SPECIAL ISSUE

Kenya Gazette Supplement No. 19 (Kakamega County Acts No. 3)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KAKAMEGA COUNTY ACTS, 2014

NAIROBI, 8th September, 2014

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

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THE KAKAMEGA COUNTY EARLY CHILDHOOD DEVELOPMENT AND EDUCATION ACT, 2014

No. 3 of 2014

Date of Assent: 21st August, 2014

Date of Commencement: 8th September, 2014

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AN ACT of the County Assembly of Kakamega to make provisions for comprehensive pre-primary schooling and Programmes so as to achieve the goals of Basic Education for all residents.

ENACTED by the County Assembly of Kakamega, as follows—

PART I— PRELIMINARY

Short title.

1. This Act may be cited as the Kakamega County Early Childhood Development Education Act, 2014.

Interpretation.

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

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

"child" means an individual who has not attained the age of 18 years

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

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

"Curriculum" means all the approved subjects taught or programmes offered and includes all the activities provided at any institution of basic education ;provision of knowledge, attitudes, value, morals, virtues to learners inside and outside classroom.

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Early Childhood Development for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social, aesthetic value and communication development of children from conception to age eight.

"ECD" means Early Childhood Development

(2) Early childhood development services means services—

(a) intended to promote early childhood holistic development; and

(b) provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.

(3) An early childhood development programme means a programme structured within an early childhood development service to provide and promote early childhood holistic and basic development provided by the child's caregiver and anyone responsible to the child.

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

"Executive Committee Member" means Executive Committee Member for the time being responsible for matters related to early childhood development as provided for under the fourth schedule, part 11 and section 9 of the Constitution of Kenya 2010.

"head teacher" means the lead educator or administrator of an early childhood education centre; Teacher in charge means teacher in charge of early childhood education centre.

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

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

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

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

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

"Pupil" means a child enrolled in a basic education institution.

"School" means an institution registered under this Act that meets the basic prescribed standards.

Guiding principles.

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

(a) the right of every child to free and compulsory pre-primary school education;

(b) equitable access for the child to pre-primary school education;

(c) promotion of quality and relevant education: teacher pupil ratio 1:25

(d) protection of a child culture including language in the catchment area

(e) protection of the right of every child in the public school to equal standards of education including the medium of instruction used in school for all children of the same educational level; and

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(f) ensuring human dignity and integrity of persons engaged in the management of pre-primary school education through accountability and transparency.

PART II—FREE AND COMPULSORY PRE-PRIMARY SCHOOL EDUCATION

Role of Executive Member.

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

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

(a) pre-primary education centres within a reasonably accessible distance within the county;

(b) special and integrated Early Childhood schools for learners with disability.

(3) the executive committee member shall coordinate with all relevant agency to ensure that all the barriers to quality education are removed and the national government to facilitate realization of the right to education within the county.

Free tuition.

5. (1) A public pre-primary school shall not charge or cause any parent or guardian to pay tuition fee for or on behalf of any pupil in the school without authority of the Executive Committee Member.

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

Duty of parents and guardians.

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

(2) Where a parent or guardian defaults in the discharge of his or her responsibility under sub-section (1), such a parent or guardian commits an offence and is liable

to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

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

Free admission.

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

Proof of age for admission.

Cap. 149

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

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

Period of admission and prohibition of discrimination.

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

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

Incentives and prohibition of holding back and expulsions.

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

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

Prohibition against physical punishment and mental harassment to the child.

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

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

Holiday tuition.

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

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

Responsibility of the Executive Committee Member.

13. The Executive Committee Member shall—

(a) ensure free and compulsory pre-primary education to every child in the county;

(b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering pre-school education;

(c) ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing pre-school education;

(d) progressively provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms;

(e) progressively provide infrastructure including schools, learning and teaching equipment and appropriate financial resources;

(f) ensure quality pre-school education conforming to the set standards and norms;

(g) provide special education and training facilities for talented and gifted pupils and pupils with disabilities;

(h) ensure compulsory admission, attendance and completion of pre-school education by every pupil.

