

The Kilifi County Early Childhood Education Bill, 2016

THE KILIFI COUNTY EARLY CHILDHOOD EDUCATION BILL, 2016

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The Kilifi County Early Childhood Education Bill, 2016

A Bill for

An Act of the County Assembly of Kilifi to provide for early childhood education in Kilifi County and for other connected purposes.

Enacted by the County Assembly of Kilifi as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Kilifi County Early Childhood Education Act, 2016.

Interpretation

2. In this Act—

“early childhood education and care centre” has the meaning set out in section 3;

“early childhood service” means an early childhood education and care centre service, home-based education and care service, or hospital-based education and care service;

“home-based education” means the provision of education for reward, to fewer than five children under the age of six and it includes any child enrolled at the facility who is the child of the person who provides education or care, in—

(a) their own home; or

(b) the home of the person providing the education; or

(c) any other home nominated by a parent or guardian of the child;

“hospital-based education and care service” means the provision of education or care to three or more children under the age of six who are receiving hospital care;

“licensed early childhood education and care centre” means an early childhood education and care centre in respect of which the service provider holds a current license issued under section 8;

“licensed early childhood service” means an early childhood service in respect of which the service provider holds a current license issued under section 8;

“licensed home-based education service” means a home-based education and care service in respect of which the service provider

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holds a current license issued under section 8;

“licensed hospital-based education service” means a hospital-based education and care service in respect of which the service provider holds a current license issued under regulations made under section 8;

“Executive Committee Member” means the county Executive Committee Member responsible for matters relating to education;

“service provider” means each of the following—

- (a) in relation to an early childhood education and care centre, the body, agency, or person that operates the centre;
- (b) in relation to a home-based education and care service, the body, agency, or person that arranges, or offers to arrange, that education or care; and
- (c) in relation to a hospital-based education and care service, the body, agency, or person that provides that education or care.

Early childhood
Education and care
centre

3. An early childhood education and care centre means premises used regularly for the education of three or more children by the day or part of a day to—

- (a) children under the age of six who do not belong to the persons providing the education; but
- (b) not for any continuous period of more than seven days.

(2) Subject to subsections (3) and (4), the following premises are not early childhood education and care centres—

- (a) registered schools;
- (b) hostels;
- (c) residences;
- (d) institutions under the control of the Ministry responsible for matters relating to health;
- (e) hospital care institutions;
- (f) premises where all the children present are—
 - (i) members of the same family in the care of a member of the

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- family; or
 - (ii) members of the same family in the care of a caregiver who is not acting for gain or reward;
- (g) any premises, during any period of use for the education or care of children for any period not exceeding four hours a week in circumstances where the children's parent or guardian is—
- (i) in close proximity to the children and are able to be contacted; and
 - (ii) able to resume responsibility for the children at short notice:
- (h) any premises, during any period of use for the education or care of three or more children under the age of six, none of whom attends for any period exceeding two hours per day, in circumstances where the children's parent or guardian is—
- (i) in close proximity to the children and are able to be contacted; and
 - (ii) able to resume responsibility for the children at short notice:
- (i) any premises, during any period of use for the operation of a licensed home-based education and care service, or hospital-based-education and care service.
- (3) Despite subsection (2), premises are early childhood education and care centres if they are—
- (a) within premises of a kind described in any of paragraphs (a) to (i) of subsection (2); and
 - (b) used regularly or principally for the education or care of three or more children under the age of six who are children of—
 - (i) staff who work within premises of a kind described in any of paragraphs (a) to (i) of subsection (2); or
 - (ii) persons attending premises of that kind as residents or students.
- (4) An early childhood education and care centre may be operated

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within the premises of a registered school; and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises.

PART II—ADMINISTRATION AND CURRICULUM

**Administrative
Requirements**

4. The service provider for every licensed early childhood education service shall keep, and avail to the Executive Committee Member on request—

- (a) a register of the children who attend or have attended the service provider, specifying the date of birth of each; and
- (b) a record of the attendance of children at the service provider; and
- (c) a record of all fees and other charges paid in respect of children's attendance at the service provider; and
- (d) any other records that are necessary to enable the service provider's performance to be monitored adequately.

