

SPECIAL ISSUE

Kenya Gazette Supplement No 6 (Nairobi County Bills No. 5)



REPUBLIC OF KENYA

NAIROBI CITY COUNTY ASSEMBLY
OFFICE OF THE CLERK
TABLES & JOURNALS
BILLS FIRST READING

07 SEP 2021

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KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2021

NAIROBI, 28th April, 2021

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**THE NAIROBI CITY COUNTY EARLY CHILDHOOD
DEVELOPMENT AND EDUCATION BILL, 2021**

A Bill for

AN ACT of the Nairobi City County Assembly to make provisions for comprehensive pre-primary schooling and Early Childhood Development Programmes so as to achieve the goals of basic Education for all residents and for connected purposes.

ENACTED by the Nairobi City County Assembly, as follows—

Short title

1. This Act may be cited as the Nairobi City County Early Childhood Development and Education Act, 2021.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“basic education” means the educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic education and education offered in pre-primary educational institutions;

“child” has the meaning assigned to it under Article 260 of the Constitution;

“County education Board” means the Board established under section 4 of this Act;

“Education Standards and Quality Assurance Commission (ESQAC)” means the Commission established under Section 62 of the Basic Education Act, No. 14 of 2013;

“County Education Board” Means the board established under section 17 of the Basic Education Act, No. 14 of 2013;

“County director of early childhood education” means a director appointed to coordinate the early childhood education matters in the county;

“Curriculum” means all the approved subjects taught or programmes offered and includes all the activities provided at any institution of basic education;

“Early Childhood Development” means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school-going age;

“Education, Standards and Quality Assurance Council” means the Council established under section 64 of the Basic Education Act, No. 14 of 2013 of which the County Education Board shall with the approval of the relevant county department establish a county office;

“Executive Committee Member” Means the County Executive Committee Member for the time being responsible for matters related to basic education and Training;

“head teacher” means the lead educator or administrator of an early childhood education centre;

“institution of basic education and training” means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility an education centre and academy;

“out of school youth” means a person who has attained the age of eighteen years but has not attained thirty five years and who is not engaged in learning in the formal education system;

“parent” means a mother, father or guardian of a child and includes any person who is responsible under the law to maintain a child or is entitled to a child’s custody;

“pre-primary education” means education offered to a child of four or five years before joining level one in a primary school;

“private school” means a school established, owned or operated by private individuals, entrepreneurs and institutions;

“Pupil” means a child enrolled in a basic education institution; “school” means an institution registered under this Act that meets the basic prescribed standards;

“special needs education” includes education for gifted or talented learners as well as learners with disability and includes education which 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;

“special school” means a school established for the benefit of a particular class of children who require some special form of education, treatment or care.

Guiding Principles

3. The provision of pre-primary school education shall be guided by the following values and principles—

- (a) The right of every child to free and compulsory pre-primary school education;
- (b) Equitable access for the child to pre-primary school education;
- (c) Promotion of quality and relevant education;
- (d) Protection of every child against discrimination
- (e) Protection of the right of every child in the public school to equal standards of education including the medium of instruction used in school for all children of the same educational level; and
- (f) Ensuring human dignity and integrity of persons engaged in the management of pre-primary school education.

PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF NAIROBI COUNTY EDUCATION BOARD

Establishment of the Board

4. (1) There is established a Board to be known as the Nairobi City County Education Board.

(2) The Board established under subsection (1) shall be an agent of the National Education Board.

Functions of the Board

- 5.** (1) The functions of the Board shall be to—
- (a) advise the Executive Committee Member, the department of education and related departments on policy matters in respect to Education
 - (b) oversee in consultation with other departments of the county government, the operation and management of youth polytechnics, pre-primary education including early childhood care and education programmes in the county;
 - (c) coordinate and monitor education and training in the County on behalf of the national government;
 - (d) interpret national policies in education based on the county's needs;
 - (e) initiate proposals for policy reforms;
 - (f) plan, promote, develop, and coordinate education, training and research in the county in accordance with the provisions of this Act, the Basic Education Act, the national education policy and the laws and policies of the county government;

- (g) collaborate with the Board of Management, the Principal, the Head Teacher, and other appropriate authorities in the management of schools;
- (h) register and maintain a data bank of all education and training institutions within the county;
- (i) monitor curriculum implementation in basic education in the county;
- (j) monitor the conduct of examinations and assessments at the basic education and training levels in the county in collaboration with all the relevant national bodies;
- (k) working with all relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed and that the County government facilitate the realization of the right to education by all people;
- (l) the initiation of guidelines for approval by the Executive Committee Member on the establishment of ECD centres;
- (m) putting measures in place to ensure all children attend and remain in school to complete basic education requirements;
- (n) collaboration with the Quality Assurance and Standards Council, Teachers Service Commission and with other stakeholders to promote standards in basic education and training for students and teachers; and
- (e) any other matter as shall be from time to time be referred to the Board by the Executive Committee Member.

