Mr. Adjiboda (PCAI)
Pls facilitate tabling and co-ordination of other processes including Notice of Motion
18/2/21

THE SENATE
COMMITTEE SERVICES

MEMO

To : **Speaker of the Senate**

SCANNED

THE SENATE RECEIVED 16 FEB 2021 CLERK'S OFFICE

Thro' : Clerk of the Senate

Thro' : Deputy Clerk

Clerk, you may approve for processing.

J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
16/02/2020

Rt. Hon. Speaker
You may approve for tabling
Date: 16/02/21

Thro': Director, Committee Services ***(DC, this is forwarded for your consideration and subsequent approval)***

16/02/21

Approved
17/2/2021

From : Research Officer

Date: 16th February, 2021

RE: APPROVAL FOR TABLING OF THE REPORT OF THE MEDIATION COMMITTEE ON THE EARLY CHILDHOOD EDUCATION BILL, 2018 (SENATE BILLS No. 26 of 2018)

The **Mediation Committee on the Early Childhood Education Bill, 2018 (Senate Bills No. 26 of 2018)** is seeking to table its report on the **Consideration of the Early Childhood Education Bill, (Senate Bills No. 26 of 2018)**

This is to seek for your approval for tabling.

Ringerah
Humphrey Ringera
Research Officer/Clerk to the Committee

Mr. Adyiboda
Pls facilitate tabling and co-ordination of other processes including Notice of Motion
18/2/21

THE SENATE
COMMITTEE SERVICES

MEMO

To : **Speaker of the Senate**

THE SENATE RECEIVED 16 FEB 2021 CLERK'S OFFICE

Thro' : Clerk of the Senate

Thro' : Deputy Clerk

Clerk, you may approve for processing.

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 16/02/21

16/02/2020

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SCANNED

REPUBLIC OF KENYA

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J. M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date 16/02/21

TWELFTH PARLIAMENT

PAPERS LAID	
DATE	18/02/2021
TABLED BY	Chairperson
COMMITTEE	Mediation
CLERK AT THE TABLE	Lillian

FOURTH SESSION - 2020

THE MEDIATION COMMITTEE ON THE EARLY CHILDHOOD EDUCATION BILL, 2018 (SENATE BILLS No. 26 of 2018)

REPORT ON THE CONSIDERATION OF THE EARLY CHILDHOOD EDUCATION BILL, (SENATE BILLS No. 26 of 2018)

Approved
12/2/2021

Joint Clerk's Chambers
Parliament Buildings,
NAIROBI

DECEMBER 2020

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PREFACE

Establishment of the Committee

The Mediation Committee on the Early Childhood Education Bill (Senate Bills No. 26 of 2018) was constituted by the Speaker of the National Assembly pursuant to Article 113 of the Constitution and Standing Order 149 of the National Assembly Standing Orders and by the Speaker of the Senate pursuant to Standing Order 160 of the Senate Standing Orders on 1st October, 2020.

Mandate of the Committee

The Mediation Committee derives its mandate from Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly Standing Orders and Standing Order 160(1) of the Senate Standing Orders.

These provisions outline the functions of the Committee as follows-

i. to consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;
ii. to consider Bills where either House rejects a Motion that a Bill which originate in the other House be read a Second or Third time; and,
iii. to attempt to develop a version of the Bill that both Houses of Parliament will pass.

The Mediation Committee was established to negotiate an agreed version of the Early Childhood Education Bill, 2018 (Senate Bills. No 26 of 2018) that would be presented to both Houses of Parliament for approval.

Membership of the Committee

The Committee is comprised of the following Members-

1) The Hon. Sen. Okong'o Omogeni, MP - **Chairperson**
2) The Hon. Wambugu Ngunjiri, MP - **Vice Chairperson**
3) The Hon. (Dr.) Daniel Kamuren Tuitoek, MP - Member
4) The Hon. Sen. Mwangi Githiomi, MP - Member
5) The Hon. John Paul Mwirigi, MP - Member
6) The Hon. Sen. (Dr.) Agnes Zani, MP - Member
7) The Hon. Sen. Seneta Mary Yiane, MP - Member
8) The Hon. Sen. Falhada Dekow, MP - Member
9) The Hon. Eve Akinyi Obara, MP - Member
10) The Hon. (Dr.) Pamela Ochieng', MP - Member

EXECUTIVE SUMMARY

Hon Speaker,

The Early Childhood Education Bill, 2018 (Senate Bill. No 26 of 2018) was passed by the Senate, with amendments, on 22nd May, 2019. It was thereafter referred to the National Assembly for consideration.

The National Assembly passed the Bill, with amendments, on 5th December, 2019. The Senate thereafter considered the National Assembly's amendments on 30th June, 2020 and negatived some of the said amendments.

Hon. Speaker,

Pursuant to the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly Standing Orders and the Standing Order 160(1) of the Senate Standing Orders, the Bill was committed to the Mediation Committee for consideration.

The Mediation Committee comprising of five members each from the Senate and the National Assembly respectively, was constituted on 1st October, 2020 and held its first meeting on 10th November, 2020, and elected Sen. Okong'o Omogeni, SC, MP as the Chairperson and Hon. Wambugu Ngunjiri, MP as Vice-Chairperson.

The Committee thereafter commenced consideration of the contentious provisions of the Bill in both virtual and physical meetings.

Hon. Speaker, following consideration of the contentious clauses, the Mediation Committee resolved to **retain clauses 33 and 37 as proposed by the Senate. The Mediation Committee further resolved to adopt the National Assembly amendments to clauses 27, 28, 36, 44 and 68.**

The Committee held its final meeting on to consider and adopt its report on Tuesday, 8th December, 2020.

Hon. Speaker,

As I conclude, I want to thank all the Members of the Mediation Committee for their immense contribution during consideration of this Bill that culminated to this report.

