



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

UNDERSTANDING HOME EDUCATION

In the context of the COVID-19 questions have been raised regarding the plight of learners with comorbidities and the options they can take to continue their education. Some parents have indicated that they are afraid to take their children back to school. In her response at the Media Briefing held on 19 May, the Minister of Basic Education said that those parents wishing to keep their children at home due to fear or because of comorbidities they could do so provided they registered for HOME EDUCATION.

It is important for parents and caregivers to understand what is involved in HOME EDUCATION as it can be involved.

Parents have been asking what exactly is Home Education and how does it work. The Department through the SASA of 1996 has provided for this option of education.

The policy says HOME EDUCATION simply because a HOME is NOT a school. The correct nomenclature is HOME EDUCATION. The sets out the conditions for HOME EDUCATION.

The POLICY ON HOME-EDUCATION as gazette in 2018, 16 November sets out to establish the legal framework and size of our Basic Education System as it relates to HOME-EDUCATION. It also seeks to explain what Home education is not, what it is and how it is implemented.

The provision of Education in the Republic of South Africa is governed by two related Acts of Parliament. These are

- The South African Schools Act of 1996 (Act 48 of 1996)
- National Education Policy Act of 1996 (Act 27 of 1996)

These two operative Acts are consistent with the Bill of Rights as enshrined in Constitution of the Republic of South Africa (Act 108 of 1999).

The Bill of Rights is enshrined in our constitution. Our country is also a signatory to the Convention on the Rights of the Child and both these tools provides that the best interests of a child are of paramount importance in every matter concerning the child, and that everyone has the right to basic education. The Department of Basic Education is committed to give expression to both the spirit and the letter of these Acts through a coherent and progressive policy framework that facilitates adequate conditions for the realization of the right of every child to Basic Education. This includes children of school-going age in both public and private school system and

even those whose parents may choose to place in the **HOME EDUCATION** environment.

This august task is a shared privilege and responsibility. There's ample recognition that it can only be accomplished with proper partnerships and cooperation between all stakeholders in the education community including government, officials, parents, educator/labour and civil society organizations. Provision of Basic Education in our country is done primarily through conventional schooling both in the public and the private sector. There are 25 000 schools in the country; 23 796 are public schools while 1 966 are Private Schools. These schools accommodate at least 12, 4 million learners.

It is in this context that a proper understanding of the SASA (Act 48 of 1996) and NEPA (Act 27 of 1996) and all provisions and policy statements on **HOME EDUCATION** must be discussed.

HOME EDUCATION IS NOT...

Home-Education should be of a standard not lower than that offered in a public school.

HOME-EDUCATION is an accountable process of learning within the parameters of the South African Schools Act as stipulated in section 51 of the Act; (no. 84 of 1996). Parents considering the **HOME-EDUCATION** program should be aware of the "accountability" requirements for the program. **HOME-EDUCATION** is not an automatic right, it is accessed through a set-out process and is managed together with the Department of Basic Education.

Case law exists to give support to the provisions enacted by the DBE in the management of HOME-EDUCATION (***The Schneider Case heard in the Western Cape High Court in 2010 is a case in point***).

- A parent who wants to home educate her or his child has to comply with the relevant legislation, particularly sub-section 3 (1) and 51 of the South African Schools Act; and
- the court shall not sanction a breach of the Act with regards to compliance with it by a parent who requires to home educate her or his child.

DEFINING HOME-EDUCATION IN SOUTH AFRICA

(1) Home education as contemplated in section 51 of the Act is:

(a) an education programme for the learner that takes place primarily in the environment of the learner's home;

(b) an alternative to attendance at a public or an independent school;

(c) conducted in accordance with the requirements for the registration of a learner for home education provided for in the Act.

(2) An illegal independent educational institution such as an institution operating like an independent school whilst unregistered with the state in terms of the Act, also commonly known as a tutor centre, cottage school, home school centre and micro school, does not form part of the scope of home education.

The objects of the policy on home education

The objects of this policy are to:

1. protect, promote and ensure the rights of learners to basic education; recognise parents' prior right to choose the kind of education that shall be given to their children;¹
2. provide for registration, implementation and monitoring of home education in accordance with section 51 of the Act and to provide for matters incidental thereto;
3. repeal the Policy for the Registration of Learners for Home Education, 1999; and
4. provide uniform and manageable procedures for home education in provinces.