(2) The Nairobi County Education Board shall generate and cause to be published an annual report on the state of education and service delivery in the County.

(3) The County Education Board may in consultation with the National Education Board and relevant stakeholders appoint a sub county education office with clear functions and powers.

Conduct of business and affairs of the Board

6. (1) The Conduct and regulation of the affairs of the County Education Board shall be as provided in the Regulations.

(2) The County Education Board may regulate its own procedure with approval of the County Executive Committee Member.

(3) In carrying out its functions, the County Education Board shall work in consultation and cooperation with the National Education Board.

Composition of the Board

7. (1) The County Education Board shall consist of a Chairperson and 8 other members appointed by the County Executive Committee Member in accordance with the provisions of this Act, through an open and competitive process and shall include—

- (a) the Chief Officer in Charge of Education in the County Government who shall also be the Chairperson to the Board;
- (b) the County Director of Education or his or her representative who shall be the Secretary to the Board;
- (c) an educationist of at least five years standing in Basic Education and Training in the county;
- (d) a representatives of Kenya Private Schools Association;
- (e) a representative of the Teachers Service Commission;
- (f) a representative of the religious organisations with experience in Basic Education and Training;
- (g) a representative of people with disabilities with ten years standing in Basic Education and Training;
- (h) a representative of a civil society organisations dealing with matters of children rights, education and training.

(2) In appointing persons as members of the County Education Board, the County Executive Committee Member shall observe the principle of gender equity, regional, ethical and religious balance, transparency, openness and competitiveness and shall have due regard to the principle of equal opportunities for persons with disabilities.

(3) A person shall be qualified for appointment a member of the Board if such person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least ten years' experience in matters relating to education;
- (c) has had a distinguished career in their respective fields; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) All members of the County Education Board shall have a minimum qualification of post-secondary education certificate.

Tenure

8. The Board shall serve for a term of five years and shall be eligible for reappointment for one further one term of five years.

Remuneration of the County Education Board

9. The members of the County Education Board shall be paid such allowances and disbursements for expenses as may be approved by the County Executive Committee Member in consultation with the County Treasury and the Salaries and Remuneration Commission.

Committees of the Board

10. (1) A County Education Board may establish such committees as may be appropriate to perform such functions and discharge such responsibilities as it may determine.

(2) Without prejudice to the provisions of sub-section (1) the County Education Board shall set up specialized committees on—

- (a) finance, audit and human resources;
- (b) basic education;
- (c) special needs education;
- (d) early childhood care and education;
- (e) vocational institutions and youth polytechnics;
- (f) standards and quality assurance;
- (g) assessment and examinations;
- (h) dispute resolution; and
- (i) human rights and gender.

Consultation with Experts

11. The County Education Board may from time to time consult with experts as it is satisfied possess skills and experience to assist in the discharge of the functions of the County Education Board.

Reporting

12. (1) The County Education Board shall submit an annual report to the County Executive Committee Member detailing the activities and new registrations undertaken by the Board in that year.

(2) Notwithstanding subsection (1), County Executive Committee Member may, at any time, require a report from the County Education Board on a particular matter.

PART III—FREE AND COMPULSORY PRE-PRIMARY SCHOOL EDUCATION

Role of the County Executive Member

13. (1) The Executive Committee Member shall implement the right of every child to free and compulsory pre-primary school education.

(2) The Executive Committee Member shall in consultation with the County Education Board provide for the establishment of—

- (a) pre-primary education centres within a reasonably accessible distance within the county;
- (b) Special integrated and inclusive schools for learners with disability.

Free tuition

14. (1) A public pre-primary school shall not charge or cause any parent or guardian to pay tuition fee for or on behalf of any pupil in the school.

(2) Notwithstanding the provisions of subsection (1), tuition fee may be charged to persons who are not Kenyan citizens.

(3) Notwithstanding the provisions of this section, charges may be imposed at a public pre-primary school with approval of the Executive Committee Member in consultation with the County Education Board and the county education board provided that no child shall be refused to attend school because of failure to pay such charges.

(4) A person shall not collect levies without issuing an official receipt.

