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THE BASIC EDUCATION BILL, 2012

A Bill for

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.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Basic Education

Act, 2012.

Interpretation.

2. 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 pre-primary educational institutions and 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 prescribed 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, and responsible to the Principal Secretary;

No. 8 of 2012

“Duksi” means the system of instructions provided for under section 92;

“Education Appeals Tribunal” means the Appeals Tribunal established under section 92;

“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” means the lead administrator or educator in a primary school and includes a manager of a private school who is charged with the responsibility of implementing educational policy guidelines and professional practices that promote synergy for the optimal utilization of resources in the provision of education;

“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 system of instructions provided for under section 92;

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

“National Council for 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;

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

“primary education” means education imparted to a child who has completed pre-primary education;

“Principal” means the lead administrator or educator in a post primary educational institution under this Act appointed by Teachers Service Commission, and includes the manager of a private institution, and responsible to the Cabinet Secretary for implementation of educational policy guidelines, and professional practices that provide synergy for optimal utilization of resources in provision of education;

“professional teacher” means a person who meets the prescribed admission criteria for teacher training and has gone through a recognized and accredited training program and attained the appropriate attitudes, skills, competencies and subject mastery for the purposes of

becoming a teacher;

No. 10 of 2011

“Salaries and Remuneration Commission” has the meaning assigned to it under the Salaries and Remuneration Act;

“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, non-formal 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 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 or 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” means professional or untrained teacher;

“tuition fees” means fees charged to cater for instruction or instructional materials;

“untrained teacher” means a person who is engaged as a teacher and meets the prescribed admission criteria as provided for under any written law and has the subject mastery for the purposes of becoming a teacher but has not undertaken an accredited program.

Application.

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

Guiding principles.

4. 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 unfair discrimination within or by an education department or education or institution on any ground whatsoever;
- (f) advancement and protection of every child to be instructed in the language of his or her choice where this is reasonably practicable;
- (g) encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development;
- (h) promotion of peace, integration, cohesion, tolerance, and inclusion as an objective in the provision of basic education;
- (i) elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society;

- (j) imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose, togetherness, and respect;
- (k) promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education;
- (l) transparency and cost effective use of educational resources and sustainable implementation of educational services;
- (m) ensuring human dignity and integrity of persons engaged in the management of basic education;
- (n) elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture;
- (o) promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture;
- (p) non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs;
- (q) enhancement of co-operation, consultation and collaboration among the Cabinet Secretary, the National Education Board, the County Education Boards, the education and training institutions and other related stakeholders on matters related to education; and
- (r) provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.

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

Establishment and
functions of the
Board.

5. (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 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; and
- (d) putting measures in place to ensure all children attend and remain in school to complete basic education requirements.
- (e) any other matter as shall be from time to time be assigned to the Board by the Cabinet Secretary.

Conduct of
business and
affairs of the
Board.

6. (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.

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

Qualifications for appointment as chairperson or member of the Board.

- (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; and
- (c) 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) public administration;
- (vi) law;
- (vii) economics; and

(viii) 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.

Disqualifications
from appointment.

9. 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.

Appointment and
term of
Chairperson and
members.

10.(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, convene a Selection Panel for the purpose of selecting suitable candidates for appointment as the Chairperson or member of the Board.

(2) The Selection Panel convened 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) one person representing a joint forum of religious organizations consisting of the Supreme Council of Kenya Muslims, the Kenya Episcopal Conference, the National Council of Churches of Kenya, the Evangelical Fellowship of Kenya and the Hindu Council of Kenya; and
- (f) one person to represent the Association of Professional Societies in East Africa; and
- (g) one person to represent the Teachers Service Commission.
- (h) One person to represent the trade union of teachers

(3) The Selection Panel shall provide three names among the members to the Cabinet Secretary who shall appoint the Chairperson.

(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 nation wide 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 nation wide 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) 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.

(10) 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 and ethnic balance, transparency, openness and competitiveness and shall have due regard to the principle of equal opportunities for persons with disabilities.

