

NO. 14 OF 2013

THE BASIC EDUCATION ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. The Basic Education (Education Standards and Quality Assurance Council) Regulations.....	3
2. The Basic Education Regulations.....	17

**THE BASIC EDUCATION (EDUCATION STANDARDS
AND QUALITY ASSURANCE COUNCIL) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation
2. Interpretation
3. Object of the Regulation

PART II – ESTABLISHMENT OF THE EDUCATION
STANDARDS AND QUALITY ASSURANCE COUNCIL

4. Establishment of the Council
5. Functions of the Council

PART III – COMPOSITION AND MEMBERSHIP OF THE COUNCIL

6. Composition of the Council
7. Appointment of the Chairperson
8. Appointment of Members of the Council
9. Term of office of Chairperson and member of the Council
10. Vacation of office of the Chairperson or members of the Council
11. Powers of the Council
12. Council Secretary to be responsible for day to day affairs of the Council
13. Constituting Committees and delegation of powers of the Council
14. Remuneration of Council members
15. Employment of staff and engagement of consultants
16. Deployment of staff to County and sub-county offices
17. Appointment of the Chief Executive Officer
18. Terms of office of the Chief Executive Officer
19. Removal of the Chief Executive Officer
20. Terms of office of Council members
21. Filling a vacancy

PART IV – COMMITTEES OF THE COUNCIL

22. Committees of the Council
23. Quality Assurances and Standards Committee
24. Procedures of the Council

PART V – FINANCIAL PROVISIONS

25. Funds of the Council
26. Financial Year
27. Annual Estimates
28. Book of Accounts and Audits
29. Investment of Funds

PART VI – GENERAL PROVISIONS

30. Common Seal
31. Remuneration of Council members
32. Protection from personal liability

PART VII – TRANSITIONAL PROVISIONS

33. Staff of the Council

[Subsidiary]

34. Assets and Records

SCHEDULES

PROCEDURE OF APPOINTMENT OF CHAIRPERSON OR MEMBER OF THE
COUNCIL

MEETINGS OF THE COUNCIL

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

[Legal Notice 11 of 2014]

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these Regulations unless the context otherwise requires—

"Act" means the Basic Education Act (Cap. 211);

"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.

3. Object of the Regulation

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

4. Establishment of the Council

(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

[Subsidiary]

- (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.

5. Functions of the Council

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

6. Composition of the Council

- (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—

[Subsidiary]

- (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.

7. Appointment of the Chairperson

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.

8. Appointment of Members of the Council

(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 of 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. Term of office of Chairperson and member of the Council

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. Vacation of office of the Chairperson or members of the Council

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.

11. Powers of the Council

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

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

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

13. Constituting Committees and delegation of powers of the Council

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.

14. Remuneration of Council members

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

15. Employment of staff and engagement of consultants

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.

16. Deployment of staff to County and sub-county offices

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

17. Appointment of the Chief Executive Officer

(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;

[Subsidiary]

- (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.

18. Terms of office of the Chief Executive Officer

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

19. Removal of the Chief Executive Officer

(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.

20. Terms of office of Council members

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.

21. Filling a vacancy

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

22. Committees of the Council

(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.

23. Quality Assurances and Standards Committee

(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.

24. Procedures of the Council

(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

25. Funds of the Council

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.

26. Financial Year

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

27. Annual Estimates

(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.

28. Book of Accounts and Audits

(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.

[Subsidiary]

(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 (No. 12 of 2003).

29. Investment of Funds

(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

30. Common Seal

(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.

31. Remuneration of Council members

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.

32. Protection from personal liability

(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

33. Staff of the Council

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.

34. Assets and Records

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.

FIRST SCHEDULE

[r. 8(3)]

PROCEDURE OF APPOINTMENT OF CHAIRPERSON OR MEMBER OF THE COUNCIL

1. Constitution of the selection panel

(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.

2. Functions of the selection panel

(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.

[Subsidiary]

SECOND SCHEDULE

[r. 24(1)]

MEETINGS OF THE COUNCIL

1. Frequency of Meetings and Special Meetings

(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).

2. Chairing of Meetings

(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.

3. Quorum of Meetings

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

4. Voting

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.

5. Conflict of Interest and Disclosure

(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.

6. Rules and Procedure of Meetings

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.

7. Delegation by the Council

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.

8. Decisions of the Council

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.

9. Council to regulate own procedure

The Council shall regulate its own procedure.

