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8 December 2017

The Deputy Director-General: Curriculum Policy, Support and Monitoring

The Department of Basic Education

222 Struben Street

Pretoria

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For Attention: Ms P. Ngcobo

**COMMENTS ON: DRAFT POLICY ON HOME EDUCATION IN TERMS OF THE NATIONAL  
EDUCATION POLICY ACT 27 OF 1996**

**Introduction**

1. The Eastern Cape Home Schooling Association (hereinafter referred to as "ECHSA") herewith presents its response to the invitation for public comments on the Draft Policy on Home Education (hereinafter referred to as the "Draft Policy") which was published on 17 November 2017.

2. ECHSA was established in 1998, and represents home educators in the Eastern Cape Province. ECHSA represents approximately 500 families.
3. The Draft Policy attempts to address matters pertaining to home education nationally and provincially and as such ECHSA, as an association of home educators, has a direct interest. ECHSA's members are directly affected by the proposed provisions.

#### **Objection to time-frame for filing of proper comments**

4. ECHSA, in the strongest possible terms, objects to the short time period provided for the public comments and deems that the period 17 November 2017 to 8 December 2017 (21 days) provides insufficient time to prepare detailed, in-depth and meaningful comments.
5. The Draft Policy is a substantial and detailed document which requires in-depth analysis, discussion and input from members of ECHSA.
6. The provisions in the Draft Policy significantly impact on the lives of many children and families, not only in the Eastern Cape Province, but also nationally. The proposed provisions have far-reaching consequences for children. The limited time-frame for submission on comments is therefore completely inadequate and is not in the best interests of the children whom it will affect.
7. ECHSA has been informed that several requests for an extension of the closing date for comments have been made. To date we have not been informed whether such a request has been granted or not.
8. ECHSA therefore reserves the right to amend and/or provide additional comments after the closing date of 8 December 2017. In no way should the observations be viewed as complete. ECHSA has not had sufficient time to engage with its members to compile complete observations and submissions.

#### **Objection to the timing of the invitation for public comments**

9. ECHSA objects to the timing of the publishing of the Draft Policy for comments. The Basic Education Laws Amendment Bill of 2017 was published on 13 October 2017 and the closing date for comments was 17 November 2017. (ECHSA also objected to the inadequate time-frame provided for public comments to the Basic Education Laws Amendment Bill of 2017.)

10. Within a week of the closing date for public comments on the Basic Education Laws Amendment Bill of 2017, the Draft Policy was published for public comments.
11. The Draft Policy refers to provisions in the South African Schools Act 84 of 1996 (hereinafter referred to as the "SA Schools Act") in its current un-amended form (see paragraphs 6.2. (2) and 7 of the Draft Policy), **and** in its proposed amended form (see paragraph 8.2 of the Draft Policy).
12. The Department of Basic Education has therefore issued a draft policy (which at most may be categorised as subordinate legislation) relying on provisions in draft primary legislation (in other words, the Basic Education Laws Amendment Bill of 2017) which are still to be analysed, discussed, debated and consulted
13. The fact that a Draft Policy was issued by the Department of Basic Education, which incorporates provisions of draft primary legislation which consultation processes are not complete, indicates a flagrant disregard for the democratic rights of the citizens in South Africa.
14. This furthermore begs the question whether the Department of Basic Education intends to take seriously the submissions made on the draft primary legislation or whether the call for public comments was merely lip service being paid to consultation processes.
15. It would appear that the Executive is usurping the role of the Legislature; and infringing on its power by pre-empting the outcome of the consultation process/es on the Basic Education Laws Amendment Bill of 2017; whereas such process only began on 13 October 2017.
16. These actions are providing grounds for constitutional challenge of the proposed amendments, which will result in the provisions being declared invalid.

#### **Request to engage in meaningful consultation**

17. ECHSA requests that the Department of Basic Education invites representatives of ECHSA to engage in a meaningful consultation process on matters affecting its members, including all aspects relating to the regulation of home education in the SA Schools Act, or any other matters which may affect home education in the Eastern Cape Province.

