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THE BASIC EDUCATION ACT

CHAPTER 211

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CHAPTER 211

BASIC EDUCATION ACT

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CHAPTER 211

BASIC EDUCATION ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: 25th January, 2013.]

An Act of Parliament to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes

[Act No. 14 of 2013, Legal Notice 126 of 2013, Act No. 17 of 2017, Act No. 24 of 2019, Act No. 3 of 2021.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Basic Education Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"accreditation" means the procedure by which the accreditation agency formally recognizes the status of an institution offering basic education and confirms in writing by way of a documentation issued under this Act;

"adult" means an individual who has attained the age of eighteen years;

"adult and continuing education" means the learning processes within the perspective of lifelong learning in which an adult or out-of-school youth is granted an opportunity in an institution of basic education for purposes of developing abilities, enriching knowledge and improving skills;

"adult basic education" means basic education offered as a full-time or part-time course to a person who is above the age of eighteen years and includes education by correspondence, the media of mass communication and the use of libraries, museums, exhibitions or other means of visual or auditory communication for educational purposes and "Adult learning" shall be construed accordingly;

"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 early childhood education centres;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to basic education and training;

"child" means an individual who has not attained the age of eighteen years;

"community" means persons residing in the neighbourhood of a basic education institution;

"County Director of Education" means a Director appointed under section 52;

"County Education Board" means a Board established as an agency of the national Government to serve the relevant county under section 17;

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

"Director-General" means a person appointed under the Public Service Commission Act (Cap. 185) and responsible to the Cabinet Secretary;

"*Duks*" means Islamic elementary institution that offers Quranic education and other related subjects;

"Early childhood education" has the meaning assigned to it under the law relating to early childhood education;

"Education Appeals Tribunal" means the Appeals Tribunal established under section 93;

"EMIS" means Educational Management Information System;

"Education Standards and Quality Assurance Commission (ESQAC)" means the Commission established under section 62;

"formal education" means the regular education provided in the system of schools, and other formal educational institutions;

"headteacher" has the meaning assigned to it under the Teachers Service Commission Act (Cap. 212);

"ICT Integration and Education" means the seamless incorporation of information communication technologies to support and enhance the attainment of curriculum objectives, to enhance the appropriate competencies including skills, knowledge, attitudes and values and to manage education effectively and efficiently at all levels;

"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 educational centre, an academy, a research institution, a school correctional facility or a borstal institution;

"*Madrassa*" means the structural Muslim educational institutions or schools that offer Islamic and other subjects and are laddered from primary to secondary;

"manager" means a person who has been appointed by the Cabinet Secretary in consultation with the proprietor through regulations to coordinate and oversee implementation of education policies and guidelines in non-public basic education institutions and performs delegated teacher management functions;

"mobile school" means a formal flexible institution that allows for mobility of pupils and teachers and is specifically designed to suit the needs of migrant communities;

"National Council for Marginalized and Nomadic Education" means the council provided for under section 92;

"National Education Board" means the National Board for Education and Training established under section 5 of this Act;

"non-formal education" means any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development;

"out-of-school youth" means all persons who have attained the age of eighteen years but have not attained thirty five years and who are 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;

"parent's association" means an association as prescribed in subsection 53(2);

"pastoral programmes" means the curriculum designed by different Christian churches;

"pre-primary education" *deleted by Act No. 3 of 2021*;

"primary education" means education imparted to a child who has completed early childhood education;

"Principal" has the meaning assigned to it under the Teachers Service Commission Act;

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

"Salaries and Remuneration Commission" has the meaning assigned to it under the Salaries and Remuneration Act (Cap. 412D);

"school" means an institution registered under this Act that meets the basic prescribed standards and includes institutions offering alternative approaches of multi-grade, double-shift, mobile schooling, out of school programmes, adult and continuing education, distance or correspondence instruction, or accelerated learning and talent based institutions, but does not include-

- (a) any institution or assembly for which a Cabinet Secretary other than the Cabinet Secretary responsible for matters relating to basic education and training, is responsible;
- (b) any institution or assembly in which the instruction is, in the opinion of the Cabinet Secretary, wholly or mainly of a religious character; or
- (c) an institution mainly or wholly of a religious character;

"special education needs" means conditions physical, mental or intellectual conditions with substantial and long term adverse effects on the learning ability (other than exposure) or the needs of those who learn differently or have disabilities that prevent or hinder or make it harder for them to access education or educational facilities of a kind generally provided for learners of the same age in the formal education system;

"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;

"sponsor" means a person or institution who makes a significant contribution and impact on the academic, financial, infrastructural and spiritual development of an institution of basic education;

"stakeholder" means a person, a public or private institution or organization involved in an education institution and with vested interests for the benefit of such an institution;

"statutory structural adjustment" means a systematic multi-disciplinary process of collecting information about learners for the purpose of identifying and confirming the substantial and long-term impact on the learning process, abilities or educational progress so as to provide educational support based on the assessment or findings;

"teacher" has the meaning assigned to it under the Teachers Service Commission Act;

"tuition fees" means fees charged to cater for instruction or instructional materials.

[Act No. 3 of 2021, s. 70.]

3. Application

This Act shall apply to all institutions of basic education under this Act.

4. Guiding principles

The provision of basic education shall be guided by the following values and principles—

- (a) the right of every child to free and compulsory basic education;
- (b) equitable access for the youth to basic education and equal access to education or institutions;
- (c) promotion of quality and relevance;
- (d) accountability and democratic decision making within the institutions of basic education;
- (e) protection of every child against discrimination within or by an education department or education or institution on any ground whatsoever;
- (f) protection of the right of every child in a public school to equal standards of education including the medium of instructions used in schools for all children of the same educational level
- (g) without prejudice to paragraph (f) above advancement and protection of every child in early childhood and lower primary level of education to be instructed in the language of his or her choice where this is reasonably practicable;
- (h) encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development;
- (i) promotion of peace, integration, cohesion, tolerance, and inclusion as an objective in the provision of basic education;

- (j) elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society;
- (k) imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose togetherness, and respect;
- (l) promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education;
- (m) transparency and cost effective use of educational resources and sustainable implementation of educational services;
- (n) ensuring human dignity and integrity of persons engaged in the management of basic education;
- (o) promoting the respect for the right of the child's opinion in matters that affect the child;
- (p) elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture;
- (q) promoting the protection of the right of the child to protection, participation, development and survival;
- (r) promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture;
- (s) non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs;
- (t) enhancement of co-operation, consultation and collaboration among the Cabinet Secretary, Teachers Service Commission, the National Education Board, the County Education Boards, the education and training institutions and other related stakeholders on matters related to education; and
- (u) provision of appropriate human resource, funds equipment, infrastructure and related resources that meet the needs of every child in basic education.

[Act No. 3 of 2021, s. 70.]

PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL EDUCATION BOARD

5. Establishment and functions of the Board

- (1) There is established a Board to be known as the National Education Board.
- (2) The functions of the Board shall be to advise the Cabinet Secretary, the department of education and related departments on policy matters in respect to—
 - (a) collaboration with the Quality Assurance and Standards Council, Teachers Service Commission and with other stakeholders to promote standards in basic education and training;
 - (b) working with all relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed and that the National and County governments facilitate the realization of the right to education by all Kenyans;

- (c) the initiation of guidelines for approval by the Cabinet Secretary on the establishment of basic education institutions;
- (d) putting measures in place to ensure all children attend and remain in school to complete basic education requirements;
- (e) putting measures to ensure, where applicable, transition to the next level of education, especially for the vulnerable and marginalized children;
- (f) any other matter as shall be from time to time be referred to the Board by the Cabinet Secretary.

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

6. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule

(2) Except as provided under the First Schedule, the Board may regulate its own procedure.

7. Composition of the Board

(1) The Board shall consist of a Chairperson and eight other members appointed by the Cabinet Secretary in accordance with the provisions of this Act.

(2) The Chairperson shall serve for a term of four years and shall be eligible for reappointment for one further term of four years.

(3) The members shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

8. Qualifications for appointment as Chairperson or member of the Board.

(1) A person shall be qualified for appointment as the Chairperson of the Board if such person—

- (a) holds a degree in education from a university recognized in Kenya;
- (b) has knowledge and at least fifteen 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.

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

- (a) holds a degree from a recognized university;
- (b) has knowledge and at least ten' years experience in matters relating to any of the following fields—
 - (i) education;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) human rights;
 - (vi) public administration;
 - (vii) law;
 - (viii) economics; and

- (ix) meets the requirements of Chapter Six of the Constitution.
- (c) has had a distinguished career in their respective fields; and
- (d) meets the requirements of Chapter Six of the Constitution.

9. Disqualifications from appointment

A person shall not be qualified for appointment as the Chairperson or a member of the Board if such person—

- (a) is a member of Parliament or a county assembly;
- (b) is a member of a local authority;
- (c) is an undischarged bankrupt; or
- (d) has been removed from office for contravening the provisions of the Constitution or any other written law.

10. Appointment and term of Chairperson and members.

(1) Upon commencement of this Act or whenever there is a vacancy in the Board, the Cabinet Secretary shall, within fourteen days of the occurrence of the vacancy, appoint a Selection Panel for the purpose of selecting suitable candidates for appointment as the Chairperson or member of the Board.

(2) The Selection Panel appointed under subsection (1) shall consist of a Chairperson—

- (a) two persons to represent registered School Heads Association;
- (b) a representative of the Cabinet Secretary responsible for matters relating to education who shall be the Secretary to the Selection Panel;
- (c) one person to represent the Public Service Commission;
- (d) one person to represent the National Council for Persons with Disabilities;
- (e) three persons nominated by the following bodies-
 - (i) a joint forum of the National Council of Churches of Kenya and the Evangelical Fellowship of Kenya;
 - (ii) the Kenya Conference of Catholic Bishops ; and
 - (iii) the Muslims Education Council.
- (f) one person to represent the Kenya Private Sector Alliance;
- (g) one person to represent the Teachers Service Commission.
- (h) two persons to represent trade unions of teachers;
- (i) one person to represent organizations dealing with children's rights; and
- (j) one person to represent an association of parents.

(3) The Selection Panel shall, subject to this section, determine its own procedure, and the Cabinet Secretary responsible for education shall provide the Panel with such facilities and such other support as the Panel may require for the discharge of its functions.