THE BASIC EDUCATION REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation
2. Interpretation

PART II – MANAGEMENT OF BASIC EDUCATION INSTITUTIONS

A - Registration of Institutions

3. Registration
4. Procedure for registration
5. Head of Institution

B - Boards of Management

6. Qualifications for members to the Board of Management
7. Application for membership
8. Ad-hoc vetting panel
9. Dissolution of the Board of Management
10. Board of Management Inaugural meeting
11. Promotion of co-curricular activities
12. Contribution for activities
13. Institutions to facilitate training
14. Insufficient funds for activities
15. Offence
16. Composition of the committee
17. Appointment of non-teaching staff
18. Terms and conditions of employment for non-teaching staff
19. Employment of semi-professional by the Board
20. Board to deal with claims and grievances
21. Dismissal and termination of employment

C - Learners with Special Education Needs

22. Assessment of learners with special needs
23. Qualified personnel to assess
24. Types of institutions
25. Facilities to be suitable
26. Curriculum
27. Auxiliary services
28. Evaluation of learners
29. Borstal institutions etc.

PART III – SCHOOL RULES, DISCIPLINE PROCEDURES FOR STUDENTS AND EXCLUSION

30. School rules to be subjected to public participation
31. School rules to be approved by the Board of Management
32. Individual liability for indiscipline
33. Mass indiscipline
34. Notice to close institution in case of impending strike
35. Closure in case of mass indiscipline
36. Action of the Board on receiving a report

[Subsidiary]

37. Register to be kept
38. Suspension letter
39. Procedure for handling disciplinary cases
40. Exclusion of learner from the institution in case of indiscipline
41. Appeals to the Tribunal
42. No withdrawal of learner's candidature
43. Transfer of learner

PART IV – FREE AND COMPULSORY EDUCATION

44. Fees
45. No fees increment without the authority of the Cabinet Secretary
46. Offence
47. Minimum entry
48. Transit of a learner
49. Qualification of teachers
50. Mandatory provision in institutions
51. Curriculum development
52. Accreditation of other agencies
53. Policy making
54. Curricula to be approved by the Kenya Institute of curriculum development
55. Supplementary textbooks
56. Conduct of school-based assessment
57. Guidelines on course books
58. Admission of a learner
59. Progression of learner
60. Learners living in difficult circumstances
61. Bio-data of learners
62. Information on parents
63. Registers and records
64. Facilities in institutions
65. Guidance programs
66. Report on shortfall of teaching staff
67. Uniform

PART V – ALTERNATIVE PROVISIONS OF BASIC EDUCATION,
TRAINING AND CONTINUING ADULT EDUCATION

68. Institutions of alternative basic and continuing adult education
69. Grants
70. Curriculum Institutions of alternative basic and continuing adult education
71. Learners above the age of eighteen years
72. Placement at an appropriate level of education
73. Conduct of program
74. Levies to be charged
75. Infrastructure grant
76. Middle level institution
77. Registered middle level institution
78. Curriculum in middle level institution

PART VII – CATEGORIZATION OF INSTITUTIONS
OF BASIC EDUCATION AND TRAINING

79. Classification of institutions

- 80. Re-registration
- 81. Environment committee of the board of management
- 82. Security measures
- 83. Board of Management to ensure adequate security

PART VIII – OFFICIAL SCHOOL HOURS

- 84. Official school hours
 - 85. Revocation
-

THE BASIC EDUCATION REGULATIONS

[Legal Notice 39 of 2015]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Basic Education Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Board" has the meaning assigned to it under the Act;

"class mode" refers to the optimum number of learners in a classroom;

"Commission" means the Teachers Service Commission;

"Director" means the County Director of Education;

"head of institution" means a teacher, head teacher, or principal appointed by the Teachers' Service Commission to head an institution and exercising delegated authority of the Cabinet Secretary, Ministry of Education as the Accounting Officer for the institution;

"institution" means an institution of basic education and training;

"institution of basic education and training" includes a pre-primary school, primary or a secondary school, an adult education institution and a middle-level college;

"KCSE" means the Kenya Certificate of Secondary Education;

"middle level college" means an institution offering pre-service and in-service teacher training courses that support basic education;

"Ministry" means the Ministry responsible for basic education;

"non-teaching staff" means all employees of the Boards of Governors who are not engaged in teaching or research;

"zone" means an education administrative area consisting of a cluster of schools identified by the County Education Board with the approval of the National Education Board.

PART II – MANAGEMENT OF BASIC EDUCATION INSTITUTIONS

A - Registration of Institutions

3. Registration

No person, body or organization shall establish or admit learners to a private or public institution without first obtaining written authority from the Cabinet Secretary.