18. ECHSA requests that its members be given an opportunity to participate in consultations, be invited to present opinions and expert evidence, and to be heard in public hearings nationally and in the Eastern Cape Province.
19. The content of the provisions which are proposed creates a tension between the private and public spheres of society, and applies to and affects different human rights (the right to human dignity, the right to privacy, the freedom of conscience, religion, thought, belief and opinion, the freedom of expression, children's rights, the right to basic education, and the right to just administrative action). Due to the fact that children are the focus of the proposed provisions, the application of the best interests of children, has to be of paramount importance. The very nature of the provisions which are proposed, therefore demand that extensive consultation and public participation processes be followed throughout the proposed promulgation of the legislation.

#### **Objection to the enabling provision**

20. The Policy for the Registration of Learners for Home Education (GG No.20659 published on 23 November 1999) (hereinafter referred to as the "Current Policy"), was issued in terms of section 3(4)(g) of the National Education Policy Act 27 of 1996 (hereinafter referred to as the "National Education Policy Act"). Section 3(4)(g) of the National Education Policy Act provides that the Minister may determine national policy for the organisation, management, governance, funding, establishment and registration of education institutions.
21. Home education is not an "education institution" as is referred to in section 3(4)(g) of the National Education Policy Act. "Education institution" is defined in the National Education Policy Act as "any school contemplated in the South African Schools Act, 1996". "School" is defined in the National Education Policy Act as "a pre-primary, primary or secondary school". The SA Schools Act, in turn, defines "school" as "a public school or an independent school which enrolls learners in one or more grades between grade zero and grade twelve". The definition for public schools in the SA Schools Act refers to a school contemplated in Chapter 3 (which does not include home education). The definition for independent schools in the SA Schools Act refers to a school registered or deemed to be registered in terms of section 46 (which again does not include home education). Home education therefore does not fit within the definition of education institution, as per the definitions of the National Education Policy Act or the SA Schools Act, and it is

argued that the empowering provision of the Current Policy, is incorrect and invalid.

22. There does not appear to be any reference to the empowering provision of the Draft Policy.
23. In light of the fact that there is no reference to the empowering provision within the Draft Policy, ECHSA questions whether the Department of Basic Education concedes that the reference to section 3(4)(g) of the National Education Policy Act is/was incorrect and invalid.
24. ECHSA furthermore submits that there are insufficient grounds to argue that the empowering provision is the general introductory portion of section 3(4) of the National Education Policy Act without any reference to the specific subsections listed under section 3(4), due to this general section referring to the education system. The general portion of section 3(4) reads as follows:  
“Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system (our underlining) and, without derogating from the generality of this section, may determine national policy for - “
25. The term “education system” is not defined in either the National Education Policy Act or the SA Schools Act.
26. The term “education” is however defined in the National Education Policy Act as “any education and training provided by an education institution, other than training as defined in section 1 of the Manpower Training Act, 1981”. The term “education” is not defined in the SA Schools Act. Therefore, again, the term “education institution” is incorporated into the definition of “education”, and it is clear that there exists no empowering provision for the promulgation of a national policy on home education in terms of section 3(4) of the National Policy Education Policy Act.

### **Comments on Provisions**

27. Although ECHSA submits that the empowering provisions are not in existence, and that the Current Policy, and the Draft Policy are invalid, ECHSA does wish to provide detailed comments on proposed provisions, in order to participate in the development and understanding of home education in South Africa.