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

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

Vacation of, and removal from office.

- (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. The Cabinet Secretary may in consultation with

Staff of the Board.

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.

Experts and consultants.

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

Remuneration of the Board.

14. 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.

Reporting

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

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

Secretary to the Board.

16.(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.(1) There shall be a County Education Board for every county.

County Education Board.

18. (1) The functions of the County Education Board shall be to-

Functions of the County Education Boards.

(a) oversee in consultation with the county government, the operation and management of village polytechnics, pre-primary 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:

- (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 Head Teacher, 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 and policy implementation 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.

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

Consultation with
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. (1) Every County Education Board shall consist of a Chairperson, and eight other members appointed by the Cabinet Secretary as follows-

Composition of the
County Education
Boards.

- (a) an eminent educationist 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 governor;
- (d) a representative of the Teachers Service Commission;

- (e) a representative of religious organizations;
- (f) a representative of the association of private schools;
- (g) a representative of a trade union representing the interest of teachers;
- (h) a representatives of parents teachers association; and
- (i) a representative of persons with disability.

(2) In appointing persons as Chairperson and members of the County Education Board, the Cabinet Secretary shall observe the principle of gender equity, regional and ethnic 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 as may be determined by the Cabinet Secretary from time to time.

Conduct of
business and
affairs of the
County Education
Boards.

21. (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.

Tenure.

22. (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. The members of the County Education Boards 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.

Remuneration of
the County
Education Boards.

24. 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.

Co-option.

25. (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.

Committees of the
County Education-
Board.

(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 village polytechnics;
- (f) standards and quality assurance; and

(g) assessment and examinations.

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

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

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

Role of Sponsor.

26. The role of the Sponsor shall be –

(a) consultation with the Teachers' Service Commission on matters related to staffing;

(b) recommendation of review of syllabus, curriculum, books and other teaching aids;

(c) representation in the School Management Committees and Board of Management;

(d) supervisory and advisory services in matters regarding religious education in schools.

(e) maintenance of religious traditions in the school.

PART IV – FREE AND COMPULSORY BASIC EDUCATION

Right of child to free and compulsory.

27.(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) pre-primary, primary and secondary schools, non formal and 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; and

28. (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.

Free tuition.

(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.

29. (1) Every parent whose child is -

Compulsory primary and secondary education.

- (a) born in Kenya; 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 sub-section (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 Director-General for the absence of his or her child at a school or institutions of basic education.

Duty of parents
and guardian.

30.(1) It shall be the responsibility of every parent or guardian to admit 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 sub-section (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 five years or to both.

No payment of fee
for admission.

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

Proof of age for
admission.

32.(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 or on the basis of such other document, as may be prescribed under regulations.

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

33.(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.

No denial of admission.

(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 colour, age, disability, language or culture.

(3) 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.

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

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

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

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

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

Incentives and prohibition of holding back and expulsion.

(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.

Prohibition against physical punishment and mental harassment to the child.

35.(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.

Prohibition against employment of a child of compulsory school age.

36. (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.

Responsibility of the Government.

37. 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 teaching and non teaching staff; infrastructure including school buildings; learning and teaching equipment; and appropriate financial resources;
- (e) ensure quality basic education conforming to the set standards and norms;
- (f) provide special education and training facilities for talented and gifted pupils and pupils with disabilities;
- (g) ensure compulsory admission, attendance and completion of basic education by every pupil; and
- (h) monitor functioning of schools.

38.(1) Where a pupil fails to attend school, the Head Teacher shall investigate the circumstances of the child's absence from school;

Duty of a principal or head teacher.

(2) where the Headteacher finds there are no reasonable grounds for the child's failure to attend school the 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.

(d) submit a report on the child to the County Education Board.

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

PART V - SYSTEM AND STRUCTURE OF EDUCATION

Promotion of education.

39. 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) pre-primary education;

(b) primary education;

(c) secondary education;

(d) middle level institutions of basic education;

Structure of education.