4. Procedure for registration

All institutions referred to in regulation 3 shall be registered in a manner and form prescribed through guidelines issued by the Cabinet Secretary.

5. Head of Institution

(1) The day to day management of a public institution of basic education and training shall be the responsibility of the head of the institution, who shall be appointed by the Commission.

(2) The head of institution—

- (a) shall be the accounting officer of the institution, an authority delegated by the Cabinet Secretary;

Basic Education

[Subsidiary]

- (b) shall be the team leader for the implementation of the Ministry's policies and programs in the institution;
- (c) may initiate policy proposals for consideration by the County Education Board and the Cabinet Secretary.

(3) Where any impropriety is established on the part of a head of an institution, the Cabinet Secretary shall forthwith revoke the designation of such head of institution as the accounting officer and request the Teachers Service Commission for a replacement.

(4) Where the institution referred to paragraph (4) is a private institution, the Cabinet Secretary shall request the proprietor thereof to appoint a replacement.

(5) In paragraphs (3) and (4) above the Teachers Service Commission or the proprietor, as the case may be, shall institute disciplinary action against the concerned head of institution.

B - Boards of Management**6. Qualifications for members to the Board of Management**

The minimum qualifications of the Chairmen and members of Boards of Management shall be—

- (a) in the case of—
 - (i) a pre-primary or primary school; and
 - (ii) an adult education and continuing education centre, a diploma and a KCSE certificate respectively; and
- (b) in the case of a Secondary School or a middle level college, a degree from a university recognized in Kenya, and a KCSE Certificate respectively.

7. Application for membership

(1) The head of an institution shall, whenever a vacancy occurs in the Board of management of the institution for which he or she is responsible, notify the County Education Board accordingly through the sub-county Education Board office and request for the filling of the vacancy.

(2) Upon receipt of a request under paragraph (1), the County Education Board shall in writing request the nominating entities to forward names of suitably qualified persons to be appointed as members of the Board of Management.

(3) The County Education Board shall constitute an ad hoc committee to vet the suitability of the proposed nominees, which shall consist of—

- (a) a representative of the County Director of Education who shall be the Chairperson;
- (b) the member of County Assembly responsible for the area where the institution is located;
- (c) the Member of Parliament for the area in which the institution is located;
- (d) the Chief of the area in which the institution is located;
- (e) the sponsor, if any, of the institution;
- (f) a representative of the Parents Association, of the institution;
- (g) a representative of County Education Board, and
- (h) the head of institution, who shall be the committee Secretary.

8. Ad-hoc vetting panel

(1) The committee appointed under regulation 7(3) shall ensure that—

- (a) the persons nominated to the Board of Management of any institution meet the requirements of Article 10 and Chapter Six of the Constitution of Kenya, 2010; and
- (b) the composition of the Board Members adheres to the two third gender rule.

(2) A Board of Management appointed under these regulations shall remain in office for a term of three years, which shall be renewable for one further term.

9. Dissolution of the Board of Management

(1) The Cabinet Secretary may, on the recommendation of the County Education Board dissolve the Board of Management of an institution where—

- (a) such Board—
 - (i) is found guilty of gross misconduct;
 - (ii) is deemed to be incapable of discharging its mandate as provided for in the Act; or
- (b) the institution changes its mandate or ceases to operate.

(2) Where a Board of Management is dissolved under paragraph (1), the County Education Board shall appoint an interim committee of five members to assume the responsibility of management of the institution.

10. Board of Management Inaugural meeting

A newly appointed Board of Management shall hold its inaugural meeting, convened and chaired by the secretary to the County Education Board or his representative within two weeks after appointment.

11. Promotion of co-curricular activities

(1) The County Director of Education shall promote both recreational and competitive sports, games for physical development, performing and creative arts, talent shows and congresses in institutions of basic education and training by ensuring that—

- (a) all students and pupils are accorded the opportunity to participate in activities from the institutional to the national level;
- (b) every institution has or can access adequate facilities for co-curricular activities; and
- (c) every institution shall put in place measures to promote co-curricular activities and ensure that all learners shall have access to suitable affordable sports kits.

(2) The calendar for all co-curricular activities shall be drawn up by the Cabinet Secretary in consultation with the relevant national and regional bodies and associations and shall be circulated to all institutions three months before the end of each school year.

12. Contribution for activities

No institution shall cause any parent or guardian to contribute any funds for co-curricular activities without written approval from the Cabinet Secretary on the advice of the respective Country Director of Education, and all payments made hereunder shall be so authorized at all levels.

13. Institutions to facilitate training

All private institutions of basic education and training shall facilitate the participation of their learners in co-curricular activities at all levels.