Duty of parents and guardians

15. (1) Every parent or guardian shall cause to be presented for admission or cause to be admitted his or her child, as the case may be, to a pre-primary education institution.

(2) Where a parent or guardian defaults in the discharge of his or her responsibility under sub-section (1), such a parent or guardian commits an offence and is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(3) A parent or guardian shall have the right to participate in the character development of his or her child.

Free admission

16. A person shall not charge or collect any fee while admitting a child to a public pre-primary school.

Proof of age for admission

17. (1) For the purpose of admission to a pre-primary, the age of a child shall be determined on basis of the birth certificate issued in accordance with the provisions of the Births and Deaths Registration Act, Chapter 149, Laws of Kenya, or the attainment of the school going age of three years on the basis of such other document, as may be prescribed under Regulations.

(2) A child shall not be denied admission in a school or pre-school education institution for lack of proof of age.

Period of admission and prohibition of discrimination

18. (1) A child shall be admitted in a school at the commencement of the academic year or within such other extended period as may be prescribed by a basic education institution.

(2) A school or person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture.

Incentives and prohibition holding back or expulsion

19. (1) Pupils shall be given appropriate learning incentives to learn and complete pre-primary school education.

(2) A pupil admitted in a school, subject to provisions of this Act shall not be held back in any class or expelled from pre-primary school.

Prohibition against physical punishment and mental harassment to the child

20. (1) A pupil shall not be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological.

(2) A person, who contravenes the provisions of subsection (1), commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or both.

Holiday tuition

21. (1) A pupil shall not be subjected to holiday tuition.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year or to both.

Responsibility of the Executive Committee Member

22. The Executive Committee Member shall—

- (a) ensure free and compulsory pre-primary education to every child in the county;
- (b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering pre-school education;
- (c) children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing pre-school education;
- (d) subject to the availability of resources, progressively provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms;
- (e) subject to the availability of resources, progressively provide infrastructure including schools, learning and teaching equipment and appropriate financial resources;
- (f) ensure quality pre-school education conforming to the set standards and norms; provide special education and training facilities for talented and gifted pupils and pupils with disabilities;
- (g) ensure compulsory admission, attendance and completion of pre-school education by every pupil.
- (h) monitor functioning of schools; and
- (i) advise the County government on financing of infrastructure development for pre-school education.

Duty of head teacher

23. (1) Where a pupil fails to attend school, the Head teacher shall cause investigation of the circumstances of the child's absence from school.

(2) Where the Head teacher finds there are no reasonable grounds for the child's failure to attend school, the head teacher shall—

- (a) issue a written notice to the parents of the child requiring them to comply with the provisions of this Act; and
- (b) submit a report on the child to the county education board.

PART III—SYSTEM AND STRUCTURE OF PRE-PRIMARY SCHOOL EDUCATION

Pre-primary school education and ECD training

24. The Executive Committee Member shall promote pre-school education and training of ECD teachers in the county under the following system and structure—

- (a) Pre-primary education; and
- (b) ECD teacher training colleges.

Administrative requirements

25. The service provider for every licensed early childhood education service shall keep, and avail to the Executive Committee Member on request—

- (a) a register of the children who attend or have attended the service provider, specifying the date of birth of each;
- (b) a record of the attendance of children at the service provider;
- (c) a record of all fees and other charges paid in respect of children's attendance at the service provider; and
- (d) any other records that are necessary to enable the service provider's performance to be monitored adequately.

Structure of education

26. (1) The system shall be so structured as to enable learners to access education and training at any level in a sequence, and at a pace that may be commensurate with the individual learner's physical, mental and intellectual abilities and the resources available.

(2) The Executive Committee Member in consultation with the County Education Board and other relevant stakeholders shall make Regulations prescribing an appropriate structure for education and training.

(3) The Executive Committee Member shall upon advice of the County Education Board advise the county government on the promotion of environmental protection education for sustainable development.

Curriculum framework

27. (1) The executive Committee member may prescribe a curriculum framework for licensed early childhood services in consultation and in alignment with the current national curriculum framework developed by the Ministry of Education and Kenya Institute of Curriculum Development.

(2) The Executive Committee Member may not prescribe a curriculum framework or amend any prescribed curriculum framework, unless the Executive Committee Member has consulted with those organisations that appear to the Executive Committee Member to be representative of persons likely to be substantially affected by the curriculum framework or the amendment, as the case may be.

