



For enquires: Adv. Megan Puchert

Megan.puchert@gmail.com

072 207 8226

[www.echsa.net](http://www.echsa.net)

[echsa1@gmail.com](mailto:echsa1@gmail.com)

[echsa2@gmail.com](mailto:echsa2@gmail.com)

22 August 2018

The Deputy Information Officer

The Department of Basic Education

222 Struben Street

Pretoria

0002

BY HAND

For Attention: Mr CA Leukes

**APPLICATION IN TERMS OF SECTION 18(1) OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 – POLICY ON HOME EDUCATION**

1. Please find enclosed an application in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000 (hereinafter referred to as the “PAIA Act”), completed on “Form A” (as accessed on the Department of Basic Education’s website), with **Annexures A to I** attached to “Form A”.

2. The Eastern Cape Home Schooling Association (hereinafter referred to as "ECHSA") has been in existence since 1998 and represents approximately 500 families.
3. A member of the Eastern Cape Home Schooling Association (hereinafter referred to as "ECHSA"), Ms Hayley Gibbons, telephonically contacted the Department of Basic Education (hereinafter referred to as the "Department") on 21 August 2018 to inquire about the Department's bank details in order to pay the required **R35.00 request fee**, as stipulated in the PAIA Regulations, dated 9 March 2001. Ms Gibbons was informed that it was unnecessary to pay the request fee. Should this not be the case, kindly notify ECHSA as a matter of urgency, and urgently provide the correct details for the payment to be effected. Kindly take cognisance of the fact that ECHSA is an Eastern Cape organisation, and that it is punitive to expect ECHSA to pay a cash amount at your offices in Pretoria.
4. Kindly also notify ECHSA as to the fees of the copies of records applied for, as a matter of urgency.
5. The Policy on Home Education (hereinafter referred to as the "Policy"), which was issued to the public for comment on 17 November 2017 and was apparently approved by the Council of Education Ministers (hereinafter referred to as "CEM") on 19 July 2018, refers.
6. The Department issued a media statement on 30 July 2018 pertaining to the Policy. The media statement is published on the Department's website at <https://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/7002/ItemID/5602/Default.aspx>.
7. ECHSA informally requested information from the Department to understand the processes undertaken. At the time of issuing this application, we have not received a reply or sufficient information to answer our informal requests.
8. It is requested that should any information be refused, detailed reasons be provided for such refusal.
9. Your assistance in processing our application for information is appreciated. Should there be any technical shortcomings, your further assistance and co-operation will be appreciated.

Yours sincerely



**Adv. Megan Puchert**

**Chairperson**

**The Eastern Cape Home Schooling Association**









## basic education

Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA

# FORM A

## REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

[Published under GN R187 in GG 23119 of 15 February 2002, in terms of Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).]

### FOR DEPARTMENTAL USE

Reference number: \_\_\_\_\_

Request received by \_\_\_\_\_ (name, surname and rank of  
information officer or deputy information officer) at \_\_\_\_\_ (place) ON \_\_\_\_\_ (date).

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

\_\_\_\_\_  
INFORMATION OFFICER OR DEPUTY INFORMATION OFFICER (signature)

### A. Particulars of public body

The Deputy Information Officer:

Mr CA Leukes  
Deputy Information Officer  
Legal Services  
Department of Basic Education  
Private Bag X895  
Pretoria  
0001

Tel.: 012 357 3712/3710

Fax: 012 323 9430

Email: [leukes.c@dbe.gov.za](mailto:leukes.c@dbe.gov.za); [mokonyane.i@dbe.gov.za](mailto:mokonyane.i@dbe.gov.za)

### B. Particulars of person requesting access to the record

#### Notes

- (a) The particulars of the person who requests access to the record must be recorded below.
- (b) Furnish an address and/or fax number in the Republic to which information must be sent.
- (c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: Megan Puchert

Identity number: 7305160031080

Postal address: 49 Highfield Road, Beacon Bay, East London, 5241

Fax number: not applicable

Telephone number: 072 207 8226

MP

Fax number: not applicable  
Email address: echsa1@gmail.com and megan.puchert@gmail.com  
Capacity in which request is made, when made on behalf of another person: Chairperson of the Eastern Cape Home Schooling Association

### C. Particulars of person on whose behalf request is made

#### Note

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname: the Eastern Cape Home Schooling Association  
Identity number: See Resolution attached as Annexure I.

### D. Particulars of record

#### Notes

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.  
(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record: See Annexures A to I attached.  
2. Reference number, if available: Unknown  
3. Any further particulars of record: The Policy on Home Education

### E. Fees

#### Notes

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.  
(b) You will be notified of the amount required to be paid as the request fee.  
(c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.  
(d) If you qualify for exemption of the payment of any fee, please state the reason therefore.

Reason for exemption from payment of fees: We phoned the contact numbers provided on the form to request the bank details to deposit the R35.00 request fee. We were informed that no fee is payable. Please provide the bank details urgently.

### F. Form of access to record

#### Note

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

State your disability: Not applicable

#### Notes

(a) Your indication as to the required form of access depends on the form in which the record is available.  
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.  
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

Mark the appropriate option below with an "X".

#### 1. If record is in written or printed form –

	copy of record*		inspection of record
	X		

MP

**2. If record consists of visual images –** *Not applicable*

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)

	view the images		copy of the images*		transcription of the images*
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**3. If record consists of recorded words or information that can be reproduced in sound –**

*Not applicable*

	listen to the soundtrack (audio cassette)		transcription of soundtrack* (written or printed document)
--	-------------------------------------------	--	------------------------------------------------------------

**4. If record is held on computer or in an electronic or machine-readable form –**

	printed copy of record*		printed copy of information derived from record*		copy in computer readable form* (stiffy or compact disk)
	<i>X</i>				

\* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?  
**A postal fee is payable.**

**YES**

**NO**

*X*

*We will arrange for collection by courier once we are notified that it is available.*

In which language would you prefer the record? *English*

(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.)

**G. Notice of decision regarding request for access**

*You will be notified in writing whether your request has been approved or denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

How would you prefer to be informed of the decision regarding your request for access to the record? *E-mail to:*

*echsa1@gmail.com and megan.puchert@gmail.com*

Signed at *East London* (place) on this *22<sup>nd</sup>* day of *August* (month) *2018* (year)

*M. Puchert*

SIGNATURE OF REQUESTER  
OR PERSON ON WHOSE BEHALF REQUEST IS MADE

*MP*





## **Annexure A**

### **1. Background**

Section 7(a) of the National Education Policy Act 27 of 1996 (hereinafter referred to as the "National Education Policy Act") provides that **the Minister shall within 21 days after determining policy** in terms of section 3 give notice of such determination in the Gazette and indicate in such notice where the policy instrument issued with regard thereto may be obtained.

According to the Department's media statement (**Annexure B**), the Policy on Home Education (hereinafter referred to as the "Policy") was "presented to DBE management structures, and approved by Heads of Education Department Committee (HEDCOM) to be tabled at a CEM meeting for promulgation. The CEM of 19 July 2018 approved the policy. The Department is currently preparing a gazette for promulgation."

The National Education Policy Act and its regulations are silent on when a policy is deemed to be determined.

Informal correspondence was entered into with the Department (**Annexure C**), but we have not received a reply.

### **Request**

- 1.1. Provide the internal policy or standard operating procedure document, setting out the process to be followed by the Department to enable the Minister to "determine" a policy in terms of section 3 of the National Education Policy Act.
- 1.2. Provide a copy of the minutes of the CEM meeting, dated 19 July 2018, indicating that the Policy was approved.
  - 1.2.1 Should provisions of section 44 of the PAIA Act be invoked to refuse this request, it is requested that a detailed explanation be provided as to which sections are applicable and why they are applicable.
  - 1.2.2 If a copy of the complete minutes of the 19 July 2018 CEM meeting is refused, please provide an extract of the meeting minutes, indicating



the signature/s, name/s and designation/s denoting the approval of the Policy.

- 1.3. Provide a copy of the attendance register of the CEM meeting, dated 19 July 2018.
- 1.4. Can it be accepted, as is indicated in the Department's media statement, that the Policy was "determined" by the approval of the Policy in the 19 July 2018 CEM meeting? If not, provide documentation indicating that the process of "determination" is not complete at CEM approval stage.
- 1.5. On what date does the Department intend to publish the determined Policy in the Gazette? Provide documentation pertaining to this intended date.
- 1.6. How is this date established? Provide documentation pertaining to how the date is established.

## **2. Background**

ECHSA made a detailed submission to the Department after the public was invited to submit comments on the draft Policy. A copy of the submission, dated 31 January 2018, is attached (**Annexure D**).

In the ECHSA submission, in paragraphs 18 to 24, ECHSA pointed out serious concerns with the empowering provisions of the draft Policy due to the explicit and detailed definitions contained in the education legislation.

ECHSA followed up with the Department to establish whether these concerns were taken into consideration. Please see the informal correspondence between ECHSA and the Department (**Annexure E**).

### **Request**

- 2.1. Provide a copy of the record of proceedings indicating that these concerns were considered, given adequate, detailed attention; and addressed prior to the approval of the Policy by the 19 July 2018 CEM meeting.
  - 2.1.1 Should provisions of section 44 of the PAIA Act be invoked to refuse this request, it is requested that a detailed explanation be provided as to which sections are applicable and why they are applicable.

## **3. Background**

The Constitutional Court case, *Minister of Education v Harris* 2001 (11) BCLR 1157 (CC) refers (**Annexure F**).



The scope of the Minister's powers under the National Education Policy Act were examined in the matter. Judge Sachs in paragraph [9] states the following:

"The cumulative effect of these provisions is to emphasise the distinction between the determination of guiding policy on the one hand, and its translation into legally binding enactments on the other."

Judge Sachs further determines the following in paragraph [11]:

**"Policy made by the Minister in terms of the National Policy Act does not create obligations of law that bind provinces, or for that matter parents or independent schools.** The effect of such policy on schools and teachers within the public sector is a different matter. For the purposes of this case, it is necessary only to determine the extent to which policy formulated by the Minister may be binding upon independent schools. **There is nothing in the Act which suggests that the power to determine policy in this regard confers a power to impose binding obligations.** In the light of the division of powers contemplated by the Constitution and the relationship between the Schools Act and the National Policy Act, the Minister's powers under section 3(4) are limited to making a policy determination and he has no power to issue an edict enforceable against schools and learners." (our emphasis)

Paragraph [12] of the judgment further indicates that the language of a provision was peremptory and consistent only with an intention to create a binding obligation.