(i) monitor functioning of schools; and

(j) advise the County government on financing of infrastructure development for pre-school education.

Duty of head teacher

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

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

(a) issue a written notice to the parents of the child requiring them to comply with the provisions of this Act; and

(b) submit a report on the child to the school management board;

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

Pre-primary school education and ECD training.

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

(a) pre-primary education; and

(b) ECD teacher training colleges.

Structure of education.

16. (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.

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

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

Categories of schools.

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

(a) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions; and

(b) public schools which are schools established owned or operated by the Government and include sponsored schools.

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

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

Establishment and management of special pre-primary school institutions.

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

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

(3) Children with special needs include—

(a) intellectually, mentally, physically, visually, emotionally challenged or hearing impaired learners;

(b) pupils with multiple disabilities; and

(c) specially gifted and talented pupils.

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

Regulations in special needs education.

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

Duty of county education board to provide child guidance services.

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

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

(a) the study of children with special education needs within the county;

(b) the giving of advice to parents and teachers as to appropriate methods of education for such children;

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

Report of child with special needs by county education board.

21. (1) The county education board shall, in relation to each child with special needs belonging to schools in their area, and the provisions to benefit him or her after he or she completes pre-school education, make a report to the Director-General or relevant Director.

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(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 pre-school 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 basic education learning to be attended by him or her.

Future provision for children with special needs.

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

PART V—PRIVATE EARLY CHILDHOOD EDUCATIONAL INSTITUTIONS

Establishment of private ECD schools.

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

Registration of private ECD schools.

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

(2) A private ECD school shall not be registered if—

(a) the proprietor is disqualified from being a proprietor by reason of Article 10 or Chapter Six of the Constitution;

(b) the school premises, or any part of those premises, are unsuitable for a school; or

(c) the proprietor or manager has been convicted of any crime against children under the Sexual Offences Act, 2006 and Counter Trafficking in Persons Act, 2010. No. 3 of 2006 No. 8 of 2010.

Right to attend a private ECD school.

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

Duties of private ECD school.

26. A private school shall—

(a) establish necessary educational and governance structure;

(b) recruit registered teachers;

(c) comply with and follow the approved curriculum;

(d) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;

(e) maintain necessary teaching and learning materials;

(f) maintain a data bank on pupils undertaking education in the school and submit to the Executive Committee Member; and

(g) where requested by the Executive Committee Member, provide evidence that pupils are making reasonable educational progress appropriate for their age and grade level based upon results of nationally recognized standardized achievement tests.

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PART VI—RECRUITMENT OF ECD SUPPORT TEACHERS

Eligibility of support teachers to be recruited.

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

(a) is a Kenyan citizen; and

(b) is at least 18 years of age;

(c) has a degree,or a diploma or certificate in ECD duly recognised in kenya;

(d) has certificate of good conduct;

(e) is of good moral standing in the society.

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

(a) county Director of Early Childhood education;

(b) county human resource officer;

(c) county Representative from the Education committee who shall be nominated by the Executive Committee member;

(d) sub-county ECD Programme officer;

(e) member of the County Education Board;

(f) quality assurance officer;

(g) official from Kenya primary head teachers association.

Terms and conditions of service.

28. The terms and conditions of services for any person recruited under section 27 shall be as determined by the county public service board

PART VII—ASSESSMENT

Duration, sequence and report of assessment.

29. (1) The ECD support teacher shall be assessed during normal class session at least twice a term but on

different dates and different lessons.

(2) In assessing an ECD support teacher under subsection (1), the assessor shall observe at least one complete lesson and the assessor shall be required to write up a report on assessment in duplicate as provided in the assessment book.

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

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

Licensing, registration and accreditation procedures.

30. (1) Any person offering basic education in the county shall be 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 Count Education Board shall inform the office representing the Education, Standards and Quality Assurance Council at the county in the case of a pre-primary, primary or secondary school.

