary
function is to put in place co-ordinated school,
learner and teacher/lecturer support services.”*

(Department of Basic Education, 2014, p. 7)

The documentary evidence, therefore, establishes an important principle: teacher responsibility is legally and policy-wise embedded within a wider institutional support system. Teachers may identify barriers for learners with undiagnosed difficulties, but often lack the expertise or resources to address them. The policy framework provides necessary support at the school and district levels.

Although policy documents establish SBSTs and DBSTs as support mechanisms, the documentary corpus provides limited detail regarding minimum staffing levels, response timelines, accountability measures or resource guarantees. Consequently, teacher access to support may depend on institutional capacity rather than explicit legal entitlement.

Theme 4: Teacher protection and inclusive education remain legally fragmented

The fourth theme explores the connection between teacher protections and inclusive education responsibilities in South Africa. While laws protect teachers and policies set high expectations, there is no clear framework to reconcile the two. The Constitution provides the foundational protection:

*“Everyone has the right to fair labour
practices.”*

(Republic of South Africa, 1996, s. 23(1))

Education legislation establishes the legal framework for teachers separately. The Employment of Educators Act regulates:

*“ . . . the conditions of service, discipline,
retirement and discharge of educators”*

(Republic of South Africa, 1998, p. 1)

Inclusive education policy, meanwhile, places teachers within an extensive support process. SIAS establishes:

“Through a set of forms, this policy outlines the protocol that has to be followed in identifying and addressing barriers to learning that affect individual learners throughout their school career.”

(Department of Basic Education, SIAS, 2014, p. 12)

This line reinforces that the SIAS process is structured as a step-by-step progression (teacher, SBST, DBST), ensuring learners receive support at different levels as needed. Additionally:

“Support provision can be provided along a continuum of intensity ranging from low to moderate to high.”

(Department of Basic Education, SIAS, 2014, p. 14)

DBE assigns the SBST to support class teachers, while the DBST offers broader support. The documentary corpus fails to provide a unified legal explanation of teachers' protections in inclusive education. While teachers do have protection, it is fragmented across various regulations. This fragmentation is significant as responsibilities shift downward, creating tension between teacher responsibilities and the support provided by institutional structures.

Further analysis suggests that fragmentation operates not only through separate legal instruments but also through separate enforcement mechanisms. Constitutional rights may be enforced through the courts; labor protections through bargaining councils and labor tribunals; professional issues through SACE disciplinary procedures; and inclusive education obligations primarily through administrative and departmental procedures. While these mechanisms individually provide protections, the documentary corpus reveals no single framework that integrates teacher rights with inclusive education responsibilities. The analysis therefore, identifies fragmentation primarily as an issue of legal coordination rather than the absence of legal protection.

5. Discussion

The findings demonstrate that the legal position of teachers in South African inclusive education is characterized less by an absence of protection than by a disconnection between responsibility and protection. The constitutional and legislative

framework recognizes teachers as rights-bearing professionals, while inclusive education policy positions them as key actors in identifying barriers, facilitating support and enabling learner participation. This creates a significant legal and institutional relationship: teachers are expected to give effect to learners' constitutional rights while simultaneously exercising their own rights to dignity, fair labor practices, professional recognition and safe working conditions. The central issue is therefore not whether teachers should be accountable for inclusive education, but whether that accountability is matched by the institutional conditions necessary to exercise it. This distinction is consistent with Ainscow's (2020) argument that inclusion is fundamentally a systemic process rather than an individual teacher intervention. It also extends South African scholarship by positioning teacher protection as part of the infrastructure that enables inclusive education.