Paragraph [13] of the judgment provides that it follows that "the notice purports to impose legally binding obligations upon independent schools and upon MECs, and is *ultra vires* the powers granted to the Minister by section 3 of the National Policy Act."

See the informal correspondence between the Department and ECHSA with regard to the Harris case (**Annexure E**).

### **Request**

- 3.1. Provide documentary proof that the findings of the Constitutional Court in the Harris case were taken into consideration during the process of determining



policy for home education, considering that home education does not fall within the ambit of independent schools, and even less so public schools.

#### 4. **Background**

Numerous requests have been made to the Department to obtain a copy of the Policy, but with no success.

Members of ECHSA have had to derive information about the contents of the Policy from radio interviews and other media statements made by the Department, without being provided a copy of the Policy.

We have patiently resigned ourselves to the fact that we will need to wait for the publication of the Policy in the gazette to view the approved Policy.

However, a service provider, Impaq Education (Pty) Ltd, issued a statement on its website providing details of the Policy. A print-out, dated 20 August 2018, of this statement is attached (**Annexure G**).

#### **Request**

- 4.1. Provide a list of individuals, organisations, and service providers to whom the Policy has been made available.
- 4.2. Provide a copy of the Policy.
- 4.3. Did the Department engage with Impaq Education (Pty) Ltd after the 31 January 2018 closing date for submissions? If so, provide copies of the minutes of the meeting/s, the attendance register/s or other communications.
- 4.4. Did the Department engage with other individuals, organisations, or the public after the 31 January 2018 closing date? If so, provide a list of the individuals, organisations or members of the public. Provide copies of the minutes of the meeting/s, the attendance register/s or other communications with these respective individuals, organisations or members of the public.

#### 5. **Background**

ECHSA was handed a Department booklet guide on home education (**Annexure H**) in **May 2018**. The booklet is not dated. The booklet, however, provides detailed information which deviates from the current provisions in the South African Schools Act 84 of 1996, and from the provisions as set out in the



Policy for the Registration of Learners for Home Education which was issued on 23 November 1999.

Although we have not had sight of the Policy, and as a result cannot comment on the provisions contained therein, it appears the booklet was prepared and printed in anticipation of the determining of the Policy.

**Request**

- 5.1. Was the booklet printed by the Government Printer? If so, provide copies of the submission/s made for the printing of the booklet by the Government Printer, the approval/s signed for the printing of the booklet, and the handing-over documentation from the Government Printer to the Department pertaining to the printing and handing over of the booklet.
- 5.2. Was the booklet printed by a procured service provider? If so, provide copies of the submission to procure the printing services, clearly indicating all relevant approvals, the Request for Quotation (or, if the contract was procured as a tender, the tender documentation), the approval/s to appoint the successful service provider, the award letter to the successful service provider, and the handing-over documentation from the service provider to the Department once the booklet was printed.







**30 July 2018**

## **COUNCIL OF EDUCATION MINISTERS APPROVES HOME EDUCATION POLICY FOR PROMULGATION**

A fully constituted meeting of the Council of Education Minister's (CEM) has approved the Home Education policy for promulgation by the Minister of Basic Education, Mrs Angie Motshekga. This approval comes after a lengthy consultation process that spanned almost four years.

As far back as October 2014 the first consultation meeting with home education community and other key stakeholders was held. The meeting was attended by representatives from Home Education Associations, Pestalozzi Trust (the legal arm for some parents); Independent Curriculum Providers; ISASA, Umalusi; South African Comprehensive Assessment Institute (SACAI); South African Institute for Distance Education (SAIDE); Department of Higher Education and Training (DHET); and the Department of Basic Education (DBE). In this meeting Home Education stakeholders presented national and international research to the DBE. The home education community expressed appreciation for the opportunity as it was the first time ever that the state engaged them on the practice, whether pre- and/or post 1994.

A second consultation meeting with stakeholders was held in July of the following year where a discussion document was presented and a working group was set up involving all stakeholders. Unfortunately some of the stakeholders resigned from this process citing disagreements with the document, and that they would not be seen as part of the DBE team to review the 1999 policy.

The Working Group however was able to continue with its work until the draft policy was gazetted in November 2017 for the public to make submissions within 21 days. The Department received numerous requests from the public to extend the submission date to which it obliged and the new closing date for submissions, 31 January 2018, was communicated to the public.

A total of 740 submissions were received and DBE acknowledged receipt to all who submitted. Between February and July 2018, the Working Group captured submissions received, analysed them and reviewed the policy after having considered progressive inputs.

The policy was presented to DBE management structures, and approved by Heads of Education Department Committee (HEDCOM) to be tabled at a CEM meeting for promulgation. The CEM of 19 July 2018 approved the policy. The Department is currently preparing a gazette for promulgation.



The Department is aware that a small grouping is opposed to the policy and has been spamming departmental officials requesting that the policy not be promulgated. However considering the extensive and all-encompassing consultation process the Department of Basic Education is confident that all comments on the policy have been adequately ventilated, all in the best interest of ensuring that every child has a right to basic education as enshrined in the constitution and the approved policy will get promulgated as approved by CEM.

**Enquiries:** Elijah Mhlana – 083 580 8275  
Troy Martens – 079 899 3070

***ISSUED BY THE DEPARTMENT OF BASIC EDUCATION***





ECHSA Chairperson &lt;echsa1@gmail.com&gt;

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**Policy on Home Education**

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**Ngcobo.P** <Ngcobo.P@dbe.gov.za>  
To: ECHSA Chairperson <echsa1@gmail.com>

Thu, Jul 26, 2018 at 10:26 AM

Dear Advocate

I appreciate your call and the email. I will provide you with a response on how your submission was taken into consideration during the review. It's a bit hectic for me these days, please give me time.

Regards

Phindi

**From:** ECHSA Chairperson [mailto:echsa1@gmail.com]  
**Sent:** Thursday, July 26, 2018 10:03 AM  
**To:** Ngcobo.P  
**Subject:** Policy on Home Education

Dear Ms Ngcobo

[Quoted text hidden]

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ECHSA Chairperson &lt;echsa1@gmail.com&gt;

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## Policy on Home Education

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ECHSA Chairperson &lt;echsa1@gmail.com&gt;

Fri, Jul 27, 2018 at 1:57 PM

To: "Ngcobo.P" &lt;Ngcobo.P@dbe.gov.za&gt;

Cc: Megan Puchert &lt;megan.puchert@gmail.com&gt;

Dear Phindi

Thank you so much for your reply, I appreciate it. I can well imagine how busy you must be and I look forward to receiving your response as soon as you are able to.

Just a quick question for clarity:

Do you know on what date the Council of Education Ministers (CEM) approved the Policy?

And, does the Policy still need to go to the Head of Education Departments Committee, or will the Policy be published directly in the Gazette within 21 days of the CEM approval?

Kind regards

Megan

[Quoted text hidden]



ECHSA Chairperson &lt;echsa1@gmail.com&gt;

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**Policy on Home Education**

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**Ngcobo.P** <Ngcobo.P@dbe.gov.za>  
To: ECHSA Chairperson <echsa1@gmail.com>  
Cc: Megan Puchert <megan.puchert@gmail.com>

Mon, Jul 30, 2018 at 1:29 PM

Good day

Please note that DBE is preparing a media statement which I hope will cover your questions as well as many questions we are receiving. I will let you know when the statement is out.

Regards

Phindi

**From:** ECHSA Chairperson [mailto:echsa1@gmail.com]  
**Sent:** Friday, July 27, 2018 1:58 PM  
**To:** Ngcobo.P  
**Cc:** Megan Puchert  
**Subject:** Re: Policy on Home Education

[Quoted text hidden]

[Quoted text hidden]



ECHSA Chairperson <echsa1@gmail.com>

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## Draft Policy on Home Education

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ECHSA Chairperson <echsa1@gmail.com>

Tue, Aug 7, 2018 at 10:07 PM

To: Ms Ngcobo <ngcobo.p@dbe.gov.za>

Cc: Megan Puchert <megan.puchert@gmail.com>

Dear Phindi

Are you in a position to indicate on what date the approved Policy will be published?

Regards

Megan

A handwritten signature in the bottom right corner of the page.



ECHSA Chairperson &lt;echsa1@gmail.com&gt;

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**Draft Policy on Home Education**

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**Ngcobo, Phindile** <Ngcobo.P@dbe.gov.za>  
To: ECHSA Chairperson <echsa1@gmail.com>

Tue, Aug 14, 2018 at 11:10 AM

Good day

Unfortunately I'm not, the submission is still in the process. I will email as soon as it is approved.

Regards

Phindi

**From:** ECHSA Chairperson [mailto:echsa1@gmail.com]

**Sent:** Tuesday, August 07, 2018 10:08 PM

**To:** Ngcobo, Phindile

**Cc:** Megan Puchert

**Subject:** Draft Policy on Home Education

[Quoted text hidden]

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Megan Puchert &lt;megan.puchert@gmail.com&gt;

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**Fwd: emails****Megan Puchert** <megan.puchert@gmail.com>

Thu, Aug 16, 2018 at 11:39 PM

To: Mhlanga.e@dbe.gov.za

Cc: Simelane.m@dbe.gov.za, ngcobo.p@dbe.gov.za, ECHSA Chairperson &lt;echsa1@gmail.com&gt;

Dear Mr Mhlanga

The Policy on Home Education and the media statement, dated 30 July 2018, which appears on the Department of Basic Education's website, refer.

I am the Chairperson of the Eastern Cape Home Schooling Association (ECHSA). ECHSA has been in existence since 1998 and represents approximately 500 home educating families.

We have been trying to establish on what date the approved Policy will be published in the Gazette, as we have been unable to obtain a copy of the approved Policy.

Ms Phindile Ngcobo has been very helpful in communicating with me. She has however referred me to you to inquire about the specific details of the release of the Policy.

**Kindly assist me in understanding the process:**

According to the media statement, the Policy was approved on 19 July 2018 and will be published in the Gazette.