(5) Any person making an application for the establishment, licensing, registration and accreditation of a basic education and training institution shall pay the

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prescribed fees to the relevant agencies under this Act or any other written law.

Rejection of application by the county education board.

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

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

Offence and penalty.

32. (1) Where a person—

(a) engages in the promotion, management, or teaching of basic education without being accredited and registered in accordance with the provisions of this Act; or

(b) uses any premises or facilities to provide education and training through face to face, open distant or electronic learning or any other mode of delivery unless the institution has undergone quality review and approved in accordance with this Act, Commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or a term of imprisonment for a term not exceeding three years or, to both.

County education board to maintain a data bank.

33. The county Education Board shall establish and maintain a databank of all—

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

(b) teachers in the County; and

(c) pre-primary school children.

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

Rules, Regulations and guidelines on quality.

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

Licensing of an institution of basic education and training.

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

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

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

(a) the institution has sufficient number of registered teachers and non teaching staff under the staffing norms prescribed by the Education Standards and Quality Assurance office for the county has been complied with;

(b) the institution has appropriate teaching and learning facilities;

(c) the available premises and accommodation are suitable with regard to the number, age, gender, and security of the learners who are to attend the institution;

(d) the premises and accommodation conform to the prescribed requirements of the occupational health and safety Regulations; and

(e) the necessary and suitable infrastructure as well appropriate and adequate equipment to carry out the programmes applied for as may be prescribed by Regulations.

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Appeal against decision of county education board.

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

Establishment of the county education appeals Tribunal.

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

(2) The County Education Appeals Tribunal shall comprise of—

(a) the chairperson of the County Education Board;

(b) a representative of Standards Assurance Board; and

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

Establishment of the County Standards Assurance Board

38. There is established a County Standards Assurance Board which shall be responsible for:

Establishment of the County Standards Assurance Board

(a) Promoting quality education, professionalism, and public accountability on behalf of the children and county residents.

(b) Consideration of, and making proposals for review of courses, modes of assessment, and necessary regulatory changes;

(c) Consideration of reports of professional, regulatory and statutory bodies with respect to the undertaking of education and its related aspects in the County.

(d) Quality assurance and enhancement, including responding to relevant legislation and liaising with relevant bodies;

PART IX — FINANCIAL PROVISIONS

Financing of pre-

39. The funds of the Department of Early Childhood

Education which shall be used to promote pre-primary school education shall consists of— school education.

(a) monies provided by the County Assembly for the purposes of the Department;

(b) any funds provided by bilateral or multilateral donors, for the purpose of the basic education;

(c) monies that may accrue to or vest in the course of the exercise of its functions under this Act;

(d) gifts, grants, donations or endowments as may be given to the Department;

(e) monies that may be borrowed by the Department for the discharge of the functions of the Department;

(f) fees for services rendered to any designated institution in terms of a service agreement; and

(g) Monies from any other source provided for the Department or relevant educational institution or programme.

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

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

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(c) the acquisition, maintenance, repair and replacement of the equipment, facilities and other movable properties of the Department;

(d) the proper maintenance of buildings and grounds of the Department;

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matter as the Department may deem as appropriate; and

(f) the infrastructural development.

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

Accounts of audit departments or schools.

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

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

(a) a statement of income and expenditure during the year; and

(b) a statement of the assets and liabilities of the Department on the last day of that year.

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, 2003.

School based auditing.

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

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

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

Investment of funds.

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

(2) The County 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 X— GENERAL PROVISIONS

General penalties.

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

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

(b) in any case, to affine not exceeding three hundred thousand shillings or a term of imprisonment of not exceeding twelve months, or both.

Regulations.

46. (1) The Executive Committee Member may upon consultations with the County Education Board make Regulations—

(a) prescribing anything that may be prescribed under this Act;

(b) generally for the better carrying out of provisions of this Act;

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(c) on the establishment of Board of management of pre-schools.

(2) Without prejudice to the generality of subsection (1) Executive Committee Member 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 the learner.