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THE KWALE COUNTY EARLY CHILDHOOD DEVELOPMENT AND EDUCATION AND CARE CENTRE ACT, 2016

No 9 of 2016

Date of Assent 22nd April, 2016

Date of Commencement 26th April, 2016

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THE KWALE COUNTY EARLY CHILDHOOD DEVELOPMENT AND EDUCATION AND CARE CENTRE ACT, 2016

AN ACT of the County Assembly of Kwale to provide for Early Childhood Development and Education and Care Centre, and for connected purposes

ENACTED by the County Assembly of Kwale, as follows—

PART I—PRELIMINARY

1 This Act may be cited as the Kwale County Early Childhood Development and Education and Care Centre Act, 2016

2 In this act—

“care” means the provision of what is necessary for the health, welfare, and protection of a child in an early childhood service,

“Early Childhood Development and Education and Care Centre and care centre” has the meaning set out in section 3,

“early childhood service” means an Early Childhood Development and Education and Care Centre and care centre, home-based education and care service, or hospital-based education and care service,

“home-based education and care service” means the provision of education or care, for gain or reward, to fewer than 5 children under the age of 6 (in addition to any child enrolled at school who is the child of the person who provides education or care), in—

(a) their own home,

(b) the home of the person providing the education or care, or

(c) any other home nominated by the parents of the children

“hospital-based education and care service” means the provision of education or care to 3 or more children under the age of 6 who are receiving hospital care,
“licensed early childhood service” means an early childhood service in respect of which the service provider holds a current licence issued under the provisions of this Act,

“executive member” means the County Executive Committee Member who is for the time being in charge of education,

“playgroup” means a group that meets on a regular basis to facilitate children's play and in respect of which—

(a) no child attends for more than 4 hours on any day,

(b) more than half the children attending on any occasion have a parent or caregiver present in the same play area at the same time, and

(c) the total number of children attending on any occasion is not greater than 4 times the number of parents and caregivers present in the same play area at the same time,

“service provider” means each of the following—

(a) in relation to an early childhood education and care centre, the body, agency, or person who or that operates the centre,

(b) in relation to a home-based education and care service, the body, agency, or person who or that arranges, or offers to arrange, that education or care,

(c) in relation to a hospital-based education and care service, the body, agency, or person who or that provides that education or care, and

(d) in relation to a playgroup, the person or persons who operate the playgroup

“unsupervised access to children” in relation to a licensed early childhood service, means access to any child that is not accessed, supervised, observed, or able to be directed (if necessary) by, any 1 or more of the following—

(a) a registered teacher or holder of a limited authority to teach,

(b) a parent of the child
3 (1) Early Childhood Development and Education and Care Centre and care centre means premises used regularly for the education or care of 3 or more children (not being children of the persons providing the education or care, or children enrolled at a school being provided with education or care before or after school) under the age of 6—

(a) by the day or part of a day, but

(b) not for any continuous period of more than seven (7) days

(2) An Early Childhood Development and Education and Care Centre and care centre may be operated within the premises of a registered school, and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises

(3) Premises of the following kind are not early childhood education and care centres—

(a) hostels,
(b) residences,
(c) institutions under the control of the Ministry of Health,
(d) hospital care institutions,
(e) premises where all the children present are members of the same family in the care of a member of the family or members of the same family in the care of a caregiver who is not acting for gain or reward,
(f) any premises, during any period of use for the education or care of children for any period not exceeding four (4) hours a week in circumstances where the children's parents or caregivers are—

(i) in close proximity to the children and are able to be contacted, and

(ii) able to resume responsibility for the children at short notice

(g) any premises, during any period of use for the education or care of 3 or more children under the age of 6, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children's parents or caregivers are—
(i) in close proximity to the children and are able to be contacted, and

(ii) able to resume responsibility for the children at short notice

(h) any premises, playgroup, licensed home-based education and care service, or hospital-based education and care service