Section 7 of the National Education Policy Act 27 of 1996 reads as follows:

*Publication of national education policy.—The Minister shall within 21 days after determining policy in terms of section 3*

*(a) give notice of such determination in the Gazette and indicate in such notice where the policy instrument issued with regard thereto may be obtained;*

*(b) table the policy instrument referred to in paragraph (a) in Parliament within 21 days after the notice has appeared in the Gazette, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament.*

My reading and understanding of section 7, and the media statement released by the Department, therefore indicates that the Policy must be published within 21 days from 19 July 2018, which should have been on 9 August 2018. Am I correct in this interpretation, and if not, kindly clarify it for me?

If the approved-by-CEM-Policy has not been signed off and approved by various other role players in the Department (such as the CFO or the Deputy Minister) or by the Minister herself, can it then be understood that the Policy has not yet officially been approved, and that the 21-day prescribed period in section 7 will only commence on the date on which the Minister signs the approval of the Policy submission?

Your urgent response will be much appreciated.

Regards

Adv. Megan Puchert  
Chairperson  
ECHSA  
072 207 8226

----- Forwarded message -----

From: **Ngcobo, Phindile** <Ngcobo.P@dbe.gov.za>

Date: Wed, Aug 15, 2018 at 12:16 PM

Subject: emails

To: "Megan Puchert (megan.puchert@gmail.com)" &lt;megan.puchert@gmail.com&gt;

Dear Advocate Puchert

As discussed, please direct your queries to Mr Mhlanga and copy Dr Simelane. Addresses are provided below:

Chief Director, Communications: Mr Elijah Mhlanga Mhlanga.e@dbe.gov.za

Director, Inclusive Education: Dr Moses Simelane Simelane.m@dbe.gov.za

Kind regards,

Ms Phindile Ngcobo

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Adv. Megan Puchert  
072 247 8226  
m.puchert@gmail.co.za

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- Forensic Investigations
- Contract Management
- Supply Chain Management





Enquires: Adv. Megan Puchert

[www.echsa.net](http://www.echsa.net)

[Megan.puchert@gmail.com](mailto:Megan.puchert@gmail.com)

[echsa1@gmail.com](mailto:echsa1@gmail.com)

072 207 8226

[echsa2@gmail.com](mailto:echsa2@gmail.com)

31 January 2018

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

The Department of Basic Education

222 Struben Street

Pretoria

0002

BY E-MAIL: [ngcobo.p@dbe.gov.za](mailto:ngcobo.p@dbe.gov.za)

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 thanks the Department of Basic Education (hereinafter referred to as the "DBE") for the extension to submit comments on the Draft Policy, of which we were notified on 9 December 2017.
3. This submission replaces the ECHSA submission which was submitted on 8 December 2017.
4. ECHSA was established in 1998, and represents home educators in the Eastern Cape Province. ECHSA represents approximately 500 families.
5. The Draft Policy addresses matters pertaining to home education nationally and provincially and as such ECHSA, as a provincial 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**

6. Although ECHSA is grateful for the extension granted to submit revised comments on the Draft Policy, it is submitted that the time frame is still inadequate. The initial time-frame provided fell over a period when many home educating families and children were writing exams and completing their school year. The extension period fell over the December holiday period and the start of the school year period. Due to the nature of home education, the fact that membership is spread across the Eastern Cape Province in a decentralised fashion, the short time-frame and period of the school year, many challenges were experienced in formulating complete comments. The period for the submission of comments on the Draft Policy also came soon after the closing date of the call for comments on the Basic Education Laws Amendment Bill of 2017. This has added to the burden of submitting meaningful comments at a difficult time of the year.

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

7. 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.)



8. 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.
9. 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 unamended form (see paragraphs 6.2.(2) and 7 of the Draft Policy), and in its proposed amended form (see for example paragraphs 8.2 and 13(2)(e) of the Draft Policy).
10. The DBE 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 on.
11. The fact that a Draft Policy was issued by the DBE, which incorporates provisions of draft primary legislation for which consultation processes are not complete, indicates a flagrant disregard for the democratic rights of the citizens in South Africa.
12. This furthermore begs the question whether the DBE 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.
13. 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 processes on the Basic Education Laws Amendment Bill of 2017; whereas such process only began on 13 October 2017.
14. These actions are providing grounds for judicial challenge of the proposed amendments, which will result in the provisions being declared invalid.

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

15. ECHSA requests that the DBE 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.

16. ECHSA requests that its members be given an opportunity to participate in meaningful consultations, be invited to present opinions and expert evidence, and to be heard in public hearings nationally and in the Eastern Cape Province.
17. 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 a 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**

18. 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.
19. 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.



20. There does not appear to be any reference to the empowering provision of the Draft Policy.
21. 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.
22. 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's 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 - ...".
23. The term "education system" is not defined in either the National Education Policy Act or the SA Schools Act.
24. 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**

25. 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.



26. 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/or the Draft Policy are valid.
27. 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.
28. 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 website. (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.
29. 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.
30. 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
5-6	1. Definitions	<p><b>"home education"</b></p> <ol style="list-style-type: none"> <li>1. The 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 DBE. This definition does not reflect the true nature of home education as practised by home educators internationally, in South Africa, and in the Eastern Cape Province.</li> <li>2. The use of the term "programme of education" in the definition is limiting, and does not reflect all home education methodologies and approaches.</li> <li>3. 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.</li> <li>4. Although the regulation of home education through registration is 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.</li> <li>5. ECHSA takes the view that parents have 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</li> </ol>



Policy Page	Chapter/Section	Comment
		<p>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).</p> <p><b>“home education site”</b></p> <p>This definition is offensive to the members of ECHSA. Home education is where children live and thrive, living in a home, and not a site. Home education takes place in the private sphere of a family and a home, and should not be confused with or construed to merely being a site such as a school building would be.</p> <p><b>“illegal independent educational institution”</b></p> <p>ECHSA submits that educational institutions fall within the public sphere of society as opposed to home education which falls within the private sphere of a home and family. It is unnecessary to insert a definition of an educational institution into a document which purports to address home education.</p> <p><b>“learner”</b></p> <p>It is not clear why the proposed definition has been used. This definition does not correspond to the definition in the SA Schools Act as it currently stands, or in the BELA Bill.</p> <p>Furthermore, ‘basic education’ is not defined in the legislation.</p> <p>There is no consensus on the meaning of the term ‘basic</p>

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		<p>education'. By incorporating this definition, there will be confusion, inconsistency, uncertainty and ambiguity.</p> <p><b>"school"</b></p> <p>This definition for school does not correspond with the definition for school in the SA Schools Act or the National Policy Act. With the introduction of this definition, there will be 3 different definitions for 'school'. There is no consistency between the various documents.</p> <p><b>"tutor"</b></p> <p>The definition for tutor is limited and ambiguous. There is no indication as to what is meant by the term 'qualified educator'. It is also submitted that if it is the intention of the DBE to limit tutoring services for home educated children, to people who have obtained qualifications in teaching only, it is a severely limiting and restricting factor, which loses sight of the many rich learning experiences which home educators internationally and in South Africa expose their children to. An example is where an illiterate member of the community provides arts, crafts or music lessons which provide authentic exposure to traditional practices, diversity, and cultural values to a home educated child, the positive impact of which may far exceed that which a 'qualified teacher' may provide.</p>



Policy Page	Chapter/Section	Comment
7	Paragraph 4.	<p>The nature of basic education</p> <p>The paragraph setting out the nature of basic education is very limited and does not reflect the various aspects of the right to a basic education and what the nature of such a right entails.</p> <p>Although the application of the <i>Juma Masjid</i> case is certainly important when addressing the right to a basic education as contained in section 29.1 of the Constitution, there are numerous other cases which deserve to be mentioned.</p> <p>Academics wrestle with the meaning of the term and nature of a right to a basic education. It is not clear why the DBE attempts to address this in the Draft Policy when the term is not even defined in the SA Schools Act, the National Policy Act or the Children's Act.</p>
7	Paragraph 5.	<p>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. 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> </ol>

Policy Page	Chapter/Section	Comment
		<p>4. The International Covenant on Civil and Political Rights. Not only are these International Legal Instruments applicable, but also case law, and foreign law.</p>
7-10	Paragraphs 4.-9.	<p>It is not clear why it is necessary to incorporate these paragraphs into the Draft Policy. Although certain aspects are accurate and ECHSA appreciates the fact that the DBE has attempted to understand the character of home education in paragraph 8.3, many aspects are incomplete or inaccurate. These aspects require much further analysis and discussion. Paragraph 8.2 also refers to 'purposeful programme of education' which ECHSA disagrees with as commented on above pertaining to the definitions.</p> <p>ECHSA also objects to the incorporation of the requirement to register learners. As mentioned above, and in the ECHSA submission on the BELA Bill, ECHSA disagrees with the requirement to register a learner for home education.</p> <p>ECHSA also objects to the inclusion of the wording 'illegal independent educational institution' in the scope of home education. The determination of whether an educational institution is legal or illegal is a question of law and fact depending on the circumstances of each case. ECHSA submits that it is inappropriate to incorporate this wording or a negative explanation of what home education is into a policy.</p>



<b>Policy Page</b>	<b>Chapter/Section</b>	<b>Comment</b>
10-11	Paragraph 10.1	<p>ECHSA objects to the insertion of (k). The wording of 10.1(k)(i) is ambiguous and provides a double standard, which unfairly discriminates against parents who choose to home educate their children.</p> <p>It is also submitted that paragraph 10.1(k)(iii) is unconstitutional and that the provision will not withstand judicial scrutiny. The provision is based on untested and unsubstantiated assumptions and a statement is made about the best interests of the learner, without any justification.</p>
11-13	Chapter 2	<p><b>Registration</b></p> <p>ECHSA strongly opposes the requirement to apply to register a child to be educated at home. It is requested that the DBE engages in meaningful consultation processes with ECHSA in order to address this objection. The process and purpose of registration places an unnecessary administrative burden on the DBE as well as families. It is submitted that there are other processes which will better serve the requirements of the DBE and the families affected, rather than increasing peremptory provisions and requirements with little or no effect.</p>
11	Chapter 2 Paragraph 12.(1)	The wording of this provision is ambiguous and the meaning is unclear.