(3) As soon as practicable after prescribing or amending a curriculum framework, the Executive Committee Member shall publish a notice in the *Gazette*—

- (a) stating that a curriculum framework has been prescribed or, as the case may be, amended; and
- (b) setting out the curriculum framework or the amendment to the curriculum framework in its entirety, or stating where or how a copy of the curriculum framework or the amendment to the curriculum framework can be obtained by the public.

(4) Without limiting the generality of subsection (1), a notice under subsection (3) may—

- (a) specify different commencement dates for different provisions of the curriculum framework or for different purposes;
- (b) specify a transitional period during which service providers may elect to comply with another specified curriculum requirement and specify a date on which service providers shall comply with the curriculum framework; and
- (c) specify a transitional timeline of one (1) year for implementation of the curriculum framework by the service providers.

(5) If a curriculum framework is prescribed under this section, every service provider for a licensed early childhood service to whom that curriculum framework in accordance with any requirements prescribed in regulations made under this Act.

Categories of schools

28. Pre-primary school educational institutions shall be categorized as—

- (a) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions; and
- (b) public schools which are schools established owned or operated by the Government and includes sponsored schools.

(2) A public basic education institution shall not be converted to a private basic education institution or to any other private status without consultation with the County Education Board and approved by the Executive Committee Member, on advice from the County Education Board.

PART IV—PROMOTION OF SPECIAL NEEDS PRE-PRIMARY SCHOOL EDUCATION

Establishment and management of special pre-primary school institutions

29. (1) Subject to the Constitution and the provisions of this Act, the Executive Committee Member shall establish and maintain public special pre-primary schools.

(2) The Executive Committee Member shall provide special needs education in special schools established under this subsection (1) or in pre-primary school suitable to the needs of a child requiring special education.

(3) Children with special needs include—

- (a) intellectually, mentally, physically, visually, emotionally challenged or hearing impaired learners;
- (b) pupils with multiple disabilities; and
- (c) specially gifted and talented pupils.

(4) The Executive Committee Member shall ensure that every special school or educational institution with learners with special needs is provided with appropriate trained teacher, non-teaching staff, infrastructure, learning materials and equipment suitable for such learners.

Regulations in Special needs education

30. The Executive Committee Member shall make Regulations for the establishment and management of special schools and institutions offering special needs education to pupils with special needs.

Duty of county education Board to provide child guidance services

31. (1) The County Education Board shall in consultation with the county government provide for education assessment and research centres including a special need service in identified clinics in the county.

(2) For the purposes of subsection (1), special needs services shall include—

- (a) the study of children with special education needs within the county;
- (b) the giving of advice to parents and teachers as to appropriate methods of education for such children;

- (c) in suitable cases, provision for the special education needs of such children in the identified clinics and the giving of advice to county education boards regarding the assessment of the needs of any child under special needs education for the purposes of any of the provisions of this Act.

Reporting of child with special needs to county Education Board

32. (1) The relevant director shall, in relation to each child with special needs belonging to schools in their area, and the provisions to benefit him or her after he or she completes pre-school education, make a report to the County Education Board.

(2) The director's report to the County Education Board under subsection (1) shall include—

- (a) recommendations as to whether the child would benefit from school education after he or she completes preschool education;
- (b) a summary of the child's impairments or talent;
- (c) a statement of the special educational needs arising from those impairments or talents;
- (d) a statement of the measures proposed to be taken to meet those needs; and
- (e) where appropriate, the proposal of a school of basic education learning to be attended by him or her.

Future provision for children with special needs

33. County Education Board shall, in consultation with the Executive Committee Member, make such arrangements as they deem necessary to enable a pupil with special needs attend an establishment whether or not is a school in or outside the county if that establishment makes provision wholly or partly for gifted or talented learners or advantage of the pupil or one or both of his or her parents, or some other persons, to be present with him or her at the establishment during the period of the attendance, learners with disabilities.

PART V— PRIVATE EDUCATION INSTITUTIONS

Establishment of private schools

34. Subject to the Constitution, national law and the provisions of this Act, any person may establish and maintain a private school.

Registration of private schools

35. (1) A person shall not establish or maintain a private school unless it is registered under this Act.

- (2) A private school shall not be registered if —
- (a) the proprietor is disqualified from being a proprietor by reason of Article 10 or Chapter Six of the Constitution;
 - (b) the school premises, or any part of those premises, are unsuitable for a school; or
 - (c) the proprietor or manager has been convicted of any crime against children under the Sexual Offences Act, 2006 and Counter Trafficking in Persons Act, 2010.