PART II—EARLY CHILDHOOD DEVELOPMENT AND EDUCATION AND CARE CENTRE AND CARE CENTERS

4 The County government shall establish Early Childhood Development and Education and Care Centre within or near primary schools

5 Schools that already have Early Childhood Development and Education and Care Centre centers shall receive funding from the County government to upgrade the already existing early childhood development education centers to the required standards in accordance with this Act and the regulations

6 (1) Every Early Childhood Development and Education Care Centre shall comply and abide by the following minimum standards—

(a) The Early Childhood Development and Education and Care Centre shall be well maintained and properly kept for the safety of the children,

(b) guardians will be allowed upon request to inspect the premises where the children are housed or schooled,

(c) the Early Childhood Development and Education and Care Centre shall be kept clean and sanitized at all times, and

(d) there shall be a fully equipped first aid kit in the early childhood development education and care centre premises

PART III — ADMINISTRATION AND CURRICULUM

7 (1) All children that have attained the school going age shall be enrolled and registered in an early childhood education and care centres
(2) Every parent whose child is—
   (a) Kenyan, or
   (b) resides in Kenya,
shall ensure that the child attends regularly as a pupil at an early childhood service

(3) A parent who fails to take his or her child to an Early Childhood Development Education and Care Centre as required under sub-section (1) commits an offence

(4) A person who contravenes this section shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or both

(5) Subsection (2) shall not apply to a parent or guardian who presents within a reasonable time a reason to the satisfaction of the County Director of Early Childhood Development and Education and Care Centre for the absence of his or her child at the center

8 (1) It shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to an early childhood service

(2) Where a parent or guardian defaults in the discharge of his or her responsibility under sub-section 1—
   (a) such a parent or guardian shall be deemed to have committed an offence and is liable to fine not exceeding one hundred thousand or to a period not exceeding two (2) years or to both

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

9 (1) Every parent or guardian shall produce a birth certificate or child welfare clinic card as proof of age upon admission of the child in an Early Childhood Development and Education and Care Centre service

(2) No child shall be denied admission in a school or basic education institution for lack of proof of age

10 The service provider for every licensed early childhood service must keep, and make available to the director early childhood education on request,—
(a) a register of the children who attend or have attended the service, specifying the date of birth of each,
(b) a record of the attendance of children at the service,
(c) a record of all fees and other charges paid in respect of children's attendance at the service,
(d) evidence that parents of children attending the service have regularly examined the attendance record, and
(e) any other records that are necessary to enable the service’s performance to be monitored adequately

11 There shall be a board of management for every early childhood development education and care centre

12 (1) The board shall be comprised of—
(a) the teacher/ caregiver in the early childhood development education and care centre,
(b) youth representative,
(c) person with disability representative,
(d) parent representative from Early Childhood Development Education 1
(e) parent representative from Early Childhood Development Education 2,
(f) parent representative from Early Childhood Development Education 3, and
(g) religious representative.
(2) The parents will elect amongst themselves the representatives to the board

13 The functions of the board of management shall be to—
(a) handle petty cash,
(b) ensure the smooth running of the early childhood education development and care centre,
(c) ensure the early childhood education development and care centre is well maintained including the buildings and the compound, and
(d) ensure the security is maintained at the early childhood education care centre.
14. The board of management may regulate its own operations.

15. (1) The executive member may, in consultation with the Kenya Institute of Curriculum Development prescribe a curriculum framework for the following—

(a) all licensed early childhood services,

(b) all certificated playgroups,

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

(3) Within three weeks after prescribing or amending a curriculum framework, the executive member must publish a notice in the Gazette—

(a) stating that a curriculum framework has been prescribed or, as the case requires, 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 members of the public.

(4) A notice under subsection (3) may—

(a) specify different commencement dates for different provisions of the curriculum framework or for different purposes, and

(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 must comply with the curriculum framework.