The Committee wishes to thank the Offices of the Speakers of the Senate and the National Assembly, the Clerks of the Senate and the National Assembly for the necessary support extended to it in the conduct and execution of its mandate.

The Committee further wishes to record its appreciation for the services rendered by the staff of the Senate and the National Assembly that enabled the production of this report.

Hon. Speaker,
It is my pleasant duty, on behalf of the Mediation Committee and pursuant to Standing Order 161 (1) of the Senate Standing Orders and Standing Order 150 (1) of the National Assembly Standing Orders, to present the Report of the Mediation Committee on its consideration of the Early Childhood Education Bill 2018 (Senate Bill No 26 of 2018).

I thank you, **Hon. Speaker.**

Signed .....

Date .....10th December, 2020...

SEN. OKONG'O OMOGENI, SC, MP
CHAIRPERSON, EARLY CHILDHOOD EDUCATION BILL, 2018
MEDIATION COMMITTEE

Signed .....

Date .....10th December, 2020.....

HON. WAMBUGU NGUNJIRI, MP
VICE-CHAIRPERSON, EARLY CHILDHOOD EDUCATION BILL, 2018
MEDIATION COMMITTEE

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE EARLY CHILDHOOD EDUCATION BILL, 2018, (SENATE BILL NO 26 OF 2018)

We, the undersigned Members of the Mediation Committee, do hereby append our signature to adopt the Report on the Early Childhood Education Bill (Senate Bill No. 26 of 2018) Mediation Committee.

Sen. Okong'o Omogeni, SC, MP - **Chairperson**

Hon. Deric Wambugu Ngunjiri, MP - **Vice Chairperson**

Hon. (Dr.) Daniel K. Tuitoek, MP - Member

Hon. Sen. Mwangi Githiomi, MP - Member

Hon. Sen. Falhada Dekow, MP -Member

Hon. John Paul Mwirigi, MP - Member

Hon. Sen. (Dr.) Agnes Zani, MP - Member

Hon. Sen. Seneta Mary Yiane, MP - Member

Hon. Eve Akinyi Obara, MP - Member

Hon. (Dr.) Pamela Ochieng' MP - Member

CHAPTER ONE

1. INTRODUCTION

1.1. The Early Childhood Education Bill, 2018

The County Early Childhood Education Bill, 2018 (Senate Bill. No 26 of 2018) *(Short title of Bill amended to: The Early Childhood Education Bill)* seeks to provide a framework for the implementation of early childhood education by the county government in line with its functions as set out under the Fourth Schedule of the Constitution.

The Bill provides for among others, the –

1) procedure for the registration of early childhood education centres;
2) management of early childhood education centres;
3) establishment and operations of boards of management of early childhood education centres;
4) administration of the early childhood education system in the county with reference to matters such as the admission of children, the standards of education in a private education centre, the curriculum, education centre programmes and school feeding programmes to be implemented in an education centre;
5) accreditation of education centres administering or intending to administer foreign curriculum;
6) quality of education and standards required to be maintained in an early childhood education centre;
7) establishment of the county early childhood quality assurance committee to ensure the implementation of the policies and standards of education;
8) transitional provisions in relation to existing education centres or schools that offer early childhood education services;
9) formulation of regulations by the Cabinet Secretary for the effective implementation of the Act; and
10) amendments to the Basic Education Act, 2013 to align it with the Constitution with regard to the provisions of early childhood education services by the county governments in line with the Fourth Schedule to the Constitution.

The Early Childhood Education Bill, 2018 (Senate Bill No. 26 of 2018) was published on 4th September, 2018 and read a First Time in the Senate on 25th September, 2018. The Bill was read for the Second Time on 28th and 29th November, 2018 and 26th February, 2019 when it was passed.

The Bill was considered and passed by the Senate with amendments on 22nd May, 2019 and was thereafter referred to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 11th June 2019. The Second Reading of the Bill in the National Assembly was done on 26th September, 1st October and 2nd October, 2019.

The Bill was considered at the Committee of the whole House in the National Assembly on 20th November 2019 and passed on 21st November, 2019. The Bill was thereafter forwarded to the Senate for consideration on 3rd December, 2019.

The Senate considered the National Assembly's amendments on 30th June, 2020 and concurred with most of the amendments and negatived some of the said amendments.

Consequently, pursuant to Article 113 of the Constitution, Standing Order 149 of the National Assembly Standing Orders and Standing Order 160 (1) of the Senate Standing Orders, the Bill was referred to a Mediation Committee with the sole objective of negotiating on an agreed version of the Bill that would be presented to both Houses for approval.

CHAPTER TWO

2. CONSIDERATION OF THE EARLY CHILDHOOD EDUCATION BILL, 2018

2.1. Amendments passed by the National Assembly to the Early Childhood Education Bill, (Senate Bill No. 26 of 2018)

The National Assembly passed the following amendments to the Bill

CLAUSE 2

THAT, clause 2 of the Bill be amended by—

in the definition of the term "Education Appeals Tribunal" by deleting the expression "92 and substituting therefor the expression "93",

deleting the definition of the term "pupil"; and

inserting the following new definition in their proper alphabetic sequence—

"children with special needs" means a child in need of special needs education;

"learner" has the meaning assigned to it in the Teachers Service Commission Act;

"special needs education" has the meaning assigned to it in the Basic Education Act;

"village administrator" means the office of a village administrator established in section 52 of the County Governments Act."

Justification

It is important to align the use of terms in the Bill to those general definitions applied within the education sector, as well as within the various legislations within the education sector. The amendments therefore seek to align the terms "learner" and "special needs education" to the Basic Education Act, No. 14 of 2013.

The amendment also serves the purpose of correcting a referencing error.

CLAUSE 8

THAT, clause 8 of the Bill be deleted and substituted therefor the following new clause—

Duty of head teacher 8.