Right to attend a private school

36. Any person requiring pre-primary school education may attend a private school as an alternative to public school.

Duties of private school

- 37.** A private school shall —
- (a) establish necessary educational and governance structure;
 - (b) recruit registered teachers;
 - (c) comply with and follow the approved curriculum;
 - (d) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;
 - (e) maintain necessary teaching and learning materials;
 - (f) maintain a data bank on pupils undertaking education in the school and submit to the Executive Committee Member; and
 - (g) where requested by the Executive Committee Member, provide evidence that pupils are making reasonable educational progress appropriate for their age and grade level based upon results of nationally recognized standardized achievement tests.

Eligibility of teachers to be recruited

38. (1) A person shall not be recruited by the recruitment panel under this section as ECD teacher unless that person—

- (a) has a degree, a diploma or certificate in ECD duly recognized in Kenya;
- (b) has a certificate of good conduct;
- (c) is a Kenyan citizen;
- (d) is at least 18 years of age; and
- (e) registered with the Teachers Service Commission.

(2) The recruitment panel referred to under subsection (1) shall consist of—

- (a) County Director of Early Childhood education;
- (b) County human resource officer;
- (c) a representative from the County Education Board who shall be nominated by the Executive Committee member;
- (d) Sub-County ECD Programme officer;
- (e) Member of the County Education Board.

Terms and conditions of service

39. The terms and conditions of services for any person recruited under section 34 shall be as determined by the county public service board.

PART VII—ASSESSMENT

Duration, sequence and report of assessment

40. (1) The ECD trainee teacher shall be assessed during normal class session at least twice a term but on different dates and different lessons.

(2) In assessing a trainee teacher under subsection (1), the assessor, appointed by the recruitment panel under Sec. 36(2), shall observe at least one complete lesson and the assessor shall be required to write up a report on assessment in duplicate as provided in the assessment book.

(3) The original report under subsection (2) shall remain with the assessor while the duplicate shall be given to the trainee.

PART VIII—LICENSING, REGISTRATION AND ACCREDITATION, PROCEDURES OF PRE-PRIMARY SCHOOLS

Licensing, registration and accreditation procedures.

41. (1) Any person offering basic education in the county shall be accredited and registered as provided for under this Act and Regulations provided under Section 65.

(2) A person or organization intending to establish an institution offering basic education shall make an application in the prescribed manner to the County Education Board.

(3) Upon receipt of an application, the County Education Board shall—

- (a) record the application; and
- (b) if satisfied that the establishment of the institution conforms to the prescribed requirements, notify the applicant within thirty days.

(4) Where an application is approved, the County Education Board shall inform the office representing the Education, Standards and Quality Assurance Council at the county in the case of a pre-primary and childcare facilities.

(5) A service provider for a home- based education and care service or a hospital based education and care service may apply for a license under the Regulations made under this Act in respect of the home- based education and care service or hospital based education and care service provided by the service provider.

(6) Any person making an application for the establishment, licensing, registration and accreditation of a basic education and training institution shall pay the prescribed fees to the County Education Board established under this Act.

Rejection of application by the county Education Board.

42. (1) Where the County Education Board is not satisfied that the applicant has complied with the requirements set out under this Act, the Committee may reject the application and notify the applicant of the decision within thirty days.

(2) Any person aggrieved by the decision of the County Education Board under section (1) may appeal to the Education Appeals Tribunal within a period of thirty days of the decision.

Offence and penalty

43. (1) Where a person—

- (a) engages in the promotion, management, or teaching of pre-primary education without being accredited and registered in accordance with the provisions of this Act; or
- (b) uses any premises or facilities to provide education and training through face to face, open distant or electronic learning or any other mode of delivery unless the institution has undergone quality review and approved in accordance with this Act, commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or a term of imprisonment for a term not exceeding three years or, to both.

County Education Board to maintain a data bank

44. (1) The County Education Board shall establish and maintain a databank of all—

- (a) registered, accredited, licensed, and incorporated institutions of education, training and or research in the County;
- (b) teachers in the County; and
- (c) pre-primary school children.

(2) The register established and maintained under subsection (1) shall be open to the public for inspection during normal working hours.

Rules, regulations and guidelines on quality

45. The Executive Committee Member shall in consultation with Standards Assurance Board, and the relevant stakeholders establish guidelines and prescribe rules and regulations for the establishment, licensing, accreditation, and registration of basic education and training institutions.

Licensing of an institution of basic education and training

46. (1) An institution may apply to the Standards Assurance Board Council for licence and registration as a basic education and training institution.

(2) The Standards Assurance Board shall assess the application made under subsection (1) to ensure due compliance with the standards formulated and developed under this Act and submit its report to the County Education Board.