28. The fact that ECHSA wishes to provide comments, must in no way whatsoever be seen or interpreted to be that it concedes that the Current Policy and the Draft Policy are valid.
29. As mentioned above, ECHSA has not had sufficient time to prepare comments on the proposed provisions, even though it wishes to do so. In no way, whatsoever, should these comments be seen to be complete, and where comments are not made on provisions which appear in the Draft Policy, these omissions should not be interpreted to infer that ECHSA agrees with the provisions.
30. Please find below a limited number of comments on the specific paragraphs in the Draft Policy, in the format as was requested on the Department of Basic Education web site. (ECHSA strongly opposes many of the provisions in the Draft Policy, as it does in the current SA Schools Act, and the proposed amendments in the Basic Education Laws Amendment Bill of 2017) and therefore ECHSA rejects the mere revision of some of the wording in the paragraphs under discussion.
31. As mentioned, ECHSA requests that extensive consultation occurs, whereby these provisions and the premise on which they are based can be analysed, discussed and solutions reached.
32. You are also referred to the submission made by ECHSA on the Basic Education Laws Amendment Bill of 2017 (**Annexure A**), as there are provisions which were commented on which directly pertain to the provisions in the Draft Policy.



## DRAFT POLICY ON HOME EDUCATION

Policy Page	Chapter/Section	Comment	Proposal for Revision
5-6	1. Definitions	Please refer to the ECHSA submission (Annexure A) made on 10 November 2017 on the Basic Education Laws Amendment Bill of 2017.	Please refer to the ECHSA submission (Annexure A) made on 10 November 2017.
7	5	1. The legal framework for home education does not make mention of the International Legal Instruments which directly provide a legal framework within which home education functions.	<p>The following International Legal Instruments need to be included:</p> <ol style="list-style-type: none"> <li>1. The Universal Declaration of Human Rights;</li> <li>2. The United Nations Convention on the Rights of the Child;</li> <li>3. The African Charter on the Rights and Welfare of the Child;</li> <li>4. The International Covenant on Economic, Social and Cultural Rights; and</li> <li>5. The International Covenant on Civil and Political Rights.</li> </ol>

<b>Policy Page</b>	<b>Chapter/Section</b>	<b>Comment</b>	<b>Proposal for Revision</b>
11	Chapter 2 Paragraph 12. (1)	<p>The wording of this provision is ambiguous and the meaning is unclear.</p> <p>One of the interpretations of this paragraph is that a parent may not home educate their child until such time as the HOD has approved the home education of such child. This is a most concerning process. The practical implications and processes which this interpretation will require, will not be in the best interests of children. It would require that children, in whose best interests it is to be home educated, will need to wait (which by implication then means that it will not be in that child's best interests) for administrative processes to be dealt with.</p>	
11	Chapter 2 Paragraph 12.(2)(b)	By providing a month of the year, by which applications to register must be submitted,	



Policy Page	Chapter/Section	Comment	Proposal for Revision
		<p>requires that home education and the best interests of a child, have to be subordinate to the time-line which is imposed by the Draft Policy.</p> <p>The paragraph does permit a deviation from this time-line, but it places a burden on the parent to then provide "sound reasons" for the delay.</p> <p>Should there be administrative processes and requirements imposed on parents and children by the State, it is submitted that these processes and requirements be as minimal, flexible, and parent and child centred as possible.</p>	
12	Chapter 2 Paragraph 13.(1)(a)	<p>It is not clear why the wording "in the interests of the learner" is utilised. International law, our South African legislation and case law refer to the "best interests of a child" as the criteria to be applied. According to section 28 (2) of the</p>	

Policy Page	Chapter/Section	Comment	Proposal for Revision
		Constitution of the Republic of South Africa, 1996, a child's <b>best interests</b> are of paramount importance in every matter concerning the child.	
12	Chapter 2 Paragraph 13.(2)(c)(i) and (ii)	<p>The wording "cover the acquisition of content" which is required to be at least comparable to the relevant national curriculum outcomes is concerning.</p> <p>Article 11.4 of The African Charter on the Rights of the Child and Article 13.3 of The International Covenant on Economic, Social and Cultural Rights both refer to parental choice of schools which "conform to the minimum educational standards".</p> <p>It is submitted that the wording "at least comparable to the relevant national curriculum" is a higher standard than "conform to the minimum</p>	