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		One of the interpretations of this paragraph is that a parent may not home educate his 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 for administrative processes to be dealt with. This is contrary to the principle set out in section 6(4)(b) of the Children's Act which indicates that in any matter concerning a child a delay in any action or decision to be taken must be avoided as far as possible.
11	Chapter 2 Paragraph 12.(2)(b)	Providing a month of the year, by which applications to register must be submitted, 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. 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.  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.
12	Chapter 2 Paragraph 13.(1)(a)	It is not clear why the wording "in the interests of the learner" is utilised. International law, our South African legislation and case

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		law refer to the “best interests of a child” as the criteria to be applied. According to section 28 (2) of the 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 Paragraphs 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 different standard than “conform to the minimum 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</p>



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		<p>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.</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 in a home environment. Home education predominantly has an individualistic approach to education.</p>
12	Chapter 2 Paragraph 13.(2)(d)	<p>The fact that the PED intends to inspect private homes, is a grave infringement of various human rights as enshrined in the Bill of Rights. Section 14 of the Constitution makes provision for the right to privacy, which includes the right for everyone not to have their person or home searched, their property searched, their possessions seized, or the privacy of their communications infringed. ECHSA submits in the strongest possible terms that the limitation of the rights to privacy and dignity, in this instance, is not justifiable under the limitation clause of the Bill of Rights.</p> <p>It is submitted that the <i>Mistry v Interim Medical and Dental Council of South Africa</i> 1998 (4) SA 1127 (CC) case be studied in this</p>

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		<p>regard. Although the case did not relate to education or child law matters, the right to privacy was analysed and discussed in detail. In the case, the court found that the provision was unconstitutional.</p> <p>It is also submitted that the proportionality test, which was set out in <i>S v Makwanyane</i> 1995 (3) SA 391 (CC), should be considered in this regard. It is necessary to examine whether the breach of the right is justified by the state as being reasonable and justifiable. The existence of safeguards to regulate the way in which state officials may enter the private domains of ordinary citizens is one of the features that distinguish a constitutional democracy from a police State.</p> <p>ECHSA submits that it is not necessary to conduct inspections of homes for the purposes of home education. The State is usurping a role and a function which exceeds what is required in terms of the ratified International Treaties.</p> <p>Again, in this regard, ECHSA requests that the DBE engages in meaningful consultation to discuss how the State's obligations and concerns can be met without unnecessarily infringing on the privacy and dignity rights of those choosing to home educate.</p>
12	Chapter 2 Paragraph 13.(2)(e)	The requirement that parents must undertake to make suitable educational resources available to support the learner's learning is not suitably defined.

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		Many home educating parents have limited financial means, but create significant and healthy learning environments through nature, every-day objects and creative learning experiences.
12	Chapter 2 Paragraph 13.(2)(e)(ii)	<p>This provision is not suitably explained.</p> <p>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.</p>
12	Chapter 2 Paragraph 13.(2)(e)(iii)	<p>This provision causes grave concern at different levels.</p> <p>What is understood by the wording 'educational attainment'?</p> <p>ECHSA wishes to engage with the DBE on all aspects relating to the assessment of home educated learners. It is submitted that insistence that parents cover the expense of annual assessments, is onerous. Home educating parents often survive as single income families in pursuit of what is in the best interests of their children.</p> <p>It is also not clear what the DBE intends to do with the required information once it is provided.</p> <p>Prior to imposing a requirement, it is important that those on whom the provision is imposed, understand the effect and consequences of the compliance or non-compliance with the requirement. In other words, should a home educated child be assessed annually, and according to the DBE not be performing</p>



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		satisfactorily, what does the DBE intend to do and how will the assessment information be used?
12	14.	No time-frame is provided within which the HOD has to respond to an application to register a child for home education. The Current Policy indicates in paragraph 9. That the HOD must take all reasonable steps to respond within 30 days after receipt of an application. It is submitted that the DBE is treating a parent wishing to home educate with a heavy handed approach, whereby the parent becomes criminally liable when educating a child at home without the necessary approval and registration, whereas there is no provision which provides any guarantee of a time-frame by which an application matter will be processed.
13	17.	<p>It is most disturbing that the DBE considers a home as a site. The essence of educating a child at home is that it occurs in the private sphere of a family. Although there are some home educating families who follow a 'school-at-home' approach, the essence of home education is not contained in a single work space, designated area or an education programme. The whole home, the community and the world at large is regarded as the education environment.</p> <p>Although ECHSA agrees that it is important for children to have access to space, it is not clear how and why the DBE is imposing</p>

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		this provision, and on what research or comparative schooling model this is being based. ECHSA requests again, that meaningful consultation processes be entered into, in order for these issues to be discussed and workable solutions be arrived at.
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.
	Paragraph 18.5	This paragraph does not correlate with the requirement in paragraph 13(2)(e)(iii).
14	Chapter 3 Paragraph 19.	Chapter 1 paragraph 1 of the Policy on Screening, Identification, Assessment and Support (SIAS) 2014 indicates that its purpose is to provide a policy framework for the standardisation of the procedures to identify, assess and provide programmes for all learners who require additional support to <u>enhance their participation and inclusion in school</u> . It would therefore appear that children with 'additional support needs', who are being educated at home, are required to comply with a Policy, the purpose of which is to include them in a school environment. The Policy is clearly geared to the management of learners in a school environment, and has little or no meaningful application or impact

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		<p>on home educated learners. Home education is a positive alternative for many children who struggle within a mainstream school environment. There are ample home educated learners, who may be classified as children with 'additional support needs', who have benefited greatly from home education, away from mainstream schooling, and who have or are developing into healthy, functional, contributing, well-adjusted and upstanding citizens of South Africa. It is unfortunate that the Draft Policy misunderstands the benefits of and attraction to home education for children with 'additional support needs'. The use of the term 'barriers to learning' is also inappropriately applied to the home education environment. The term is defined in the SIAS 2014 definition section as referring to 'difficulties that arise within the education system as a whole, the learning site and/or within the learner him/herself which prevent access to learning and development' is not a definition which is acceptable to be used in a home education environment. Many home educated learners who had learning barriers while in a mainstream school system overcome the barriers merely by being removed from the 'education system' and the 'learning site' which are often the very cause of the barriers. It is requested that additional requirements and administrative burdens not be added to these children or their families who provide loving, caring and nurturing environments for their children. It is submitted that there are alternative measures</p>



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		which can be provided to assist and support home educated children who have additional support needs. Here again, ECHSA requests that the DBE engages in a meaningful consultation process in this regard.
15	Chapter 3 Paragraph 23.	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.

## **Conclusion**

31. 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.
32. 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.
33. 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**

**Chairperson**

**The Eastern Cape Home Schooling Association**





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10 November 2017

The Director-General

The National Department of Basic Education

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BY E-MAIL: [rudman.d@dbe.gov.za](mailto:rudman.d@dbe.gov.za)

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







ECHSA Chairperson &lt;echsa1@gmail.com&gt;

## Policy on Home Education

ECHSA Chairperson <echsa1@gmail.com>  
To: Ms Ngcobo <ngcobo.p@dbe.gov.za>

Thu, Jul 26, 2018 at 10:02 AM

Dear Ms Ngcobo

Thank you for being willing to speak to me on the telephone yesterday, 24 July 2018, to discuss the Draft Policy on Home Education.

Thank you for confirming that the Draft Policy was approved. To confirm, you indicated that you were not authorised to distribute the approved Policy at this stage, but that you would distribute it once you received approval from the Minister to do so.

As discussed with you on the telephone today, and as was reflected in the Eastern Cape Home Schooling Association's (ECHSA) submission, we are very concerned about the validity of the Policy in light of the empowering provisions in the National Education Policy Act. Herewith a copy of the relevant paragraphs from ECHSA's submission, dated 31 January 2018.

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

18. 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.

19. 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.

20. There does not appear to be any reference to the empowering provision of the Draft Policy.

21. 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.

22. 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's 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 ...".

23. The term "education system" is not defined in either the National Education Policy Act or the SA Schools Act.

24. 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.

Furthermore, as discussed with you on the phone yesterday, we are concerned about the impact of the 2001 Constitutional Court case, *Minister of Education v Harris*. I have scrutinised the *Harris* case, and am gravely concerned that the findings of the Constitutional Court in the *Harris* case have been disregarded in the process of the drafting and approval of the Policy on Home Education. The court in the *Harris* case had found that the Minister of Education had exceeded the powers conferred on him in terms of section 3(4) of the National Education Policy Act and had accordingly infringed on the constitutional principle of legality. I attach a copy of the *Harris* judgment for your ease of reference.

I would much appreciate the opportunity to engage with the Department of Basic Education on these points in order to gain a clearer understanding of the situation.

Regards

Adv. Megan Puchert  
Chairperson  
ECHSA  
072 207 8226

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108K





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## Policy on Home Education

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Ngcobo.P <Ngcobo.P@dbe.gov.za>

Thu, Jul 26, 2018 at 10:26 AM

To: ECHSA Chairperson <echsa1@gmail.com>

Dear Advocate

I appreciate your call and the email. I will provide you with a response on how your submission was taken into consideration during the review. It's a bit hectic for me these days, please give me time.

Regards

Phindi

**From:** ECHSA Chairperson [mailto:echsa1@gmail.com]

**Sent:** Thursday, July 26, 2018 10:03 AM

**To:** Ngcobo.P

**Subject:** Policy on Home Education

Dear Ms Ngcobo

[Quoted text hidden]

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**Minister of Education v Harris  
2001 (11) BCLR 1157 (CC)**

**Division:** Constitutional Court  
**Date:** 05/10/2001  
**Case No:** CCT 13/01  
**Before:** A Chaskalson, President; PN Langa, Deputy-President; LWH Ackermann, JC Kriegler, TH Madala, Y Mokgoro, CME O'Regan, AL Sachs, ZM Yacoob, Justices; B Du Plessis and TL Skweyiya, Acting Justices

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**Flynote**

**Education**

*schools - admission requirements in - age requirements for the admission of learners - policy prescribing that only a child who is to turn seven before 31 December of any particular year might be admitted to grade 1 in that school year - Age Requirements for Admission to an Independent School Policy (General Notice 647 of 2000 published in Government Gazette 20911 of 18 February 2000 as amended by Government Notice 399 published in Government Gazette 21103 of 14 April 2000) - Notice having been declared to be unconstitutional and invalid by High Court - on appeal Constitutional Court dismissing appeal - Constitutional Court finding Minister to have exceeded the powers conferred upon him by section 3(4) of the National Policy Act 27 of 1996 and accordingly to have infringed the constitutional principle of legality.*

**Editor's Summary**

In *Harris v Minister of Education 2001 (8) BCLR 796 (T)* the Transvaal Provincial Division of the High Court struck down General Notice 647 of 2000 published in Government Gazette 20911 of 18 February 2000 as amended by Government Notice 399 published in Government Gazette 21103 of 14 April 2000 headed "Age Requirements for Admission to an Independent School Policy".

