

7<sup>th</sup> February, 2014

LEGAL NOTICE NO. 11

THE BASIC EDUCATION ACT  
(No. 14 of 2013)

IN EXERCISE of the powers conferred by section 95 of the Basic Education Act, the Cabinet Secretary for Education Science and Technology in consultation with the Board makes the following Regulations:—

THE BASIC EDUCATION (EDUCATION STANDARDS AND QUALITY ASSURANCE COUNCIL) REGULATIONS, 2013

PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Basic Education (Education Standards and Quality Assurance Council) Regulations, 2013.

Interpretation. No. 14 of 2013

2. In these Regulations unless the context otherwise requires —

"Act" means the Basic Education Act, 2014;

"Assessment" means the process of determining the level of performance of —

(a) a person in a particular skill or subject area; or

(b) an institution in comparison to other institutions,

by employing minimal standards and key indicators and includes the estimation of the nature, quality or value of a person or an object;

"Council" means the Education Standards and Quality Assurance Council established under section 64 of the Act;

"Council Secretary" means the secretary to the Council appointed under regulation 7;

"Director-General" has the meaning assigned to it under section 2 of the Act

"evaluation" means a process of determining the value or work of a program, course or other initiative, with an ultimate goal of making decisions about adopting, rejecting or reversing an innovation;

"monitoring" means to observe a situation for any changes which may occur overtime using a monitoring or measuring device;

"standards" means a level of quality or specified level of quality which once established must be maintained or improved on and be attained by persons falling below it;

"quality assurance" means the determination of the degree of goodness or worthiness while expressing certainty or success in education standards.

#### Object of the Regulation

3. The object of these Regulations is to establish and provide for the operations of the Education Standards and Quality Assurance Council.

### PART II—ESTABLISHMENT OF THE EDUCATION STANDARDS AND QUALITY ASSURANCE COUNCIL

#### Establishment of the Council.

4. (1) There is established the Council known as Education Standards and Quality Assurance Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name, be capable of-

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, borrowing, holding, charging or disposing of movable and immovable property;

(c) borrowing money or making investments; and

(d) doing or performing all such things or acts necessary for proper performance of its functions under these Regulations which may be lawfully performed by a body corporate.

(3) The Council shall be the successor to the Directorate of Quality Assurance and Standards existing immediately before the commencement of these Regulations.

(4) The headquarters of the Council shall be in Nairobi with the functions devolved to the Counties and Wards.

Functions of the Council.

5. (1) The functions of the Council shall be to—

(a) ensure standards and maintain quality in institutions of basic education and in particular, to—

(i) establish, maintain and improve institution-based quality assurance;

(ii) promote standardization in basic education and training;

(iii) ensure standards in development of the curriculum;

(iv) ensure standards in evaluation of the curriculum;

(v) carry out standards assessment of basic education institutions;

(vi) initiate audit of accounts in basic education and training institutions;

(vii) carry out research in basic education institutions to improve education standards; and

(viii) initiate, organise and coordinate staff training programmes for Education Standards and Quality Assurance Council officers' for capacity building;

(b) administer policies and guidelines set for Basic Education, in particular to-

- (i) enforce guidelines and regulations for the establishment, licensing, accreditation and registration of Basic Education and training institutions;
  - (ii) recommend temporary suspension of operations of institutions of basic education and training that do not meet the minimum established standards as stipulated in the Act;
  - (iii) conduct certification of professional and academic documents;
  - (iv) prescribe staffing norms for Basic Education Institutions by working out and approving Curriculum Based establishment for schools and training institutions and advise the Ministry on the trends obtaining from the analysis;
  - (v) provide appropriate incentive for voluntary compliance with the standards and quality in Basic Education and training;
  - (vi) publish and update the public regularly on approved lists of all Basic Education Institutions and Teachers' Training Colleges;
  - (vii) appoint, promote, remunerate and discipline quality assurance and standards officers;
  - (viii) advise the Cabinet Secretary on all matters pertaining to quality education and training standards; and
  - (ix) make recommendations to appropriate authorities for necessary action;
- (c) supervise and oversee curriculum implementation and delivery, in particular to-
- (i) initiate cooperation with the government or any other body or person with a view to securing the adoption and practical application of quality and standards in basic education and training;
  - (ii) oversee the vetting of books and other curriculum support materials in basic education and training and maintain a list of the approved instructional materials;

(iii) vet expatriate and volunteer teachers, individuals, groups and organizations wishing to visit and work with basic education and training institutions;

(d) monitor the conduct of assessment and examinations in institutions of Basic Education, in collaboration with County Education Board, in particular to-

(i) collaborate with Kenya National Examination Council and other examination bodies to ensure standards in curriculum evaluation;

(ii) monitor the conduct of national examinations in basic education institutions;