Curriculum framework

5. (1) The Executive Committee Member may prescribe a curriculum framework for licensed early childhood services.
- (2) The Executive Committee Member may not prescribe a curriculum framework or amend any prescribed curriculum framework, unless the Executive Committee Member has consulted with those organisations that appear to the Executive Committee Member to be representative of persons likely to be substantially affected by the curriculum framework or the amendment, as the case may be.
- (3) As soon as practicable after prescribing or amending a curriculum framework, the Executive Committee Member shall publish a notice in the *Gazette*—
- (a) stating that a curriculum framework has been prescribed or, as the case may be, amended; and
 - (b) setting out the curriculum framework or the amendment to the curriculum framework in its entirety, or stating where or how a copy of the curriculum framework or the amendment to the curriculum framework can be obtained by the public.
- (4) Without limiting the generality of subsection (1), a notice under

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subsection (3) may—

- (a) specify different commencement dates for different provisions of the curriculum framework or for different purposes; and
 - (b) specify a transitional period during which service providers may elect to comply with another specified curriculum requirement and specify a date on which service providers shall comply with the curriculum framework.
- (5) If a curriculum framework is prescribed under this section, every service provider for a licensed early childhood service to whom that curriculum framework applies, shall implement that curriculum framework in accordance with any requirements prescribed in regulations made under this Act.

PART III—LICENSING AND CERTIFICATION PROVISIONS

Requirement for early
Childhood education
and care centres to be
licensed

6. (1) No service provider may operate an early childhood education and care centre unless that service provider is licensed to operate centre as provided under section 8.

- (2) Every service provider who operates an early childhood education and care centre commits an offence if the service provider—
- (a) operates the early childhood education and care centre without holding a current license under regulations made under section 8; or
 - (b) ceases to operate an early childhood education and care centre for which it holds a current license under regulations made under section 8, in circumstances other than an emergency, without first informing the Executive Committee Member that it will stop operating the centre; or
 - (c) ceases to operate the early childhood education and care centre for which it holds a current license under regulations made under section 8, in circumstances involving an emergency, and fails to tell the Executive Committee Member as soon as is reasonably practicable after the closure.
- (3) An offence under subsection (2) is punishable on conviction—
- (a) in the case of an offence under subsection (2)(a), by a fine not exceeding twenty thousand for every day or part of a day on which the offence took place; or

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- (b) in the case of an offence under subsection (2)(b) or (c), by a fine not exceeding fifty thousand.

Certain service
Providers may be
Licensed

7. A service provider for a home-based education and care service or a hospital-based education and care service may apply for a license under regulations made under section 8 in respect of the home-based education and care service or hospital-based education and care service provided by the service provider.

Regulations relating to
licensing

8. (1) The Executive Committee Member may make regulations providing for—
- (a) the licensing of service providers to provide early childhood services of any kind, and the transfer of licenses; and
 - (b) regulating the management, operation, and control of licensed early childhood services of any kind, and imposing duties on service providers.
- (2) Regulations made under subsection (1) may—
- (a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, staffing and parental or a guardian's participation including adult to child ratios, health and safety, implementation of the curriculum framework, communication and consultation with a parent or guardian, the operation or administration of those services, or any of them, to be complied with to ensure the health, comfort, care, education, and safety of children attending licensed early childhood services;
 - (b) authorize the Executive Committee Member, after consultation with those organisations that appear to the Executive Committee Member to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the chief officer to assess compliance with the minimum standards imposed by these regulations;
 - (c) require the Executive Committee Member to publish a notice in the *Gazette*—
 - (i) stating that criteria referred to in paragraph (b) have been prescribed; and
 - (ii) setting out the criteria in their entirety, or stating where or

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how a copy of those criteria may be obtained by members of the public;

- (d) limit or regulate the numbers of children who may attend licensed early childhood education and care centres or any premises used to provide a licensed home-based education and care service, or a licensed hospital-based education and care service;
 - (e) provide for the grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of licenses of one or more specified kinds for service providers for each kind of early childhood service, and prescribe the conditions subject to which such licenses may be granted, renewed or transferred and the fees payable in respect of the grant, renewal, and transfer of such licenses, or do any of those things;
 - (f) prescribe conditions governing, or that may be imposed in respect of, licensed early childhood services and the duties of their service providers;
 - (g) prescribe the records to be kept by service providers in respect of children attending licensed early childhood education and care centres, licensed home-based education and care services, and licensed hospital-based education and care services;
 - (h) regulate the qualifications to be held by any specified number or proportion of those persons carrying out the following—
 - (i) the control and management of each licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them; and
 - (ii) the education and care of children attending a licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them;
 - (i) prescribe offences punishable on conviction by a fine not exceeding five hundred thousand shillings in respect of the contravention of, or non-compliance with, the regulations.
- (3) Regulations made under subsection (16) may prescribe different standards and other requirements—
- (a) for early childhood services of different types or descriptions; and

based

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- (b) in respect of different kinds of licenses.
- (4) The criteria prescribed by the Executive Committee Member for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including for—
 - (a) early childhood services of different types or descriptions; and
 - (b) different kinds of licenses; and
 - (c) different minimum standards.