The Minister appealed against the decision to the Constitutional Court. In a unanimous judgment (*per Sachs J*) the Court dismissed the appeal.

The Court found it unnecessary to pronounce upon the correctness or otherwise of the determinations on constitutionality made by the Court *a quo* regarding unfair discrimination and violation of the best interests of the child. The appeal fell to be dismissed because in issuing the notice, Appellant had exceeded the powers conferred upon him by section 3(4) of the National Policy Act and had accordingly infringed the constitutional principle of legality.

**Judgment**

**Sachs J**

- [1] On 18 January 2000 the Minister of Education (the Minister) published a notice<sup>1</sup> under section 3(4) of the National Education Policy Act (the

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National Policy Act) stating that a learner may not be enrolled in grade one in an independent school if he or she does not reach the age of seven in the same calendar year. Talya Harris was part of a group of children who had enrolled at the age of three in the King David pre-primary school, and had spent three years being prepared for entry to the primary school in the year 2001. Her sixth birthday was due to fall on 11 January 2001, a short while before the school year would begin. Challenging the validity of the notice, her parents sought an order of court permitting her to be enrolled in grade one in the year she turned six.

- [2] On 15 January 2001 in the Transvaal High Court Coetzee J declared the notice to be unconstitutional and invalid, and authorised King David Primary School to admit Talya to Grade 1, where she presently is. In a subsequent written judgment he made the following findings:
- (a) The Minister's actions discriminated unfairly on the grounds of age against Talya and similarly situated children, was not justifiable, and accordingly violated the right to equality guaranteed by section 9 of the Constitution.
  - (b) By requiring Talya and other children in her position to repeat their final year of pre-primary school or to sit at home waiting for the year to pass, the Minister's actions unjustifiably violated section 28(2) of the Constitution which provides that a child's best interests are of paramount importance in every matter concerning the child.
  - (c) The Notice was *ultra vires* the powers of the Minister. In terms of section 3(4) of the National Education Policy Act of 1996, the Minister was merely authorised to determine national policy in respect of a number of issues, including the age of admission to schools, but not empowered to make law.
  - (d) The Minister, being in the national government, usurped a provincial executive power in conflict with section 125 as well as section 41 of the Constitution, when he stated in the notice that the age requirement had to be applied as an additional prerequisite for registration of independent schools as determined by a provincial Member of the Executive Council (MEC).
  - (e) Finally, even if the notice was valid, it was so only to the extent that it enunciated national policy. Such

MA

policy was binding neither on private institutions nor on provincial education authorities, and accordingly could not provide any legal barrier to the admission of Talya to the King David Primary school in the 2002 school year.

[3] The Minister has appealed against the whole of the judgment and order. As will be seen from the reasons that follow, I have come to the conclusion that it is both unnecessary and inappropriate for this Court to rule on the broad and complex constitutional issues raised concerning equality and the rights of the child. Rather, the matter can and should be decided on an examination of the scope of the Minister's powers under the National Policy Act.

[4] I set out the notice in full and italicise the most relevant portions:

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**"NOTICE 647 OF 2000  
DEPARTMENT OF EDUCATION**

**NATIONAL EDUCATION POLICY ACT, 1996 (ACT NO. 27 OF 1996)**

**DRAFT AGE REQUIREMENTS FOR ADMISSION TO AN INDEPENDENT SCHOOL POLICY**

*The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 3(4)(i) of the National Education Policy Act, 1996 (No. 27 of 1996) of the age requirements for the admission of learners to an independent school or different grades at such a school, as set out in the Schedule.*

PROFESSOR KADER ASMAL, MP

MINISTER OF EDUCATION

2000

**SCHEDULE**

**AGE REQUIREMENTS FOR ADMISSION TO AN INDEPENDENT SCHOOL**

**Interpretation**

1. In this notice any expression to which a meaning has been assigned in the National Education Policy Act 1996 (No. 27 of 1996) shall have that meaning.

**Age requirements for admission to an independent school**

2. The statistical age norm per grade is the grade number plus 6  
~~Example~~ 1 + 6 = age 7  
Grade 9 + 6 = age 15  
Grade 12 + 6 = age 18
3. *A learner must be admitted to grade 1 if he or she turns seven in the course of that calendar year. A learner who is younger than this age may not be admitted to grade 1.*
4. A learner may be admitted to grade R only if he or she turns six in the course of that calendar year. Attendance of grade R is not compulsory.

**Application**

5. *These age requirements must be applied in addition to the grounds for registration of independent schools as determined by the Member of the Executive Council as contemplated in section 46(2) of the South African Schools Act, 1996 (No. 84 of 1996).*

**Short title and commencement**

6. This notice is called the Age Requirements for Admission to an Independent School Policy, and it comes into effect on **1 January 2001**".

[5] In analysing the legal effect of this notice, the following facts are relevant:

- (a) In 1998 the Minister had published a General Notice in terms of section 5(4) of the Schools Act 1996<sup>2</sup> which in effect applied the turning-seven rule as from the beginning of the 1999 school year to public schools. The objective of the notice under the National Policy Act, which is the subject of the present challenge, was to achieve

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uniformity between public and independent schools by extending the turning-seven rule to independent schools as well.

- (b) King David Primary School is an independent educational institution maintained at its own expense and registered with the state in terms of section 29(3) of the Constitution.<sup>3</sup> The school was satisfied that Talya was ready to enter grade one in the year she turned six.

[6] It should be pointed out that the challenge brought in the High Court on Talya's behalf was largely though not exclusively based on a demand for exemptions to, rather than a scrapping of, the turning-seven rule. The contention was that the discrimination was unfair and against the best interests of the child because the requirement allowed for no exemptions for children who did not reach seven during the year, even if they were manifestly ready for school. The initial focus on exemptions resulted in the affidavits dealing extensively

with the validity of school-readiness tests in a multi-cultural society, the main disagreement between the respective experts being whether reliable and objective tests could at present be employed in South Africa. On the other hand relatively little factual information was provided to enable this Court to contextualise the broader and more complex constitutional issues raised.

- [7] In 1996 two statutes were introduced to transform the system of what had formerly been apartheid education in South Africa. They were the South African Schools Act (Schools Act),<sup>4</sup> and the National Policy Act<sup>5</sup> referred to above. The sweep of the proposed transformation can be gauged from the Preamble to the Schools Act:

"Whereas the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

Whereas this country requires a new national system for *schools* which will redress past injustices in educational provision, provide an education of progressively high quality for all *learners* and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all *learners, parents* and *educators*, and promote their acceptance of responsibility for the organisation, governance and funding of *schools* in partnership with the State; and

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Whereas it is necessary to set uniform norms and standards for the education of *learners* at *schools* and the organisation, governance and funding of *schools* throughout the Republic of South Africa; . . ."

- [8] The National Policy Act, as its name indicates, was introduced to complement the Schools Act by empowering the Minister to determine national policy for education.<sup>6</sup> Education is classified as a functional area of concurrent national and provincial legislative competence.<sup>7</sup> National legislation prevails over provincial legislation where, amongst other things,

"[t]he national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing -

- (i) norms and standards;
- (ii) frameworks; or
- (iii) national policies."<sup>8</sup>

It is in this context that the National Policy Act has to be understood. Section 3(4) of this Act states that:

". . . 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 and, without derogating from the generality of this section, may determine national policy for -

. . .

- (i) the admission of students to education institutions which shall include the determination of the age of admission to schools; . . ."

- [9] The text empowers the Minister to determine national policy for the admission of students to education institutions,<sup>9</sup> which shall include the determination of the age of admission to schools. It is not clear whether this provision enables the Minister him- or herself to determine the actual age of admission or merely to lay down policy for the determination of the age of admission to schools. What is clear is that national legislation (as opposed to national policy) on a matter referred to in section 3, can only be introduced after a process of extensive consultation<sup>10</sup> and pub

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lication<sup>11</sup> has been completed. Similarly, the Schools Act provides that an MEC must exercise any power conferred by the Act "after taking full account of the applicable policy determined" in terms of the National Policy Act.<sup>12</sup> Moreover a provincial legislature is not prevented from enacting legislation for school education in its province in accordance with the Constitution and the Schools Act.<sup>13</sup> The cumulative effect of these provisions is to emphasise the distinction between the determination of guiding policy on the one hand, and its translation into legally binding enactments on the other.

- [10] It is also not immediately evident what the effect of a policy determination made by the Minister in terms of the specific power under section 3(4)(i) of the National Policy Act is. As Harms JA pointed out in *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd*,<sup>14</sup> the word "policy" is inherently vague and may bear different meanings:

"It appears . . . to serve little purpose to quote dictionaries defining the word. To draw the distinction between what is policy and what is not with reference to specificity is, in my view, not always very helpful or necessarily correct. For example, a decision that children below the age of six are ineligible for admission to a school, can fairly be called a 'policy' and merely because the age is fixed does not make it less of a policy than a decision that young children are ineligible, even though the word 'young' has a measure of elasticity in it. Any course or program of action adopted by a government may consist of general or specific provisions. Because of this I do not consider it prudent to define the word either in general or in the context of the Act. I prefer to begin by stating the obvious, namely that laws, regulations and rules are legislative instruments whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise the separation between legislature and executive will disappear. In this case, however, it

seems that the provincial legislature intended to elevate policy determinations to the level of subordinate legislation, but leaving its position in the hierarchy unclear . . ."15 (Footnote omitted.)

- [11] In the present matter we are concerned with policy determinations under the National Policy Act. In *Ex Parte Speaker of the National Assembly : In Re*

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*Dispute Concerning the Constitutionality of Certain Provisions of the National Education Policy Bill 83 of 1995*<sup>16</sup> this Court considered the Bill which then became the National Policy Act and stated:

"Nothing in the Bill imposes an obligation on the provinces to act in conformity with national education policy. That may possibly be achieved by Parliament through the passing of legislation which prevails over provincial law in terms of s 126(3).<sup>17</sup>

...