40.(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.

41. Basic educational institutions shall be categorised as-

Categories of schools.

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

PART VI - SPECIAL NEEDS EDUCATION

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

Establishment and management of special institutions.

(2) The Cabinet Secretary shall provide special needs education in special schools established under subsection (1) or in pre-primary, 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.

Regulations in special needs education.

43.(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; and

(g) establish mechanisms to ensure that every special school or educational institution offering special needs education has appropriate personnel, infrastructure, learning materials and equipment.

(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.

44.(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 EARCs including a special needs service in identified clinics in the county.

Duty of County education Boards to provide child guidance service.

(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

(d) 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.

report of child
with special needs
by County
Education Board.

45. (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.

Future provision
for children with
special needs.

46.(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 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 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, such expenses of, as the case may be, the parent, parents or other person.

PART VII PRIVATE EDUCATIONAL INSTITUTIONS

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

Establishment of private schools.

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

Registration of private schools.

(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) the Cabinet Secretary is satisfied that the proprietor is not a suitable person to be the proprietor of any school;
- (c) the manager of the school is not a trained teacher;
- (d) a teacher employed in the school is not a

suitable person to be a teacher in any school;
or

(e) the school premises, or any part of those premises, are unsuitable for a school.

(3) Subject to the provisions of this Act, the registration of any private school shall be provisional 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.

Right to attend a private school.

49. Any person requiring basic education may attend a private school.

Duties and rights of a private school.

50.(1) A private school shall-

(a) establish necessary educational and governance structures;

(b) recruit registered teachers;

(c) comply with and follow the prescribed 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

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

Governance and management of education and training.

(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.

Structures of governance and management in education.

52.(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 under the Public Service Commission Act in consultation with the Cabinet Secretary.

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(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 appointed by the Cabinet Secretary.

(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 Teachers 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;

53.(1) There shall be a Board of Management for every public and private-

Board of
management.

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

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

54.(1) The Board of Management established under section 53 shall consist of the following members appointed by the County Education Board:

Composition of
Board of
Management.

- (a) three persons representing parents of the pupils

in the school;

(b) one person nominated by each of the following-

(i) the County Education Board;

(ii) industry or the commercial sector from the locality of the school;

(c) one representative of the teaching staff in the school;

(d) two representatives of the sponsors of the school;

(e) one person nominated by civil society organizations in the locality of the school; and

(f) one person to represent persons with special needs;

(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 County Education Board shall appoint Chairperson from among the members of the Board of Management of an institution of basic education

Provided that a member appointed under subsection (1)(e) shall not be the Chairperson.

(4) 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.

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

(6) The provisions of sections 54 to 57 shall apply *mutatis mutandis* to a board of management of any public or private-

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

55.(1) The Cabinet Secretary shall, by regulations 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.

Qualifications of members of boards of management.

(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.

56.(1) The functions of a Management Committee of a pre-primary institution shall be to –

Functions of a Management Committee of pre-primary institution.

- (a) promote the best interests of the institution and ensure the institution's

development;

- (b) develop a strategic plan for the institution;
- (c) promote quality care, nutritional and health status of the children;
- (d) ensure the development of the children's knowledge, self-confidence, free expression, spiritual and social values and appreciation of other people's needs and views;
- (e) provide a secure physical and psycho-social setting for the children;
- (f) facilitate the development of children's affective, cognitive, psychomotor and physical attributes in an integrated manner including the development of talented and gifted pupils; and
- (g) perform any other function to facilitate the implementation of its functions under this Act or any other written law

Functions of the
Board of
management.

57. The functions of the Board of Management of a 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.

Annual report on governance.

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

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

59.(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; and
- (d) audit committee.

60.(1) The head of a basic education institution shall be the secretary to the Board of Management.

Secretary to the Board of Management.

61. The members of the board of management shall be paid such remuneration, fees, allowances and disbursements for expenses as the Cabinet Secretary may determine upon the advice of the Salaries and Remuneration Commission.