(4) The Selection Panel shall, within seven days of its convening, invite applications, in at least two newspapers of nationwide circulation from qualified persons to be submitted within twenty-one days from the date of the invitation.

(5) The Selection Panel shall within seven days of receipt of applications under subsection (4) consider the applications and publish the names and academic qualifications of all shortlisted applicants in at least two daily newspapers of nationwide circulation.

(6) The Selection Panel shall within fourteen days of the publication under subsection (5) interview and identify three persons qualified for appointment as Chairperson and thirteen persons qualified for appointment as members of the Board and shall forward the names of the selected candidates to the Cabinet Secretary for appointment.

(7) The Cabinet Secretary shall, within seven days of receipt of the names forwarded under subsection (6) appoint the Chairperson and members of the Board.

(8) Where the Cabinet Secretary rejects a nominee or all of the nominees submitted by the Selection Panel for approval under paragraph (6), the provisions of paragraph (1) to (5) shall apply.

(9) In rejecting a nominee or nominees, the Cabinet Secretary shall attach a memorandum indicating the reason for such rejection.

(10) The Selection Panel convened under subsection (1) shall stand dissolved upon the appointment of the Chairperson or member of the Board whichever is the later.

(11) In short listing, nominating or appointing persons as Chairperson and members of the Board, the Selection Panel and the Cabinet Secretary shall observe the principle of gender equity, regional, ethnic and religious balance, transparency, openness and competitiveness and shall have due regard to the principle of equal opportunities for persons with disabilities.

(12) The Selection Panel may, subject to this section, determine its own procedure.

11. Vacation of and removal from office

(1) The office of the Chairperson or a member of the Board shall become vacant if the holder—

- (a) dies;
- (b) resigns from office, by a notice in writing addressed to the Cabinet Secretary;
- (c) is absent from three consecutive meetings of the Board without good cause; or
- (d) is removed from office in accordance with subsection (2).

(2) The Chairperson or a member of a Board may be removed from office for-

- (a) contravention of Chapter Six of the Constitution;
- (b) serious violation of this Act or any other law;
- (c) gross misconduct, whether in the performance of the Chairperson's, member's or office holder's functions or otherwise;
- (d) physical or mental incapacity to perform the functions of office;
- (e) incompetence; or
- (f) if adjudged bankrupt

12. Staff of the Board

The Cabinet Secretary may in consultation with the Board and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Board under this Act.

13. Experts and Consultants

The Board may engage consultants and experts as it considers appropriate, to assist in the discharge of its functions under this Act.

14. Remuneration of the Board

The Chairperson and members of the Board shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

15. Reporting

(1) The National Education Board shall submit an annual report to the Cabinet Secretary.

(2) Notwithstanding subsection (1), the Cabinet Secretary may, at any time, require a report from the National Education Board on a particular matter.

16. Secretary to the Board.

(1) The Board shall, through an open, transparent and competitive recruitment process, recommend for appointment by the Cabinet Secretary a suitably qualified person to be the Secretary to the Board.

(2) A person shall be qualified for appointment as the Secretary if the person—

- (a) holds a minimum of a first degree in education or related discipline;
- (b) has had at least ten years' proven experience in leadership at senior management level;
- (c) has experience in finance, management and public administration; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) The Secretary shall—

- (a) be appointed by the Cabinet Secretary;
- (b) be an *ex officio* member of the Board with no right to vote;
- (c) be the secretary to the Board;
- (d) subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board; and
- (e) perform such other functions as the Board may from time to time, determine.

(4) The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine upon the advice of the Salaries and Remuneration Commission.

PART III – COUNTY EDUCATION BOARD**17. County Education Board**

(1) There is established a County Education Board for every county.

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

18. Functions of the County Education Boards

(1) The functions of the County Education Board shall be to—

- (a) oversee in consultation with the county government, the operation and management of youth polytechnics, early childhood education including early childhood care and education programmes in the county;
- (b) coordinate and monitor education and training in the County on behalf of the national government and the county government;
- (c) interpret national policies in education based on the county's needs;
- (d) initiate proposals for policy reforms;
- (e) plan, promote, develop, and coordinate education, training and research in the county in accordance with the provisions of this Act, the national education policy and the laws and policies of the county government;
- (f) collaborate with the Board of Management, the Principal, the HeadTeacher, and other appropriate authorities in the management of basic schools;
- (g) register and maintain a data bank of all education and training institutions within the county;
- (h) monitor curriculum implementation in basic education in the county;
- (i) 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;
- (j) collaborate with the Teachers Service Commission on teacher management within the county;
- (k) prepare and submit a comprehensive school termly annual report including Educational Management Information System data to the Cabinet Secretary on all areas of its mandate including education and training services, curriculum, policy implementation and school based audit report within the County;
- (l) coordinate with all relevant agencies to ensure that all the barriers to the right to quality education are removed and with National Government to facilitate realization of the right to education within the county;
- (m) put measures in place to ensure all children and youth of school going age within the county attend and stay in to complete basic education.
- (n) perform such other functions as may be necessary for the better carrying out of the functions of the county education board under this Act or any other written law.

(2) 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.

[Act No. 3 of 2021, s. 70.]

19. Consultation with National Education Board

(1) In carrying out its functions, the County Education Board shall work in consultation and co-operation with the National Education Board.

(2) Notwithstanding the provisions of subsection (1), the Cabinet Secretary in consultation with the National Education Board shall make regulations prescribing the coordination between the National Education Board and the County Education Boards.

20. Composition of the County Education Boards

(1) Every County Education Board shall consist of a Chairperson and twelve other members appointed by the Cabinet Secretary through an open and competitive process and shall include—

- (a) an educationist of at least five years' standing, based in the county;
- (b) the County Director of Education or his or her representative who shall be the Secretary to the County Education Board;
- (c) a representative of the county executive in charge of education;
- (d) a representative of the Teachers Service Commission
- (e) where applicable, one person each representing—
 - (i) jointly, the National Council of Churches of Kenya and the Evangelical Fellowship of Kenya;
 - (ii) the Kenya Episcopal Conference; and
 - (iii) the Muslims Education Council;
- (f) a representative of the association of private schools;
- (g) two representatives of a trade union representing the interest of teachers;
- (h) two representatives of parents teachers association; and
- (i) a representative of persons with disability;
- (j) two members nominated by the following bodies—
 - (i) the Primary School HeadTeachers' Association; and
 - (ii) the Secondary School Principals Association.
- (k) a representative of a child rights organization.

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

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

21. Conduct of business and affairs of the County Education Boards.

(1) The conduct and regulation of the business and affairs of the County Education Boards shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the County Education Boards may regulate its own procedure.

22. Tenure

(1) The Chairperson shall serve for a term of four years renewable once.

(2) The members shall serve for a renewable term of three years.

Provided that the Cabinet Secretary shall by regulation, provide for the, staggering of the terms of the inaugural Board members.

23. Remuneration of the County Education Boards

The members of the County Education Boards shall be paid such allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

24. Co-option.

The County Education Boards may from time to time co-opt into its membership such persons not being more than three as it is satisfied possess skills and experience to assist in the discharge of the functions of the County Education Board.

25. Committees of the County Education Board

(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 subsection (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.

(3) The County Education Board shall appoint the Chairperson of a committee established under subparagraph (1) from among its members.

(4) The County Education Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(5) All decisions of the committees appointed under subsection (1) may be reviewed by the County Education Board.

26. Roles of County Government

(1) The roles of the county government shall include the provision of funds required for the development of the necessary infrastructure for institutions of basic education and training used for conducting early childhood education, childcare facilities, homecraft centres and village polytechnics.

(2) Pursuant to Article 187 of the Constitution, the national government may, upon request and with agreement between both governments, transfer its functions relating to infrastructure development of primary schools and secondary schools to a county government.

(3) Where the national government transfers its functions to a county government under subsection (2), it may also allocate conditional grants to that

county government to cater for the additional responsibilities arising from the transfer.

[Act No. 3 of 2021, s. 70.]

27. Role of Sponsor

The role of the Sponsor shall be—

- (a) to participate and make recommendations of review of syllabus, curriculum, books and other teaching aids;
- (b) representation in the School Management Committees and Board of Management;
- (c) to provide supervisory and advisory services in matters regarding spiritual development in schools including the appointment of chaplains at their own expense;
- (d) maintenance of spiritual development while safeguarding the denomination or religious adherence of others;
- (e) to offer financial and infrastructural support.

PART IV – FREE AND COMPULSORY BASIC EDUCATION

28. Right of child to free and compulsory

(1) The Cabinet Secretary shall implement the right of every child to free and compulsory basic education.

(2) The Cabinet Secretary shall in consultation with the National Education Board and the relevant County Education Board provide for the establishment of-

- (a) early childhood, primary and secondary schools, mobile schools, and adult and continuing education centers, within a reasonably accessible distance within a county;
- (b) appropriate boarding primary schools in arid and semi-arid areas, hard-to-reach and vulnerable groups as appropriate; and
- (c) academic centres, or relevant educational institutions to cater for gifted and talented learners;
- (d) special and integrated schools for learners with disability.

[Act No. 3 of 2021, s. 70.]

29. Free Tuition

(1) No public school shall charge or cause any parent or, guardian to pay tuition fees for or on behalf of any pupil in the school.

(2) Notwithstanding subsection (1)—

- (a) tuition fees may be payable by persons who are not Kenyan citizens;
- (b) other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges;
- (c) no person shall collect levies without issuing an official receipt.

30. Compulsory primary and secondary education

(1) Every parent whose child is—

- (a) Kenyan; or
- (b) resides in Kenya

shall ensure that the child attends regularly as a pupil at a school or such other institution as may be authorized and prescribed by the Cabinet Secretary for purposes of physical, mental, intellectual or social development of the child.

(2) A parent who fails to take his or her child to school as required under subsection (1) commits an offence.

(3) 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.

(4) 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 Education for the absence of his or her child at a school or institutions of basic education.

31. Duty of parents and guardian

(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 a basic education institution.

(2) Where a parent or guardian defaults in the discharge of his or her responsibility under subsection (1), 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 years or to both.

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

32. No payment of fee for admission

No person shall while admitting a child to a public school or a basic education institution collect any admission fee.