PART IV—POWERS OF ENTRY AND INSPECTION

Parent or guardian'
right of entry

- 9.** A parent or guardian of a child has a right of entry to a licensed early childhood service provider where a licensed home-based education and care service is provided, whenever their child is there, except if the parent or guardian—
- (a) is subject to an order of a court that prohibits access to, or contact with, the child, either generally or with respect to the child while, or at a time when the child is, attending the centre or service; or
 - (b) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them; or
 - (c) is, in the opinion of a person responsible for the operation of the centre, under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behaviour of the person; or
 - (d) is, in the opinion of a person responsible for the operation of the centre, exhibiting behaviour that is or is likely to be disruptive to the effective operation of the centre.

Powers of entry and
Inspection without
warrant

- 10.** (1) A person holding an authorization under subsection (3) may, for the purpose of ensuring that the provisions of this Act, or the conditions of any license, certificate, or grant issued or made under any of those provisions, are being complied with, or for the purpose of conducting any audit, at any reasonable time—
- (a) enter and inspect any premises that are or contain a licensed

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early childhood education and care centre or that are used to provide a licensed home-based education and care service or a licensed hospital-based education and care service;

(b) inspect, photocopy, print out, or copy any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the licensed early childhood service;

(c) remove any document described in paragraph (b), whether in its original form or in an electronic form or as a paper copy.

(2) If a document is removed from the premises under subsection (1)(c), the person who removes it shall—

(a) leave at the premises a list of the documents removed; and

(b) return the documents, or a copy of them, to the premises as soon as practicable, unless to do so would prejudice any investigation being or to be carried out by the government.

(3) The Executive Committee Member may authorize, in writing, any person who, in the opinion of the Executive Committee Member, is suitably qualified and trained in the exercise of powers under subsection (1), to exercise those powers.

(4) An authorization under subsection (3) shall contain—

(a) a reference to this section; and

(b) the full name of the person authorized; and

(c) a statement of the powers conferred on that person by this section.

(5) A person exercising a power under subsection (1) shall have the appropriate written authorization, and evidence of identity, and shall produce them to the person in charge of the premises concerned or, as the case may be, the person having possession or control of the documents concerned—

(a) on first entering the premises; and

(b) whenever subsequently reasonably required to do so by the person in charge.

(6) For the purposes of this section and section 11, inspection, in

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Powers of entry grounds

relation to any premises, includes observing any children present there.

- 11.** (1) A person authorized by section 10(3) who has reasonable grounds to believe that any premises are being used as an early childhood education and care centre in contravention of this Act, may apply, in writing, and on oath to court for a warrant.
- (2) If the magistrate to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, they may issue a warrant directed to the person by name authorising the person to enter and inspect the premises.
- (3) A warrant issued under subsection (2) shall contain—
- (a) a reference to this section; and
 - (b) the full name of the person authorized;
 - (c) a description of the premises concerned; and
 - (d) the date on which it was issued and the date on which it expires.
- (4) A warrant issued under subsection (2) shall authorize the person named in it, at any reasonable time within four weeks after the date on which it is issued, to—
- (a) enter the premises described in the warrant; and
 - (b) do, on those premises, anything necessary to ascertain whether those premises are being used as an early childhood education and care centre, in contravention of this Act.
- (5) A person exercising any power under subsection (4) shall have the appropriate warrant and proof of identity and shall produce them to the occupier of the premises concerned—
- (a) on first entering the premises; and
 - (b) whenever subsequently reasonably required to do so by the occupier.
- (6) Each warrant issued under subsection (2) expires on the earlier of the following dates—
- (a) the date when the purpose for which it was issued has been

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satisfied; or

(a) the date specified as the date of expiry under subsection (3)(d).