There are no provisions of the Bill that oblige the provinces to follow national education policy, or that empower the Minister to require them to adopt national policy or to amend their own legislation."<sup>18</sup>

Policy made by the Minister in terms of the National Policy Act does not create obligations of law that bind provinces, or for that matter parents or independent schools. The effect of such policy on schools and teachers within the public sector is a different matter. For the purposes of this case, it is necessary only to determine the extent to which policy formulated by the Minister may be binding upon independent schools. There is nothing in the Act which suggests that the power to determine policy in this regard confers a power to impose binding obligations. In the light of the division of powers contemplated by the Constitution and the relationship between the Schools Act and the National Policy Act, the Minister's powers under section 3(4) are limited to making a policy determination and he has no power to issue an edict enforceable against schools and learners. Yet the manifest purpose of the notice is to do just that.

- [12] A reading of the notice makes it plain that the Minister intended it to have binding effect. Paragraph 3 of the notice provides that:

"A learner must be admitted to grade 1 if he or she turns seven in the course of that calendar year. A learner who is younger than this age *may not be* admitted to grade 1." (My emphasis.)

The language of this provision is *peremptory* and is consistent only with an intention to create a binding obligation. Similarly paragraph 5 of the notice provides that:

"These age requirements must be applied in addition to the grounds for registration of independent schools as determined by the Member of the Executive Council as contemplated in section 46(2) of the South African Schools Act, 1996 (Act No. 84 of 1996)."

This paragraph too is formulated in *peremptory* and not *permissive* terms and is consistent only with an intention to require MECs to impose the turning-seven rule as a condition of registration of independent schools.

- [13] Complex constitutional questions arise as to whether the Minister is permitted at all to oblige MECs to enforce national policy in this way. It is not necessary to decide such questions in this case, for section 3 of the National Policy Act does not accord the Minister such power. It follows that the notice purports to impose legally binding obligations upon

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independent schools and upon MECs, and is *ultra vires* the powers granted to the Minister by section 3 of the National Policy Act.

- [14] Counsel for the Minister contended, however, that even if the notice was not valid under section 3(4) of the National Policy Act, it was valid under section 5(4) of the Schools Act which empowers the Minister to determine the minimum age requirement for admission to independent schools. That section reads:

"The Minister may by notice in the Government Gazette, after consultation with the *Council of Education Ministers*, determine age requirements for the admission of *learners* to a *school* or different *grades* at a *school*."

- [15] Counsel pointed out that although the section in the Schools Act was headed "Admission to Public Schools" it was notable that, unlike all the other provisions in the section which referred to "public schools", this subsection refers simply to age requirements for admission to "a school".<sup>19</sup> I will assume, without deciding, that the Minister is entitled under the Schools Act to determine the age of entry into independent as well as public schools. Counsel contended further that the fact that the Minister had mistakenly purported to exercise his powers under section 3(4) of the National Policy Act rather than correctly under section 5(4) of the Schools Act, did not mean that the notice was as a consequence *ultra vires*.

- [16] For that proposition counsel relied on various cases<sup>20</sup> including *Latib v Administrator, Transvaal*<sup>21</sup> in which the court had to consider the validity of a notice declaring a public road. The proposed public road was to traverse both farmland and land falling within a municipal area. Different subsections of the Ordinance empowered the declaration of public roads over farmland on the one hand and municipal land on the other, but the notice had referred to only one of the relevant subsections. The Administrator in his affidavit indicated that this had been an oversight. In holding that the notice was in any event valid, Galgut J reasoned as follows:

"It seems clear, therefore, that, where there is no direction in the statute requiring that the section in terms of which a proclamation is made should be mentioned, then, even though it is desirable, nevertheless there is no

need to mention the section and, further, that, provided that the enabling statute grants the power to make the proclamation, the fact that it is said to be made under the wrong section will not invalidate the notice."22

- [17] However, the applicability of this line of reasoning must depend on the particular facts of each case, especially whether the functionary consciously

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elected to rely on the statutory provision subsequently found to be wanting. In *Administrateur, Transvaal v Quid Pro Quo Eiendomsmaatskappy (Edms) Bpk*,23 the Administrator had published a notice purporting to widen a road reserve when in fact he intended to build a new exit road on the relevant land - something which he had the power to do in terms of another provision of the Ordinance. The notice was challenged on the basis that the provision of the Ordinance under which it was made envisaged the widening of road reserves and not the building of new roads. Although upon appeal the Administrator sought to rely on *Latib*, his argument was rejected. Wessels JA held that the Administrator had consciously ("bewustelik") sought to rely on the road-widening power and had chosen not to use the alternative power in the Ordinance. The Administrator did not by oversight or administrative error designate the wrong statutory provision under which to issue the notice for the purpose he had in mind; he consciously made an election to use a different power under a different provision. This fell outside the scope of the approach adopted in *Latib*.24

- [18] In this case, there is no suggestion in the affidavits filed by the Minister of an administrative error. On the contrary, the notice in the present matter not only cites section 3(4)(i) of the National Policy Act three times as the source of its authority, it identifies itself with the Act by means of its heading "Draft Age Requirements For Admission to an Independent School Policy" (my italics). There can be little question then that the provision was deliberately chosen. It might well be that those responsible for drafting the notice had doubts about whether the powers under section 5(4) of the Schools Act could be used in respect of independent schools, a matter which I have expressly left open. They might have had other reasons for choosing to issue the notice under section 3(4) of the National Policy Act. It is not necessary to speculate. What is clear is that they consciously opted to locate the notice in the framework of section 3(4) of the National Policy Act. The result is that it is not now open to the Minister to rely on section 5(4) of the Schools Act to validate what was invalidly done under section 3(4) of the National Policy Act. The otherwise invalid notice issued under the National Policy Act can therefore not be rescued by reference to powers which the Minister might possibly have had but failed to exercise under the Schools Act.
- [19] Having come to the above conclusion it is neither necessary, nor in my view would it be appropriate, to enter into the other complex constitutional questions raised in the judgment of the High Court and debated in this Court. As Ackermann J pointed out in *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*:25

"While the concept of ripeness is not precisely defined, it embraces a general principle that where it is possible to decide any case, civil or criminal,

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without reaching a constitutional issue, that is the course which should be followed."26

In the present matter, the issue raised in the most crisp form with the best evidential foundation was the one relating to the powers of the Minister. Having resolved that question in a manner which terminates the dispute between the parties, I decline to pronounce on the correctness or otherwise of the determinations on constitutionality made in the High Court regarding unfair discrimination and violation of the best interests of the child. In issuing the notice the Minister exceeded the powers conferred upon him by section 3(4) of the National Policy Act and accordingly infringed the constitutional principle of legality.27 The appeal must fail.

- [20] The appeal is dismissed with costs, including the costs of two counsel.

(The other members of the Court concurred in the judgment of Sachs J.)

For the appellant:

*PC van der Byl* SC and *EI Moosa* instructed by the State Attorney, Pretoria

For the respondent:

*G Marcus* SC and *M Chaskalson* instructed by *L Chimes*, Rosebank

**Cases referred to**

<i>Administrateur, Transvaal v Quid Pro Quo Eiendomsmaatskappy (Edms) Bpk</i> <u>1977 (4) SA 829 (A)</u>	<u>1165</u>
<i>Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd</i> <u>[2001] 4 All SA 68 (A)</u>	<u>1162</u>
<i>Avenue Delicatessen and Others v Natal Technikon</i> <u>1986 (1) SA 853 (A)</u>	<u>1164</u>
<i>Executive Council, Western Cape Legislature v President, RSA</i> <u>1995 (10) BCLR 1289 (CC); 1995 (4) SA 877 (CC)</u>	<u>1164</u>
<i>Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others</i> <u>1998 (12) BCLR 1458 (CC);</u>	<u>1166</u>

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Pinnacle Point Casino (Pty) Ltd v Auret NO and Others [1999] 2 All SA 511 (C); 1999 (4) SA 763 (C) 1165

R v Foley and Others 1953 (3) SA 496 (E) 1164

S v Bequiot 1996 (12) BCLR 1588 (CC); 1997 (2) SA 887 (CC) 1166

S v Mhlungu and Others 1995 (7) BCLR 793 (CC); 1995 (3) SA 867 (CC) 1166

Speaker of the National Assembly *Ex Parte: In Re Dispute Concerning the Constitutionality of Certain Provisions of the National Education Policy Bill 83 of 1995* 1996 (4) BCLR 518 (CC); 1996 (3) SA 289 (CC) 1162

Zantsi v Council of State, Ciskei, and Others 1995 (10) BCLR 1424 (CC); 1995 (4) SA 615 (CC) 1166

**Footnotes**

- 1 General Notice 647 of 2000 in *Government Gazette* No 20911 of 18 February 2000. The text is set out in para 4 below.
- 2 33 in *Government Gazette* No 19377 of 19 October 1998.
- 3 Section 29(3) of the Constitution provides as follows :  
 "Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -  
 (a) do not discriminate on the basis of race;  
 (b) are registered with the state; and  
 (c) maintain standards that are not inferior to standards at comparable public educational institutions."  
 The effect of the provisions on the Minister's powers regarding the age of entry into independent schools was debated in argument before us but not discussed in the papers and I make no comment on it.
- 4 Act 84 of 1996.
- 5 Act 27 of 1996.
- 6 Section 2 provides:  
 "**Objectives of Act.** - The objectives of the Act are to provide for -  
 (a) the determination of national education policy by the Minister in accordance with certain principles;  
 (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purpose of consultation;  
 (c) the publication and implementation of national education policy;  
 (d) the monitoring and evaluation of education."
- 7 Schedule 4 Part A to the Constitution.
- 8 Section 146(2)(b) to the Constitution.
- 9 Education institution is broadly defined by section 1 of the National Education Policy Act as meaning:  
 "any institution providing education, whether early childhood education, primary, secondary, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community education."
- 10 Section 6 of the National Education Policy Act:  
 "**Consultation on legislation.**-Legislation on a matter referred to in section 3 shall be introduced in Parliament . . . only after consultation between the Minister and -  
 (a) the Council, in respect of education at education institutions; and . . ."
- 11 Section 7 of the National Education Policy Act:  
 "**Publication of national education policy.**-The Minister shall within 21 days after determining policy in terms of section 3 -  
 (a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument issued with regard thereto may be obtained;  
 (b) table the policy instrument referred to in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament."
- 12 Section 2(2) of the Schools Act:  
 "A Member of the Executive Council and a Head of Department must exercise any power conferred upon them by or under *this Act*, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996)."
- 13 Section 2(3) of the Schools Act.
- 14 Unreported judgment of the Supreme Court of Appeal in case no SCA 252/99, 17 May 2001. (Reported at [2001] 4 All SA 68 (A) - Ed.)
- 15 *Id* at para 7.
- 16 1996 (3) SA 289 (CC); 1996 (4) BCLR 518 (CC).
- 17 *Id* at para 31.
- 18 *Id* at para 38.
- 19 Section 1 of the Act defines the word "school" to mean "a public school or an independent school".
- 20 See, for example, *MacRobert v Pretoria Municipal Council* 1910 TPD 931 at 945 per Wessels J; *R v Foley and Others*

1953 (3) SA 496 (E) at 498; Orkney Town Council v Oscar Tanner (Pty) Ltd 1966 (4) SA 284 (T) at 290; Avenue Delicatessen and Others v Natal Technikon 1986 (1) SA 853 (A) at 870; Klerksdorpse Stadsraad v Renswyk Slaghuis (Edms) Bpk 1988 (3) SA 850 (A) at 873E-F. See also Executive Council, Western Cape Legislature v President, RSA 1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC) at paras 22 and 68 per Chaskalson P, where the question of applicability of the rule in Latib was left open.