33. Proof of age for admission

(1) For the purpose of admission to a basic education institution, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths Registration Act (Cap. 149) or at the attainment of the school going age of four years on the basis of such other document, as may be prescribed under regulations.

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

34. No denial of admission

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

(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.

(3) The provisions of subsection (2) shall not apply in matters relating to gender in cases where a school is registered for a particular gender.

(4) No public school shall administer any test related to admission of a child to a public school or cause a person to administer such test unless such a test is for purposes of placing the child at an appropriate level of education.

(5) No child shall be denied admission to a public school.

(6) A parent of a child who has been denied admission to a public school may notify the County Education Board of the decision.

(7) The County Education Board shall review the decision of a school that denies a child admission.

(8) The Cabinet Secretary may by regulation prescribe criteria for the admission to a public school.

35. Incentives and prohibition of holding back and expulsion.

(1) Pupils shall be given appropriate incentives to learn and complete basic education.

(2) No pupil admitted in a school, subject to subsection (3) shall be held back in any class or expelled from school.

(3) Subject to subsection (1) the Cabinet Secretary may make regulations to prescribe expulsion or the discipline of a delinquent pupil for whom all other corrective measures have been exhausted and only after such child and parent or guardian have been afforded an opportunity of being heard:

Provided that such a pupil shall be admitted to an institution that focuses on correction in the context of education.

36. Prohibition against physical punishment and mental harassment to the child.

(1) No pupil shall 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 not exceeding six months or both.

37. Holiday Tuition

(1) No pupil shall 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.

38. Prohibition against employment of a child of compulsory school age.

(1) No person shall employ a child of compulsory school age in any labour or occupation that prevents such child from attending school.

(2) Any person who employs or prevents a child who is subject to compulsory attendance from attending school is guilty of an offence and is liable to fine not exceeding five million or to a period not exceeding five years or to both.

39. Responsibility of the Government

It shall be the duty of the Cabinet Secretary to—

- (a) provide free and compulsory basic education to every child;
- (b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education;
- (c) ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing basic education;

- (d) provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms;
- (e) provide infrastructure including schools, learning and teaching equipment and appropriate financial resources;
- (f) ensure quality basic education conforming to the set standards and norms;
- (g) provide special education and training facilities for talented and gifted pupils and pupils with disabilities;
- (h) ensure compulsory admission, attendance and completion of basic education by every pupil;
- (i) monitor functioning of schools;
- (j) advise the national government on financing of infrastructure development for basic education; and
- (k) provide free, sufficient and quality sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty and provide a safe and environmentally sound mechanism for disposal of the sanitary towels.

[Act No. 17 of 2017, s. 2.]

40. Duty of a principal or headteacher

(1) Where a pupil fails to attend school, the HeadTeacher shall cause investigation of the circumstances of the child's absence from school;

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

- (a) issue a written notice to the parent of the child requiring that parent to comply with the provisions of this Act.
- (b) submit a report on the child to the County Education Board.
- (c) submit a report on the child to the County Education Board.

(3) Any parent who without a reasonable cause and after a written notice from the headteacher, fails to comply with section 38 of this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding two years or to both.

PART V – SYSTEM AND STRUCTURE OF EDUCATION

41. Promotion of education

The Cabinet Secretary shall in consultation with the relevant Cabinet Secretary and other relevant stakeholders promote education and training in Kenya under the following system and structure—

- (a) early childhood education;
- (b) primary education;
- (c) secondary education;
- (d) middle level institutions of basic education;

[Act No. 3 of 2021, s. 70.]

42. Structure of education

(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 Cabinet Secretary in consultation with the National Education Board and other relevant stakeholders shall make Regulations prescribing an appropriate structure for education and training.

(3) The Cabinet Secretary in consultation with the National Education Board shall advise the government on the financing of technical, vocational and talent education.

(4) The Cabinet Secretary shall upon advice of the National Education Board advise the government on the promotion of environmental protection education for sustainable development.

43. Categories of schools

(1) Basic educational institutions shall be categorised as—

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

(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 National Education Board and approval by the Cabinet Secretary.

PART VI – SPECIAL NEEDS EDUCATION

44. Establishment and management of special institutions

(1) Subject to the Constitution and the provisions of this Act, the Cabinet Secretary shall establish and maintain public special schools.

(2) The Cabinet Secretary shall provide special needs education in special schools established under subsection (1) or in early childhood, primary and secondary schools suitable to the needs of a pupil 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 Cabinet Secretary 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.

[Act No. 3 of 2021, s. 70.]

45. Regulations in special needs education.

(1) The Cabinet Secretary may make regulations for the establishment and management of special schools and institutions offering special needs education to pupils with special needs.

(2) Notwithstanding the generality of subsection (1) the Cabinet Secretary shall make regulations to—

- (a) prescribe the duration of primary and secondary education suitable to the needs of a pupil pursuing special needs education;

- (b) provide for the learning and progression of children with special needs through the education system;
- (c) prescribe standards and requirements relating to the conduct of schools making provision for special needs education for pupils with special needs.
- (d) prescribe the curriculum to be used in respect of special needs education;
- (e) prescribe the categories of pupils requiring special needs education and methods appropriate for the education of pupils in each category of special school or educational institutions under section 42;
- (f) prescribe guidelines for the promotion of education for children with special needs;
- (g) establish mechanisms to ensure that every special school or educational institution offering special needs education has appropriate personnel, infrastructure, learning materials and equipment; and
- (h) establish a mechanism for monitoring and evaluation to advise the government on the quality of infrastructure and learning facilities in regard to special needs education.

(3) The curriculum used in special needs education shall comply with the requirement of the national curriculum in so far as it is reasonably practicable.

46. Duty of County education Boards to provide child guidance service.

(1) Subject to the Constitution and the provisions of this Act, it shall be the duty of every County Education Board in consultation with the relevant county government to provide for education assessment and research centers including a special needs service in identified clinics in the county.

(2) The functions of that service 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.

47. Report of child with special needs by County Education Board

(1) It shall be the duty of the County Education Board to consider in relation to each child with special needs belonging to schools in their area, what provision would benefit him or her after he or she completes basic education and to make a report to the Director-General or relevant Director.

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

- (a) recommendations as to whether the child would benefit from school education after he or she completes basic 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 by the education authority to be taken to meet those needs; and
- (e) where appropriate, the proposal of a school of higher learning to be attended by him or her.

48. Future provision for children with special needs

(1) A County Education Board shall in consultation with the Cabinet Secretary make such arrangements as they deem fit to enable a pupil with special needs attend an establishment whether or not a school in or outside Kenya if that establishment makes provision wholly or mainly for gifted or talented learners or advantage of the pupil for one or both of his or her parents, or some other person, to be present with him or her at the establishment during the period of the attendance, learners with disabilities.

(2) Without prejudice to the generality of subsection (1), the arrangements mentioned in that subsection may include defraying, whether wholly or partly—

- (a) the fees payable for the pupil's attendance and his or her travelling, maintenance and other expenses in respect of that attendance; and
- (b) where in the opinion of the Cabinet Secretary it would be to the such expenses of, as the case may be, the parent, parents or other person.

PART VII – PRIVATE EDUCATIONAL INSTITUTIONS

49. Establishment private schools

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

50. Registration of private schools

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

(2) No private school shall be registered if—

- (a) the proprietor is disqualified from being a proprietor by reason of Article 10 or Chapter Six of the Constitution;
- (b) a teacher employed in the school is not registered by the Teachers Service Commission;
- (c) the school premises, or any part of those premises, are unsuitable for a school; or
- (d) the proprietor or manager has been convicted of any crime against children under the Sexual Offences Act (Cap. 63A) and Counter Trafficking in Persons Act (Cap. 61).

(3) Subject to the provisions of this Act, the registration of any private school shall be provisional for a term of one year renewable for one further term of one year until the institution is quality assured and notice given in writing to the proprietor that the registration is final.

(4) If any person—

- (a) conducts a private school which is not a registered school or a provisionally registered school, or
- (b) being the proprietor of a private school does any act calculated to lead to the belief that the school is a registered school while it is a provisionally registered school,

he or she shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

51. Right to attend a private school

Any person requiring basic education may attend a private school.

52. Duties and rights of a private school

(1) A private school shall—

- (a) establish necessary educational and governance structures;
- (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 Cabinet Secretary;
- (g) where requested by the Cabinet Secretary, 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.

(2) The County Education Board in consultation with the Teachers Service Commission shall assess a private school, including teachers, non teaching staff, the school's educational programmes and the school instructional materials, to inspect the school's facilities and to perform such other appropriate functions with respect to the private school as the Cabinet Secretary may require.

**PART VIII – GOVERNANCE AND MANAGEMENT
OF BASIC EDUCATION AND TRAINING**

53. Governance and management of education and training

(1) The Cabinet Secretary shall be responsible for the overall governance and management of basic education.

(2) Subject to the provisions of this Act, the Cabinet Secretary shall by regulation entrust the governance or management of any aspect of basic education and training to any agency, body, organ or institution as may be appropriate for the purposes of this Act.

54. Structures of governance and management in education.

(1) For purposes of ensuring effective and efficient management of basic education in Kenya, the Cabinet Secretary shall by regulation establish such structures of governance and management at national and county levels as may be appropriate.

(2) The structures of governance and management of education established in subsection (1) shall—

- (a) encourage cooperation and collaboration among all stakeholders involved in governance and management of basic education;
- (b) decentralize decision making authority on financial and human resources and related functions in basic education;

- (c) enhance the culture of democracy, accountability and transparency in the governance and management of basic education; and
- (d) ensure effective and efficient delivery of basic education at all levels.

(3) There shall be a Director-General appointed through an open and competitive process under the Public Service Commission Act in consultation with the Cabinet Secretary.

(4) (a) The Director-General appointed under subsection 3 shall be responsible to the Principal Secretary.

(b) The Director-General shall have functions prescribed in any written law and the directions of the Cabinet Secretary.

(5) There shall be a County Director of Education deployed by the Cabinet Secretary through an open and competitive process.

(6) The County Director of Education shall be Secretary to the County Education Board and holder of the authority to incur expenditure of the educational account in the country.