(1) Where a learner admitted in an education centre fails to attend the education centre, the head teacher shall, in collaboration with the village administrator, cause an investigation of the circumstances of the learner's absence from school.

Where the head teacher finds that there are no reasonable grounds for the learner's failure to attend school, the head teacher shall—

issue a written notice to the parent of the learner requiring that parent to comply with the provisions of this Act; and

submit a report on the learner to the County Education Board.

A parent who without reasonable cause and after a written notice from the head teacher, fails to comply with a notice under subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or to both.

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector.

The amendment also serves to ensure a similar penalty to a parent or guardian in respect to the offences of failure to take a child to school, as well as the failure to comply with a notice from the head teacher to ensure the attendance of a child to school. This is because both offences are similar and should therefore attract the same penalty.

CLAUSE 9

THAT, clause 9 of the Bill be deleted and substituted therefor the following new clause--

Children with special needs

9. (1) The county executive committee member shall put in place such infrastructure as may be necessary to ensure that children with special needs have access to, and are provided with early childhood education.

(2) In performing the functions under subsection (1), the county executive committee member shall—

i. ensure that screening tools for early identification of children with special needs and disabilities are developed and distributed for use;

ii. ensure early identification, assessment and interventions of children with special needs and disabilities;

iii. ensure training of personnel working with children with special needs and disabilities on use of screening tools for early interventions;

iv. facilitate development of programmes for training and professional development for all pre-primary

education providers and personnel in special needs education;

v. ensure that children with special needs and disabilities have equal access to recreational sporting facilities within and outside pre-primary school programmes to nurture talents;

vi. ensure that teachers and other staff in integrated pre-primary schools plan and implement an integrated individualized education programme for the purpose of monitoring the progress of an individual child with special needs and disabilities;

vii. liaise with other professionals and stakeholders to provide psychosocial support to learners with special needs and disabilities;

viii. facilitate provision of teacher aids to pre-primary schools to support teachers handling children with special needs and disabilities; and

ix. ensure that children with disabilities are provided with any other necessary support.

Justification

The amendment seeks to ensure that the Bill is aligned with the provisions of the Basic Education Act, No. 14 of 2013 that make reference to children with special needs.

Further, the amendment seeks to provide for the specific measures that shall be taken by the county executive committee member to ensure that children with special needs have access to early childhood education.

CLAUSE 15

THAT, clause 15 of the Bill be amended—

in sub-clause (1) by deleting the words ""or is likely to meet"; and

in sub-clause (3) by deleting paragraph (b).

Justification

The amendment seeks to eliminate any ambiguity that may arise in the interpretation of what amounts to the term "is likely to meet".

CLAUSE 16

That, clause 16 of the Bill be deleted and substituted therefor the following new clause—

Review of Registration

16. (1) As soon as practicable after provisionally registering an education centre under section 15, the County Education Board

in paragraph (c) and substituting therefor the words "board of management",

Justification

The amendment is necessary for purposes of correction of a grammatical error. The amendment also seeks to ensure that the board of management of an education centre, and not the head teacher, shall be responsible to the County Education Board for ensuring that the registration of the education centre is maintained. This is in line with the function of the County Education Board, as provided in the Basic Education Act, No. 14 of 2013, to collaborate with the board of management in the management of basic schools.

CLAUSE 27

That, clause 27 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

Church based institutions

"(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approved by the county executive committee member."

Justification

The amendment seeks to allow the conversion of early childhood education centres from public status to private status, but only after the consultation with the County Education Board and the Approval of the county executive committee member. This seeks to align the Bill with the provisions of section 43(2) of the Basic Education Act, No. 14 of 2013, which provides that a public basic education institution shall not be converted to a private basic education institution or to any other private status without consultation with the National Education Board and approval by the Cabinet Secretary.

CLAUSE 28

That, clause 28 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause—

"(4) Notwithstanding the generality of subsection (2), the role of the sponsor under subsection (1) shall be—

to participate and make proposals for the review of syllabus, curriculum, books and other teaching aids; and

to offer financial, infrastructural and spiritual support to the education center"

Justification

The amendment seeks to ensure that the role of the sponsor of an education centre shall not be to make recommendations for curriculum

review, but to make proposals for the review of curriculum, this is to ensure that the role of the sponsor does not conflict with the mandate of the Kenya Institute of Curriculum Development which is responsible for curriculum review.

CLAUSE 29

That, clause 29 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

"(3) In the performance of its functions under paragraphs (b) and (c) of subsection (2), the board of management shall first seek the approval of the County Education Board."

Justification

The amendment seeks to ensure that the board of management will be required to seek the approval of the County Education Board before acquiring or charging assets of the education centre, as well as borrowing money on behalf of the education centre. This will ensure that the County Education Board performs an oversight role by ensuring that the board of management makes sound financial decisions.

CLAUSE 30

That, clause 30 of the Bill be amended in sub-clause (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

"(a) one person elected by the parents from each level within the education centre to represent parents of learners in the education centre;"

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector. The amendment is also necessary to ensure that where all the parents from the levels in an education centre fail to meet the minimum requirements for nomination to the board of management as provided in sub-clause (2), such parents shall be at liberty to elect any other person to represent them in the board of management.

CLAUSE 33

That, clause 33 of the Bill be deleted.

Justification

The deletion of this clause is necessary to ensure that there is no duplication of duties between the parents teachers association and the board of management. Further, at the early childhood education level,

the period is too short to warrant too many governance structures which will result in unnecessary cost implications.

CLAUSE 35

That, clause 35 of the Bill be amended by deleting the word "pupil" wherever it appears and substituting therefor the word "learner".

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector,

CLAUSE 37

That, clause 37 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

> "(3) In the performance of the functions under this section, the County Education Board shall establish a County Early Childhood Education Committee, as a committee of the County Education Board, to oversee the implementation of early childhood education in each county."