(iii) externally assess the Early Childhood Development Education, Primary and Diploma Teacher Education final Teaching practice for purposes of certification; and

(iv) monitor the application of standards in the development and administration of continuous assessment tools for basic education and training;

(e) monitor and evaluate the standards and quality in Basic Education, in particular to-

(i) carry out continuous monitoring of all programmes in Basic Education;

(ii) provide timely feedback for decision making purposes;

(iii) monitor, evaluate and review policies on standards and relevance in basic education and training;

(iv) collect, examine and publish information related to Quality and Standards in basic education and training; and

(v) coordinate the management of the Council's data and statistics;

(f) develop and implement a scheme of service for officers in the council in consultation with Salaries and Remuneration Commission and other relevant bodies;

(g) ensure quality assurance for Education Officers in semi-autonomous government agencies and commissions offering services in basic education; and

(h) monitor the quality of services offered in the Ministry, semi-autonomous government agencies and commissions offering services in basic education.

### PART III—COMPOSITION AND MEMBERSHIP OF THE COUNCIL

Composition of the Council.

6. (1) The Council shall consist of—

(a) a chairperson appointed by the Cabinet Secretary;

(b) a Chief Executive Officer appointed by the Cabinet Secretary who shall be the Secretary to the Council;

(c) the Principal Secretary of the Ministry responsible for matters relating to Basic Education or representative;

(d) the Director of the Kenya Institute of Curriculum Development;

(e) the Secretary of the Teachers Service Commission;

(f) the Secretary of the Kenya National Examination Council;

(g) the Secretary of the Commission for University Education;

(h) not more than six other members, three of whom shall be of the opposite gender not being employees of Ministry of Education, appointed by the Cabinet Secretary in Consultation with the Board ,each to represent-

(i) the interest of persons with disabilities;

(i) the teacher training institutions;

(ii) the interest of Adult and Continuing Education;

(iii) Parents Association;

(iv) primary and secondary heads association; and

(v) the office of the Attorney-General.

(2) The Council may co-opt in its membership two ex-officio members at any one time as it may deem necessary.

Appointment of the Chairperson.

7. A person shall be qualified to be appointed as the Chairperson, if the person —

(a) holds a master's degree in education from a recognized university;

(b) has at least fifteen years' experience in Public Service or a practitioner in a relevant profession or industry; and

(c) satisfies the requirements of Chapter Six of the Constitution.

Appointment of Members of the Council.

8. (1) A person may be appointed as a member of the Council, other than as an ex-officio member if the person-

(a) has a degree from a university recognised in Kenya;

(b) has at least ten years' experience in a senior position in the public service or a practitioner in a relevant profession or industry; and

(c) meets the requirements or Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment as a member of the Council, if the person —

(a) is state officer;

(b) is declared to be of unsound mind;

(c) is an undischarged bankrupt; or

(d) found to have misused, abused a state office or public office or in any way contravened Chapter six of the Constitution satisfies the requirements of Chapter Six of the Constitution.

(3) In making appointments under this part, the Cabinet Secretary shall apply the procedure set out in the First Schedule.

9. The Chairperson and members of the Council shall hold office for a term of four years and shall be eligible for reappointment for one further term.

10. The Office of the chairperson or a member of the Council shall become vacant if the holder—

(a) resigns from office by notice in writing to the Cabinet Secretary;

(b) is absent from three consecutive meetings of the Council without good cause;

(c) is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine;

(d) is adjudged bankrupt; or

(e) is unable to perform the functions of the office due to physical or mental impairment.

Powers of the Council.

11. The Council shall have all the powers necessary for the effective performance of its functions under these regulations, and in particular, but without prejudice to the generality of the foregoing; the Council shall have power to—

(a) manage, supervise and administer the assets of Council in such manner as best promotes the purpose for which it is established;

(b) determine the provisions to be made for capital, the recurrent expenditure and reserves for the council;



(c) receive any grants, gifts, donations or endowments and make legitimate disbursement therefrom;

(d) enter into association with such other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which it is established;

(e) offer services to any person, institution or foreign Government upon such terms as the Council may from time to time determine; and  
Terms of office of the Chief Executive Officer

(f) undertake any other activity necessary for the fulfillment of its function.

Council Secretary to be responsible for day to day affairs of the Council.

12. The Council Secretary shall be responsible for the day-to-day activities of the Council and shall report to the governing Council.

Constituting Committees and delegation of powers of the Council.

13. The Council may-

(a) constitute such committees as it may consider necessary for the better performance of the functions of the Council; and

(b) by resolution either generally or in any particular case delegate to any Committee, member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of its functions or duties.

Remuneration of Council members.

14. The members of Council shall be paid such remuneration or allowances as may be determined by the Salaries and Remuneration Commission.

Employment of staff and engagement of consultants.