(7) The County Director of Education shall, subject to the authority of the Cabinet Secretary and in consultation with the County Government, perform the following functions:

- (a) implementation of education policies;
- (b) co-ordination and supervision of all education officers and support staff at the County level;
- (c) management of basic education, adult continuing education, non-formal, special needs education, tertiary and other educational programmes;
- (d) initiating educational policies at County level;
- (e) liaise with Kenya National Examination Council on management of national examinations;
- (f) maintenance of quality assurance and standards in the County;
- (g) management and monitoring the implementation of educational programmes;
- (h) advising and facilitating the establishment and registration of learning institutions by the County government;
- (i) administration of education management information system and the related information and communication technology at the County level;
- (j) facilitate auditing of all basic education institutions in the County;
- (k) advise the County Education Board on selection and appointment of Boards of Management (BOMs), School Management Committees and Parents Associations;
- (l) co-ordinate capacity building and development for officers, school managers, Boards of Management and curriculum implementers;
- (m) admissions, transfers and discipline of students;
- (n) co-ordination of partners and education providers in the County including links with Government Departments on all education matters;

- (o) supervision of handing and taking over in schools and educational institutions in consultation with the Teacher Service Commission;
- (p) oversee the proper management and maintenance of school buildings, property and infrastructure development;
- (q) monitoring and evaluation of education programmes;
- (r) management of co-curricular activities, sports education and talent development in basic education institutions in the County;
- (s) any other duties assigned by the Cabinet Secretary.

(8) The County Director of Education shall, in the performance of the functions under subsection (7), have due regard to the teacher management functions provided under Article 237 of the Constitution and the Teachers Service Commission Act.

55. Board of management

(1) There shall be a Board of Management for every public—

- (a) *deleted by Act No. 3 of 2021*;
- (b) primary school;
- (c) secondary school;
- (d) adult and continuing education centre;
- (e) multipurpose development training institute; or
- (f) middle level institutions of basic education.

(2) Notwithstanding subsection (1) every school shall have a parents association which shall be constituted in the manner set out in the Third Schedule.

(3) Every private school shall establish a parents' teachers association.

[Act No. 3 of 2021, s. 70.]

56. Composition of Board of Management.

(1) The Board of Management established under section 55 shall consist of the following members appointed by the County Education Board:

- (a) six persons elected to represent parents of the pupils in the school or local community in the case of county secondary schools;
- (b) one person nominated by the County Education Board;
- (c) one representative of the teaching staff in the school elected by the teachers;
- (d) three representatives of the sponsors of the school;
- (e) one person to represent special interest groups in the community; and
- (f) one person to represent persons with special needs;
- (g) a representative of the students' council who shall be an *ex officio* member

(2) The Board of Management may from time to time co-opt into its membership such persons as it is satisfied possess skills and experience to assist in the discharge of the Board's functions.

(3) The number of members of the Board of Management co-opted under subsection (2) shall not exceed three at any particular time and such members do not have a right to vote at the meetings of the Board.

(4) The members of the Board of Management shall elect their Chairperson from amongst themselves provided that the member to be so elected shall not be a person who was appointed under subsection (1)(c).

(5) For public schools sponsored by faith-based organisations, the Chairperson of the Board of Management shall be appointed by the County Education Board in consultation with the sponsor.

(6) For a public school, the Chairperson of the Board of Management shall be elected by the members in their first meeting.

(7) Despite subsection (5), a faith-based sponsor who does not make a significant contribution and impact to a school or institution as contemplated under section 2 of the Act shall not be consulted in the appointment of the Chairperson of the Board of Management of that school or institution.

(8) The conduct and affairs of the Board of Management shall be as set out in the Fourth Schedule.

(9) The provisions of sections 54 to 57 shall apply *mutatis mutandis* to a board of management of any public—

- (a) primary school;
- (b) secondary school;
- (c) adult and continuing education centre; and
- (d) multipurpose development training institute.

57. Qualifications of members of boards of management

(1) The Cabinet Secretary shall, by regulations members of boards of management. prescribe the qualifications for persons who may be appointed to or co-opted into the Board of Management of a primary school, secondary school, adult continuing education centre, multipurpose development training institution or any basic education institution under this Act.

(2) In appointing persons as members of a board of management, the nominating and appointing authority shall observe and respect:

- (a) the ethnic and regional diversity of the people of Kenya;
- (b) impartiality and gender equity; and
- (c) Article 10 and Chapter Six of the Constitution.

58.

[Repealed by Act No. 3 of 2021, s. 70.]

59. Functions of the Board of Management

The functions of the Board of Management of a Functions of the Board of management basic education institution shall be to—

- (a) promote the best interests of the institution and ensure its development;
- (b) promote quality education for all pupils in accordance with the standards set under this Act or any other written law;
- (c) ensure and assure the provision of proper and adequate physical facilities for the institution;
- (d) manage the institution's affairs in accordance with the rules and regulations governing the occupational safety and health;

- (e) advise the County Education Board on the staffing needs of the institution;
- (f) determine cases of pupils' discipline and make reports to the County Education Board;
- (g) prepare a comprehensive termly report on all areas of its mandate and submit the report to the County Education Board;
- (h) facilitate and ensure the provision of guidance and counseling to all learners;
- (i) provide for the welfare and observe the human rights and ensure safety of the pupils, teachers and non teaching staff at the institution;
- (j) encourage a culture of dialogue and participatory democratic governance at the institution;
- (k) promote the spirit of cohesion, integration, peace, tolerance, inclusion, elimination of hate speech, and elimination of tribalism at the institution;
- (l) encourage the learners, teachers and non teaching staff and other, parents and the community, and other stakeholders to render voluntary services to the institution;
- (m) allow reasonable use of the facilities of the institution for community, social and other lawful purposes, subject to such reasonable and equitable conditions as it may determine including the charging of a fee;
- (n) administer and manage the resources of the institution;
- (o) receive, collect and account for any funds accruing to the institution;
- (p) recruit, employ and remunerate such number of non-teaching staff as may be required by the institution in accordance with this Act; and
- (q) perform any other function to facilitate the implementation of its functions under this Act or any other written law.

60. Annual report on governance

Every public school or institution of basic education shall, submit on an annual basis a report to the Director of Basic Education.

61. Committees of the Board of Management of a basic institution.

(1) The board of management of an institution of basic education may establish such committees as the Board may consider appropriate to perform such functions and discharge such responsibilities as the Board may deem necessary.

(2) Without prejudice to the provisions of subsection (1), the board of management shall establish the following committees—

- (a) finance, procurement and general purposes committee;
- (b) academic standards, quality and environment committee;
- (c) discipline, ethics and integrity committee;
- (d) audit committee; and
- (e) human rights and student welfare committee.

62. Secretary to the Board of Management.

The head of a basic education institution shall be the secretary to the Board of Management.

63. Remuneration of the members of the Board of management

The members of the Board of Management shall be paid such allowances as the Cabinet Secretary may provide by regulations upon the advice of the Salaries and Remuneration Commission.

PART IX – STANDARDS, QUALITY ASSURANCE AND RELEVANCE

64. Establishment of the Education Standards and Quality Assurance Council.

(1) There shall be established an Education Standards and Quality Assurance Council.

(2) The Education Standards and Quality Assurance Council shall—

- (a) ensure standards and maintain quality in institutions of basic education;
- (b) administer policies and guidelines set for basic education;
- (c) supervise and oversee curriculum implementation and delivery;
- (d) in cooperation with county education, monitor the conduct of assessments and examinations in institutions of basic education;
- (e) monitor and evaluate standards and quality in basic education.

(3) The Cabinet Secretary shall by regulations prescribe the composition, appointment and terms of service of the members of Education Standards and Quality Assurance Council in accordance with the Constitution and this Act

65. Composition and staff at Education Standards and Quality Assurance Council.

(1) The Council shall appoint quality assurance and standards officers for the purposes of this Act.

(2) The Cabinet Secretary shall by regulation prescribe the following with respect to Education Standards and Quality Assurance Council (ESQAC):

- (a) the relationship between the Cabinet Secretary and the Director-General;
- (b) the composition of Education Standards and Quality Assurance Council;
- (c) functions of key officers of Education Standards and Quality Assurance Council;
- (d) qualifications of members and key staff;
- (e) the relative autonomy of Education Standards and Quality Assurance Council; and
- (f) the retention by the Cabinet Secretary of policy making and oversight.

66. Powers of the Quality Assurance and Standards Officers.

(1) The Quality and Assurance officers shall facilitate compliance with standards by promoting a collegial and collective approach to quality assurance.

(2) Education Standards and Quality Assurance Council and Quality Assurance Officers shall provide appropriate incentives for voluntary compliance with the standards and quality assurance in basic education.

(3) Subject to subsections (1) and (2) a Quality Assurance and Standards Officers may—

- (a) at any time enter any basic education and training institution with or without notice to ensure compliance with education standards and regulations
- (b) require any person responsible for the management of a basic educational institution or teacher or employee—
 - (i) to produce for his or her quality review any time table syllabus, or record book, material or document;
 - (ii) to furnish the Quality Assurance and Standards Officer with such information relating to the teaching or the management of the basic education institution;
- (c) require by order in writing, the attendance before him or her any person who appears to be acquainted with the facts or circumstances of the case.
- (d) take such photographs or video recording as the Quality Assurance and Standards Officer deems necessary of the premises and persons reasonably believed to be acquainted with the fact or the circumstances of the case.

(4) An officer appointed under this section shall have power to recommend temporary suspension of operations of the institutions to the County Education Board for a specific period until the basic standards are met.

(5) A Quality Assurance and Standards Officer may make recommendations to the Teachers Service Commission and County Education Board for necessary action.

(6) The head, institutional managers, directors, heads or principals shall allow access to all parts and records of the institution.

(7) On being so requested by an officer appointed under this section, the head principal or any other person responsible for the school shall place at the disposal of the officer all the facilities, records, accounts, notebooks, examination scripts and other materials belonging to the school that the officer may reasonably require for the purpose of the inspection of the school or the inspection or audit of its accounts.

(8) In this section, "school" shall include any part of the school and any building used in connection with the school, including workshops, dormitories, kitchens, sanatoria, hostels, ancillary buildings and any other buildings on the site of the school.

67. Cabinet Secretary and promoters to be responsible for maintenance of standards.

The Cabinet Secretary, the Teachers Service Commission, the Standards and Quality Assurance Council, the National Education Board, the national quality assurance bodies, and the County Education Boards shall ensure the maintenance of standards, quality and relevance of education and training as provided for under this Act or any other written law.