Policy Page	Chapter/Section	Comment	Proposal for Revision
		<p>educational standards". In fact, it can be argued that these phrases do not correlate at all.</p> <p>Many of the curricula which home educators rely on, do not match the South African national curriculum in a year by year, grade by grade approach with regard to content and skills.</p> <p>Curricula range across a spectrum of approaches to accommodate the individual needs of families and/or the needs of individual children within families.</p> <p>If this provision is enforced, it is envisaged that there will be litigation to defend the rights of parents to choose for their children the kind of</p>	

Policy Page	Chapter/Section	Comment	Proposal for Revision
		<p>education that shall be given to their children. (See Article 26.3 of The Universal Declaration of Human Rights.) Also, the application of the best interests of the child will be defended in response to the enforcement of this provision.</p> <p>This provision is based on the premise that all children, of a certain age, grade level and ability, must adhere to content and skills acquisition in a set manner which has been developed for basic education <i>en masse</i>. This is an incorrect premise, as the approach to mass education is a significantly different approach to education of the individual. Home education is predominantly an individualistic approach to education.</p>	

Policy Page	Chapter/Section	Comment	Proposal for Revision
		<p>It is not clear how the Department of Basic Education intends to administrate this provision.</p> <p>Will this provision be administered in a centralised national manner or will the administration be delegated to a variety of officials at a local level?</p>	
12	Chapter 2 Paragraph 13.(2)(d)	<p>The fact that the PED intends to inspect private homes, is a grave infringement on various human rights as enshrined in the Bill of Rights.</p> <p>ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.</p>	
12	Chapter 2 Paragraph 13.(2)(e)	The requirement that parents must undertake to make suitable educational resources available to	

Policy Page	Chapter/Section	Comment	Proposal for Revision
		<p>support the learner's learning is not suitably defined.</p> <p>It would appear that double standards are being applied to home education parents compared to parents who send their children to under-resourced public schools.</p> <p>Many home educating parents have limited financial means, but create significant and healthy learning environments through nature, every-day objects and creative learning experiences.</p>	
12	Chapter 2 Paragraph 13.(2)(e)(iii)	<p>This provision causes grave concern.</p> <p>ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.</p>	

<b>Policy Page</b>	<b>Chapter/Section</b>	<b>Comment</b>	<b>Proposal for Revision</b>
13	Chapter 3 Paragraph 18.1(1)	The fact that the Department of Education wishes to prescribe the type of curricula which home educated learners may use, causes grave concern and is a direct infringement on human rights as enshrined in the Bill of Rights. ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.	
14	Chapter 3 Paragraph 18.6	ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.	
14	Chapter 3 Paragraph 19.	This paragraph causes grave concern. ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.	
15	Chapter 3	This paragraph causes grave concern.	



Policy Page	Chapter/Section	Comment	Proposal for Revision
	Paragraph 23.	ECHSA wishes to make a detailed submission on this provision, but is unable to do so within the limited time-frames provided.	

## **Conclusion**

33. We would like to thank the Department of Basic Education for the opportunity to provide constructive comments in relation to matters which affect home education in South Africa in general and the Eastern Cape in particular.
34. We are however concerned about the validity of the Current Policy and the Draft Policy, and therefore strongly reject the proposed provisions contained within in their entirety.
35. We sincerely hope that there will be further opportunities for constructive and collaborative interactions to address the complex problems with actual solutions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Puchert', with a stylized flourish at the end.