Remuneration of the members of the Board of management.

PART IX STANDARDS, QUALITY ASSURANCE AND RELEVANCE

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

Establishment of the Education Standards and Quality Assurance Commission.

(2) The Education Standards and Quality Assurance Commission 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 Commission in accordance with the Constitution and this Act.

Composition and staff at Education Standards and Quality Assurance Commission

63.(1) The Commission 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 Commission (ESQAC):

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

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

Powers of the
Quality Assurance
and Standards
Officers

(2) Education Standards and Quality Assurance Commission 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.

(2) 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.

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

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

(5) 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.

(6) 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.

Cabinet Secretary
and promoters to
be responsible for
maintenance of
standards

65. The Cabinet Secretary, Standards and Quality Assurance Commission, National Education Board, 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.

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

National
Qualifications
Framework
Accounts and
audit.

- (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.

67. 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.

Review of
standards, quality
and relevance.

68. Every institution of basic education in consultation with the Education, Standards and Quality Assurance Commission shall, in accordance with the provisions of this Act-

National and
international
standards and
quality assurance

- (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.

Standards, quality and relevance in education

69. 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.

Guidelines on standards, quality and relevance

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

Policy and guidelines on curricula

71. (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.

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

Curricula
development.

(2) Subject to subsection (1), the Cabinet Secretary shall accredit curriculum development agency for all levels and programmes.

(3) The Cabinet Secretary shall by regulations and upon consultation with relevant stakeholders provide for the composition and related functions of Kenya Institute of Curriculum Development.

(1) 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.

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

(6) Any person who contravenes the provisions of

this section commits an offence.

Prohibition of
development and
examination of
own curriculum

73. 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 - LICENSING, REGISTRATION AND ACCREDITATION PROCEDURES IN BASIC EDUCATION

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

74. 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 Commission at the county in the case of a pre-primary, primary or secondary school.

75. (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.

Rejection of application by the County Education Board.

(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.

76. (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.

Offence to promote without being licensed or accredited and registered.

(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.

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

County Education Board to maintain a databank.

(a) registered, accredited, licensed and incorporated institutions of education, training and or research in the County; and

(b) teachers in the County.

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

Fees.

78. 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.

Rules, regulations and guidelines on quality.

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

Licensing of an institution basic education and training

80.(1) The Education, Standards and Quality Assurance Commission 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 competent and licensed 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.

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

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

- (a) name, physical, postal and electronic addresses of the proposed institution;
- (b) 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;
- (c) 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;
- (d) the number, qualifications and competence of the teachers and non teaching staff;
- (e) available suitable infrastructure, and appropriate equipment;
- f) a statement of financial ability; and
- (g) such other matters as may be prescribed in the regulations made under this Act.

82.(1) Public examinations shall be conducted as provided for under the Kenya National Examination

Examinations and
assessments

Cap. 225A

Council Act.

(2) The Cabinet Secretary may make regulations prescribing:

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

Appeal against
decision of County
Education Board.

83. 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 90.

PART XI FINANCIAL PROVISIONS

Financing of basic
education.

84. (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.

85. The financial year of the Department of Education shall be the period of twelve months ending on the 30th June in each year.

Financial year.

86. (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.

Annual estimates.

(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;

- (c) 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.

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

Accounts and
Audit of
Departments or
schools.

87. (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.

No. 12 of 2003

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

School based
auditing.

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

(2) The officers responsible for school-based auditing shall advise and work with the respective headteachers, principals, school administrators and

management and governing bodies and ensure that the proper maintenance of accounts and assets of the institution.

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

89. (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.

Investment of funds.

(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

90. Any person who commits an offence under this Act for which no other penalty is provided is liable: -

General penalties.

(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.

91.(1) There is established an Education Appeals Tribunal.

The Education Appeals Tribunal.

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

(2) 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.

Regulations.