68. National Qualifications Framework

(1) The Cabinet Secretary shall in collaboration with the relevant stakeholders develop the National Qualifications Framework to—

- (a) set the standards and benchmarks for qualifications and competencies including skills, knowledge, attitudes and values;
- (b) define the levels of qualifications and competencies;

- (c) provide for the recognition of attainment or competencies including skills, knowledge, attitudes and values; and
- (d) facilitate linkages, credit transfers and exemptions and a vertical and horizontal mobility at all levels to enable entry, re-entry and exit.

(2) The Principal Secretary shall oversee the administration and implementation of the National Qualifications Framework with regard to basic education under this Act or any other written law.

69. Review of standards, quality and relevance

The Cabinet Secretary shall in consultation with the relevant departments or agencies and stakeholders through regulations and appropriate measures continuously review, evaluate and monitor policies on standards and relevance in education and training to assure and ensure standards, quality and relevance.

70. National and international standards and quality assurance.

Every institution of basic education in consultation with the Education, Standards and Quality Assurance Council shall, in accordance with the provisions of this Act—

- (a) develop or adapt appropriate national and international standards;
- (b) establish, implement and manage quality assurance systems;
- (c) establish and promote appropriate collaborative arrangements with relevant national and international agencies on standards and quality assurance; and
- (d) establish systems and processes for continuous review and improvement of standards and quality assurance.

71. Standards, quality and relevance in education

The Cabinet Secretary in consultation with the National Education Board, and the various County Education Boards and institutions and all persons engaged in the promotion, provision and conduct of education shall—

- (a) ensure compliance with quality and relevance in the provision and delivery of education;
- (b) adapt effective and efficient systems to achieve the desired outcomes and objectives and avoid duplication and waste.

72. Guidelines on standards, quality and relevance.

The Cabinet Secretary shall, in consultation with the relevant stakeholders, make Regulations on standards, quality and relevance in education in Kenya.

73. Policy and guidelines on curricula.

(1) To ensure standards, quality and relevance in curriculum development, the Cabinet Secretary shall, upon advice of the National Education Board, continuously develop, review, evaluate and monitor the curriculum:

Provided that the curriculum shall be reviewed every five years.

(2) Basic education institutions may, in consultation with the national quality assurance bodies, curriculum development agency and industry, initiate the review of policy on curriculum in their respective areas.

(3) The policy and guidelines on curricula developed under this section shall secure the competencies and learning outcomes for the relevant structures and levels under the National Qualifications Framework.

(4) The Cabinet Secretary shall, in consultation with the relevant stakeholders make appropriate regulations to implement the provisions of this section.

74. Curricula development

(1) There shall be a Kenya Institute of Curriculum Development whose mandate shall include curriculum development for basic education.

(2) Subject to subsection (1), the Cabinet Secretary shall accredit curriculum development agencies for all levels and programmes on the basis of approved criteria.

(3) Subject to subsection (1), the curricula shall be developed for all levels and programmes by accredited agencies in accordance with the National Qualifications Framework and the policies and guidelines developed and established under this Act.

(4) Any person or institution may propose a curriculum to an accredited curriculum agency.

(5) Any person who contravenes the provisions of this section commits an offence.

75. Prohibition of development and examination of own curriculum

Except as otherwise provided for under this Act, no person or institution shall combine the functions of developing and teaching and examining or assessing and issuing a certificate in respect of a curriculum without accreditation and approval in accordance with the provisions of this Act.

PART X – LICENSING, REGISTRATION AND ACCREDITATION PROCEDURES IN BASIC EDUCATION

76. Licensing, registration and accreditation of persons and institutions of education, training and research

A person shall not offer basic education in Kenya unless the person is accredited and registered as provided for under this Act.

(2) A person or organization intending to establish an institution offering basic education shall make an application in the prescribed manner to the relevant 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 primary or secondary school.

[Act No. 3 of 2021, s. 70.]

77. Rejection of application by the County Education Board

(1) Where the County Education Board is not satisfied that the institution has complied with the requirements set out under this Act the Board 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 subsection (1) may appeal to the Education Appeals Tribunal within a period of thirty days of the decision.

78. Offence to promote without being licensed or accredited and registered.

(1) A person shall not engage in the promotion, management, or teaching of basic education unless such person is accredited and registered in accordance with the provisions of this Act.

(2) A person may not use 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.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or a term of imprisonment not exceeding three years or to both.

79. County Education Board to maintain a databank

(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) pupils and students.

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

(3) The Board shall deal with any relevant personal data collected and so held in the register according to the data principles set out in the Data Protection Act, No. 24 of 2019.

[Act No. 24 of 2019, 2nd Sch.]

80. Fees.

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 relevant agencies under the Act or any other written law.

81. Rules, regulations and guidelines on quality.

The Cabinet Secretary shall in consultation with Education, Standards and Quality Assurance Council, and the relevant stakeholders establish guidelines and prescribe rules and regulations for the establishment, licensing, accreditation and registration of basic education and training institutions.

82. Licensing of an institution basic education and training.

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

(2) 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 have 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;
- (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.

83. Application to County Education Board for establishment of a basic education institution.

An application for the establishment of a basic education institution shall contain:

- (a) name, physical, postal and electronic addresses of the proposed institution;
- (b) in the case of a mobile school, the name of a general area and the name of the family in which the school is situated;
- (c) the governance and management structures of the institution, membership of the proposed institution, academic qualifications and experience of the promoters and managers of the intended institution;
- (d) the aims and objects for which the institution is to be established and the programmes of instructions and the courses of study that will be offered;
- (e) the number, qualifications and competence of the teachers and non teaching staff;
- (f) available suitable infrastructure, and appropriate equipment;
- (g) a statement of financial ability; and
- (h) such other matters as may be prescribed in the regulations made under this Act.

84. Examinations and assessments

(1) Public examinations shall be conducted as provided for under the Kenya National Examination Council Act (Cap. 225A)

(2) The Cabinet Secretary may make regulations prescribing:

- (a) the conduct of school based assessments;
- (b) conditions;
- (c) the certification of school based assessments.

85. Appeal against decision of County Education Board

Any person aggrieved by the decision of County Education Board under this Part may, within thirty days of being notified of the decision, appeal against such a decision to the Education Appeals Tribunal established under section 93.

PART XI – FINANCIAL PROVISIONS

86. Financing of basic education.

- (1) The funds of the Department of Education shall consist of—
- (a) monies provided by Parliament 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 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.
- (2) The funds shall be used to promote basic education.

87. Financial year

The financial year of the Department of Education Financial year shall be the government financial year.

88. Annual estimates.

(1) Before the commencement of each financial year, the Cabinet Secretary 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;
- (f) the infrastructural development; and
- (g) conditional capitation funds to facilitate the acquisition of sufficient and quality sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty.

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

[Act No. 17 of 2017, s. 3.]

89. Accounts and Audit of Departments or schools.

(1) The Cabinet Secretary 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 Cabinet Secretary 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.

90. School based auditing

(1) The Cabinet Secretary shall establish School based auditing mechanisms for school-based auditing.

(2) The officers responsible for school-based auditing for public schools shall advise and work with the respective headteachers, principals, school administrators and governing bodies to ensure the proper maintenance of accounts and assets of the institution.

(3) The Cabinet Secretary shall make appropriate regulations on school based auditing for public schools.

91. Investment of funds

(1) The Cabinet Secretary may 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 Treasury may from time to time approve for that purpose.

(2) The Cabinet 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 XII – GENERAL PROVISIONS

92. General penalties

Any person who commits an offence under this Act for which no other penalty is provided is liable—

- (a) in the case of a first conviction, to a fine not exceeding two hundred thousand shillings or a term of imprisonment not exceeding twelve months, or both; and
- (b) in any other case, to a fine not exceeding three hundred thousand shillings or a term of imprisonment of not exceeding twelve months or both.

93. The Education Appeals Tribunal.

(1) There is established an Education Appeal Tribunal.

(2) Any person aggrieved by the decisions of the County Education Board may appeal to the Education Appeals Tribunal.

(3) The Cabinet Secretary in consultation with the National Education Board and relevant stakeholders shall prescribe regulations on the operation and structure of the Education Appeals Tribunal.

(4) The Education Appeals Tribunal shall comprise of—

- (a) the Chairperson of the National Education Board;
- (b) the Director-General;
- (c) the Secretary to the Teachers Service Commission;
- (d) a representative of the Education Standards and Quality assurance Council;
- (e) a representative of the Kenya Private Sector Alliance;
- (f) a representative of the Attorney-General; and
- (g) the Chief Executive Officer of the National Council for Nomadic Education in Kenya.

94. Establishment of the National Council for Nomadic Education

(1) There is established a National Council for Nomadic Education in Kenya.

(2) Notwithstanding subsection (1), the National Council for Nomadic Education in Kenya shall be constituted in a manner set out in the Sixth Schedule.

95. Regulations

(1) The Cabinet Secretary may upon consultation with the Board make regulations—

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of provisions of this Act.
- (c) on the establishment of Boards of Management for primary schools.

(2) Without prejudice to the generality of subsection (1) the Cabinet Secretary may make regulations to provide for—

- (a) an appropriate structure for education and training
- (b) incentives to learners, teachers and non teaching staff;
- (c) discipline, corrective measures and expulsion to facilitate compliance;
- (d) admission, progression and transfer of learner;
- (e) integration of the *madrassa*, *Duksi* and pastoral programmes of instructions into the formal education system as appropriate to improve access and retention;
- (f) to secure appropriate institutional linkages and relative autonomy for the Kenya National Commission for United Nations Educational Scientific and Cultural Organization to enable it to promote education through culture, natural science, social and human sciences, and information and communication technology.