14. Insufficient funds for activities

(1) Where funds from the government for a particular co-curricular activity are found to be inadequate the concerned institutions shall in writing notify the County Director of Education of the deficit three months prior to the commencement of the activity.

(2) Upon receipt of the notice, the County Director of Education in liaison with the County Education Board shall consult the Cabinet Secretary on how to meet the deficit.

[Subsidiary]

15. Offence

Any person, head of institution or any member of the Board of Management who sends away a learner due to non-payment of activity fees by the parent or guardian without written authority from the County Director of Education commits an offence under the Act.

16. Composition of the committee

Every County Director of Education shall establish a committee to manage and coordinate co-curricular activities, which shall comprise one representative of the following respectively—

- (a) the County Director of Education, who shall be the Chairperson;
- (b) the Education Standards Quality Assurance Council, who shall serve as the Secretary;
- (c) the County Director of the Teachers Service Commission;
- (d) the county government;
- (e) the heads of the respective basic education institutions within the county; and
- (f) the private schools association within the county.

17. Appointment of non-teaching staff

Every Board of Management shall, pursuant to section 59 (p) of the Act, recruit, employ, remunerate, promote, demote or terminate the services of any of its employees.

18. Terms and conditions of employment for non-teaching staff

Persons belonging to a professional cadre and employed by the Board of Management shall be employed on such terms and conditions of conditions of service similar to those recommended for equivalent posts in the Civil Service and as per the applicable scheme of service.

19. Employment of semi-professional by the Board

The Board of management may appoint suitable semi-professional and subordinate staff, on such terms and conditions as shall be determined by the Board.

20. Board to deal with claims and grievances

Where a claim or grievance arises from an employee of the Board of management, the Board shall deal with the claim or grievance exhaustively in accordance with the Employment Act (Cap. 226).

21. Dismissal and termination of employment

(1) The Board of Management shall reserve the right to dismiss any of its employees instantly and without notice or pay in lieu of notice for reasons of gross misconduct as provided in the Employment Act (Cap. 226).

(2) The Board shall not decide on a proposal to—

- (a) dismiss from employment any person employed by the Board;
- (b) terminate a contract between the Board of Management and its employees;
- (c) request the Cabinet Secretary to terminate the services of a person seconded to the Board of management,

on grounds of misconduct or grave professional default, until the person concerned has been given an opportunity to appear in person before the Board and has presented his defence.

(3) Subject to the provisions of paragraph (1) where a member of non-teaching staff is entrusted as an agent of the Cabinet Secretary to perform certain functions and such officer fails or neglects to perform the duties so assigned and sufficient grounds exist to discipline, terminate or dismiss the officer from the service, the Cabinet Secretary shall direct the cause of action to be taken against that officer and the Cabinet Secretary's decision shall be final.

C - Learners with Special Education Needs**22. Assessment of learners with special needs**

Whenever it is necessary or appropriate to do so, a learner shall be assessed for placement and continuous support in an institution of basic education and training at the County Education Assessment and Research Centre set up at County level under section 46 of the Act.

23. Qualified personnel to assess

Assessment under regulation 22 shall be carried out with the consent of the learner's parent or guardian at the Centres referred to in that regulation by qualified personnel, including, but not limited to medical staff, educationists, special needs experts, at the request of such parent or guardian or on the initiative of the institution.

24. Types of institutions

Learners with special needs who have been assessed under regulation 22 shall be placed in any of the following facilities—

- (a) regular institutions of basic education and training;
- (b) special needs institutions of basic education and training;
- (c) regular institutions of basic education and training with special needs unit;
- (d) talent academies for gifted and talented learners;
- (e) vocational institution; and
- (f) hospital schools and home-based schooling.

25. Facilities to be suitable

The Boards of Management for all the institutions specified in regulation 24 shall ensure *inter alia* that—

- (a) the institution provides reasonable accommodation to all learners;
- (b) the pace of instruction is commensurate with learners' physical, mental or intellectual abilities;
- (c) catch-up classes or waivers are facilitated in specific subject areas, and
- (d) all learners are provided with adequate appropriate instructional materials.

26. Curriculum

The Kenya Institute of Curriculum Development shall provide differentiated curricula appropriate for the needs of learners with special needs.

27. Auxiliary services

All learners with special needs shall be entitled to auxiliary services or assistive devices placed in their respective institutions.

28. Evaluation of learners

All learners with special needs shall be evaluated and issued with appropriate certificates of achievement in the prescribed course undertaken.