92. (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 School Management Committees 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;

providing for religious education and religious instruction having regard to the national values and principles under Article 10 and Chapter 6 of the Constitution.

(e) integration of:

- (i) the non formal, informal, and community education;
 - (ii) the *madrassa* and *Duksi* systems of instruction into the formal education system as appropriate to improve access and retention;
- (f) the establishment, functions and regulations of the National Council Nomadic Education in Kenya to promote education in pastoral and nomadic areas, arid and semi-arid lands and marginalized and hard to reach areas;
- (g) to secure appropriate institutional linkages and relative autonomy for the Kenya National Commission for UNESCO 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;
- (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 national values and principles under Article 10 and Chapter 6 of the Constitution and the Bill of Rights, among others;
- (m) provide for teacher education and development;
- (n) provide for the implementation of international instruments on education 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.

(7) The Cabinet Secretary may make regulations prescribing the duties and rights of students.

PART XIII – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

93. The following Acts are repealed-

Repealed Acts.
Cap 211 Cap 223.

- (a) the Education Act; and
- (b) the Board of Adult Education Act.,

94. 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.

Preservation of
proceedings and
rights of appeal.

95. 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.

Continuance of
periods of time.

96. (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.

Preservation of
licences,
certificates and
registration.

(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.

Transfer of
property, assets,
liabilities and staff

97. (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.

98. (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.

General savings.

(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. 7)

**CONDUCT OF BUSINESS AND AFFAIRS OF THE
NATIONAL EDUCATION BOARD.**

- Filling of vacancy 1. 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.
- Vice chairperson 2. The Board shall, at its first meeting, elect a Deputy Chairperson from amongst the persons appointed under section 6 of this Act.
- Meetings of the Board. 3. The Board shall meet at least three times in each year.
- Special meetings 4. 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.
- Chairperson to preside. 5.(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.
- Quorum. 6. The quorum for the conduct of the business of the Board shall be five members.
- Voting procedure. 7. 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. 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.

Validity of
proceedings

9. 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.

Minutes of the
meeting.

10. 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.

Committees of the
Board.

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

Power of the Board
to regulate own
procedure

12. (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.

Disclosure of
interest.

(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. 21)***CONDUCT OF BUSINESS AND AFFAIRS OF THE
COUNTY EDUCATION BOARDS.**

Vacation of office.

1. 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 Board 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.

Meetings of the
Board

2. (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 sub-section (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. 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

Special meetings.

4. (1) The chairperson shall preside at all meetings of the County Education Board.

Presiding at meetings.

(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. 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.

Quorum at meetings.

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

Voting.

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

Procedure at

7. Subject to the provisions of this Act the County

meetings.

Education Board may determine its own procedure.

Vacancies and
defects in
appointment

8. 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 in the appointment of a member.

Disclosure of
interest.

9.(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 after the 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.
Board.

Records.

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

THIRD SCHEDULE (s. 53) ESTABLISHMENT AND FUNCTIONS OF PARENTS TEACHERS ASSOCIATION

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

(a) every parent with a pupil in the school;

(b) every teacher of 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 Teachers Association shall be elected during an annual general meeting of parents and teachers.

(3) The Parents Teachers 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 Teachers 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, Teachers 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 Teachers 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 Teachers Association shall regulate its own procedure.

FOURTH SCHEDULE

(s. 53)

PART I CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OF MANAGEMENT.

Incorporation of
Board of
management.

1. 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.(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

Tenure.

(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.

3. (1) A member of a Board of Management may at any time resign by giving notice in writing to the County Education Board.

Resignation from the Board of Management.

(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.

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

Revocation of appointment and vacation of office.

- (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.

Frequency of meetings of the Board of Management.

5. (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.

6.(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.

Quorum of the Board of Governors.

(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.

7. (1) The Chairperson shall preside at every meeting of the Board of Management at which the chairperson is present and in his absence, the deputy chairperson shall preside.

Chairperson to preside over a meeting of Board of Governors.

(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.

8. 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 chairman or the person presiding shall have a casting vote.