(3) Without prejudice to the foregoing, the County Education Board shall license and register a basic education and training institution only if—

- (a) the institution has sufficient number of registered teachers and non-teaching staff under the staffing norms prescribed by the Education Standards and Quality Assurance office for the county has been complied with;
- (b) the institution has appropriate teaching and learning facilities;
- (c) the available premises and accommodation are suitable with regard to the number, age, gender, and security of the learners who are to attend the institution;

- (d) the premises and accommodation conform to the prescribed requirements of the occupational health and safety Regulations; and
- (e) the necessary and suitable infrastructure as well appropriate and adequate equipment to carry out the programmes applied for as may be prescribed by Regulations.

Appeal against decision of county Education Board

47. Any person aggrieved by the decision of County Education Board may, within thirty days of being notified of the decision, appeal against such a decision to the Education Appeals Tribunal.

Establishment of the County Education Appeals Tribunal

48. (1) There is established a tribunal to be known as County Education Appeals Tribunal with the jurisdiction to hear and determine any complain from any person aggrieved by the decisions of the county Education Board.

- (2) The County Education Appeals Tribunal shall comprise of—
 - (a) the chairperson of the County Education Board;
 - (b) a representative of Standards Assurance Board;
 - (c) a nominee of the County Executive Committee Member; and
 - (d) an educationist of at least 8 years experience nominated by the County Executive Committee and approved by the County Education Board.

(3) The Executive Committee Member in consultation with the relevant stakeholders shall prescribe regulations on the operation and structure of the Education Appeals Tribunal.

Establishment of the County Standards Assurance Board

49. There is established a County Standards Assurance Board which shall be responsible for—

- (a) promoting quality education, professionalism, and public accountability on behalf of the students and county residents;
- (b) consideration of, and making proposals for review of courses, modes of assessment, and necessary regulatory changes;
- (c) consideration of reports of professional, regulatory and statutory bodies with respect to the undertaking of education and its related aspects in the County;
- (d) quality assurance and enhancement, including responding to relevant legislation and liaising with relevant bodies.

PART IX—FINANCIAL PROVISIONS

Financing of preschool education.

50. The funds of the Department of Early Childhood Education which shall be used to promote pre-primary school education shall consist of—

- (a) monies provided by the County Assembly for the purposes of the Department;
- (b) any funds provided by bilateral or multilateral donors, for the purpose of the basic education;
- (c) monies that may accrue to or vest in the course of the exercise of its functions under this Act;
- (d) gifts, grants, donations or endowments as may be given to the Department;
- (e) monies that may be borrowed by the Department for the discharge of the functions of the Department;
- (f) fees for services rendered to any designated institution in terms of a service agreement; and
- (g) monies from any other source provided for the Department or relevant educational institution or programme.

Financial year

51. The financial year of the Department of Early Childhood of Education shall be government financial year.

Annual estimates

52. (1) Before the commencement of each financial year, the Executive Committee Member shall cause to be prepared estimates of revenue and expenditure of the Department for that year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Department for the financial year concerned and in particular shall provide for—

- (a) the payment of salaries, allowances and other changes in respect of the staff of the Department;
- (b) the payment of pensions, gratuity and other changes in respect of retirement benefits which are payable out of the funds of the Department;
- (c) the acquisition, maintenance, repair and replacement of the equipment, facilities and other movable properties of the Department;

- (d) The proper maintenance of buildings and grounds of the Department;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matter as the Department may deem as appropriate; and
- (f) the infrastructural development.

(3) The annual estimates shall be approved by the County Assembly before the commencement of the financial year to which they relate.

Funding of certain early childhood education services

53. (1) In every year, out of money appropriated by the County Assembly—

- (a) The service provider for a licensed early childhood service—
 - (i) may be paid general grants; and
 - (ii) may be paid one or more discretionary grants.
- (b) the management of a body corporate that fulfils the requirements prescribed by Regulations may be paid a discretionary grant for the purpose of establishing a licensed early childhood service.

(2) The amount of every grant shall be determined by the Executive Committee Member.

(3) The Executive Committee Member may, from time to time, determine the means by which the amounts of grants may be calculated or ascertained; and—

- (a) different means may be determined in respect of—
 - (i) grants of different classes or descriptions;
 - (ii) licensed early childhood education services of different classes or descriptions; and
- (c) the amount of any grant may be determined accordingly; but
- (d) nothing in this subsection limits or affects the Executive Committee Member's power under subsection (2) to determine the amount of any grant.