15. The Council may employ such staff or engage such consultants or experts or approve such secondment to the Council as may be necessary for the proper performance of its functions, on such terms and conditions as may be approved by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Deployment of staff to County and sub-county

16. The Council shall establish offices in each County and shall deploy its staff to the County and sub-County offices.

Appointment of the Chief Executive Officer.

17. (1) There shall be a Chief Executive Officer of the Council who shall be appointed by the Council through a competitive, fair and open recruitment process.

(2) A person shall be qualified for appointment as a Chief Executive Officer if the person-

(a) is a citizen of Kenya;

(b) holds at least a postgraduate degree in education or its equivalent from a university recognized in Kenya;

(c) has at least ten years' experience at management level in matters related to education; and

(d) meets the requirements of Chapter Six of the Constitution.

Terms of office of the Chief Executive Officer.

18. The Chief Executive Officer shall hold office for a period of five years and shall be eligible for re-appointment for one further term.

Removal of the Chief Executive Officer.

19. (1) The Chief Executive Officer may be removed from office in accordance with the terms and conditions of service for-

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehavior;

(c) incompetence or neglect of duty;

(d) a conviction in a court of competent jurisdiction for an offence in contravention of the tenets of Chapter Six of the Constitution; or

(e) any other ground that would justify removal from office under the terms and conditions of service.

(2) The Chief Executive Officer shall, before being removed from office, be given not less than thirty days' notice of the allegations made against him or her and shall be afforded an opportunity to present his or her defence against the allegations to the Council.

Terms of office of Council members.

20. The Chairperson and a person appointed as member of the Council shall serve for a term of four years and shall be eligible for re-appointment for one further final term.

Filling a vacancy.

21. Where a vacancy occurs in the membership of the Council, the Cabinet Secretary shall, within fourteen days of the notification of the vacancy, convene a selection panel in accordance with the First Schedule for the purpose of selecting a suitable person to fill the vacancy.

#### PART IV—COMMITTEES OF THE COUNCIL

Committees of the Council.

22. (1) The Council may establish such committees as it may consider appropriate to perform such functions and discharge such responsibilities as it may determine.

(2) The Council Secretary shall provide secretariat services to the Committees appointed.

(3) Without prejudice to the generality of paragraph (1) the Council shall establish-

(a) the Quality Assurance and Standards Committee;

(b) the Finance Committee;

(c) the Audit Committee;

(d) the Human Resource and Integrity Committee; and

(e) the Procurement Committee.

Quality Assurances and Standards Committee.

23. (1) The Quality Assurance and Standards Committee shall comprise—

(a) the Principal Secretary who shall be the Chairperson; and

(b) not less than six and not more than ten members appointed by the Council to represent-

(i) the Director General of Education;

(ii) the Kenya National Examination Council;

(iii) the Kenya Institute of Curriculum Development;

(iv) the Commission for University Education;

(v) the Teachers Service Commission; and

(vi) the interest of persons with disabilities.

(2) The Committee may co-opt other persons whose knowledge and experience it may find necessary for the performance of its functions to —

(a) keep under constant review the quality and standards of education in Basic Education and training; and

(b) oversee the quality of education programme in Basic Education.

(3) The Quality Assurance and Standards Committee may establish its own rules of procedure and shall submit the proceedings of its meetings to the council for approval.

Procedures of the Council.

24. (1) The business and affairs of the Council shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the second schedule, the Council may regulate the procedures of its meetings as it may consider necessary for the performance of the functions of the Council.

## PART V — FINANCIAL PROVISIONS

Funds of the Council.

25. The funds of the Council shall comprise—

- (a) such sums as may be provided by Parliament;
- (b) such monies as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under the Act, these Regulations or any other written law; and
- (c) all monies from any other source provided for or donated or lent to the Council.

Financial Year.

26. The financial year of the Council shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual Estimates.

27. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year, and in particular, the estimates shall provide for —

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Council;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Council; and
- (c) the proper maintenance of the buildings and grounds of the Council.

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

Book of Accounts and Audits. No 12 of 2003

28. (1) The Council shall cause to be kept proper books of accounts of all the income and expenditure, assets and liabilities undertakings, funds, activities, contracts, transactions and other business of the Council.

(2) The Council shall ensure that all money received is properly brought to account, all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over its assets and liabilities.

(3) The accounts of the Council shall be audited in accordance with the Public Audit Act, 2003.

Investment of Funds.

29. (1) The Council may invest any of its funds in any securities which the Cabinet Secretary may, from time to time, approve for that purpose.

(2) The Council may, subject to the "approval of Cabinet Secretary, place on deposit with such bank or banks as the Council may determine, any monies not immediately required for the purposes of the Council.

(3) Any balance of grant may be carried forward in the accounts of the Council from one year to next and be expended as the Council may determine, or be put into a reserve account of the Council.