Decision of the Board of Management.

9. (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, proposed 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

Disclosure of interest.

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 sub-paragraph (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.

Common seal.

10.(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 sub-paragraph (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.

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

Remuneration of the members of the Board of Management.

12. 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.

Appointment of staff of the Board of Management.

13. 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.

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

14. 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.

Liability of an institution for damages.

15. (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.

Annual estimates.

(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 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 an 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.

16. (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.

Unexpended monies.

(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.

17. 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.

Securing of loans by Board of Management.

18. 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:

Vesting of property.

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.

19.(1) A Board of Management of a public institution of basic education may invest any of the funds of the

Investment of funds.

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.

Financial year.

20. The financial year of a public institution of basic education shall be the period of twelve months ending on the thirtieth day of June in each year.

Funds of a public institution of basic education.

21.(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.

Accounts and audit.

22. (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, 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, 2003.

(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.

PART II

1. For purposes of governance and oversight in the education sector, the National Education Board shall advise the Cabinet Secretary on all matters concerning education in the country.
2. The members of the National Education Board shall be appointed by the Cabinet Secretary on recommendation of the selection Panel and shall comprise —
 - (a) a renowned educationist who shall be the Chairperson;
 - (b) one representatives of the Teachers Union;

- (c) one representative of the Teachers Service Commission;
- (d) one representatives of the religious Organisations;
- (e) one representative of the Kenya Private Sector Alliance;
- (f) one representative of the Parents Teachers Association;
- (g) one representatives of the Head Teachers Association;
- (h) one representative of persons with disability.

FIFTH SCHEDULE

Special Board of Adult and Continuing Education

Establishment and
Functions of the
Board.

1. 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.

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

Members of Board.

(a) A chairman 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) not more than twelve persons appointed by the Cabinet Secretary to represent the agencies.

(2) The Board may co-opt not more than five persons, who shall for the purposes of this Act be deemed to be members of the Board.

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

Chairman &
Secretary.

(2) In the absence of the chairman at any meeting of the board, the members present shall elect one of their number to be Chairman 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).

Period of
Office members.

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

Provided that the members first appointed shall, at the Cabinet Secretary 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 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.

Procedure and
quorum.

5.(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 chairman and may not vote.

Executive
Committee.

6.(1) The Board shall establish an Executive Committee consisting of the Chairman of the Board who shall be the Chairman of such Committee. The Chairman 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.

(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.

Advisory panels

(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 chairman 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.(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

County Committees.

as the Board shall determine in each case; and the Board shall regulate the procedure of each such Committee.

(2) The functions of any Provincial & Local County Committee with respect to the appropriate, county shall be to advise the on the conduct and promotion of activities in adult to advise on the development and co-ordination of activities in ACE and in agreement with Cabinet Minister and the agencies concerned to for ACE in such County.

(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.

Rules.

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

Allowances.

10. 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.

MEMORANDUM OF OBJECTS AND REASONS

The Basic Education Bill 2012 attempts to harmonize laws and regulations relating to basic education in Kenya. The Bill seeks to operationalize Article 53 and other relevant enabling provisions of the Constitution with respect to the right to education for all Kenyans, the children's right to free and compulsory education and the devolved structures of governance. As part of compliance and to ensure that the education sector is properly aligned to the Constitution and Vision 2030, the Bill proposes a devolved governance and management structures in the education sector. This, it is hoped, will ensure equity and good governance of quality education services in all parts of Kenya.

Since independence and especially after the enactment of the Education Act, Cap 211 in 1968, there have been recommendations made by various task forces commissions, committees and working parties set up for the purpose of investigating and making proposals on how to address challenges in the education sector. One of the challenges is the limited access and inequity in the provision of education and training in Kenya. It has been observed that despite the existence of the Education Act Cap. 211 and other laws and Government policies and regulations relating to education, some areas in the country still face acute shortage of education facilities. Moreover, due to socio-cultural reasons some marginalised groups also do not have access to schools or appropriate education programme.