The application and scope of the policy on home education

1. This policy applies to home education as contemplated in section 51 of the Act.
2. This policy should be interpreted and applied in a manner that gives effect to the Constitution and relevant sections of the Act including section 3 and 51 of the Act.
3. This policy applies uniformly to all Provincial Education Departments (PEDs) as national norms and standards pertaining to home education.

The nature of basic education

1. In a case heard in the Constitutional Court in 2011, (Juma Masjid...) the court considered the meaning and ambit of the right to basic education and said that this right:
 - (a) is immediately realisable;
 - (b) may only be limited in terms of law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'; and
 - (c) is distinct from the right to further education provided for in section 29 (1) (b) of the Constitution.

The legal framework for home education in South Africa

Home education in South Africa has basis in the following sources of law:

- (a) Constitution of the Republic of South Africa, 1996

- (b) Children’s Act, (Act no 38 of 2005)
- (c) South African Schools Act, (Act no 84 of 1996) (SASA)

The legal background and context of home education in South Africa

Constitution

(1) The aims of the Constitution relevant to home education include the following:

- a) improving the quality of life of all citizens and free the potential of each person;
- (b) democratic and open society;
- (c) equal protection by law of every citizen;
- (d) democratic values, social justice and fundamental human rights;
- (e) human dignity, equality, non-racialism, non-sexism and the rule of law;
and
- (f) supremacy of the Constitution.

(2) The Constitution is the supreme law of the Republic. Law or conduct inconsistent with it is invalid and the obligations imposed

(3) The Constitution provides for a Bill of Rights. The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.⁷

(4) The Bill of Rights provides that:

- (a) the state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (b) a child’s best interests are of paramount importance in every matter concerning the child.
- (c) everyone has the right to basic education.

Legislation

(1) The **Children’s Act** provides that:

- (a) In all matters concerning the care, protection and well-being of a child the standard that the child’s best interest is of paramount importance, must be applied.
- (b) A person may have either full or specific parental responsibilities and rights in respect of a child.

(c) The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right:

- (i) to care for the child;
- (ii) to maintain contact with the child;
- (iii) to act as guardian of the child; and
- (iv) to contribute to the maintenance of the child.

(d) 'care', in relation to a child, includes, where appropriate:

- (i) guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development; and
- (ii) generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child.

The **South African Schools Act** provides as follows:

(a) Section 3 (1) provides that:

(1) Every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

(b) Section 3 (5) provides that:

If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department (HOD) may:

- (a) investigate the circumstances of the learner's absence from school;
- (b) take appropriate measures to remedy the situation; and
- (c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

(c) Section 3 (6) provides that:

(6) Subject to this Act and any other applicable law:

- (a) any parent who, without just cause and after a written notice from the HOD, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or
- (b) any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending a school, is guilty of an

offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Rationale and motivation for home education

Parents express many reasons for wishing to educate their children at home. The following are among the reasons most commonly mentioned by parents...

- Education of a child at home under parental guidance fulfils a parent's prime responsibility for the upbringing of the child within the family;
- A child's education must be embedded in the parent's religious world view and values, in contrast with secular school education;
- Socio-economic, health and psycho-social issues;
- Home education offers optimum conditions for a child's learning;
- Provision of a nurturing learning environment for a child with physical or learning disabilities;
- Home education provides a more affordable option for parents than school enrolment;
- Preference for home education rather than boarding school when suitable schools are too distant from home;
- Enabling itinerant families to maintain the continuity of a child's education by educating the child at home rather than transferring from school to school;
- Flexibility in accessing educational resources such as field trips, visit to museums, nature reserves, libraries; and
- Geographical location

The General Principles of HOME-EDUCATION...

The principles for home education include that:

- (a) parents have a right to choose a child's home as a suitable educational environment for their children;
- (b) there is a diversity of religious and educational philosophies held by parents providing home education for their children;
- (c) the diversity of educational philosophies reflects the diversity of preferences of parents for particular forms of education for their children; and
- (d) home education is committed to:
 - (i) offering a broad range of opportunities that foster in each child the development of the child's unique spiritual, emotional, physical, social and intellectual being;
 - (ii) valuing the individual needs, interests and aptitudes of each child; and
 - (iii) preparing each child to become an independent and effective citizen including global citizenship.

The Process to register a learner for HOME-EDUCATION: Section 51 of Act no. 84 of 1996... *The application process will among others consider the Rational and Motivation provided by the applicant (parent)...*

It is only this process, culminating in Approval granted by the Head of Department (HOD) that can exempt the child of compulsory, school-going age (Grade 1 – 9) from school attendance.