(3) The Cabinet Secretary may make regulations with respect to the conduct and management of schools and such regulations may—

- (a) prescribe standards with regards to the numbers and qualifications of staff, the size of classes and the expenditure on educational standards in accordance with international best practices;
- (b) provide for the preparation or approval of curricula, syllabuses, books and other educational materials;

- (c) prescribe minimum standards for the health and safety of pupils and for a satisfactory environment for education;
 - (d) provide for the keeping of registers and records and the submission of returns, including EMIS data;
 - (e) provide for incentives for submission of reports, returns and related EMIS data;
 - (f) provide for sanctions and penalties for non submission and falsification of records, reports, returns, and related EMIS data;
 - (g) provide for admission, suspension, discipline, punishment and expulsion of pupils;
 - (h) provide for educational calendar;
 - (i) prescribe how schools shall be classified;
 - (j) make different provisions with respect to different classes or kinds of schools, impose conditions and make exemptions;
 - (k) provide for the promotion, development, management and governance of education through ICT Integration and Education, and EMIS, and statutory structural adjustment;
 - (l) provide for religious instruction and religious education in basic education having regard to the national values and principles under Article 10 and Chapter Six of the Constitution;
 - (m) provide for teacher education and development;
 - (n) provide for the implementation of international instruments on education and child rights to which Kenya is a party; and
 - (o) provide for or prescribe such other matters as the Cabinet Secretary considers necessary or desirable to provide for or prescribe.
- (4) The Cabinet Secretary may make regulations prescribing the duties and rights of students.

PART XIII – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

96. Repealed Acts

The following Acts are repealed—

- (a) the Education Act (Cap. 211); and
- (b) the Board of Adult Education Act (Cap. 223).

97. Preservation of proceedings and rights of appeal.

Any proceedings, instruments and any right of review appeal subsisting immediately before the commencement of this Act by virtue of the repealed Acts shall after the commencement of this Act be treated as subsisting by virtue of the corresponding enactment in this Act.

98. Continuance of periods of time

Where a period of time specified in the repealed Acts is current at the commencement of this Act, this Act shall have effect as if the corresponding provisions had been in force when the period began to run.

99. Preservation of licences, certificates and registration

(1) Any register kept, registration effected, certificate issued, letters of Interim Authority, notice or information given, return made or other thing done under the

repealed Acts which, immediately before the date of commencement of this Act, was in force or effect shall continue in force and have effect as if kept, effected, issued, given, made or done under the corresponding provision of this Act.

(2) Any form used and any requirement as to the particulars to be entered in any form used for the purposes of the repealed Act which was in force or effect immediately before the date of commencement of this Act shall continue in force and have effect as though prescribed under this Act until forms or particulars are so prescribed.

100. Transfer of property, assets, liabilities and staff.

(1) All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or possessed by the institutions established under the repealed Acts shall by virtue of this section vest in the respective institutions established under this Act without further conveyance, transfer or assignment.

(2) All rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the institutions established under the repealed Acts are deemed to be the rights, obligations and liabilities of the respective institutions established under this Act.

(3) All references to the offices or institutions established under the repealed Acts in any agreement or instrument relating to any property, assets, rights, privileges, immunity, obligations or liabilities transferred under subsection (1) and (2) and subsisting immediately before the commencement of this Act, shall, unless the context otherwise requires, be read as references to respective offices or institutions established under this Act.

(4) Except as the institutions established under the repealed Acts otherwise directs under the relevant law, all persons who were members of the staff of the offices or institutions established under the repealed Acts shall be members of the staff of respective offices or institutions established under this Act and shall be deemed to have been appointed under this Act on the terms and conditions of service applicable to them immediately before the commencement of this Act.

101. General savings

(1) Notwithstanding the repeal of the Acts under all acts, directions, orders, appointments, requirements, authorizations, decisions or other things given, taken or done under, and all funds, assets and other property acquired or disposed of by virtue of the repealed Acts shall, so far as are not inconsistent with this Act, be deemed to have been given, taken, done or acquired or disposed of under this Act.

(2) All rules and regulations made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue to be in force but may be amended or revoked by rules and regulations made under this Act.

(3) All pending disciplinary matters will be determined as if they were commenced under this Act.

(4) All instruments issued by the offices or institutions established under the repealed Acts and in force immediately prior to the commencement of this Act shall be deemed to have been issued under this Act.

(5) All pre-primary institutions currently managed by the Ministry of Education, or any local government shall continue under such management until the first general election under the Constitution.

(6) The Cabinet Secretary may, in consultation with the National Education Board, make regulations prescribing anything which under this Act may be prescribed, and generally for the better carrying into effect the provisions of this Act.

FIRST SCHEDULE

[s. 6(1)]

CONDUCT OF BUSINESS AND AFFAIRS OF THE NATIONAL EDUCATION BOARD

1. Filling of vacancy

A vacancy in the office of a member under paragraph 3 shall be filled by a person appointed by the Cabinet Secretary in accordance with the provisions of this Schedule.

2. Vice-Chairperson

The Board shall, at its first meeting, elect a Deputy Chairperson from amongst the persons appointed under section 6 of this Act.

3. Meetings of the Board.

The Board shall meet at least three times in each year.

4. Special meetings.

The Chairperson may at any time convene a special meeting of the Board and shall do so within fifteen days of a written requisition for the meeting signed by at least three members.

5. Chairperson to preside.

(1) The Chairperson shall preside at all meetings of the Board, in which the Chairperson is present and in the case of his or her absence, the Deputy Chairperson shall preside.

(2) At a meeting of the Board at which neither the Chairperson or Deputy Chairperson is present, the members of the Board present shall elect one of their numbers to preside, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

6. Quorum.

The quorum for the conduct of the business of the Board shall be five members.

7. Voting procedure.

The decisions of the Board shall be by a majority of votes, and the Chairperson of the meeting shall have an original and a casting vote.

8. Validity of proceedings.

The validity of any proceedings of the Board shall not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

9. Minutes of the meeting.

Minutes of the proceedings at meetings of the Board shall be kept in such a manner as the Board directs, and, on the written request of the Cabinet Secretary, shall be made available to him or her or any person nominated by him or her.

10. Committees of the Board.

The Board may establish such committees as may be necessary for the performance of the functions of the Board and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

11. Power of the Board to regulate its own procedure.

Subject to the provisions of this Schedule, the Board shall regulate its own procedure.

12. Disclosure of interest

- (1) If a member of the Board is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

SECOND SCHEDULE

[s. 22(1)]

**CONDUCT OF BUSINESS AND AFFAIRS
OF THE COUNTY EDUCATION BOARDS**

1. Vacation of office

The office of a member of the County Education Board shall become vacant if the member—

- (a) is absent without the permission of the Chairperson from three or more consecutive meetings of the County Education Board.
- (b) resigns the office in writing under his or her hand delivered to the Chairperson of the County Education Board;
- (c) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (d) is found guilty of an offence which in the opinion of the County Education renders him or her unsuitable to continue to hold office;
- (e) becomes for any reason including infirmity of body or mind, incompetent or incapable of performing the functions of the office; or
- (f) is otherwise unable to discharge the functions of his or her office.

2. Meetings of the Board.

- (1) The County Education Board shall hold such number of meetings at such places and at such times as the County Education Board shall consider necessary for the proper discharge of its functions.

- (2) Notwithstanding subsection (1) the County Education Board shall meet not less than three times in each financial year.
- (3) At least fourteen days notice shall be given prior to any meeting of the County Education Board.

3. Special Meetings

Notwithstanding the provisions of section 2, the Chairperson or any three members may call a special meeting whenever it is expedient for the transaction of the business of the County Education Board by giving not less than seven days notice to the members

4. Presiding at meetings.

- (1) The Chairperson shall preside at all meetings of the County Education Board.
- (2) In the absence of the Chairperson at a meeting, the vice-Chairperson shall preside at that meeting of the County Education Board.
- (3) In the absence of the Chairperson and the vice-Chairperson at a meeting, the members present shall elect a member to preside at that meeting of the County Education Board.

5. Quorum at meetings

The quorum for the conduct of business at a meeting of the County Education Board shall be more than half of the members of the County Education Board.

6. Voting

(1) A decision on any matter before the County Education Board shall be by a majority of votes of the members present.

(2) In the case of an equality of votes the Chairperson or the person presiding shall have a casting vote.

7. Procedure at meetings

Subject to the provisions of this Act the County Education Board may determine its own procedure.

8. Vacancies and defects in appointment

Subject to sections 2 and 5, proceedings of the County Education Board shall not be invalid by reason only of a vacancy in the membership of the County Education Board or by reason of a defect appointment of a member.

9. Disclosure of interest.

- (1) If a member of the County Education Board is directly or indirectly interested in a contract, proposed contract or other matter before the County Education Board and is present at a meeting of the County Education Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall disclose the fact as soon as is practicable a commencement of that meeting.
- (2) A member to whom subsection (1) applies shall not participate in the consideration, discussion or voting on the matter in which the member has disclosed an interest.

10. Records.

The Secretary to the Board shall keep a record of all proceedings and meetings of the County Education Board.

THIRD SCHEDULE

[s. 55(2)]

ESTABLISHMENT AND FUNCTIONS OF PARENTS ASSOCIATION

1. There shall be a Parents Association for every public or private secondary school consisting of—

- (a) every parent with a pupil in the school;
- (b) a representative of the teachers in the school.

2. (1) There shall be an Executive Committee consisting of representatives of each class and two teachers.

- (2) The members of the Executive Committee of Parents Association shall be elected during an annual general meeting of parents and teachers.
- (3) The Parents Association shall, at its first meeting, elect a Chairperson from amongst the persons elected under paragraph 2 of this Schedule.
- (4) The Chairperson and two members of the Association shall be co-opted to the Board of Management.
- (5) The Head or Principal shall be the Secretary to the Association.
- (6) The functions of the Parents Association shall be to—
 - (a) promote quality care, nutritional and health status of the pupils;
 - (b) maintain good working relationship between teachers and parents;
 - (c) discuss, explore and advise the parents on ways to raise funds for the physical development and maintenance;
 - (d) explore ways to motivate the teachers and pupils to improve their performance in academic and co-curricular activities;
 - (e) discuss and recommend charges to be levied on pupils or parents;
 - (f) undertake and oversee development projects on behalf of the whole Parents Association.
 - (g) assist the school management in the monitoring, guidance, counseling and disciplining of pupils; and
 - (h) discuss and recommend measures for the welfare of staff and pupils.

(3) The Parents Association shall hold such number of meetings at such places and at such times as the Association shall consider necessary for the proper discharge of its functions.

(4) Subject to the provisions of this Schedule, the Parents Association shall regulate its own procedure.