21 1969 (3) SA 186 (T).

22 Id at 190-1.

23 1977 (4) SA 829 (A).

24 See also Pinnacle Point Casino (Pty) Ltd v Auret NO and Others 1999 (4) SA 763 (C) at 769G-770A. (Also reported at [1999] 2 All SA 511 (C) - Ed)

25 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC).

26 Id at para 21. See also S v Mhlungu and Others 1995 (3) SA 867 (CC); 1995 (7) BCLR 793 (CC) at para 59; Zantsi v Council of State, Ciskei, and Others 1995 (4) SA 615 (CC); 1995 (10) BCLR 1424 (CC) at paras 2-5; Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) at para 199 and S v Bequint 1997 (2) SA 887 (CC); 1996 (12) BCLR 1588 (CC) at paras 12-13.

27 Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC).









Dear Impaq family

As you likely know, the Council of Education Ministers (CEM) has recently approved the new home education policy for promulgation by the Minister of Basic Education. The news was widely reported in the media since the 30<sup>th</sup> of July 2018. This approval follows a process to develop the new policy that stretched over a period of almost four years, and included consultation with various home education stakeholders as well as the publication of a draft policy for comments in November 2017. Once promulgated, the policy will replace the old home education policy that was published on 23 November 1999.

More detail on the consultation process and subsequent approval by the CEM can be found in the following online article: [click here](#).

### **Impaq's position**

As the largest provider to home education parents and learners in South Africa, Impaq formed part of the working group that was consulted to develop the new policy. We were excited to form part of this process, as we felt that it provided the Department of Basic Education (DBE) and home education stakeholders an opportunity to support the growth of this method of education in South Africa. During the process, we continued to actively engage with the members of the working group, made a number of recommendations regarding the development of the planned policy, and raised several concerns that we felt needed to be addressed. Following the publication of the draft policy in November 2017, we submitted written comments, along with 740 others, for consideration by the working group.

Over the past few months, it became clear to us that the working group did not adequately consider the important submissions from home education stakeholders (including those of Impaq) to arrive at the final version of the policy that was approved by the CEM. We have raised our concern with the DBE and indicated our opposition to elements of the new policy and the fact that the policy should only follow the implementation of the new BELA Bill (Basic Education Law Amendment Bill). Despite these concerns, we remain committed to contribute to the regulatory framework on home education. We believe the best answer still lies in dialogue with the working group, and we will continue to act in the best interest of our clients throughout this dialogue process.

## How the new policy affects home education parents and learners

In general, the new policy does not significantly change the provisions and requirements regarding home education, although some elements are positive steps towards it, for example providing more detail, which was lacking in the previous policy.

The most important requirements in the new policy, how these changed from the previous policy, as well as how Impaq's offering supports parents and learners to comply with these requirements, are listed on a high level below:

Policy requirement	Change from previous policy	Impaq support
Parents should apply to the Provincial Education Department (PED) for registration of a home education learner, and comply with any reasonable conditions set by the department.	No change.	Impaq does encourage parents to register learners with the PED and can assist parents with information on the necessary steps to follow.
Parents need to keep a record of attendance, a suitable timetable and a portfolio of evidence (containing the activities and assessments) for every learner. Portfolios must be kept for 3 years as proof of the learner's progress.	No change.	Our offering assists parents in reaching all the required outcomes as outlined by the national curriculum. The portfolio activities assist parents in building a portfolio of evidence for every learner.
Parents must provide the PED with feedback on the learner's progress and whether they have reached the required outcomes at the end of every phase. Progress must be assessed by qualified teachers registered with the SA Council of Educators (SACE).	Inclusion of minimum requirements for assessors.	Impaq provides parents with progress reports for their children, which could be provided to the PED at the end of every phase. We make use of qualified teachers as per the policy requirements to develop all our assessments.
Parents can follow any curriculum that meets the minimum outcomes as set out in the national curriculum.	No change.	Registration with Impaq ensures that learners follow the national curriculum with formal assessment on the required level throughout all the phases.
The parent may include tutorial or other educational support, secured in respect of specific areas of the curriculum. Parents remain responsible for the education of their child.	No change.	Impaq equips parents with all the materials needed to be the primary educator. Supporting tutorial services may be enlisted as needed, subject to the restrictions contained in the policy.
		Examination boards do not register independent candidates. FET learners therefore must

Home education only applies to the compulsory schooling phase (from grade 1 to grade 9 or age 15). Learners in the FET Phase (Grade 10 – 12) must be registered with an examination board.	Additional detail on post-compulsory schooling phase (FET).	register with a curriculum provider, who is registered with an examination board. In Grade 10 – 12, Impaq meets all the requirements in terms of the formal assessments, and is registered with SACAI (an examination board registered with Umalusi), which ensures the credibility of the National Senior Certificate.
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### How the new policy affects tutors to home education learners

The new policy still allows for parents of home education learners to “enlist specific services of a tutor for specific areas of the curriculum” (the language is similar to the old policy), and now provides clarity on the location allowed for this tutoring to take place, stipulating both the learner’s home or another place away from the home education site (section 18.4 2(b)).

The new policy however unfortunately includes ambiguous language on tutors and tutoring centres – it refers to “illegal tutor centres” but do not provide an exact definition of what an illegal tutor centre is, other than stipulating that it is a tutor centre that is “operating like an independent school whilst unregistered with the state in terms of the Act...”, also without defining what “operating like an independent school” is.

We do remind you of our previous communication on this matter, clearly stating that tutors should always adhere to the requirements of the law, including not operating like a school. If you require more information on this matter, including suggested distinctions between schooling and tutoring, please refer to our tutor guideline document.

Impaq would like to reiterate our ongoing commitment to ensuring that we protect the rights of our learners and parents, as well as tutors who provide a service to our home education learners within the constraints of the regulatory environment. We welcome any questions or comments on this matter. Please direct any questions or communication to [legal@impaq.co.za](mailto:legal@impaq.co.za).

We remain in ongoing dialogue with the Department in order to see how we can obtain more clarity in respect of certain grey areas of the proposed policy.

Thank you for your continued support.

Regards,

**Stefan Botha**

Chief Executive Officer: Impaq Education (a member of the FutureLearn Group)

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REPUBLIC OF SOUTH AFRICA

Read to Lead  
A Reading Nation is a Learning Nation

# Home Education



MP

## 1. What is home education?

Home education is a purposeful programme of education for a learner, alternative to school attendance, which—

- is provided under the direction and supervision of the learner's parent primarily in the environment of the learner's home;
- may include tutorial or other educational support, if necessary, secured by the parent on specific areas of the curriculum followed by the learner; and
- meets the requirements for registration of a learner for home education contemplated in section 51 of the South African Schools Act (SASA).



## 2. What is the legislative provision for Home Education in South Africa?

This booklet should be read in line with the legislative provisions given below:-

- Constitution of the Republic of South Africa, 1996
- Children's Act, 2005 (Act No 38 of 2005)
- South African Schools Act, 1996 (Act No 84 of 1996)



MP

### 3. How to register for home education?

A parent or legal guardian of a learner of compulsory school-going age who chooses to have her or his child educated at home must submit a written application and necessary documentation to the Head of Department, for the following phases :-

- 📌 Foundation Phase (grades 1-3);
- 📌 Intermediate Phase (grades 4-6); and
- 📌 Senior Phase (grades 7-9).

On line application can be done on the departmental website [www.education.gov.za](http://www.education.gov.za) by September of the year proceeding the year in which home education is to commence. The Head of Department may allow a deviation from the above if the parent can provide reasonable reasons for the delay in registering the learner for home education. Parents who cannot access internet should contact the Provincial Education Department and request for application forms. The lists of Provincial Home Education Officials are provided in the last page of this booklet.



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Upon approval of the application, the Head of Department will enter the details of the learner on the home education register. The parent will receive a registration certificate for the learner, reflecting the phase applied for, the period of registration and the learner registration number.

After completion of each phase and proof that the minimum requirements for the subjects registered and pass requirements for grades have been met, the parent(s) must apply for registration for the next phase.



4. What type of a curriculum should a parent choose?

The parent may choose to offer any curriculum that meets the minimum outcomes and assessment standards prescribed in the National Curriculum Statement.




A parent should organise teaching, learning and assessment in a manner that a learner is able to achieve the minimum outcomes and assessment standards at least comparable to the relevant national curriculum outcomes as determined by the Minister of Basic Education

The Minister of Basic Education provides the National Curriculum Statement (NCS) at no cost.



MD

5. What are the principles of the National Curriculum Statement Grades R-12?

-  **Social transformation:** ensuring that the educational imbalances of the past are redressed, and that equal educational opportunities are provided for all sections of the population;
-  **Active and critical learning:** encouraging an active and critical approach to learning, rather than rote and uncritical learning of given truths;
-  **High knowledge and high skills:** the minimum standards of knowledge and skills to be achieved at each grade are specified and set high, achievable standards in all subjects;



**Progression:** content and context of each grade shows progression from simple to complex;



**Human rights, inclusivity, environmental and social justice:** infusing the principles and practices of social and environmental justice and human rights as defined in the Constitution of the Republic of South Africa.