29. Borstal institutions etc.

Notwithstanding anything under these regulations learners of school going age residing in children's homes, borstal institutions or other corrective facilities shall be provided with basic education and training pursuant to Article 53, 54, 55 and 56 of the Constitution.

[Subsidiary]

PART III – SCHOOL RULES, DISCIPLINE
PROCEDURES FOR STUDENTS AND EXCLUSION

30. School rules to be subjected to public participation

Every institution of basic education shall develop school rules which shall be subjected to public participation and which shall not be inconsistent with the Act, or any other relevant written law.

31. School rules to be approved by the Board of Management

No institution shall implement the rules referred to in regulation 30 until they have been approved by the Board of Management of the institution.

32. Individual liability for indiscipline

A learner shall be deemed to be individually disciplined if involved in—

- (a) physical fights;
- (b) bullying of other learners;
- (c) stealing;
- (d) playing truancy;
- (e) cheating in examinations;
- (f) abusing teachers or other persons in authority;
- (g) defiance of lawful instructions;
- (h) drug trafficking or substance abuse; or
- (i) any other conduct categorized as indiscipline by the Board of Management.

33. Mass indiscipline

Learners shall be deemed to have participated in mass indiscipline in the institution if they jointly take part in—

- (a) unlawful demonstration;
- (b) boycott of classes or meals;
- (c) the destruction of school property; or
- (d) invasion of other institutions, shopping centres or homesteads.

34. Notice to close institution in case of impending strike

(1) If the head of the institution notices any of the activities described in regulation 33 among the students, which in his or her opinion may result in the disruption of general activities in the institution, he or she shall close the institution and notify the County Director of Education accordingly within twenty four hours after such closure.

(2) The notice under paragraph (1) shall bear the signature of the head of the institution.

(3) The notice given under paragraph (1) shall only be deemed to be valid if it is signed by the head of the institution.

35. Closure in case of mass indiscipline

(1) In cases of mass indiscipline, the Board of Management of an institution may declare the institution closed and students held back from attending school for a period not exceeding two weeks.

(2) The Board of Management shall submit a report to the County Education Board within two days after the closure of an institution under paragraph (1).

36. Action of the Board on receiving a report

(1) The County Education Board may after considering the report of the Board of Management under regulation 35, and after holding such inquiry as it may deem necessary to determine the cause of the mass indiscipline—

- (a) confirm or terminate the closure of the institution;
- (b) determine the condition under which all or any of the students are to be re-admitted to the same or any other institution; or
- (c) order placement to a correctional facility.

(2) In cases of damage or destruction of property, the management of the institution shall invite a registered loss assessor following the relevant law to determine the value of the loss.

(3) The loss assessed under paragraph (2) shall be borne by the person found to bear the highest responsibility for the mass indiscipline.

37. Register to be kept

Every institution shall establish and keep a register of indisciplined learners indicating the name, class, category of indiscipline, date and warning or any other corrective measures taken by the institution.

38. Suspension letter

If the head of the institution is of the opinion that—

- (a) the acts of indiscipline have persisted in spite of the warnings or corrective measures taken under these regulations; and
- (b) if the act of indiscipline is likely to threaten the safety of the other learners in the institution,

the head of the institution shall issue the learner, with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specifying the date the learner, accompanied by the parent or guardian is required to appear before the Board of Management of the institution.

39. Procedure for handling disciplinary cases

(1) The particulars of the complaint preferred against the learner shall be read out to the parent or guardian and the learner at the meeting with the Board of Management under regulation 38, and the learner shall be asked to defend himself or herself.

(2) Where the parent or guardian fails to appear, the business of the Board shall be adjourned, and the matter shall be deferred and a new date set and communicated for the parties to appear.

(3) Where the parent or guardian fails to attend on the rescheduled date, the case shall be heard and determined such absence notwithstanding.

(4) In all disciplinary proceedings affecting a learner the attendance of the Sub-county Education Officer shall be mandatory.

(5) The recommendations of the Board of Management shall within two days be communicated to the County Director or Education.

40. Exclusion of learner from the institution in case of indiscipline

Where the County Director of Education receives the recommendation of the Board of Management then he or she shall seek the advice of the County Education Board as to whether to—

- (a) order for conditional or unconditional re-admission of the learner;
- (b) transfer the learner to an alternative institution; or
- (c) transfer the learner to a corrective center in the context of education.

41. Appeals to the Tribunal

Any Person aggrieved by a decision under regulation 40 may appeal to the Education Appeals Tribunal.

[Subsidiary]

42. No withdrawal of learner's candidature

No school shall withdraw the registration of a learner as a candidate in a national examination as a form of punishment.