**Adv. Megan Puchert**

**Chairperson**

**The Eastern Cape Home Schooling Association**



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10 November 2017

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For Attention: Adv. TD Rudman

## **COMMENTS ON: HOMESCHOOLING PROVISIONS**

### **DRAFT BASIC EDUCATION LAWS AMENDMENT BILL 2017**

1. The Eastern Cape Home Schooling Association (hereinafter referred to as "ECHSA") herewith presents its response to the invitation for public comments on the draft Basic Education Laws Amendment Bill 2017 which was published on 13 October 2017.
2. ECHSA was established in 1998, and represents home schoolers in the Eastern Cape. ECHSA represents approximately 500 families.
3. ECHSA objects to the short time period provided for the public comments and deems that the period 13 October 2017 to 10 November 2017 was insufficient to prepare detailed, in-depth and meaningful comments, as should be required for the extensive amendments, relevant to its members, which are being proposed.
4. ECHSA therefore reserves the right to amend and/or provide additional comments after the closing date of 10 November 2017. In no way should the observations be

viewed as complete. ECHSA has not had sufficient time to engage with its members to compile complete observations and submissions.

5. ECHSA also requests that the National Department of Basic Education invites representatives of ECHSA to engage in a meaningful consultation process on matters affecting its members, including all aspects relating to the regulation of home education in the South African Schools Act 84 of 1996 (hereinafter referred to as the "SA Schools Act"), or any other matters which may affect home education in the Eastern Cape Province.
6. ECHSA wishes to place on record that it does not agree with the current provisions of section 51 of the South African Schools Act. ECHSA will however provide comments to the proposed amendments. These comments or observations must in no manner whatsoever be regarded as an agreement to the existing or proposed amendment provisions, unless explicitly so stated.

## **OBSERVATIONS**

7. Below are our comments. You are welcome to contact us should you wish to do so.

### **Section 1 – definition of “home education”**

8. This definition of “home education” is not a definition which is acceptable to ECHSA. It is a limited definition, which has been created to meet the needs of the Department of Basic Education.
9. The definition does not reflect the true nature of home education as practiced by home educators internationally, in South Africa, and in the Eastern Cape Province.
10. The use of the term “programme of education” in the definition is limiting, and does not reflect all home education methodologies and approaches.
11. The insertion of subsection (c) which reads “meets the requirements for registration of a learner for home education contemplated in section 51 (2), is objected to by ECHSA.
12. Although the regulation of home education through registration was provided for in the SA Schools Act, ECHSA places on record that it opposes such regulation through registration and as such ECHSA also opposes the inclusion of the registration requirement in the definition of home education.
13. ECHSA takes the view that a parent has the prior right to choose the kind of education that shall be given to their children (as contained in Article 26.3 of the Universal Declaration of Human Rights) and that the State shall respect the liberties, rights and duties of parents to choose the type of schooling for their children (as contained in Articles 11.4 and 13.3 of The African Charter on the Rights of the Child and The International Covenant on Economic, Social, and Cultural Rights respectively).

#### **Submission:**

14. The definition of home education should include all approaches to home education, by replacing the words “purposeful programme of education” by “purposeful approach to education”.
15. Subsection (c) should be deleted from the definition.
16. It is requested that the National Department of Education consults with ECHSA in order to arrive at a realistic and practical legal framework which is acceptable to all parties concerned.

### **Section 51 (2) (a) – education at home and registration as such is in the interests of the learner**

17. Although this is not a new provision, it is not clear why the wording “interests of the learner” is not preceded by the wording “best”.
18. Binding International Legal Instruments, The Constitution of the Republic of South Africa, 1996, the Children’s Act 38 of 2005 and South African case law provide that the best interests of the child is the required standard in all matters affecting children.



19. The wording “in the interests of the learner” is a standard which is ill defined and contrary to the legal prescripts.

Submission:

20. The word “best” is to be included and to precede the word “interests of the learner”.

**Section 51 (2) (b) - “the parent understands, accepts and is equipped to fulfil the responsibility of home education for the learner”**

21. This is a vague and undeterminable provision. It is not clear what is meant or understood by the word “equipped”.
22. The criteria for measuring these requirements are subjective which is problematic for appeal and review processes.
23. This does not allow for uniformity or consistent application by delegated officials across South Africa.
24. As per the International Legal Instruments quoted above in paragraph 11, parents have an inherent prior right to choose the kind of education given to their children. By the very nature of the parent being a parent of a child, such parent has the prior right to choose the kind of education given to a child.