The findings further indicate that South Africa's inclusive education policy assigns considerable responsibility to teachers without framing that responsibility as an isolated obligation. White Paper 6 envisages an education system in which educators, support personnel, schools and district structures collectively respond to barriers to learning (Department of Education, 2001). SIAS similarly establishes a structured process through which teachers identify barriers, implement classroom-level interventions and activate additional levels of support (Department of Basic Education, 2014). This is significant because it challenges interpretations of inclusive education that treat the teacher as the sole problem-solver. The teacher is an important point of intervention, but is not the entire support system. The implication is that when school or district support is absent, the resulting failure should not automatically be interpreted as teacher failure. Such an interpretation would individualize a systemic responsibility. Florian and Black-Hawkins (2013) similarly emphasize that inclusive pedagogy requires teachers to extend learning opportunities within a supportive pedagogical environment rather than carry responsibility for difference alone.

The issue becomes particularly acute for learners with undiagnosed learning difficulties. These learners often occupy an ambiguous position within the support system because their difficulties may be evident in classroom performance yet remain formally unidentified. Mosala and Sefotho's (2025) work on teacher empowerment through legal frameworks highlights the importance of enabling teachers to understand their responsibilities. This is especially crucial when supporting learners whose difficulties may not have received formal recognition. The present findings extend this argument by demonstrating that legal awareness must operate in both directions. Teachers require knowledge not only of what they are legally expected to do, but also of the institutional protections and escalation mechanisms available when their responsibilities exceed their professional authority or the resources available to them. Without this balance, inclusive education can unintentionally transform teachers into

a point at which systemic inadequacies become personalized. The teacher identifies the difficulty, attempts an intervention, communicates with the family, and initiates a referral. However, may have limited control over the specialist assessment, parental response, district intervention, or the allocation of resources that follow.

The fragmentation of teacher protection across labor, employment, occupational health and safety, professional and education law also has important implications. Fragmentation does not necessarily constitute a legal deficiency because different statutes serve different regulatory purposes. The concern is that teachers experience these frameworks simultaneously in the classroom, while the legal system often addresses them separately. A teacher dealing with a learner requiring intensive support may therefore be simultaneously subject to professional standards, employment obligations, learner rights requirements, occupational responsibilities, and administrative procedures. This complexity makes institutional support essential. Engelbrecht et al. (2016) have already demonstrated that the implementation of inclusive education in South Africa is shaped by contextual and systemic conditions. While Donohue and Bornman (2015) identify significant challenges in translating progressive policy commitments into practice. The present study adds a legal dimension to these findings: the sustainability of inclusive education depends in part on whether the legal system fairly distributes responsibility between teachers and the institutions that employ and support them.

Interpreted through Ubuntu philosophy, teacher protection and learner inclusion should not be viewed as competing priorities. Ubuntu emphasizes interconnectedness and mutual responsibility. Protecting teachers from unreasonable professional burdens contributes to the sustainability of inclusive education because learner participation depends upon teachers who are supported, respected and professionally empowered.

The broader implication is that teacher protection should no longer be treated as an issue external to inclusive education. Protecting teachers does not create a hierarchy in which teachers' interests compete with learners' rights. Rather, it recognizes that learner rights are implemented through relationships and institutions. An Ubuntu-informed understanding makes this interdependence particularly visible: the learner's well-being and dignity cannot be separated from the conditions under which the teacher works. A teacher who is professionally supported, legally informed and institutionally protected is better positioned to identify barriers, respond to diverse learning needs and sustain inclusive practice. On the other hand, where responsibility is transferred to individual teachers without adequate authority, resources or institutional support, the education system risks converting systemic shortcomings into individual professional accountability. The critical policy task is therefore to move from a model in which teachers are primarily told what they must do towards one in which teacher responsibility, teacher rights and institutional responsibility are

deliberately aligned. Sustainable inclusion requires not only protected learners, but also protected professionals capable of making those rights real.