Justification

The amendment seeks to establish the Early Childhood Education Committee as a committee within the County Education Board which shall be responsible for overseeing the implementation of early childhood education in each county.

The creation of the Early Childhood Education Committee as a committee within the County Education Board will guard against the establishment of too many governance structures whose mandates may overlap. This will also ensure a co-ordinated and seamless approach in the management of early childhood education in the counties.

CLAUSE 36

That, clause 36 of the Bill be amended in sub-clause (1) by— (a) deleting paragraph (a); and (b) deleting paragraph (c).

Role of TSC

Justification

This amendment will ensure that it shall be the responsibility of the Teachers Service Commission to set the requirements for a person to qualify for employment as an early childhood education teacher. This is in line with the provisions of Article 237(3)(a) of the Constitution which provide that the Teachers Service Commission shall review the standards of education and training of persons entering the teaching service.

CLAUSE 41

That, clause 41 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)—

Right to admission of a child

"(4) A child shall not be denied admission in an early childhood education centre for lack of proof of age."

Justification

The amendment seeks to ensure that where a parent lacks the documents required to determine a child's age for purposes of admission into an early education centre, the child shall not be denied admission into the education centre. This is in keeping with the constitutional right of every child to compulsory education.

CLAUSE 43

That, clause 43 of the Bill be deleted and substituted therefor the following new clause—

Prohibition from holding back and the expulsion

43. A learner admitted in an education centre shall not be held back in any class or expelled from the centre without the approval of the County Education Board.

Expulsion

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector. The amendment is also necessary to ensure that whenever there is a recommendation to have a child held back in a class or to expel a child, the school must seek the approval of the County Education Board before such action is taken.

CLAUSE 44

That, clause 44 of the Bill be deleted and substituted therefor the following new clause—

Standards of the education in a private education centre

44. A private education centre shall comply with and follow the curriculum approved by the Kenya Institute of Curriculum Development.

Justification

The amendment seeks to ensure the use of certainty in regards to the standard of education to be offered in a private education centre. The amendment aligns to the provision on standards of education of a private basic education institution as contained in the Basic Education Act, No. 14 of 2013, which provides that a private institution shall comply with and follow the curriculum as approved by the Kenya Institute of Curriculum Development.

CLAUSE 46

That, clause 46 of the Bill be amended—

In sub-clause (1) by deleting the word "pupil" and substituting therefor the word "learner"; and by deleting sub-clause (3) and substituting therefor the following new sub-clause—

"(3) A head teacher or a member of the board of management of a public education centre who imposes a charge or causes any parent or guardian to pay tuition fees commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months, or to both."

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector. The amendment also seeks to ensure that the head teacher and the entire board of management shall bear the responsibility in the event of the unlawful imposition of tuition fees in respect of early childhood education.

CLAUSE 47

That, clause 47 of the Bill be amended in paragraph (c) by deleting the words "need for the".

Justification

The amendment seeks to ensure specificity in the responsibility of an education centre to provide a child-centred learning approach in the early education centres.

CLAUSE 48

That, clause 48 of the Bill be deleted.

Justification

The deletion of clause 48 is necessary as it is not a practical provision. It is highly unlikely that an early education centre may offer holiday tuition. Further, this provision may be restrictive in the event that an education centre organizes trips to children during the public holidays, or where the parents would want to take the children to play at the education centres during public holidays.

CLAUSE 56

That, clause 56 of the Bill be amended in sub-clause (l) by deleting paragraph (b) and substituting therefor the following new paragraph—

"(b) reject the application by giving written reasons."

Justification

The amendment seeks to align the provision in the Bill with the constitutional requirement provided in Article 47 which requires the giving of written reasons as an aspect of fair administrative action.

CLAUSE 63

That, clause 63 of the Bill be amended— (a) in sub-clause (1)—

by deleting the word "fifteen" appearing in paragraph (a) and substituting therefor the word "ten"; and by deleting the words "Education Standards and Quality Assurance Council" appearing in paragraph (d) and substituting therefor the words "quality assurance body established under the Basic Education Act";

by inserting the following new paragraph immediately after paragraph (e)—

"(f) one person representing persons with disabilities nominated by the National Council for Persons with Disabilities."

(b) in sub-clause(5)—

(i) by inserting the words "make proposals for" immediately after the words "and where appropriate" appearing in paragraph (c); and (ii) by deleting paragraph (d).

Justification

The amendment seeks to lower the number of years of experience required for one to be appointed as a member of the county early childhood quality assurance committee. This is due to the preliminary nature of early childhood education which would not require very many years of experience.

The amendment also seeks to give effect to the provisions of Article 54(2) of the Constitution which provides that the State shall ensure the progressive implementation of the principle that at least five per cent of the members of the public in elective and appointive bodies are persons with disabilities.

Further, the amendment seeks to ensure that there is continuity and no conflict of terms used in the Bill as well as in the Basic Education Act, No. 14 of 2013. The Ministry has made proposals to the Committee to have the name of the body changed from the Education Standards and Quality Assurance Council, to the Directorate of Quality Assurance and Standards. This amendment will thus ensure that the Bill makes reference to the body irrespective of the change of its name.

The amendment also seeks to ensure that county quality assurance committee shall make proposals for the review of standards on quality assurance, while the actual review shall be done by the quality assurance body established in the Basic Education Act, No. 14 of 2013. The amendment also deletes paragraph (d) which is a repetition of the function of the county quality assurance committee as provided in paragraph (c).

CLAUSE 64

That, clause 64 of the Bill be amended—

in sub-clause (1) by deleting the word "pupils" appearing in paragraph (b) and substituting therefor the word "learner"; and

in sub-clause (4) by deleting the word "pupils" and substituting therefor the word "learners".

Justification

The amendment seeks to conform to the term "learner" as used in various legislations within the education sector.

CLAUSE 66

That, clause 66 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

"(b) if the service provider makes an application within the required period, the centre continues to be registered under subsection (1) until that application is determined."