Submission:

25. This provision should be deleted.

**Section 51 (2) (c) – “proposed home education programme”**

26. There is no definition provided for the word “programme”. The ordinary meaning of the word “programme” denotes a set plan of activities, often with predetermined outcomes.
27. Although a number of home educators follow a programmed approach to the education of their children, this wording excludes many of the approaches taken by home educators.

Submission:

28. This provision should be deleted.
29. Should it not be deleted, it should be replaced by the wording “home education approach”.

**Section 51 (2) (c) – “covers acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister”**

30. Objection is made to the requirement that the content must be comparable to the relevant national curriculum.

31. Article 11.4 of The African Charter on the Rights of the Child and Article 13.3 of The International Covenant on Economic, Social and Cultural Rights both refer to parental choice of schools which “conform to the minimum educational standards”.
32. It is submitted that the wording “at least comparable to the relevant national curriculum” is a higher standard than “conform to the minimum educational standards”. In fact, it can be argued that these phrases do not correlate at all.
33. Many of the curricula which home educators rely on, do not match the South African national curriculum in a year by year, grade by grade approach with regard to content and skills.
34. Curricula range across a spectrum of approaches to accommodate the individual needs of families and/or the needs of individual children within families.
35. If this provision is enforced, it is envisaged that there will be litigation to defend the rights of parents to choose for their children the kind of education that shall be given to their children. (See Article 26.3 of The Universal Declaration of Human Rights.) Also, the application of the best interests of the child will be defended in response to the enforcement of this provision.
36. This provision is based on the premise that all children, of a certain age, grade level and ability, must adhere to content and skills acquisition in a set manner which has been developed for basic education *en masse*. This is an incorrect premise, as the approach to mass education is a significantly different approach to education of the individual. Home education is predominantly an individualistic approach to education.
37. It is not clear how the Department of Basic Education intends to administrate this provision. Will this provision be administered in a centralised national manner or will the administration be delegated to a variety of officials at a local level?

Submission:

38. This provision should be deleted or in the very least, significantly amended after in-depth consultation with home educators.

**Section 51 (2) (d) (i) – “suitable educational resources available to support the learner’s learning”**

39. This is not suitably defined.
40. It would appear that double standards are being applied to home education parents compared to parents who send their children to under-resourced public schools.
41. Many home educating parents have limited financial means, but create significant and healthy learning environments through nature, every-day objects and creative learning experiences.

Submission:

42. This provision should be better qualified after in-depth consultation with home educators.



**Section 51 (2) (d) (ii) – “monitor the learner’s learning”**

43. This provision is not suitably explained.
44. This may result in parents being required to comply with the same assessment requirements and capturing of results as teachers at school. This is not the essence of home education.

Submission:

45. Further explanation of this provision is requested.

**Section 51 (2) (d) (iii) – “arrange for learner’s educational attainment”**

46. This is not clearly defined.

Submission:

47. Further explanation of this provision is requested.

**Section 51 (2) (d) (iii) – “to be assessed annually”**

48. This onerous provision places an unnecessary burden on home education families.
49. This will impact on how many people home educate and directly opposes the approach many home educating parents follow. A “better late than early” approach is a prime example that does not match annual assessment tools.

Submission:

50. Further research, analysis and consultation is required.

**Section 51 (2) (d) (iii) – “by a competent assessor”**

51. The term “competent assessor” is inadequately defined in section 1.
52. It is not clear what is understood by “competent assessor” as the wording of the definition appears to be faulty

Submission:

53. The definition for “competent assessor” should be revised.

**Section 51 (2) (d) (iii) – “approved by the Head of Department”**

54. The approval by the Head of Department is superfluous and indicates the measure of control which the Department of Basic Education wishes to hold over the affairs of home educated learners.
55. Should the definition for “competent assessor” include a requirement of registration with the South African Council for Educators (hereinafter referred to as “SACE”) or with the South African Qualifications Authority (hereinafter referred to as “SAQA”), the

requirement for approval of such person by the Head of Department, directly points to a mistrust of the registration of persons or bodies by SACE or SAQA.