6. Conclusion

This study critically examined the legal protections available to South African teachers who implement inclusive education. It utilized qualitative document analysis of constitutional, legislative, labor, occupational health and safety, professional, and inclusive education instruments. The analysis demonstrates that South Africa possesses a substantial legal foundation for protecting teachers. Simultaneously, it assigns them extensive responsibilities for identifying barriers, supporting diverse learners, and facilitating participation. The central finding, however, is that these two dimensions remain insufficiently integrated. Teacher responsibilities are clearly visible within inclusive education policy, whereas teacher protections are dispersed across multiple legal and regulatory frameworks. This creates a potential disconnect between what teachers are expected to accomplish and the institutional conditions in which they are expected to do so. The study argues that teacher protection should be understood as an integral component of inclusive education rather than as a separate employment concern. This is particularly important when teachers support learners with undiagnosed learning difficulties, where teachers may be required to recognize barriers and initiate support before specialist assessment or formal diagnosis occurs. As Mosala and Sefotho (2025) stress, teachers require appropriate legal knowledge and institutional support to respond effectively to learners whose difficulties may remain unidentified. Inclusive education cannot, therefore, be sustained by expanding teacher responsibilities without simultaneously strengthening professional protection, institutional authority, specialist support and accountability. Protecting teachers does not weaken children's rights. It strengthens the education system's capacity to realize them. A mature inclusive education framework must recognize the reciprocal relationship between learner rights and teacher protection. Policymakers should therefore move beyond fragmented regulation and develop a coherent framework that explicitly aligns teacher rights, institutional obligations and inclusive education responsibilities. Without such alignment, the implementation of inclusive education will continue to depend disproportionately on individual teacher capacity rather than systemic support.

7. Recommendations

The Department of Basic Education should develop and issue a national Teacher Protection and Inclusive Education Guideline that aligns White Paper 6, SIAS, labor legislation, professional ethics, and workplace safety requirements into a single

practical reference document for schools and districts. The Department of Basic Education should clarify teacher rights and responsibilities in inclusive classrooms, outlining relevant legal and educational requirements. Inclusive education duties should be shared among all educational support teams and departments. Teacher training should include legal literacy for inclusive education, covering learner rights, professional rights, and support procedures. Teachers need clear procedures for supporting students with persistent learning difficulties, ensuring the protection of documentation and the initiation of interventions, even without a formal diagnosis. SBSTs and DBSTs should provide genuine professional support and timely expertise for teachers. Inclusive education must ensure teacher safety by providing risk assessment and support for classroom risks. Schools should have clear procedures for addressing disagreements regarding learner support and accommodations, protecting parental rights, and ensuring that teachers are not vulnerable. Teacher accountability should separate individual negligence from systemic issues; documentary evidence suggests that institutional failures shouldn't be the sole basis for labeling teachers responsible. Education departments should ensure schools support teachers in implementing inclusive education effectively. Inclusive education should connect learner and teacher well-being, viewing teacher support as vital for achieving inclusion.

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Conflict of Interest Statement

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References

- Admed, S. (2024). The pillars of trustworthiness in qualitative research. *Journal of Medicine, Surgery, and Public Health*, 2, Article 100051. <https://doi.org/10.1016/j.glmedi.2024.100051>
- Ahmad, M., & Wilkins, S. (2025). Purposive sampling in qualitative research: A framework for the entire journey. *Quality & Quantity*, 59(2), 1461–1479. <https://doi.org/10.1007/s11135-024-02022-5>
- Ainscow, M. (2020). Inclusion and equity in education: Making sense of global challenges. *Prospects*, 49, 123–134. <https://doi.org/10.1007/s11125-020-09506-w>
- Amenta, E., & Ramsey, K. M. (2010). Institutional theory. In K. T. Leicht & J. C. Jenkins (Eds.), *Handbook of politics: State and society in global perspective* (pp. 15–39). Springer. https://doi.org/10.1007/978-0-387-68930-2_2
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101. <https://doi.org/10.1191/1478088706qp063oa>
- Department of Basic Education. (2014). *Policy on screening, identification, assessment and support*. <https://www.education.gov.za/Portals/0/Documents/Policies/SIAS%20Final%2019%20December%202014.pdf>
- Department of Education. (2001). *Education White Paper 6: Special needs education: Building an inclusive education and training system*. https://www.gov.za/sites/default/files/gcis_document/201409/educ61.pdf
- Donohue, D., & Bornman, J. (2015). South African teachers' attitudes toward the inclusion of learners with different abilities in mainstream classrooms. *International Journal of Disability, Development and Education*, 62(1), 42–59. <https://doi.org/10.1080/1034912X.2014.985638>
- Engelbrecht, P., & Savolainen, H. (2018). A mixed-methods approach to developing an understanding of teachers' attitudes and their enactment of inclusive education. *European Journal of Special Needs Education*, 33. <https://doi.org/10.1080/08856257.2017.1410327>
- Engelbrecht, P., Nel, M., Smit, S., & Van Deventer, M. (2016). The idealism of education policies and the realities in schools: The implementation of inclusive education in South Africa. *International Journal of Inclusive Education*, 20. <https://doi.org/10.1080/13603116.2015.1095250>
- Florian, L., & Black-Hawkins, K. (2011). Exploring inclusive pedagogy. *British Educational Research Journal*, 37(5), 813–828. <https://doi.org/10.1080/01411926.2010.501096>