Justification

The amendment is necessary for purposes of correction of grammatical errors.

CLAUSE 68

That, clause 68 of the Bill be amended in sub-clause (3)—

in paragraph (c) by inserting the word "one" immediately after the words "registration certificates of"; and by deleting paragraph (h).

Justification

The amendment is necessary to correct a grammatical omission.

The deletion of paragraph (h) is necessary to ensure that there is no conflict of mandate between the Cabinet Secretary and the teachers Service Commission, since the regulation of the teaching profession is a constitutional mandate of the Teachers Service Commission.

CLAUSE 69

That, clause 69 of the Bill be deleted and substituted therefor the following new clause— General penalty. 69. A person who contravenes any provision of this Act for which no penalty is specifically provided commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.

Justification

The amendment seeks to ensure that the general penalty is not heavier than the specific penalties prescribed in the Bill.

SECOND SCHEDULE

That, the Second Schedule to the Bill be amended in paragraph 1—

(a) by deleting the word "two" appearing in sub-paragraph (1) and substituting therefor the word "three"; and

(b) by deleting the word "vice-chairman" appearing in sub-paragraph (4) and substituting therefor the word "vice-chairperson".

Justification

The amendment seeks to ensure that the meetings of the board of management of early childhood education centres conform to the general practice as regards to the frequency of meetings of boards.

The amendment also seeks to ensure uniformity in the use of the term "vice-chairperson" as used in the Second Schedule to the Bill.

2.2. Senate Comments on the National Assembly Amendments

The Senate Standing Committee on Education considered the amendments passed by the National Assembly and concurred with most of the amendments and rejected other amendments. The Committee further recommended that the Senate reject these amendments pursuant to standing order 159 of the Senate Standing Orders.

Consequently, the Senate considered the National Assembly's amendments on 30th June, 2020 and negatived some of the said amendments.

Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill-

Clause 2

Clause of the Bill amended-

(a) Referencing to the proper section of the law;
(b) deleting of the term "pupil" to align the Bill with Kenyan Statute law; and
(c) insertion of new definitions

Resolution: Agreed to

Clause 8

Deletion and redrafting of the clause.

The clause deleted the use of the term "pupil" and replaced it with the term "learner". The amendment also reduced the sentence from two years to one year.

Resolution: Agreed to

Clause 9

Deletion and redrafting of the clause.

The clause had been redrafted to deal with special needs and children with disabilities.

The clause also expanded the role of the relevant county executive committee member with regard to children with special needs and disabilities.

Resolution: Agreed to

Clause 15

(a) The amendment deleted the expression "or is likely to me" to ensure certainty and clarity on provisional registration
(b) The amendment deleted this paragraph as a consequential amendment to the amendment in sub clause (1)
(c)

Resolution: Agreed to

Clause 16

(a) The amendment empowers the county early childhood quality assurance committee to review any education centre provisionally registered under section 15.
(b) The County Executive Committee Member may shorten the period of review.

The amendment delineates the functions of the county early childhood quality assurance committee and the County Executive Committee member.

Resolution: Agreed to

Clause 20

The amendment introduces the expression "board of management" in place of "head teacher".

This amendment aligns this section to the Bill on the management of early childhood education centre.

Resolution: Agreed to

Clause 23

(a) The paragraph was redrafted.

There is no substantial change. The amendment is the same as the earlier paragraph.

(b) The amendment deletes the term "pupil" and replaces it with "learner".

This is to align the paragraph to the provisions of the Bill and statute law.

Resolution: Agreed to

Clause 24

The amendment replaces the word "pupil" with "learners".
This is to align the clause to the provisions of the Bill and statute law

Resolution: Agreed to

Clause 25

(a) The amendment corrects a typing error

(b) The amendment replaces the words "head teacher" with the words "board of management". This is to align the clause with the rest of the Bill

Resolution: Agreed to

Clause 27

amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

"(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approval by the County Executive Committee member."

This amendment deviates from the Senate Bill. Under the Senate Bill, public education centre shall not be converted to a private education centre.

Resolution: Negatived

This might cause many public institutions to be converted into private institutions. Institutions built using public funds should not be converted into private institutions.

Clause 28

amended by deleting sub-clause (4) and substituting therefor the following new sub-clause—

"(4) Notwithstanding the generality of subsection (2), the role of the sponsor under subsection (1) shall be to—

(a) participate and make proposals for the review of syllabus, curriculum, books and other teaching aids; and

(b) offer financial, infrastructural and spiritual support to the education centre."

The amendment—

(a) empowers a sponsor to make proposals and not recommendations for the review of syllabus, curriculum, books and other teaching aids; and

(b) introduces spiritual support as a role of a sponsor.

Resolution: Negatived

The role of a sponsor should not include spiritual support. Further, Kenya is liberal country that enjoys freedom of conscience, religion, belief and opinion under Article 32 of the Constitution.

Clause 29

The amendment introduces another sub clause to read—

> In the performance of its functions under subsection (2)(b) and (c), the board of management shall first seek the approval of the County Education Board."

The amendment introduces accountability and transparency when board of management engages in—

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

(b) borrowing money

Resolution: Agreed to

Clause 30

The amendment redrafts paragraph (a) of sub clause (1)

> This is an amendment to replace the word "pupils" with the word "learners" and seeks to conform to the term "learner" as used in the various legislations within the education sector.

Resolution: Agreed to

Clause 33

The amendment deletes the clause on Parents Teachers Association.

> The deletion of this clause is necessary to ensure that there is no duplication of duties between the parents' teachers association and the board of management. Further, at the early childhood education level, the period is too short to warrant too many governance structures which will result in unnecessary cost implications

Resolution: Negatived

The Parents Teachers Association is a critical association in the management of a learning institution. There is no harm of including it in the Bill though it is included in another Act of Parliament.