43. Transfer of learner

A student shall only be transferred by the County Director of Education on the following grounds—

- (a) transfer on request in writing by the parent or guardian;
- (b) on medical grounds; or
- (c) as a result of insecurity or natural calamity.

PART IV – FREE AND COMPULSORY EDUCATION**44. Fees**

No public school or institution shall issue alternative fees structures other than those approved by the Cabinet Secretary.

45. No fees increment without the authority of the Cabinet Secretary

No person or Board of Management in a public institution of basic education and training shall alter or increase fees without written authority from the Cabinet Secretary.

46. Offence

The members of the Board of Management of an institution which contravenes regulation 44 or 45 shall jointly and severally be guilty of an offence under the Act.

47. Minimum entry

- (1) The minimum age for admission into a primary school shall be six years.
- (2) Notwithstanding paragraph (1), no person shall deny any learner of school-going age admission in a primary school for lack of proof of age.

48. Transit of a learner

A learner transiting from a pre-primary school to a public primary school of a parent's or guardian's choice shall not be subjected to—

- (a) entry examination except as provided for in section 34(4) of the Act;
- (b) any interview; or
- (c) admission fee.

49. Qualification of teachers

All persons deployed to teach in basic education institutions of learning and training shall be required to have undertaken a training program approved or recognized by the Cabinet Secretary and registered by Teachers Service Commission.

50. Mandatory provision in institutions

(1) A person, body, organ or institution responsible for the management of a pre-primary, primary or secondary school shall have provision for the following—

- (a) a first aid kit for each class and training on the use thereof for the whole school community;
- (b) adequate safe and clean water;
- (c) adequate, safe, clean and appropriate sanitation facilities which are age and gender appropriate;
- (d) disability-friendly facilities and environment;
- (e) safe and appropriate playing grounds and equipment;
- (f) spacious and conducive learning rooms; and

- (g) appropriate furniture and utilities.
- (2) All boarding institutions shall have provisions for—
 - (a) a qualified nurse;
 - (b) a watchman; and
 - (c) other suitable adult supervision within the boarding facilities.

51. Curriculum development

The Kenya Institute of Curriculum Development shall develop—

- (a) a national basic education curricular in line with the Kenya Institute of Curriculum Development Act (Cap. 211A); and
- (b) curricula for learners with special needs.

52. Accreditation of other agencies

The Kenya Institute of Curriculum Development may accredit any other agency involved in curriculum development with the approval of the Cabinet Secretary in line with the Kenya Institute of Curriculum Development Act (Cap. 211A).

53. Policy making

The Cabinet Secretary shall retain the policy-making and oversight role in the preparation and approval of curriculum and vetting of all educational materials to be used in institutions.

54. Curricula to be approved by the Kenya Institute of curriculum development

(1) The Board of Management of a public institution or the manager of a private institution, as the case may be, shall ensure that the curriculum and the instructional materials in use therein have been developed or approved by the Kenya Institute of Curriculum Development.

(2) Any person who contravenes the provisions of paragraph (1) commits an offence and shall be liable to prosecution under the provisions of the Kenya Institute of Curriculum Development Act (Cap. 211A), and any other written law.

55. Supplementary textbooks

Notwithstanding regulation 54 an institution may in consultation with its Parents Teachers Association or Parents Association, recommend supplementary instructional materials for use by the learners.

56. Conduct of school-based assessment

There shall be continuous assessment of the learners' progress in the following assessment areas—

- (a) character; and
- (b) co-curricular activities and performing arts.

57. Guidelines on course books

(1) The Cabinet Secretary shall issue guidelines on course books to be used in public primary and secondary schools from time to time.

(2) All schools shall establish and maintain a safe and secure room for storage of instructional materials.

(3) Any person found in possession of instructional materials bearing the official stamp of any institution without due authority from the management of the institution commits an offence.

[Subsidiary]

58. Admission of a learner

(1) A learner admitted into an institution of basic education and training shall be entitled to progress to the next level unhindered except—

- (a) on the recommendation of a qualified medical practitioner; or
- (b) due to non-attendance of the relevant programme for one academic year.

(2) All learners who have undertaken a full course of primary education shall be eligible for admission to a secondary school regardless of their scores in the summative evaluation of the primary education.

(3) No school or any institution of basic education shall compel a parent or guardian to transfer a learner to a different institution without written approval of the County Director of Education.

59. Progression of learner

A learner progressing from a primary school to a public secondary school of his or her choice shall not be subjected to any interviews, pre-qualification examinations or be required to make any payments before admission.