(6) If a curriculum framework is prescribed under this section, every service provider for a licensed early childhood service or who operates a certificated playgroup, and to whom that curriculum framework applies, must implement that curriculum framework in accordance with any requirements prescribed in the Act.
16 (1) Every sub-county Early Childhood Development and Education and Care Centre field officer shall present a list of qualified early childhood education teachers and care givers to the county director of education for registration annually

(2) Current nursery school teachers shall undertake another course to upgrade their skills to early childhood care

(3) All teachers in the early childhood development education and care centers shall have certification as proof of their qualifications

17 (1) No service provider shall operate an early childhood education and care centre for more than six months before obtaining certification or license

(2) Every service provider who operates an Early Childhood Development and Education and Care Centre and care centre commits an offence if—

(a) the service provider operates the early childhood education and care centre without holding a current licence,

(b) the service provider ceases to operate an early childhood education and care centre for which it holds a current licence, in circumstances other than an emergency, without first telling the executive member that it will stop operating the centre, or fails to tell the executive member as soon as is reasonably practicable after the closure

(3) An offence against subsection (2) is punishable on conviction—

(a) in the case of an offence under subsection (2) (a), by a fine not exceeding KSh 20,000

(b) In the case of an offence under subsection (2) (b), by a fine not exceeding KSh 20,000

(4) The offences in subsection 18 (2) are only applicable to the service provider and not the owner of the building where the center operates
18 A service provider for a home-based education and care service or a hospital-based education and care service shall, apply for a license or certificate in respect of the home-based education and care service or hospital-based education and care service provided by the service provider, in accordance with the provisions of this Act and the regulations.

19 (1) The executive member may make regulations providing for either or both of the following—

(a) the licensing of service providers to provide early childhood services of any kind, and the transfer of licences,

(b) regulating the management, operation, and control of licensed early childhood services of any kind, and imposing duties on service providers.

(2) Regulations made under subsection (1) may (without limitation) do all or any of the following—

(a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, staffing and parental or caregiver participation (including adult child ratios), health and safety, implementation of the curriculum framework, communication and consultation with parents, the operation or administration of those services, or any of them, to be complied with to ensure the health, comfort, care, education, and safety of children attending licensed early childhood services,

(b) authorise the executive member, after consultation with those organisations that appear to the executive member to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the chief officer to assess compliance with the minimum standards imposed by these regulations,

(c) limit or regulate the numbers of children who may attend licensed early childhood education and care centres or any premises used to provide a licensed home-based education and care service, or a licensed hospital-based education and care service,
(d) provide for the, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of licences of 1 or more specified kinds for service providers for each kind of early childhood service, and prescribe the conditions subject to which such licences may be granted, renewed or transferred and the fees payable in respect of the renewal, and transfer of such licences, or do any of those things,

(e) prescribe conditions governing, or that may be imposed in respect of, licensed early childhood services and the duties of their service providers,

(f) prescribe the records to be kept by service providers in respect of children attending licensed early childhood education and care centres, licensed home-based education and care services, and licensed hospital-based education and care services,

(g) regulate the qualifications to be held by any specified number or proportion of those persons carrying out the following—

(i) the control and management of each licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them,

(ii) the education and care of children attending a licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them

(h) provide for transitional matters not dealt with in this Act,

(i) prescribe offences punishable on conviction by a fine not exceeding KSh 500,000 in respect of the contravention of, or non-compliance with, the regulations

20 A service provider who operates a playgroup shall apply for a certificate in respect of the operation of the playgroup

21 The executive member may make regulations providing for the certification of playgroups and these regulations may do all or any of the following—
(a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, parental or caregiver participation (including adult child ratios), health and safety, implementation of the curriculum framework, communication and consultation with parents, the operation and administration of playgroups, or any of them, to be complied with to ensure the health, comfort, care, education, and safety of children attending certificated playgroups,

(b) authorise the executive member, after consultation with those organisations that appear to the executive member to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the chief officer to assess compliance with minimum standards imposed by these regulations,