Clause 35

The amendment replaces the word "pupil" with "learner".

Resolution: Agreed to

Clause 36

amended in sub-clause (1) by—

(a) deleting paragraph (a); and

(b) deleting paragraph (c).

The amendment removes the requirements for an early childhood education teacher to—

(a) hold at least a diploma in early childhood development and education from an institution recognized in Kenya;

(b) hold a certificate of good conduct.

The amendment places responsibility on the Teachers' Service Commission (TSC) on the requirements for a person to qualify for employment as an early childhood education teacher and is in line with the provisions of Article 237(3) of the Constitution.

Resolution: Negatived

There is need to provide a detailed qualifications framework on the requirements for early childhood education teachers.

Clause 37

amended by inserting the following new sub-clause immediately after sub-clause (2) –

"(3) In the performance of the functions under this section, the County Education Board shall establish a County Early Childhood Education Committee, as a committee of the County Education Board, to oversee the implementation of early childhood education in each county."

The amendment seeks to establish the Early Childhood Education Committee as a committee within the County Education Board which shall be responsible for overseeing the implementation of early childhood education in each county.

Resolution: Negatived

The County Education Board may create committees to deal with the implementation of the early childhood education in each county.

Clause 41

The amendment provides that a child shall not be denied admission in an early childhood education centre for lack of proof of age." This is in line with Article 53 of the Constitution.

Resolution: Agreed to

Clause 43
The amendment seeks to replace the word "pupil" with the word "learner".

Resolution: Agreed to

Clause 44
deleted and substituted with the following new clause—

Standards of education in a private education centre.	**44.** A private education centre shall comply with and follow the curriculum approved by the Kenya Institute of Curriculum Development.

The amendment seeks to ensure the use of certainty in regards to the standard of education to be offered in a private education centre. The amendment aligns to the provision on standards of education of a private basic education institution as contained in the Basic Education Act, No. 14 of 2013, which provides that a private institution shall comply with and follow the curriculum as approved by the Kenya Institute of Curriculum Development.

Resolution: Negatived
Kenya Institute of Curriculum Development is not the only curricula developer. There is need to have other bodies develop curricula.

The Kenya Institute of Curricula Development can them approve the curricula from different curricula development bodies for use in early childhood education.

Clause 46
The amendment seeks to replace the word "pupil" with the word "learner".

(b) The amendment deletes sub-clause (3) and substituting it with the following new sub-clause–

> "(3) A head teacher or a member of the board of management of a public education centre who imposes a charge or causes any parent or guardian to pay tuition fees commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months, or to both."

Resolution: Agreed to

Clause 56

This amends sub-clause (1) by deleting paragraph (b) and substituting the following new paragraph–

> "(b) reject the application and give written reasons for the rejection."

This amendment seeks to align the provisions in the Bill to the constitutional requirement of fair administrative action under Article 47 of the Constitution.

Resolution: Agreed to

Clause 63

(a) The amendment seeks to lower the number of years of experience required for one to be appointed as a Member of the Early Childhood Quality Assurance Committee;

(b) The amendment seeks to give effect to the provision of Article 54(2) of the Constitution which provides that the State shall ensure the progressive implementation of the principle that at least 5 per cent of the members of the public in elective and appointive bodies are persons with disabilities; and

(c) Further, the amendment seeks to ensure that there is continuity and no conflict of terms used in the Bill as well as in the Basic Education Act No. 14 of 2013.

Resolution: Agreed to

Clause 64

The amendments seek to replace the word "pupil" with the word "learner".

Resolution: Agreed to

Clause 66

This is an amendment for correction of grammatical errors.

Resolution: Agreed to

Clause 68

amended in sub-clause (3)—

(a) in paragraph (c) by inserting the word "one" immediately after the expression "registration certificates of"; and

(b) by deleting paragraph (h).

Resolution: The amendment to correct the grammatical error is agreed to. However, **deletion of paragraph (h)** is **negatived.**

There is need to clarify the role of Teachers Service Commission and Cabinet Secretary for Education on the regulation of early childhood education teachers.

Second Schedule

Amendments to the Second Schedule to the Bill in Paragraph 1 by–

(a) deleting the word "two" appearing in sub-paragraph (1) and substituting therefor the word "three"; and

(b) deleting the word "vice-chairman" appearing in sub-paragraph (4) and substituting therefor the word "vice-chairperson".

This amendment seeks to ensure that the meetings of the Board of Management of Early Childhood Education Centres conform to the general practices as regards the frequency of meetings of boards. It also seeks to ensure uniformity in the use of the term "vice-chairperson" as used in the Second Schedule of the Bill.

Resolution: Agreed to

CHAPTER THREE

3. RESOLUTIONS OF THE MEDIATION COMMITTEE

The Mediation Committee considered the seven contentious clauses of the Early Childhood Education Bill, 2018 (Senate Bill No. 26 of 2018) and unanimously resolved as follows-

Clause 27

That, clause 27 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause -

> "(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approval by the County Executive Committee member."

Resolution: The Mediation Committee **resolved** to **adopt the National Assembly amendments.**

Rationale:

The amendment seeks to allow the conversion of early childhood education centres from public status to private status, but only after the consultation with the County Education Board and the Approval of the county executive committee member.

The amendment by the National Assembly would align the Bill with the provisions of section 43(2) of the Basic Education Act, No. 14 of 2013, which provides that a public basic education institution shall not be converted to a private basic education institution or to any other private status without consultation with the National Education Board and approval by the Cabinet Secretary.

Clause 28

That, clause 28 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause - -

> "(4) Notwithstanding the generality of subsection (2), the role of the sponsor under subsection (1) shall be to--
>
> (a) participate and make proposals for the review of syllabus, curriculum, books and other teaching aids; and
>
> (b) offer financial, infrastructural and spiritual support to the education centre."