PART V—FUNDING PROVISIONS

Funding of **12.** In every year, out of money appropriated by the County Assembly—

(a) the service provider for a licensed early childhood service—

(i) may be paid general grants; and

(ii) may be paid one or more discretionary grants; and

(b) the management of a body corporate that fulfils the requirements prescribed by regulations may be paid a discretionary grant for the purpose of establishing a licensed early childhood service.

(2) The amount of every grant shall be determined by the Executive Committee Member.

(3) The Executive Committee Member may, from time to time, determine the means by which the amounts of grants may be calculated or ascertained; and—

(a) different means may be determined in respect of—

i) grants of different classes or descriptions; and

(ii) licensed early childhood education services of different classes or descriptions; and

(b) the amount of any grant may be determined accordingly; but

(c) nothing in this subsection limits or affects the Executive Committee Member's power under subsection (2) to determine the amount of any grant.

(4) A grant—

(a) may be paid unconditionally, or subject to any conditions the Executive Committee Member may specify in writing when the grant is paid or earlier; and

(b) may be paid to be used for any purpose the service provider

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considers appropriate, or for only such purposes as the Executive Committee Member specifies in writing when the grant is paid or earlier; and

(c) may be withheld in whole or in part if the service provider fails to comply with any regulations made under this Act.

(5) The service provider shall ensure that—

(a) where a grant has been paid subject to conditions, the conditions are complied with; and

(b) if a grant has been paid to be used only for purposes specified by the Executive Committee Member under subsection (4)(b), the grant is used only for those purposes.

PART VI—MISCELLANEOUS PROVISIONS

Offence of insulting, abusing, or intimidating staff

13. A person who intentionally insults, abuses, or intimidates a teacher or member of staff of an early childhood education and care centre commits an offence, and is liable on conviction to a fine not exceeding fifty thousand shillings.

Offence of obstructing power of entry

14. A person who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by section 10 commits an offence, and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.

General penalty

15. A person who contravenes any provision of this Act for which no other penalty is prescribed, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand or to a term of imprisonment not exceeding one year or to both.

Regulations

16. The Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing may prescribe—

(a) the fees to be charged under this Act;

(b) the form of applications for the license; and

(c) any matter that the Executive Committee Member considers necessary for the administration of this Act.

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MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to regulate provision of early childhood education in Kilifi County. The structure of the Bill is as follows:

Part I (clauses 1–3) of the Bill contains preliminary provisions

Clause 1 states the title of the Bill while clause 2 deals with interpretation of terms as used in the bill. Clause 3 provides the meaning of early childhood education and care centre.

Part II (clauses 4-5) of the Bill deals with administration and curriculum

Clause 4 is on administrative requirements where it provides that the service provider for every licensed early childhood education service to keep, and avail to the Executive Committee Member on request a register of the children who attend or have attended the service, specifying the date of birth. Clause 5 provides for the curriculum framework where the Executive Committee Member may prescribe a curriculum framework for licensed early childhood services.

PART III (clause 6-8) sets out the licensing and certification provisions

Clause 6 sets out the requirement that early childhood education and care centres must be licensed while Clause 7 is to the effect that a service provider for a home-based education and care service or a hospital-based education and care service must apply for a license. Clause 8 provides for regulations relating to licensing where the Executive Committee Member may make regulations providing for the licensing of service providers to provide early childhood services of any kind.

PART IV (clause 9-11) is on powers of entry and inspection

Clause 9 gives a parent or guardian of a child the right of entry to a licensed early childhood education service provider where a licensed home-based education and care service is provided, whenever their child is there. Clauses 10 and 11 are on powers of entry and inspection without and with a warrant by any person whom the Executive Committee Member has authorized.

PART V (Clause 12) provides for funding provisions

Clause 12 provides for funding of certain early childhood education services.

PART VI (Clause 13- provides for miscellaneous provisions

Clause 13 creates the offence and penalty of where a person intentionally insults, abuses, or intimidates a teacher or member of staff of an early childhood education and care centre commits an offence, and is liable, on conviction, to a fine not exceeding fifty thousand shillings.

Clause 14 creates the offence of obstructing power of entry and provides that a person who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry commits an offence, and is liable, on conviction, to a fine not exceeding one hundred

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thousand shillings. Clause 15 provides a general penalty. Clause 16 provides for regulations and gives the Executive Committee Member power to make regulations for the better carrying into effect of the provisions of the Act.

Dated the2016

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Chairperson Early Childhood Education
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