(c) require the executive member to publish a notice in the Gazette—

(i) stating that criteria referred to in paragraph (b) have been prescribed, and

(ii) setting out the criteria in their entirety, or stating where or how a copy of those criteria may be obtained by members of the public

(d) limit or regulate the numbers of children who may attend certificated playgroups,

(e) provide for the duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of certificates of 1 or more specified kinds of playgroups, and prescribe the conditions subject to which such certificates may be granted, renewed, or transferred and the fees payable in respect of the grant, renewal, or transfer of such certificates, or do any of these things,

(f) prescribe conditions governing, or that may be imposed in respect of, certificated playgroups and the duties of their service providers,

(g) prescribe the records to be kept by the service provider in respect of children attending certificated playgroups,
(h) regulate the qualifications to be held by any specified number or proportion of those persons responsible for either or both of the following—

(i) the control and management of a certificated playgroup,

(ii) the education and care of children attending a certificated playgroup

(i) provide for transitional matters not dealt with in this Act

(2) Criteria prescribed by the executive member for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including (without limitation), for—

(a) different kinds of certificates, and

(b) different standards

22 (1) The parent or guardian of a child has a right of entry to a licensed early childhood education and care centre or to the premises where a licensed home-based education and care service is provided, whenever the 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,

(b) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them,

(c) is, in the opinion of a person responsible for the operation of the centre or service, under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behaviour of the person,

(d) is, in the opinion of a person responsible for the operation of the centre or service, exhibiting behaviour that is or is likely to be disruptive to the effective operation of the centre or service

(2) The parent’s or guardian’s right of entry is restricted to between 7 a.m. and 10 a.m. except in times of emergencies
23 (1) The executive member may authorise in writing any person, who in the opinion of the executive member is suitably qualified and trained in the exercise of those powers

(2) Every authorisation under must contain—

(a) a reference to this section,

(b) the full name of the person authorised, and

(c) a statement of the powers conferred on that person by this section

24 (1) Any person holding an authorisation for the purpose of ensuring that the provisions of this Act and any regulations made under this Act, or the conditions of any licence, 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, may do all or any of the following—

(a) enter and inspect any premises that is a licensed early childhood education and care centre or, provide a licensed home-based education and care service or, a licensed hospital-based education and care service, or that are used by a certificated playgroup,

(b) inspect, photocopy, print out, or copy onto disk 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 or certificated playgroup,

(c) remove any document described in paragraph (b), whether in its original form or as an electronic or paper copy

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

(a) leave at the premises a list of the documents removed, and

(b) return the documents, or a certified 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) Every person exercising any power under this section must have the appropriate written authorisation, and evidence of identity, and must 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

25 (1) Any person authorise, 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 or regulations made under the Act, may apply in writing on oath to a court for a warrant

(2) If the magistrate or other person to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, he or she may issue a warrant directed to the person by name authorising the person to enter the premises

(3) Every warrant issued under subsection (2) must contain—

(a) a reference to this section,

(b) the full name of the person authorised,

(c) a description of the premises concerned, and

(d) the date on which it was issued and the date on which it expires

(4) Every warrant issued under subsection (2) must authorise the person named in it, at any reasonable time within 4 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 or any regulations made under section 10

(5) Every person exercising any power under subsection (4) must have the appropriate warrant and evidence of identity and must 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 that occupier

(6) Every 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)

26 A person commits an offence, and is liable on conviction to a fine not exceeding KSh 50,000 who intentionally insults, abuses, or intimidates a teacher or member of staff of an early childhood education and care centre—

(a) within the presence or hearing of any child at the centre, and

(b) while on centre premises or in any other place where children are assembled for purposes associated with the centre

27 A person commits an offence, and is liable on conviction to a fine not exceeding fifty thousand shillings, who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by 23, 24 and 25

28 The executive committee member shall make regulations for the better carrying into effect the provisions of this Act