Resolution: The Mediation Committee **resolved** to **retain clause (4) (a)** as **contained in the Bill** and **adopt the National Assembly amendments to clause (4) (b).**

The Mediation Committee therefore resolved that clause 28 of the Bill be amended in sub-clause (4) by deleting paragraph (b) and substituting therefore the following new paragraph—

"(b) offer financial, infrastructural and spiritual support to the education centre."

Rationale: The Mediation Committee concurred that making recommendations is similar to making proposals for the review of the curriculum books and other teaching aids and therefore it does not conflict with the mandate of the Kenya Institute of Curriculum Development.

The Mediation Committee further noted that the definition of the sponsor as contained in the Bill relates to the meaning of the sponsor as contained in the Basic Education Act, No. 14 of 2013 hence the need to include financial, spiritual and infrastructural support as the role of the sponsor.

Clause 33

THAT, clause 33 of the Bill be deleted.

Resolution: The Mediation Committee **resolved** to **retain clause 33 as proposed by the Senate.**

Rationale: The role and functions of the Parents Teachers Associations and the Board of Management are distinct. There are some ECDE centers that are stand alone and not domiciled under a primary school. Further, the role of the PTA at an ECDE center is to specifically address the unique and dynamic needs of the ECDE learners.

The Committee further noted that section 55 (2) and (3) of the Basic Education Act, No. 14 of 2013 provides that every school have a parents association, and further that every private school shall establish a parents' teachers association.

Clause 36

That, clause 36 of the Bill be amended in sub-clause (1) by—

(a) deleting paragraph (a); and

(b) deleting paragraph (c).

Resolution: The Mediation Committee **resolved** to **adopt the National Assembly amendments.**

Rationale: The Teachers Service Commission (TSC) is mandated under Article 237 (2) (a) to register trained teachers and Article 237 (3) (a) to review the standards of education and training of persons entering the teaching service ***including the ECDE teachers.***

Further, the amendment avoids duplication of the provisions of the TSC Act on the mandate of the TSC in registration of teachers. Currently, the TSC requires an ECDE teacher to hold a diploma in Early Childhood Education before being registered.

Clause 37

That, clause 37 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

> "(3) In the performance of the functions under this section, the County Education Board shall establish a County Early Childhood Education Committee, as a committee of the County Education Board, to oversee the implementation of early childhood education in each county."

Resolution: The Mediation Committee **resolved** to **retain clause 37 as proposed by the Senate.**

Rationale: There is already an established County Education Board, which may create committees to deal with the implementation of the early childhood education in each county **including other sub-committees.**

Further, sub-clause (2) as contained in the Bill provides for consultation between the county executive committee member and the County Education Board in the determination of early childhood education resource and infrastructure requirements within the county.

Clause 44

That, clause 44 of the Bill be deleted and substituted with the following new clause—

Standards of education in a private education centre.	**44.** A private education centre shall comply with and follow the curriculum approved by the Kenya Institute of Curriculum Development.

Resolution: The Mediation Committee **resolved** to **adopt the National Assembly amendments.**

Rationale: The amendment seeks to ensure the use of certainty in regards to the standard of education to be offered in a private education centre. The amendment aligns to the provision on standards of education of a private basic education institution as contained in the Basic Education Act, No. 14 of 2013, which provides that a private institution shall comply with and follow the curriculum as approved by the Kenya Institute of Curriculum Development.

Clause 68

That, clause 68 of the Bill be amended in sub-clause (3)—

(c) in paragraph (c) by inserting the word "one" immediately after the expression "registration certificates of"; and

(d) by deleting paragraph (h).

Resolution: The Mediation Committee **resolved** to **adopt the National Assembly amendments.**

Rationale:

The amendment in paragraph (c) is necessary to correct a grammatical omission

The deletion of paragraph (h) is necessary to ensure that the provisions of the Bill are in line with Article 237 (3) of the Constitution on the functions of the Teachers Service Commission.

MINUTES OF THE 1st SITTING OF THE MEDIATION COMMITTEE ON THE CONSIDERATION OF THE EARLY CHILDHOOD DEVELOPMENT BILL, 2018 HELD ON TUESDAY, 10TH NOVEMBER, 2020 AT THE PARLIAMENTARY SERVICE COMMISSION (PSC) BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. Hon. Sen. Okong'o Omogeni, SC, MP - **Member**
2. Hon (Dr.) Daniel Kamuren Tuitoek, MP - Member
3. Hon. John Paul Mwirigi, MP - Member
4. Hon. Sen. Mary Seneta, MP - Member
5. Hon. (Dr.) Pamela Ochieng, MP - Member

ABSENT WITH APOLOGIES

1. Hon. Wambugu Ngunjiri, MP - **Member**
2. Hon. Sen. Mwangi Githiomi, MP - Member
3. Hon. Sen. (Dr.) Agnes Zani, CBS, MP - Member
4. Hon. Falhada Dekow, MP Member
5. Hon. Eve Akinyi Obara, MP - Member

SECRETARIAT

1. Daniel Mutunga - Principal Clerk Assistant (N.A)
2. Elizabeth Muhia - Legal Counsel (Senate)
3. Christine Odhiambo - Legal Counsel (N.A)
4. Philip Lekarkar - Clerk Assistant II (N.A)
5. Humphrey Ringera - Research Officer/Clerk (Senate)
6. Winnie Atieno - Audio Officer

MIN. NO./ECD/MED-COM/01/2020 PRELIMINARIES

The Clerk of the Committee, Mr. Daniel Mutunga, being the presiding officer at the inaugural Sitting, called the meeting to order at 10:25a.m. The meeting began with a word of prayer said by Hon. (Dr.) Daniel Kamuren Tuitoek, MP.