60. Learners living in difficult circumstances

The County Director of Education in consultation with the County Education Board shall institute affirmative action to enable learners from minority or marginalized groups, or groups with special needs or those living in especially difficult circumstances to be admitted to secondary schools.

61. Bio-data of learners

Every institution shall maintain the following data on every learner—

- (a) the name and date of birth;
- (b) the name and contact information of the learner's parent or guardian; and
- (c) medical history and other special needs.

62. Information on parents

Every institution shall maintain the following information on the parent or guardians of the learners—

- (a) full name, nationality and place of residence;
- (b) occupation; and
- (c) two telephone contacts.

63. Registers and records

Every institution shall establish and maintain the following registers and records in both hard and soft copies—

- (a) the registration certificate of the institution;
- (b) the institutions' books of accounts;
- (c) registers of the institutions' movable and immovable assets;
- (d) admissions registers, indicating the date and admission number of the learners;
- (e) parents register;
- (f) visitors books;
- (g) daily attendance registers for learners;
- (h) learners progress reports;
- (i) register of learners' transfers, drop-out and completion;
- (j) the school title deed or land allotment letter or a copy thereof if the title is held by the sponsor, proprietor or trustee;

- (k) register of disciplinary action taken against learners;
- (l) an inventory of all instructional materials, stationery, equipment and assistive devices available and their state of repair or use;
- (m) syllabi;
- (n) an approved list of text books and other instructional material; and
- (o) any other records recommended by the Education Standards Quality Assurance Council.

64. Facilities in institutions

Every institution of basic education and training shall have provisions for the following—

- (a) outdoor playing facilities and equipment, both for outdoors and indoors with provisions for persons with disabilities;
- (b) administrative offices;
- (c) sanitary facilities, including bathrooms for both learners and other persons, segregated by gender and age;
- (d) kitchen and dining room;
- (e) standard classrooms measuring 7m x 8m for 50 learners for primary school or 45 learners for secondary schools or standard classrooms measuring 7m x 6m for 25 learners for pre-primary learners;
- (f) store rooms; and
- (g) a science room or other rooms for specialized subjects.

65. Guidance programs

(1) All institutions shall provide—

- (a) guidance services to all learners, distinct from counseling services;
- (b) counselling services as an essential corrective measure; and
- (c) spiritual development services focusing on moral values and character formation of the learners.

(2) Any person offering professional counselling services to institutions shall be duly qualified and registered as a counselor under the appropriate law, and approved by the Cabinet Secretary.

66. Report on shortfall of teaching staff

It shall be the responsibility of the Board of Management to make a report to the Teachers Service Commission and the County Education Board on matters related to staffing levels.

67. Uniform

(1) Every Board of Management of a public institution or manager of a private institution shall, in consultation with the respective Parents Association, develop a common dress code for learner, which shall have unique features for identification and branding.

(2) In the case of a sponsored school the concerned Board of Management shall develop the dress code in consultation with the Parents' Association and the sponsor.

(3) No institution shall prescribe a specific supplier of school uniforms or any other materials for the parent or guardian.

PART V – ALTERNATIVE PROVISIONS OF BASIC EDUCATION, TRAINING AND CONTINUING ADULT EDUCATION

68. Institutions of alternative basic and continuing adult education

Institutions of Alternative Basic Education, Training and Continuing Adult Education may utilize facilities of the existing institutions of basic education or other public and private institutions or premises on request.

[Subsidiary]

69. Grants

Learners under the age of eighteen in institutions to which this Part applies shall be eligible for capitation grants under the free and compulsory education programme.

70. Curriculum Institutions of alternative basic and continuing adult education

Only curricula approved by the Kenya Institute of Curriculum Development shall be offered by all institutions of Alternative Basic, Adult and Continuing Education.

71. Learners above the age of eighteen years

Learners above the age of eighteen years shall only be admitted into the institutions of alternative basic, adult and continuing education.

72. Placement at an appropriate level of education

While admitting learners to institutions of alternative basic, adult and continuing education, the institution shall use the learner's prior ability, knowledge and competencies in determining placement at an appropriate level of education.

73. Conduct of program

Institutions of alternative basic, adult and continuing education shall conduct their programs through accelerated and self-directed learning to cover the prescribed curriculum.

74. Levies to be charged

Public institutions of alternative basic, adult and continuing education may charge such levies as may be approved by the Cabinet Secretary in consultation with the County Education Board.

75. Infrastructure grant

Institutions of alternative basic adult and continuing education shall be provided with grants for infrastructure improvement by the national government through the relevant Ministries.