- 56. This approval will further add to the administrative burden of the National Department of Basic Education and the various provincial departments.
- 57. This approval requirement will further add to delays experienced by home educating families, as there is no/little practical evidence that the administration of the existing legislative provisions is being adhered to by the officials of the various education departments.

Submission:

- 58. The requirement should be removed.

**Section 51 (2) (d) (iii) – “at the parent’s own expense”**

- 59. Home educating parents already carry the full costs of the education of their children and make no demands for financial assistance, subsidies or tax exemptions on the State.
- 60. In addition, many home educating families sacrifice the income of one of the parents, in order to fulfil the full-time child care and education responsibilities of their children.
- 61. Low-income parents, who desire to home educate, will be prevented by legislation from doing so, based on their inability to carry the expense of such prescribed annual assessments. This is discrimination based on the economic status of the parents, and will be challenged as unconstitutional.
- 62. This is an unnecessary and punitive provision with a clear intention to “punish” a parent for educating their children at home.
- 63. Should parents not be in a financial position to pay for the annual assessments of their children, they will be in non-compliance with the legislation, which may affect their registration to home educate.
- 64. This in turn may result in a statutory offence which may lead to imprisonment of the parent/s.
- 65. It is submitted that this provision is unconstitutional and that it will be challenged in the South African courts.

Submission:

- 66. This requirement should be removed.

**Section 51 (2) (d) (iii) – “who will apply a standard that is not inferior to the standard expected in a public school...”**

- 67. It is not clear how this standard is to be measured and applied within the context of the provision.
- 68. The wording “expected” is subjective and not determinable within the context of the provision and the practical realities of the public school education system.



69. It would appear that home educating children will be subjected to a standard which is “expected” as a standard of the public school system, but in many cases not applied to or enforced in the public school system. Once again, this is a double standard which is placed on home educated parents and children.

Submission:

70. Further research, analysis and discussion is required around this term.

**Section 51 (2) (d) (iii) – “...according to the learner’s age, grade level and ability”**

71. Many home educating families do not follow the grade level approach which is consistent with the public school system. Where an assessor therefore assesses a child, in line with the standard imposed on the public school system, an inaccurate and incorrect outcome will be obtained. This is not in the best interests of the child.
72. The assessment approach required in this provision, enforces a one-size-fits-all approach which is utilised for *en masse* education. This does not correspond to an individualistic approach required/followed by individual home education parents and learners.

Submission:

73. Further research, analysis and consultation is required.

**Omission of “Voice of Child” criteria**

74. No provision is made for the “voice of the child” criteria which is required in terms of International Legal Instruments, South African legislation and case law in matters which affect the child.

**Omission of indication what the consequences will be on the outcomes of the assessment reports.**

75. There is no indication provided to determine, in advance, what the consequences will be, based on the outcomes of the assessment reports as provided for in the proposed section 51 (2) (d).
76. There is no indication whether the proposed provision for annual assessments is envisaged as being linked to the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-12, and how this pertains to home educated learners.
77. Should the registration or continued registration for home education be subject to the outcomes of the assessment reports, it is submitted that the omission of such stipulation is unfair administrative action.
78. In addition, should the registration or continued registration for home education be subject to the outcomes of the assessment reports, it is submitted that a double standard is applied to home education versus public schooling.

79. It is foreseen that this omission will result in litigation challenging the provisions, and/or litigation challenging the administrative actions taken by education officials.
80. It is submitted that these provisions and/or the omission of coherent provisions, are directing unjust and unfair administrative action which is unconstitutional.