MIN. NO./ECD/MED-COM/02/2020 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. (Dr.) Pamela Ochieng' MP and seconded by Sen. Mary Senate, MP as follows:

1. Preliminaries
2. Adoption of agenda
3. Election of the Chairperson
4. Election of the Vice-Chairperson
5. Remarks by the Chairperson
6. Remarks by the Vice-Chairperson

7. Any other business
8. Adjournment/Date of the next meeting

MIN. NO./ECD/MED-COM/03/2020 ELECTION OF THE CHAIRPERSON

The Clerk welcomed Members to the Sitting and informed them that the main agenda of the meeting was to elect the Chairperson and the Vice-Chairperson of the Committee.

He then invited nominations for the positions of the Chairperson. Sen. Okong'o Omogeni, MP was proposed for the position of the Chairperson by Sen. Mary Seneta, MP, and seconded by Hon. (Dr.) Pamela Ochieng', MP.

There being no other proposal, Sen Okong'o Omogeni, MP was unanimously elected unopposed as the Chairperson of the Committee.

MIN.NO.ECD/MED-COM/04/2020 ELECTION OF THE VICE CHAIRPERSON

Hon. Wambugu Ngunjiri, MP was proposed for the position of the Vice-chairperson by Hon. (Dr.) Daniel Tuitoek, MP and seconded by Hon. John Paul Mwirigi, MP.

There being no other proposal, Hon. Wambugu Ngunjiri, MP was unanimously elected unopposed as the Vice-Chairperson of the Committee.

MIN.NO.ECD/MED-COM/05/2020 REMARKS BY THE CHAIRPERSON

The Chairperson thanked the Members for the confidence and honour bestowed upon him and undertook to ensure that the Committee would expeditiously address the issues under mediation through his participatory leadership.

MIN. NO.ECD/MED-COM/06/2020 REMARKS BY THE VICE-CHAIRPERSON

The remarks by the Vice-chairperson would be made in the next sitting when the Vice chairperson would be available.

MIN.NO.ECD/MED-COM/07/2020 **ANY OTHER BUSINESS**

i. The Committee resolved to combine both physical and virtual meetings during the consideration of the Bill; and,

ii. The Secretariat was tasked to update the matrix on the contentious clauses and circulate it to the Members for advance reading before the next meeting.

MIN. NO.ECD/MED-COM/08/2020 **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 11:30 a.m. the next meeting would be held via the Zoom meeting platform on Tuesday, 10th November, 2020 at 10:00.

SIGNED .....

CHAIRPERSON: SEN OKONG'O OMOGENI, SC, MP

DATE: .....

SIGNED .....

VICE-CHAIRPERSON: HON. WAMBUGU NGUNJIRI, MP

DATE .....

The Committee was further informed that no inspection has been undertaken on the status of Njiru Secondary School on Environmental requirements. The only issue handled by the Authority has been an existing effluent discharge point for exhauster operated by the Nairobi City Water and Sewerage Company (NCWSC) in the School's neighbourhood.

The DG, NEMA, further informed the Committee that a meeting was held on 4th July, 2019 regarding this discharge points. In relation to the discharge points the Authority has licensed a discharge point in Njiru to be jointly managed by NCSWC and SMART Methods Njiru Self Help Group through an MOU. The discharge point was granted an EIA license No. NEMA/EIA/PSL/9453 dated 6th August, 2020.

The Committee was informed that NEMA awaits submission of the EIA for the school to be able to guide on compliance with environmental requirements for such a project.

2.4 REPORT BY THE NATIONAL ASSEMBLY SPECIAL FUNDS ACCOUNTS COMMITTEE

The Committee was informed that the matter of Njiru Secondary School had been a subject of concern by the National Assembly Special Funds Accounts Committee, and was highlighted in the committee's report on the audited financial statements for the NG-CDF for Constituencies in Nairobi City County for the Financial Years 2013/14; 2014/15 and 2015/16.

In the submissions for the Financial Year 2014/15, the National Assembly Committee was informed that as at 30th June, 2015, Njiru Secondary School with a budget of Kshs. 5,200,000 was among the three projects that had not been implemented. The Fund Account Manager informed the National Assembly Committee that the delay in implementation of Njiru Secondary School was due to land ownership disputes and the project had since been implemented.

In the submissions for the Financial Year 2015/16, the National Assembly Committee was informed that as at 30th June, 2016, Njiru Secondary School with a budget of Kshs. 7,500,000 was among the projects that had been budgeted for and had not been implemented. Consequently, the constituents of Kasarani had not obtained the intended services from such projects.

The National Assembly Committee however noted that that Njiru Secondary School is located about 100 metres from Njiru sewer outfall and just 200 metres from the Njiru quarry. Construction of phase one of the classrooms was about 60% by the time of the audit.

Nonetheless, the Schools' management did not present for audit review the Environmental Impact Assessment (EIA) Report of the project given its location next to the two facilities. In the absence of the EIA report, it was not possible to confirm the extent to which the school would be impacted by the two facilities.

2.5 COMMITTEE VISIT TO NJIRU SECONDARY SCHOOL

The Committee undertook a visit to Njiru Secondary School on Friday, 9th October, 2020 to apprise itself on the matter. The Committee was received by the School's BOM and the local leadership led by the Njiru Location Chief.

During the visit the Committee observed that the sewer emission point that was in the school compound had been moved to a newer point and the one at the compound had been abandoned and was already sealed.

The Committee was informed that the 'land buying company' had granted the school a 'letter' confirming the ownership of the school land which they are supposed to submit to the Sub County Director of Education for further processing.

The Committee was further informed that the Ministry of Education had sent a team of officials to the school who held a meeting with the BOM and informed them about the requirements that they are supposed to fulfil to facilitate registration and eventual opening of the school.

The Committee was informed that only three rooms had been constructed before the NG-CDF discontinued funding the project. The School's BOM had intended to use two classrooms and convert the third one into an administration block temporarily and construct a permanent administration block with the subsequent funding. The school's BOM has plans to construct a four storey building with each floor having its own WASH facilities.