- Forlin, C., & Chambers, D. (2011). Teacher preparation for inclusive education: Increasing knowledge but raising concerns. *Asia-Pacific Journal of Teacher Education*, 39(1).
<https://doi.org/10.1080/1359866X.2010.540850>
- Fredman, S. (2016). Substantive equality revisited. *International Journal of Constitutional Law*, 14(3), 712–738. <https://doi.org/10.1093/icon/mow043>
- Kamga, S. D. (2018). Cultural values as a source of law: Emerging trends of ubuntu jurisprudence in South Africa. *African Human Rights Law Journal*, 18(2), 626–649. <https://doi.org/10.17159/1996-2096/2018/v18n2a9>
- Loreman, T. (2007). Seven pillars of support for inclusive education: Moving from ‘why?’ to ‘how?’. *International Journal of Whole Schooling*, 3(2). <https://files.eric.ed.gov/fulltext/EJ847475.pdf>
- Morgan, H. (2022). Conducting a qualitative document analysis. *The Qualitative Report*, 27(1), 64–77. <https://doi.org/10.46743/2160-3715/2022.5044>
- Mosala, M., & Sefotho, M. M. (2025a). Education is education if it is available to everyone. *Journal of Research in Special Educational Needs*, 26(1). <https://doi.org/10.1111/1471-3802.70051>
- Mosala, M., & Sefotho, M. M. (2025b). Examining teachers’ responsibilities and rights in implementing inclusive education within the legal framework. *International Journal of Special Education*, 40(1). <https://doi.org/10.52291/ijse.2025.40.9>
- Republic of South Africa. (1993). *Occupational Health and Safety Act 85 of 1993*.
<https://www.gov.za/documents/occupational-health-and-safety-act>
- Republic of South Africa. (1995). *Labour Relations Act 66 of 1995*.
<https://www.gov.za/documents/labour-relations-act>
- Republic of South Africa. (1996). *Constitution of the Republic of South Africa, 1996: Chapter 2, Bill of Rights*. <https://www.gov.za/documents/constitution/chapter-2-bill-rights>
- Republic of South Africa. (1998). *Employment of Educators Act 76 of 1998*.
https://www.gov.za/sites/default/files/gcis_document/201409/19320.pdf
- Republic of South Africa. (2000). *South African Council for Educators Act 31 of 2000*.
<https://www.gov.za/documents/south-african-council-educators-act>
- Sankofa, N. (2023). Critical method of document analysis. *International Journal of Social Research Methodology*, 26(6). <https://doi.org/10.1080/13645579.2022.2113664>
- Skaalvik, E. M., & Skaalvik, S. (2017). Still motivated to teach? A study of school context variables, stress and job satisfaction among teachers in senior high school. *Social Psychology of Education*, 20. <https://doi.org/10.1007/s11218-016-9363-9>

Thanh, N. C., & Thanh, T. T. L. (2015). The interconnection between interpretivist paradigm and qualitative methods in education. *American Journal of Educational Science, 1*(2), 24–27.

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