The National Curriculum Statement Grades R-12 is sensitive to issues of diversity such as poverty, inequality, race, gender, language, age, disability and other factors;



MD



**Valuing indigenous knowledge systems:** acknowledging the rich history and heritage of this country as important contributors to nurturing the values contained in the Constitution; and



**Credibility, quality and efficiency:** providing an education that is comparable in quality, breadth and depth to those of other countries.



6. **What are the aims of the National Curriculum Statement Grades R-12?**

The aims of the National Curriculum Statement Grades R-12 are to produce learners that are able to:-



identify and solve problems and make decisions using critical and creative thinking;



work effectively as individuals and with others as members of a team;



organise and manage themselves and their activities responsibly and effectively;



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- ﷲ collect, analyse, organise and critically evaluate information;
- ﷲ communicate effectively using visual, symbolic and/or language skills in various modes;
- ﷲ use science and technology effectively and critically showing responsibility towards the environment and the health of others; and
- ﷲ demonstrate an understanding of the world as a set of related systems by recognising that problem solving contexts do not exist in isolation.



This curriculum aims to ensure that children acquire and apply knowledge and skills in ways that are meaningful to their own lives. The curriculum promotes knowledge in local contexts, while being sensitive to global imperatives

#### 7. What are the minimum subjects to register for a phase?

ﷲ Your program shall include , but is not limited to the following subjects per phase as examples from the National Curriculum Statement:-



*MP*

8. What are the promotion and retention requirements?

A parent may set her or his own promotion and retention requirements provided that these are equal to or exceed the standard or requirements set according to the National Curriculum Statement promotion criteria

Education Phase		
Foundation Phase	Intermediate Phase	Senior Phase
Home Language	Home Language	Home Language
First Additional Language	First Additional Language	First Additional Language
Mathematics	Mathematics	Mathematics
Life Skills	Life Skills	Natural Science
	Natural Sciences and Technology	Economic management Science
	Social Sciences	Social Sciences
	Creative Arts	Technology
	Physical Education	Creative Arts
		Life Orientation



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9. What is the role of the parent in record keeping?

- Keep the portfolio of evidence;
- Keep samples of writing, worksheets, workbooks and creative materials used or produced by the learner;
- Maintain up to date records of continuous assessment and progression of the learner;
- Keep all relevant assessment results for a period of three years for monitoring by the Head of Department.



10. What is the role of the parent in assessment?

- Implement the Assessment Policy and Guidelines of the curriculum of her/his choice to ensure that the learner meets the specific levels of performance in each grade.
- Use services of a competent assessor to assess the progress of a learner at the end of grades 3, 6 and 9, and submit a report to the Head of Department.
- Monitor the progress of the learner between Grades 1 to 9 and keep records which should be available on request.
- Ensure validity and reliability of each and every assessment task or examination through necessary control measures including invigilation.



MP

11. How should the Department of Basic Education ensure that home education programme is implemented as expected?

The Provincial Education Department shall as far as it is practicable, monitor the implementation of the Policy on Home Education.

The Provincial Education Department may request for, and the parent is required to provide, access to any records used for home education of the learner.



12. Learners experiencing barriers to learning

Education White Paper 6, Special Education Needs: Building an Inclusive Education System(2001) provides for an education system that promotes the full participation and inclusion of children who experience barriers to learning whether it be economic, social, language, class, behaviour or other barriers.

The Policy on Screening, Identification, Assessment and Support (SIAS), 2014 should be used as a tool for early intervention to help practitioners assess learners' needs at an early stage; work with families, alongside of other practitioners and service providers, to meet those needs. It should be used to manage and support teaching and learning processes for learners who



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experience barriers to learning within the framework of the National Curriculum Statement Grades R – 12.

13. What should a parent do if he or she wants to withdraw the learner from home education?

If a parent wishes to withdraw a learner of compulsory school going age from a home education programme, such a parent must inform the Head of Department of such withdrawal, submit proof that the child will be receiving education and request the Head of Department to terminate the learner's registration for education at home.



14. How should a school determine and place a previously home educated learner?

A school that enrolls or admits a previously home educated learner shall use its admission policy in order to determine and make a placement decision.

15. What happens after Grade 9?

A parent of a learner who wishes to continue with home education after Grade 9 is not required to register for Home Education.



*MP*



# 16. Who are your home education co-ordinators

Officer	Coordinator	Tel	Email	Address
National	Ms EM Chaane Ms LZ Brown	012 357 4105/4106	Chaane.m@edbe.gov.za brown.l@edbe.gov.za	222 Struben Street Pretoria 0001
Eastern Cape	Ms M N Ndzinga	040608 4186	Nomfundo.ndzinga@edbe.gov.za	Slave Tshwete Building Zone 6 Zwellisha 5605
Free State	Mr MJ Nisala	0514470038/0037	MJ.Nisala@fseducation.gov.za	152 Andrews Street Room 526 Trustfontein Building Bloemfontein 9300

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Officer	Coordinator	Tel	Email	Address
Gauteng	Ms C Molshwane	010 800 6202	Carol.molshwane@gauteng.gov.za	Corner 17 Simmonds & Main Street Johannesburg 2000
Kwa-Zulu Natal	Ms D Molefi	0333486111/1115	dineo.molefi@kznbe.gov.za	194 Langalibalele Street Absa Building, Office- 803 Pietermaritzburg 3201
Limpopo	Ms M Baloyi	0152309419	BaloyiME@limpopo.edu.gov.za	Corner 113 Biscard & 24 Excelsior Street Polokwane 0700

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Office	Coordinator	Tel	Email	Address
Mpumalanga	Dr M Pieterse	0137665375	M.Pieterse@education.mpu.gov.za	Building No 5 Government Boulevard Riverside Park Nelspruit 1200
Northern Cape	Mr K Mhlom	063 839 6366	uzontwa@gmail.com	158 Barkly Road Honestead Kimberley 8306
North West	Ms P Pule	0183698204	Ppule@nwp.gov.za	Block C Old Mmabatho High School Hostel 1305 Albert Luthuli Drive Mmabatho 2735

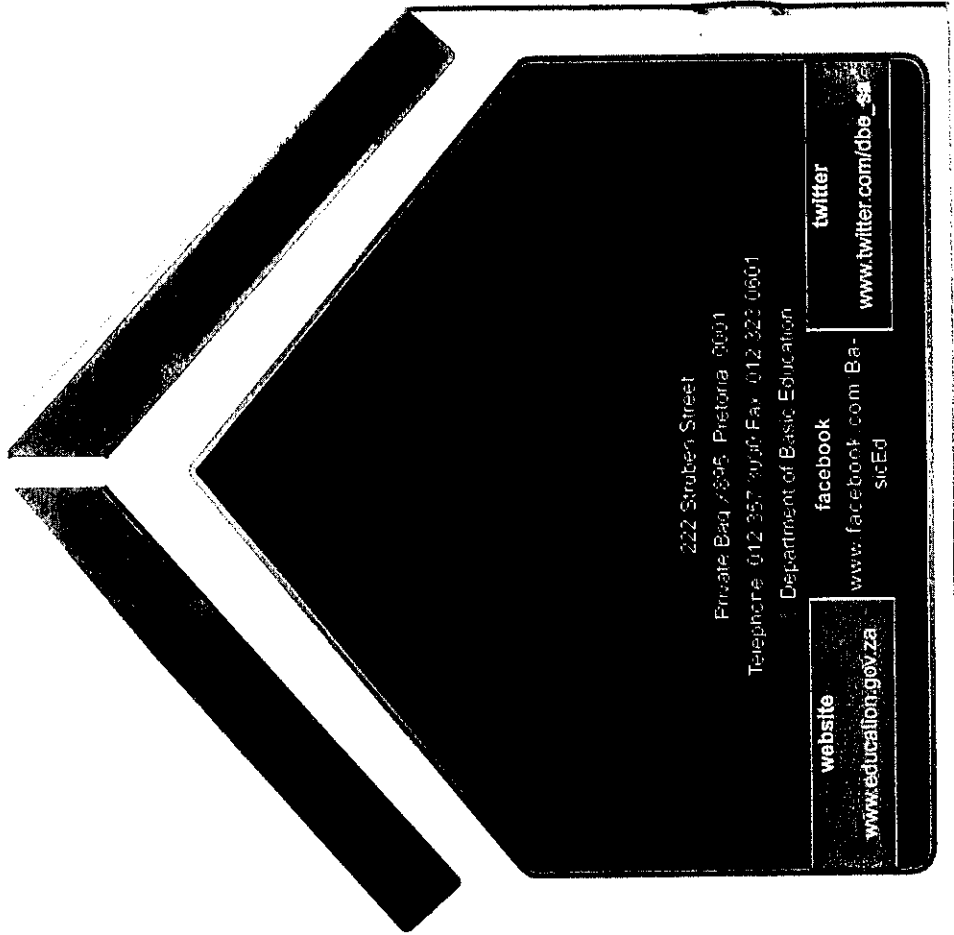


Office	Coordinator	Tel	Email	Address
Western Cape	Mr D Louw	0214672653	Deon.Louw@westerncape.gov.za	18th Floor Golden Acre Building Adenley Street Cape Town 8000



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*MP*





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**RESOLUTION- APPLICATION TO THE DEPARTMENT OF BASIC EDUCATION IN TERMS OF  
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**

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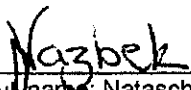
At a meeting of the Eastern Cape Home Schooling Association

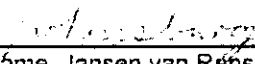
Held on 21 August 2018


It was resolved that ECHSA would lodge an application to the Department of Basic Education in terms of the Promotion of Access to Information Act 2 of 2000

It was further resolved that Adv. Megan Puchert, the Chairperson of ECHSA, be authorised to lodge the application on behalf of ECHSA

Signed on 21 August 2018

  
Full name: Natascha Yazbek  
Designation: ECHSA Secretary  
Location: Port Alfred

  
Full name: Jansen van Rensburg  
Designation: ECHSA Treasurer  
Location: East London

  
Full name: Hayley Gibbons  
Designation: ECHSA Member  
Location: East London