(5) There shall be established National Parents Associations, County Parents Associations and Sub-County Parents Associations elected by Parents Associations from schools through a delegate system.

FOURTH SCHEDULE

[s. 56(8)]

CONDUCT OF BUSINESS AND AFFAIRS
OF THE BOARD OF MANAGEMENT**1. Incorporation of Board of Management**

The Board of Management shall be a body corporate with perpetual succession and a common seal, and shall in their corporate names, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing, lending and granting money;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

2. Executive Board of Management

There shall be an executive Board of Management for each Board of Management consisting of—

- (a) the Chairperson of the Board;
- (b) the secretary of the Board;
- (c) the Chairperson of a Parents Teachers Association; and
- (d) two other Board members.

3. Tenure.

- (1) Unless the appointment of the Chairperson or a member of the Board of Management is earlier terminated under this Act, a person appointed as Chairperson or as a member shall hold office for a term of three years from the date of appointment and shall be eligible for re-appointment for one further term of a period not exceeding three years.
- (2) In reappointing members of the Boards of Management the Cabinet Secretary shall maintain a proportion of new membership that ensures continuity in the affairs of the Boards of Management.
- (3) Notwithstanding the foregoing, a person who has served as a member of a Board of Management for one term at the date of the commencement of this Act may be re-appointed for a second and final term of three years.

4. Resignation from the Board of Management.

- (1) A member of a Board of Management may at any time resign by giving notice in writing to the County Education Board.
- (2) A person giving notice under subsection (1) shall cease to be a member of the Board of Management from the date specified in the notice or, if no date is specified, from the date of the receipt by the County Education Board of the notice.

5. Revocation of appointment and vacation of office.

- (1) The appointment of a member to a Board of Management shall be revoked and the member shall vacate office if the member—

- (a) resigns in accordance with paragraph 2 of this Schedule
- (b) becomes insolvent or has conveyed or assigned his property or has made a proposition or arrangement for the benefit of his creditors;
 - (c) is sentenced by a court of law to imprisonment for a term of six months or more;
 - (d) is incapacitated by physical or mental illness;
 - (e) has been absent from three consecutive meetings of the Board of Management without leave;
 - (f) has his appointment revoked by the nominating body; or
 - (g) is otherwise unable or unfit to discharge his functions as a member of the Board of Management on account of any matter in this Act.
- (2) Where the office of a member of a Board of Management becomes vacant by reason other than the expiry of the period of that office, the County Education Board, or the proprietor or sponsor may, in accordance with the provisions of this Act appoint another person to replace the member.

6. Frequency of meetings of the Board of Management

- (1) A Board of Management shall meet at least once every four months.
- (2) Every meeting of the Board of Management shall be convened by giving at least fourteen days' notice in writing to every member unless three quarters of the total members of a Board of Management otherwise agree.
- (3) Notwithstanding the provisions of subsection (1), the Chairperson of a Board of Management may, on his own motion or upon requisition in writing by at least five members of the Board, convene a special meeting of the Board of Management or at any time for the transaction of specific business.

7. Quorum of the Board of Governors

- (1) The quorum for the conduct of business at a meeting of a Board of Management shall be two-thirds of the total number of members of the Board of Management.
- (2) Subject to the provisions of subparagraph (1) no proceedings of a Board of Management shall be invalid by reason only of a vacancy among the members thereof

8. Chairperson to preside over a meeting of Board of Governors.

- (1) The Chairperson shall preside at every meeting over a meeting of the Board of Management at which the Chairperson is present and in his absence, the deputy Chairperson shall preside.
- (2) In the absence of both the Chairperson and the deputy Chairperson at any meeting, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

9. Decision of the Board of Management.

Unless a unanimous decision is reached, a decision on any matter before a Board of Management shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

10. Disclosure of interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before a Board of Management and is present at a meeting of the Board of Management at which the contract, propose contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Board of Management who contravenes subparagraph (1) shall commit an offence and be liable to a fine of fifty thousand shillings, or to imprisonment for a term of six months, or to both.

11. Common seal

- (1) Subject to this Act, the common seal of a registered institution of basic education for which a Board of Management is responsible shall be kept in a safe in the registered office of the institution and shall not be used except in the manner authorized by the Board of Management.
- (2) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the institution—
 - (a) where they are required to be under seal, if sealed with the common seal of the institution and authenticated by the Chairperson and the secretary of the Board of Management;
 - (b) where they are not required to be under seal, if executed in that behalf by a member authorized by the Board of Management for that purpose.
- (3) A deed, instrument, contract or other documents executed in accordance with subparagraph (2) shall be effective in law to bind the institution and its successors and may be varied or discharged in the same manner as that in which it was executed.

12. Remuneration of the members of the Board of Management

Members of a Board of Management shall be paid in respect of their services such allowances as the Board of Management shall, with the approval of the Cabinet Secretary, determine.

13. Appointment of members of the Board of Management.

A Board of Management may, upon such terms and conditions of service as the County Education Board may determine, employ such staff or hire the services of such consultants or experts as may be necessary for the proper performance of its functions.

14. Protection from Liability for a member of officer of a Board of Management

No matter or thing done by a member of a Board of Management or any officer, employee or agent of the Board of Management shall, if the matter or thing is done bona fide in executing the functions, powers or duties of the Board of Management, render the member, officer, employee or agent or any person acting on directions personally liable to any action, claim or demand whatsoever.

15. Liability of an institution for damages

The provisions of paragraph 12 shall not relieve an institution of basic education of liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the institution of basic education or its Board of Managements by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

16. Annual estimates

- (1) A Board of Management of a public institution of basic education shall prepare annual estimates of revenue and expenditure for the institution under its charge, in such form and at such times as the Cabinet Secretary may prescribe.
- (2) The Board of Management may incur expenditure for the purpose of the institution in accordance with estimates approved by the Cabinet Secretary, and any approved expenditure for under any head of the estimates may not be exceeded without the prior written approval of the Cabinet Secretary.
- (3) A Board of Management for a public institution of basic education shall receive all grants made out of public funds, whether for capital or revenue purposes, and any subscriptions, donations or bequests made to the institution.
- (4) Nothing in this Act shall affect the terms and conditions upon which any grant may be made to another institution of basic education or a Board of Management in aid of an institution out of public funds.
- (5) A Board of Management may, with the approval of the Cabinet Secretary and subject to any restriction imposed by law, appeal to the general public for subscriptions, donations or bequests to an institution of basic education.
- (6) The Secretary to a Board of Management of a public institution of basic education shall be responsible for the day-to-day management of the affairs of the institution, and shall present any account of such expenditure to the Board of Management.
- (7) A Board of Management of a public institution of basic education may, with the approval of the County Education Board upon consultation with the Cabinet Secretary pay all expenses connected with the institution including the salaries of staff; but the personal emoluments of a person seconded to the service of the Board of Management shall, in the first instance, be paid by the seconding authority and may be recovered from institution.

17. Unexpended monies.

- (1) Any unexpended balance of grant may be carried forward in the accounts of a public institution of basic education from one year to the next and be committed as the Board of Management may determine, or be put into the account of the institution.
- (2) The Board of Management shall not authorize any withdrawal from the account without express approval of the County Education Board or the responsible Accounting Officer.

18. Securing of loans by Board of Management

The Board of Management shall be responsible for making arrangements to raise any loan which they may, at the request of the institution, authorize the Board of Management to secure for the purpose of the institution and shall ensure that proper provision is made for the repayment thereof and payment of all interest and

other charges thereon in accordance with any order made by the Cabinet Secretary in the matter, or in accordance with the terms and conditions of the loan.

19. Vesting of property

All such immovable property, shares, funds and securities as may from time to time become the property of a public institution of basic education shall be in the name of the institution and shall be dealt with in such manner as the Board of Management of the institution may from time to time determine, subject to the conditions upon which any grants are made from public funds for capital or recurrent purposes and the conditions upon which any endowment, bequest or donation is made for any purpose connected with the Institution:

Provided that the Board of Management may only dispose of any property with the consent of the County Education Board or on the authority of appropriate written law and regulations.

20. Investment of funds.

- (1) A Board of Management of a public institution of basic education may invest any of the funds of the institution in securities in which for the time being trustees may by law invest in trust funds, or in any other securities which the Treasury may, from time to time approve for that purpose.
- (2) The Board of Management may, subject to the guidelines and regulations issued by Treasury, place on deposit with such bank or banks as the Board of Management may determine, any monies not immediately required for the purposes of the institution.

21. Financial year.

The financial year of a public institution of basic education shall be the financial year of the government.

22. Funds of a public institution of basic education.

- (1) The funds of a public institution of basic education shall comprise of—
 - (a) such sums as may be granted to the institution by the Cabinet Secretary;
 - (b) such monies or assets as may accrue to or vest in the institution in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law; and
 - (c) all monies from any other source provided for or donated or lent to the institution.
- (2) There shall be made to the institution of basic education, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the institution in the exercise of its powers or the performance of its functions under this Act.

23. Accounts and audit.

- (1) A Board of Management of a public institution of basic education shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the institution.
- (2) Within a period of four months from the end of each financial year of the government, a Board of Management shall submit to the Auditor-General or to a auditor appointed under this section, the accounts of the institution together with—

- (a) a statement of the income and expenditure of the Institution during that year; and
 - (b) a balance sheet of the institution on the last day of that year.
- (3) The accounts of the institution shall be audited and Reported upon in accordance with the Public Audit Act (Cap. 412B).
- (4) A Board of Management of a public institution of basic education shall furnish the Cabinet Secretary with a certified copy of the audited annual statement of accounts and such other information about the revenue, expenditure, assets and liabilities of the institution as he may require.

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FIFTH SCHEDULE

[s. 55]

SPECIAL BOARD OF ADULT AND CONTINUING EDUCATION

1. Establishment and functions of the Board

There shall be a Special Board of Adult and Continuing Education, the functions of which shall be—

- (a) to advise the Cabinet Secretary on any matter relating to adult and education, including the formulation of courses and syllabuses, the establishment of residential and non-residential institutions,
- (b) to advise with respect to the co-ordination and regulate all the providers of Adult and Continuing Education private and public institutions.
- (c) to identify and assess the need for new developments in adult and continuing education.
- (d) to stimulate and encourage activities in adult and continuing education.
- (e) to report annually to the Cabinet secretary on the progress and development of adult and continuing education.
- (f) to advise the National Education Board on matters of Adult and Continuing Education.