76. Middle level institution

A middle level institution of basic education shall include an institution offering pre-service and in-service teacher training courses that support basic education.

77. Registered middle level institution

No institution registered as a public middle level institution of basic education and training shall be transferred or converted to any other use other than that for which it was registered or established, except with the approval of the Cabinet Secretary.

78. Curriculum in middle level institution

(1) All private middle level institutions of basic education and training shall only offer courses or programs whose curriculum is developed or approved by the Kenya Institute of Curriculum Development or by any agencies recognized by the Cabinet Secretary.

(2) Certification of the courses referred to under paragraph (1) or programs shall be the responsibility of Kenya National Examinations Council or any other body recognized by the Cabinet Secretary.

PART VII – CATEGORIZATION OF INSTITUTIONS
OF BASIC EDUCATION AND TRAINING

79. Classification of institutions

The institutions categorized as provided for under section 43 (1) of the Act shall be registered with reference to—

- (a) the gender of learners admitted;
- (b) the catchment area of the school as either national, extra county, county or sub-county;
- (c) boarding or day school;
- (d) low cost boarding school (in case of primary school); and
- (e) special needs education institutions.

80. Re-registration

No person or Board of Management shall change the status of a registered institution without re-registration.

81. Environment committee of the board of management

Matters of safety, security and hygiene in institutions of basic education and training shall be the responsibility of the Board of Management provided for under the Act.

82. Security measures

The Board of Management of an institution shall put in place reasonable measures regarding the hygiene, security and safety of learners while in and outside the institution while travelling on the institution's business.

83. Board of Management to ensure adequate security

The Board of Management of an institution shall ensure that—

- (a) all institution compound is clearly demarcated and fenced with a secure gate;
- (b) the classrooms, dormitories, offices, kitchens, toilets and other physical structures are clean, well maintained, safe and properly utilized;
- (c) the school environment is such as to nurture positive health and is conducive to learning and social development without compromising diversity or disability;
- (d) the environment is drug free;
- (e) all learners, particularly at lower levels, are conversant with road safety rules and other survival skills;
- (f) that regular fire disaster response drills are conducted in preparedness for fires and other disasters by all stakeholders;
- (g) all doors should open to the outside and windows should have no grills;
- (h) lightning arresters are installed in lightning-prone areas;
- (i) fire extinguishers and alarms are available and functional;
- (j) all institutional vehicles are in sound mechanical condition; and
- (k) in institutions with boarding facilities, the space between the beds shall be at least 1.2 metres while the corridors or pathways shall be at least 2 metres wide.

PART VIII – OFFICIAL SCHOOL HOURS

84. Official school hours

(1) The official operating hours for all day public or private institutions shall be Monday to Friday—

- (a) 8.00 a.m. to 3.30 p.m. for class hours; and
- (b) 3.30 p.m. to 4.45 p.m. for co-curriculum activities.

(2) No day institution of basic education and training shall require learners to report earlier than 7.15 a.m.

(3) Notwithstanding paragraph 84(1), all institutions with boarding facilities shall operate 24/7 hour basis as follows—

Basic Education

[Subsidiary]

- (a) 8.00 a.m. to 3.30 p.m. for class hours Monday to Friday;
- (b) 3.30 p.m. to 4.45 p.m. for co-curriculum activities Monday to Friday;
- (c) 5.00 p.m. to 7.30 p.m. for self-directed activities Monday to Friday;
- (d) 7.30 p.m. to 9.30 p.m. preps Monday to Friday;
- (e) 9.30 p.m. to 6.00 a.m. bedtime Monday to Friday; and
- (f) 6.00 a.m. to 8.00 a.m. supervised routine activities.

(4) No boarding institution shall send away an unaccompanied learner later than 9.00 a.m.

(5) The latest reporting time for learners to a boarding institution shall be 5.00 p.m.

85. Revocation

The following Regulations are revoked—

- (a) The Education (Education Standards) Regulations, 1968 (LN 106/1968);
 - (b) The Education (Board of Governors) Order, 1969 (LN 17/1969);
 - (c) The Education (Board of Governors) (Administration) Regulations, 1969 (LN 18/1969);
 - (d) The Education (Registration of Unaided Schools) Regulations, 1969 (LN 201/1969);
 - (e) The Education (School Discipline) Regulations, 1972 (LN 40/1972);
 - (f) The District Education Boards Regulations, 1973 (LN 207/1973);
 - (g) The Education (School Committees) Regulations, 1978 (LN 190/1978); and
 - (h) The Education (Board of Governors) (Non-Teaching Staff) Regulations, 1993 (LN 262/1993).
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