The Bill therefore proposes legislation as well as policy and administrative measures that will ensure that the problems of access and equity are effectively dealt with and minimized.

Another problem that the education sector has been facing is the inadequate governance and management structures, systems and processes. Particularly there have been complaints about teacher and school management. The Bill therefore provides for structures that will assist in the proper coordination of the education matters by offices and

bodies charged with governance and management responsibility in the sector. The intention is to secure efficiency, participation and due process.

There are also problems regarding deteriorating standards and quality and doubts associated with the relevance of the curriculum. The Bill proposes the establishment of standards and quality assurance measures in the teaching and learning processes as well as in management and governance. The Bill provides guidelines on the formulation of appropriate curricula that are responsive to Kenya's short term, medium term and long term.

The Bill also makes proposals on financing of education. Over the years there has been a lot of concern regarding the adequacy and the proper coordination of financing structures of education. In particular there have been challenges regarding a clear recognition and regulation of the role of the private and voluntary sectors in education with the result that the full potential of these sectors has never been realized.

The Bill therefore proposes the enactment of a comprehensive legal framework to ensure that there are appropriate incentives to promote lawful and fruitful financing of education by the public, private, and voluntary sectors. These issues tie with the policy on free and compulsory education. Free Primary Education has over the years been a Government policy but without an appropriate substantive legal framework to govern the programme. The result has been inefficiency, poor coordination, misappropriation and limited accountability for Free Primary Education resources. Besides, the aspirations of the project, especially ensuring that every eligible child gets education freely, have not been met. There are still many cases of failure by parents to deliver their children to school. There are equally worrying cases of schools imposing fees unlawfully.

The Bill therefore proposes a comprehensive legal framework to help actualize the policy, principles and intention of Free Primary Education. It proposes processes to implement the programme and suggests deterrent measures to curb cases of non-compliance and misappropriation of resources set aside for the programme.

The Bill seeks to implement the Constitution 2010, Vision 2030, and relevant policies through seven parts.

Part I of the Bill contains preliminary provisions which include definitions, scope of application and the general guiding principles.

Part II of the Bill establishes and provides for the powers and functions of the National Education Board which will be advise the Cabinet Secretary on collaboration with the quality assurance and standards commission and with other stakeholders to promote standards in basic education and training, among others.

Part III of the Bill establishes the County Education Boards and provides for their functions and powers, including how the Board will work under the Cabinet Secretary, with the officials at the headquarters or secretariat, and with the county governments.

Part IV of the Bill contains comprehensive provisions on free and compulsory education implementing the Constitution's provision on the right of a child to free and compulsory education.

Part V of the Bill lays-down the system and structures of education to facilitate among other things the promotion of education.

Part VI of the Bill is dedicated to the management and governance of basic education

Part VII of the Bill makes provisions for the general institutional management of education in pre-primary, primary and secondary schools, public and private village polytechnics, among others.

Part VIII of the Bill makes substantive institutional and structural provisions relating to standards, quality and relevance of educational services.

Part IX of the Bill establishes a regulatory framework the licensing, registration and accreditation procedures in basic education and training

at the national and county levels.

Part X of the **Bill** is dedicated to the principles, measures, sources and expenditure of financial resources for education and training.

Part XI of the **Bill** makes general provisions relating to penalties, regulations and the establishment and functions of the Education Appeals Tribunal.

Part XII of the **Bill** contains provisions on the repeal, saving and transitional clauses in relation to the existing laws and regulations and particularly including the Education Act, Cap 211 and the Board of Adult Education Act Cap 223. It is proposed that these two be repealed once the Education Bill 2012 is enacted and comes into force. These are appropriate saving and transitional clauses regarding the existing institutions, programmes, officers, and contracts, among others.

The enactment of this Bill will occasion additional expenditure of public funds which will be provided in the annual estimates and other appropriate sources.

Dated the 6th September, 2012,

MUTULA KILONZO,
Minister for Education.

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