(4) A grant—

- (a) may be paid unconditionally, or subject to any conditions the Executive Committee member may specify in writing when the grant is paid or earlier;

- (b) may be paid to be used for any purpose the service provider considers appropriate, or for only such purposes as the Executive Committee Member specifies in writing when the grant is paid or earlier; and
- (c) may be withheld in whole or in part if the service provider fails to comply with any Regulations made under this Act.
- (5) The service provider shall ensure that—
 - (a) where a grant has been paid subject to conditions, the conditions are complied with; and
 - (b) if a grant has been paid to be used only for purposes specified by the Executive Committee Member under subsection (4) (b), the grant is used only for those purposes.

Accounts of audit departments or schools

54. (1) Executive Committee Member shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Department.

(2) Within a period of three months after the end of each financial year, the Executive Committee Member shall submit to the Controller of Budget and the Auditor General, the accounts of the Department in respect of that year together with—

- (a) a statement of income and expenditure during the year; and
- (b) a statement of the assets and liabilities of the Department on the last day of that year.

(3) The accounts of the department shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003.

School based auditing

55. (1) The Executive Committee Member shall establish mechanisms for school-based auditing.

(2) The officers responsible for school-based auditing for public schools shall advise and work with the respective head teachers.

(3) Subject to the national law, the Executive Committee Member shall make appropriate Regulations on school based auditing for public schools.

Investment of funds

56. (1) The County Executive Committee Member may, in consultation with Executive Member responsible for finance, invest any of the funds of the Department in securities in which for the time being trustees may by law invest funds or in any other securities which the County Treasury may from time to time approve for that purpose.

(2) The County Executive Committee may place on deposit, with such bank or banks as it may determine, any monies not immediately required for the purpose of the Department.

PART X—POWERS OF ENTRY AND INSPECTION

Parent or Guardian's right of entry

57. A parent or guardian of a child has a right of entry to a licensed early childhood service provider where a licensed home-based education and care service is provided, whenever their child is there, except if the parent or guardian—

- (a) is subject to an order of a court that prohibits access to, or contact with, the child, either generally or with respect to the child while, or at a time when the child is, attending the centre or service; or
- (b) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them; or
- (c) is, in the opinion of a person responsible for the operation of the centre, under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behavior of the person; or
- (d) is, in the opinion of a person responsible for the operation of the centre, exhibiting behavior that is or is likely to be disruptive to the effective operation of the centre.

Powers of entry and inspection without warrant

58. (1) A person holding an authorization under subsection (3) may, for the purpose of ensuring that the provisions of this Act, or the conditions of any license, certificate, or grant issued or made under any of those provisions, are being complied with, or for the purpose of conducting any audit, at any reasonable time—

- (a) enter and inspect any premises that are or contain a licensed early childhood education and care centre or that are used to provide a licensed home-based education and care service;
- (b) inspect, photocopy, print out or copy any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the licensed early childhood service;
- (c) remove any document described in paragraph (b) whether in its original form or in an electronic form or as a paper copy.

(2) If a document is removed from the premises under subsection (1) (c), the person who removes it shall—

- (a) leave at the premises a list of the documents removed; and
- (b) return the documents, or a copy of them, to the premises as soon as practicable, unless to do so would prejudice any investigation being or to be carried out by the government.

(3) The Executive Committee Member may authorize, in writing, any person who, in the opinion of the executive Committee Member, is suitably qualified and trained in the exercise of powers under subsection (1), to exercise those powers.

(4) An authorization under subsection (3) shall contain—

- (a) a reference to this section;
- (b) the full name of the person authorized; and
- (c) a statement of the powers conferred on that person by this section.

(5) A person exercising a power under subsection (1) shall have the appropriate written authorization, and evidence of identity, and shall produce them to the person in charge of the premises concerned or, as the case may be, the person having possession or control of the documents concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(6) For the purposes of this section and section 11, inspection, in relation to any premises, includes observing any children present there.

Powers of entry and inspection with warrant

59. (1) A person authorized by section 56(3) who has reasonable grounds to believe that any premises are being used as an early childhood education and care centre in contravention of this Act, may apply in writing, and on oath to court for a warrant.

(2) If the magistrate to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, they may issue a warrant directed to the person by name authorizing the person to enter and inspect the premises.

(3) A warrant issued under subsection (2) shall contain—

- (a) a reference to this section; and
- (b) the full name of the person authorized;

- (c) a description of the premises concerned;
- (d) the date on which it was issued and the date on which it expires.