Submission:

81. Further research, analysis and consultation is required.

**Section 51 (3) – “The Head of Department may attach any reasonable conditions to a learner’s registration for home education”**

82. Although this is not a new provision, this has not been consistently or objectively enforced by education officials.
83. Should this be enforced, it is foreseen that there will be litigation taking the administrative decisions of education officials on review

Submission:

84. Further research, analysis and consultation is required.

**Section 51 (3) – “take into account-**

- (a) the circumstances of the learner or parent;**
- (b) the character of home education as an alternative to compulsory school attendance; and**
- (c) the capacity of the education department to support and monitor the home education of a learner.”**

85. These provisions are vague, undefinable, subjective and open to a wide range of interpretations.
86. What is meant and understood by the “character of home education”?
87. It is not clear why the conditions placed on parents or learners should be adjusted to the capacity of the education department, and how this will be implemented in a just, fair and equitable manner across the country.
88. It would appear as though the Department of Education is intending to apply a double standard to parents who are educating their children at home *versus* parents who choose to send their children to public schools. Examples would be where public schools are derelict, where there are high learner-teacher ratios, where the public schools are in high-risk security areas and where children have to travel long distances in order to access public schools.

Submission:

89. Further research, analysis and consultation is required.

**Section 51 (5) – “A parent may, after a learner has completed grade 9, enrol the learner at a public or independent school for the completion of grades 10-12.”**



90. This is a poorly worded provision.
91. It creates more problems for home educating families than what it intends to solve.
92. The provision does not indicate what “has completed grade 9” means for a home educated learner.
93. This provision will also result in people who have not registered to home educate, who may decide that it is in the best interests of their child to attend a public or independent school during grades 10-12, to expose themselves to criminal prosecution.
94. Some home educators switch from home education into mainstream schooling and *vice versa* at some stage. These provisions create stumbling blocks for these children.
95. What about children who wish to switch at a lower grade level? It is not clear why “completed Grade 9” has to be selected for this provision.
96. If the provision is directed at children who have to comply with compulsory school attendance ages, it is submitted that the provision does not provide clearly what its intention is, and does not provide clearly a solution to an omission of “gap” in the existing legislation.

**Submission:**

97. Further research, analysis and consultation is required.

**Section 51 (6) – “A parent or learner who wishes to continue with home education after the learner has completed grade 9, must make use of the services of a private or independent service provider, accredited by Umalusi...”**

98. This is a poorly worded provision and causes confusion and a variety of interpretations.
99. At face value, the provision prescribes that a parent of a home educated learner must make use of an Umalusi accredited service provider for post grade 9 home education.
100. It is submitted that this prescription is unconstitutional, which will be challenged in the South African courts.
101. This provision hinders the academic advancement of children between 15 and 18 years.
102. This provision enriches the service providers who are accredited by Umalusi, whereas parents, some of whom are qualified educators and registered with SACE, may not independently prepare a learner to register for the Senior Certificate Examination.
103. The following was obtained from Umalusi’s website on 6 Nov 2017, under the frequently asked section:  
“Does Umalusi accredit private providers of curriculum material, including teaching and learning aids?”  
”No - Umalusi accredits institutionalised providers that are offering a qualification that leads to the National Senior Certificate.”

104. There are no objective reasons why home educating parents cannot prepare their children to register for the Senior Certificate Examination, other than direct state control and the enrichment of service providers.
105. International systems such as Cambridge, GED and the SAT's provide the freedom of choice as to whether to make use of a service provider or to prepare independently for the required examinations.

Submission:

106. Further research, analysis and consultation is required.

**Section 51 (7) - (9) Cancellation of registration and appeals**

107. Time frames are not provided to indicate within which time the Head of Department must take any of the administrative actions which are provided for in section 51.
108. There is no stipulation requiring that the Head of Department provides written reasons to parents who have applied to register for home education, and against whom administrative action has been taken.

**CONCLUSION**

109. We would like to thank the Department of Basic Education for the opportunity to provide constructive comments in relation to matters which affect home education in South Africa in general and the Eastern Cape in particular.
110. We sincerely hope that there will be further opportunities for constructive and collaborative interactions to address the complex problems with actual solutions.

Yours sincerely

  
Adv. Megan Puchert