## PART VI—GENERAL PROVISIONS

Common Seal.

30. (1) The common seal of the Council shall be kept in such custody as the Council may direct and shall not be used except in the manner authorized by the Council.

(2) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Council —

(a) where they are required to be under seal, if sealed with the common seal of the Council and authenticated by the Chairperson and the Secretary; or

(b) where they are not required to be under seal, if executed in that behalf by a member authorized by the Council for that purpose.

(3) A deed, instrument, contract or other document executed in accordance with subparagraph (2) shall be effective in law to bind the Council and its successors and may be varied or discharged in the same manner as that in which it was executed.

Remuneration of Council members.

31. The members of Council shall be paid such remuneration or allowances as the Council may, with the approval of the Cabinet Secretary, determine and shall be entitled to travelling and other allowances in connection with the work of the Council.

Protection from personal liability

32. (1) Nothing done by a member of the Council or any officer, employee or agent of the Council shall, if it is done bona fide in execution of the functions, powers or duties of the Council, render the member, officer, employee or agent or any person acting on the directions of the Council personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Council, shall, if the court holds that such act was done bona fide, be paid out of the general funds of the Council, unless such expenses are recovered by him or her in such suit or prosecution.

## PART VII—TRANSITIONAL PROVISIONS

Staff of the Council.

33. Any person who is a member of staff or officer, of the former Directorate of Quality Assurance and Standards, immediately before the date of commencement of these Regulations shall on the date of commencement, automatically become a member of staff or officer of the

Council under the terms of Service of the Council as provided for in the appointment of staff under these Regulations.

Assets and Records.

34. Any asset and records of the former Directorate of Quality Assurance and Standards shall on the date of commencement of these Regulations become the property of the Council.

## (r. 22) FIRST SCHEDULE

### PROCEDURE OF APPOINTMENT OF CHAIRPERSON OR MEMBER OF THE COUNCIL

Constitution of the selection panel.

1. (1) The Cabinet Secretary shall, within fourteen days after the commencement of these Regulations and whenever it becomes necessary to appoint new members of the Council, constitute a selection panel comprising of-

(a) one representative of the Ministry responsible for education;

(b) one representative of the Public Service Commission;

(c) three persons with proven business experience who meet the requirements of Chapter Six of the Constitution.

(2) The Cabinet Secretary shall —

(a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among themselves; and

(b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

Functions of the selection panel.

2. (1) The selection panel shall —

(a) consider the applications received under subsection (3) to determine their compliance with the provisions of the Constitution, the Act and these Regulations:



- (b) short list the applicants;
  - (c) publish the names of the short listed applicants and the qualified applicants in the media;
  - (d) conduct interviews of the short listed persons;
  - (e) shortlist three qualified applicants for the position of, chairperson;
  - (f) shortlist double the number of required members qualified applicants for the position of the members; and forward the names of the qualified persons to the Cabinet Secretary.
- (2)The selection panel may, subject to this paragraph, determine its own procedure for the conduct of meetings and business affairs.
- (3)The selection panel shall stand dissolved upon the appointment of the chairperson and members of the Council.

## SECOND SCHEDULE (r. 24)

### MEETINGS OF THE COUNCIL

#### Frequency of Meetings and Special Meetings

1. (1) The Council shall hold not less than three meetings in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the Chairperson shall upon requisition in writing by at least five members of the Council convene a special meeting at any time for the transaction of its business.
- (3)The notice for a meeting for the Council shall be in writing, and shall be for a period of-
  - (a) fourteen days in the case of a meeting under subparagraph (1); and
  - (b) seven days in the case of a meeting under subparagraph (2).

### Chairing of Meetings

2. (1) The Chairperson shall preside at every meeting of the Council at which he or she is present.

(2) In the absence of the Chairperson, the Vice-Chairperson shall chair the meeting.

(3) In the absence of both the Chairperson and the Vice-Chairperson, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

### Quorum of Meetings

3. The quorum for the conduct of business at a meeting of the Council shall be two thirds of all the members of the Council.

### Voting

4. A decisions of the Council shall be a majority of the members present and voting, and in the case of an equality of votes, the person presiding at the meeting shall have a second or a casting vote.

### Conflict of Interest and Disclosure

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

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes subparagraph (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.

## Rules and Procedure of Meetings

6. The Council shall-

(a) determine rules for procedure of the conduct of its business; and

(b) cause to be kept records of its procedures and decisions.

## Delegation by the Council

7. The Council may, by resolution either generally or any particular case delegate to any Committee of the Council or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of its function or duties.

## Decisions of the Council.

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

## Council to regulate own procedure.

9. The Council shall regulate its own procedure.

Dated the 24th January, 2013.

JACOB KAIMENYI,  
Cabinet Secretary for Education, Science and Technology.