(4) A warrant issued under subsection (2) shall authorize the person named in it, at any reasonable time within four weeks after the date on which it is issued, to—

- (a) enter the premises described in the warrant; and
- (b) do, on those premises, anything necessary to ascertain whether those premises are being used as an early childhood education and care centre, in contravention of this Act.

(5) A person exercising any power under subsection (4) shall have the appropriate warrant and proof of identity and shall produce them to the occupier of the premises concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the occupier.

(6) Each warrant issued under subsection (2) expires on the earlier of the following dates—

- (a) the date when the purpose for which it was issued has been satisfied; or
- (b) the date specified as the date of expiry under subsection (3) (d).

PART XI—GENERAL PROVISIONS

General Penalties

60. 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 fifty thousand shillings or a term of imprisonment not exceeding six months, or to both; and
- (b) in any subsequent case, a fine not exceeding one hundred thousand shillings or a term of imprisonment of not exceeding twelve months, or both.

Offence of insulting, abusing, or intimidating staff

61. A person who intentionally insults, abuses, or intimidates a teacher or member of staff of an early childhood education and care centre commits an offence, and is liable on conviction to a fine not exceeding fifty thousand shillings.

Offence of physical and verbal abuse of children

62. A service provider, teacher or caretaker or caregiver who subjects the children in an early childhood education centre to verbal or physical abuse commits an offence and is liable on conviction to a fine not exceeding fifty hundred thousand shillings or to a term of imprisonment not exceeding six months or to both.

Offence of obstructing power of entry

63. A person who obstructs, hinders, resists or deceives any person exercising or attempting to exercise a power of entry conferred by Section 56(3) or Section 57 thereof commits an offence, and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.

Regulations

64. (1) The Executive Committee Member may upon consultations with the County Education Board make Regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing the Executive Committee Member may make regulations for—

- (a) an appropriate structure for education and training;
- (b) the fees to be charged under this Act;
- (c) the form of applications for the license;
- (d) incentives to learners, teachers and non-teaching staff;

- (e) discipline corrective measures and expulsion to facilitate compliance;
- (f) admission, progression and transfer of learners;
- (g) the establishment of Board of management of pre-schools; and
- (h) any matter that the Executive Committee Member considers necessary for the administration of this Act.

(2) The executive Committee Member may make Regulations in consultation and in alignment with the Ministry of Education and the national Regulations in place providing for —

- (a) the licensing of service providers to provide early childhood services of any kind, and the transfer of licenses; and
- (b) regulating the management, operation, and control of licensed early childhood services of any kind, and imposing duties on service providers.

Repeal

65. The Nairobi City County Early Childhood Education Act, 2017 (*Nairobi City County Acts No.8 of 2017*) is repealed.

MEMORANDUM OF OBJECTS AND REASONS

Pursuant to Standing Order 124, I hereby wish to present the following Statements:

To Give effect to Constitutional provisions on early childhood education

One of the main objectives for this law is to give effect to paragraph 9 of Part 2 of the Fourth Schedule to the Constitution on early childhood education and development. As a right enshrined in the Constitution, providing the guidelines within which that right can be exercised in Nairobi County is imperative.

Establish administrative requirements and curriculum framework for early childhood education

The proposed law is also principally aimed at establishing administrative requirements and curriculum framework to provide for early childhood education in the county and for connected purposes.

Establishment of County Education Board

The proposed law is also aimed at establishing county education Board with powers and functions to offer advice to the County Government with regard to education issues, work with relevant authorities and agencies to ensure that all barriers to the right to quality education are eliminated for the County to facilitate the realization of the right to education for all people.

Development of system and structure of pre-primary school education in the County

The proposed law is further aimed at developing a system and structure of pre-primary school education where the County Government is to promote the pre-primary education and training of Early Childhood Education teachers in the County. In addition, the county is to establish a structure to enable learners to access education and training at any level in a sequence and at a pace that may be commensurate with the learners' individual physical, mental and intellectual abilities and the resources available.

Promotion of Special needs pre-primary school education

The proposed law provides for establishment, regulations and management of County special pre-primary school institutions. The County Education Board to provide for education assessment and research centres including special need service.

Statement of delegation of legislative powers

It is my considered opinion that the delegated powers should go to the County Executive Committee Member for Early Childhood education who shall be charged with overseeing the enforcement of the Act.

Statement of financial implication

After a thorough understanding of the objects, it would then be necessary to draft the cost implications to the county.

However, it is worth noting that the County will benefit in the long run.

Further, the implementation of the Bill, once passed and assented, should be factored in the budget making process for the Financial year 2021/2022.

Dated the 24th April, 2021.

JAYENDRA MALDE,
Member of County Assembly.