2. Members of the Board

(1) The Board shall consist of the following members:

- (a) A Chairperson appointed by the Cabinet Secretary
- (b) not more than ten persons appointed by the Cabinet Secretary to represent the activities of the Government in Adult and Continuing Education.
- (c) five persons appointed by the Cabinet Secretary to represent local and international agencies involved in Adult and Continuing Education.

(2) The Board may co-opt other members as may be deemed necessary.

3. Chairperson and Secretary.

(1) The Chairperson shall hold office for three years but shall be eligible for re-appointment thereafter.

- (2) In the absence of the Chairperson at any meeting of the board, the members present shall elect one of their number to be Chairperson for that meeting only.
- (3) The Cabinet Secretary shall appoint a public officer to be secretary to the Board, who shall, if the Cabinet Secretary so appoints, also be a member of the Board in accordance with Section 4(1)(b).

4. Period of Office members

- (1) A member of the Board shall hold office for three years:

Provided that the members first appointed shall, at the Cabinet Secretary's discretion, hold office for one, two or three years to make provisions for rotational termination of office.

- (2) Members shall be eligible for reappointment on the termination of their period of office.
- (3) Where a person ceases to be a member of the Board before the end of his term of office, the Cabinet Secretary shall, in accordance with section 2(1), appoint a member for the unexpired term of office.

5. Procedure and quorum.

- (1) The Special Board shall regulate its own procedure:

Provided that a quorum at any meeting of the Board shall be one-third of all the members of the Board for the time being appointed or co-opted thereto.

- (2) The Board may invite any person who is not a member of the Board to attend any meeting thereof, but such person may only speak at such meetings at the request of the Chairperson and may not vote.

6. Executive Committee

- (1) The Board shall establish an Executive Committee consisting of the Chairperson of the Board who shall be the Chairperson of such Committee. The Chairperson of every Panel and not more than three other persons appointed by the Board from among its members who shall, subject to the termination of their period of office as members of the Board, hold office for one year and shall be eligible for reappointment.
- (2) The Board shall regulate the procedure of the Executive Committee.
- (3) The Board may vest in or confer on the Executive Committee any of the powers or functions of the Board but any decision of the Executive Committee relating to any advice proposed to be given by the Board to Cabinet Secretary on any matter on which the Board is competent to give advice under this Act shall require the approval of the Board expressed by a resolution thereof supported by a majority of all the members of the Board for the time being appointed or co-opted thereto.
- (4) The proceedings of any meeting of the Executive Committee shall be reported to the Board at the next meeting of the Board.

7. Advisory panels.

- (1) The Board may establish, constitute and appoint such Advisory Panel as it considers necessary to advise the Board on any matter with which the Board is concerned under this Act.
- (2) The members of any Advisory Panel shall be appointed by the Board for such period of office as the Board shall determine, and shall include, but need not exclusively consist of members of the Board.

- (3) The Board shall appoint one of its members to be the Chairperson of each Advisory Panel who shall hold office for such period as the Board, shall in each case determine.
- (4) Each Panel shall regulate its own procedure.

8. County Committees.

- (1) Subject to the approval of the Cabinet Secretary in each case, the Board may establish, constitute and appoint County Committee and the members of each such Committee shall be appointed from among persons representing the Government and agencies in the county concerned, in such numbers and for such periods of office as the Board shall determine in each case; and the Board shall regulate the procedure of each such Committee.
- (2) The functions of the County Education Committee shall be to advise the County Education Board on the activities on Adult and Continuing Education.
- (3) Each County Committee shall report to the Board annually in the month of January, and at such other times as the Board may from time to time direct, on the activities of such Committee.
- (4) The secretary of a committee shall be the appropriate county adult and Education officer.

9. Rules

The Cabinet Secretary may make rules for the better carrying out of the purposes of this Act.

10. Allowances

The members of the Board, a Panel or any Committee established under this Act who are not public officers shall be paid out of moneys provided by Parliament such allowances and expenses as the cabinet Minister may prescribe.

SIXTH SCHEDULE

[s. 94(2)]

ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL COUNCIL FOR NOMADIC EDUCATION IN KENYA

1. Functions of the Council.

- (1) The functions of the Council shall be to—
 - (a) initiate the development of policies on all matters relating to nomadic education in Kenya;
 - (b) mobilise funds from various sources for the development of nomadic education in order to support relevant activities of the Council;
 - (c) institutionalise mechanisms for effective co-ordination, monitoring and evaluation of the activities of agencies involved in the provision of nomadic education;
 - (d) implement guidelines and ensure geographical spread of nomadic education activities and targets for the nomadic people;

- (e) establish appropriate linkages and partnerships with other participating departments and agencies;
 - (f) determine standards and skills to be attained in schools and institutions within nomadic communities and review such standards from time to time;
 - (g) prepare reliable statistic of nomads and their school-aged children and establish a data bank; and
 - (h) co-ordinate research activities on nomadic education in Kenya.
- (2) Every reference to "nomadic education" shall be construed to also refer to education for the marginalized and any phrase with the word "nomadic" shall be interpreted accordingly.

2. Membership of the Council

- (1) The Council shall consist of the following members—
- (a) a Chairperson appointed by the Cabinet Secretary;
 - (b) the Principal Secretary in the department responsible for education;
 - (c) the Principal Secretary in the department responsible for finance;
 - (d) the Principal Secretary in the department responsible for the development of arid and semi-arid lands;
 - (e) three representatives of faith-based organisations;
 - (f) a representative of persons with disabilities;
 - (g) a women representative;
 - (h) a youth representative;
 - (i) two representatives of teachers' trade unions; and
 - (j) a representatives of parents vice-Chairperson.
- (2) The Council shall, at its first meeting, elect a vice-Chairperson from amongst the persons appointed under this Schedule.

3. Meetings of the Council

The Council shall meet at least three times in each year.

4. Special meetings

The Chairperson may, at any time, convene a special meeting of the Council and shall do so within fifteen days of a written requisition for the meeting signed by at least three of the members.

5. Chairperson to preside

- (1) The Chairperson shall preside at all meetings of the Council in which the Chairperson is present and in the case of his or her absence, the vice-Chairperson shall preside.
- (2) At a meeting of the Council at which neither the Chairperson nor the vice-Chairperson is present, the members of the Council present shall elect one of their members to preside, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereof.

6. Quorum

The quorum for the conduct of the business of the Council shall be seven members.

7. Voting.

The decisions of the Council shall be by a majority of votes, and the Chairperson of the meeting shall have an original and a casting vote.

8. Validity of proceedings

The validity of any proceedings of the council shall not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

9. Minutes of the meeting.

Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs and, on the written request of the Cabinet Secretary, shall be made available to him or her or any person nominated by him or her.

10. Committees of the Council.

The Council may establish such Committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

11. Power of the Council to regulate own procedure.

Subject to the provisions of this Schedule, the Council shall regulate its own procedure.

12. Disclosure of interest

If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

13. Tenure

- (1) The Chairperson shall serve for a term of four years renewable once.
- (2) The members shall serve for a renewable term of three years.

14. Qualifications.

- (1) A person shall be qualified for appointment as the Chairperson of the Council if such person—
 - (a) holds a degree in education from a university recognised in Kenya;
 - (b) has knowledge and at least ten years' experience in matters relating to education; and
 - (c) meets the requirements of Chapter Six of the Constitution.
- (2) A person shall be qualified for appointment as a member of the Council if such person—
 - (a) hold a degree from a recognised university;
 - (b) has knowledge and at least five years' experience in matters relating to any of the following fields—
 - (i) education;

- (ii) management;
 - (iii) finance;
 - (iv) governance and human rights;
 - (v) public administration;
 - (vi) law; or
 - (vii) economics
- (c) has had a distinguished career in their respective fields; and
 - (d) meets the requirements of Chapter Six of the Constitution.

15. Disqualification

A person shall not be qualified for appointment as the Chairperson or a member of the Council if such person—

- (a) is a member of Parliament or a county assembly;
- (b) is a member of a local authority;
- (c) is an undischarged bankrupt; or
- (d) has been removed from office for contravening the provisions of the Constitution or any other written law.

16. Vacancy.

- (1) The office of the Chairperson or a member of the Council shall become vacant if the holder—
 - (a) dies;
 - (b) resigns from office in writing addressed to the Cabinet Secretary;
 - (c) is absent from three consecutive meetings of the Council without good cause; or
 - (d) is removed from office in accordance with subparagraph (2).
- (2) The chairperson or a member of the Council may be removed from office for—
 - (a) contravening Chapter Six of the Constitution;
 - (b) serious violation of this Act or any other law;
 - (c) gross misconduct;
 - (d) physical or mental incapacity to perform the functions of office;
 - (e) incompetence; or
 - (f) if adjudged bankrupt.

17. Secondment.

The Cabinet Secretary may, in consultation with the Council, and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Council under this Schedule.

18. Experts and Consultants.

The Council may engage consultants and experts, as it considers appropriate, to assist in the discharge of its functions under this Schedule.

19. Remuneration

The Chairperson and members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary.

20. Reporting

- (1) The Council shall submit an annual report to the Cabinet Secretary.
- (2) Notwithstanding subparagraph (1), the Cabinet Secretary may, at any time, require a report from the National Council for Nomadic Education on a particular matter.

21. Secretary

- (1) The Council shall, through an open, transparent and competitive recruitment process, recommend for appointment by the Cabinet secretary a qualified person to be the Secretary to the Council.
 - (2) A person shall be qualified for appointment as Secretary if the person—
 - (a) holds a minimum of a first degree in education or related discipline;
 - (b) has at least ten years' proven experience in leadership at senior management level;
 - (c) has experience in finance, management and public administration; and
 - (d) satisfies the requirements of Chapter Six of the Constitution.
 - (3) The Secretary shall—
 - (a) be appointed by the Cabinet Secretary;
 - (b) be an ex officio member of the Council with no right to vote;
 - (c) be secretary to the Council;
 - (d) subject to the directions of the Council, be responsible for the day to day management of the affairs of the Council; and
 - (e) perform such other functions as the Council may, from time to time, determine.
 - (4) The Secretary shall serve on such terms and conditions as the Cabinet secretary may determine.
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