51. (1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner's home.

(2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that-

(a) the registration is in the interests of the learner;

(b) the education likely to be received by the learner at home-

(i) will meet the minimum requirements of the curriculum at public schools; and

(ii) will be of a standard not inferior to the standard of education provided at public schools; and

(c) the parent will comply with any other reasonable conditions set by the Head of Department.

(3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The Head of Department may not withdraw the registration until he or she-

(a) has informed the parent of his or her intention so to act and the reasons therefor;

(b) has granted the parent an opportunity to make representations to him or her in relation to such action; and

(c) has duly considered any such representations received.

(5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.

Responsibilities and roles

Responsibilities and roles of the parent

(1) The responsibilities and roles of the parent include but are not limited to the following:

- a. apply to the HOD for the registration of a learner to receive education at the learner's home;
- b. provide access to information;

- c. guide, assist, manage and support the learner's home education;
- d. assume responsibility for the education of the learner registered to receive education at the learner's home;
- e. comply with any reasonable conditions set by the HOD;
- f. provide and facilitate education in the manner that is consistent with the law;
- g. keep a record of attendance of a learner and a suitable time table;
- h. choose the curriculum to be followed by the learner and ensure familiarity and competence in delivering the chosen curriculum;
- i. inform the HOD in writing of the decision to withdraw the learner from receiving education at home and requesting the HOD to terminate the learner's registration for home education where the learner is of the age or grade that is subject to compulsory attendance as determined in the Act. Ensuring that such a learner is enrolled in a school, unless s/he is exempted from compulsory attendance by the HOD in terms of the Act; and
- j. familiarise herself or himself with the policy on home education.
- k. The parent may not:
 - (i) facilitate home education such that it does not take place primarily at the learner's home taking into consideration that the parent may take the learner to extra-curricular activities or to areas such as museums, libraries and heritage sites to support the education programme.
 - (ii) associate herself or himself or cause the child to be associated with any illegal independent educational institution in respect of the home education provision. Such an association is in violation of the Act, is not in the best interests of the learner, and may amount to a reason upon which the HOD may investigate if the education received by the learner at home is in her or his educational interests and which may lead to withdrawal of the registration of a learner to receive education at home.

(2) For the safety and security of the learner, when enlisting the services of a tutor and/or competent assessor, or any other person, the parent is advised to take the necessary precautions e.g.:

- a. requesting a police clearance certificate; and
- b. visiting the following registers to determine if the person that s/he is considering is not listed therein as such people should not be permitted to work with children:
 - (i). the National Register for Sex Offenders (NRSO) administered by the Department of Justice and Constitutional Development (DOJ&CD); and
 - (ii). the National Child Protection Register (NCPR)¹² administered by the Department of Social Development (DSD).

Responsibilities and roles of the Provincial Education Departments

1. The responsibilities and roles of the PED include, but are not limited to the following:
 - (a) registration of a learner for home education;
 - (b) protection of personal information;
 - (c) monitoring of home education;
 - (d) withdrawal of the registration of a learner; and
 - (e) development and maintenance of data on home education.
2. The HOD may delegate to a district or to any official of the PED any of the powers or responsibilities given to or imposed on her or him by the Act in respect of registration of a learner to receive education at home.

Further details relating to Application for registration of a learner for home education

(1) No person purporting to provide a learner of compulsory school attendance with an exemption from attendance at a school

pursuant to section 51 of the Act may implement home education without approval by the HOD.

(2) A parent of a learner who is subject to compulsory attendance who chooses to have her or his child educated at home in terms of section 51 of the Act must:

1. (a) submit a written application and necessary documentation to the HOD;
2. (b) submit the application by September of the year preceding the year in which home education is to commence for the learner. The HOD may allow a deviation from this if the parent can provide sound reasons for the delay in registering the learner for home education;
3. (c) ensure that the application is for one of the following phases: Foundation Phase (Grades 1-3), Intermediate Phase (Grades 4-6), or Senior Phase (Grades 7-9); and
4. (d) ensure that after completion of each phase, the proof that the minimum outcomes have been met are submitted by the parent(s) with the application for the registration of the next phase.

Conditions for registration of a learner to receive education at home

(1) The conditions for registration of a learner to receive education at her or his home are set out in section 51 of the Act. These conditions include that:

(a) the parent understands home education, accepts full responsibility for the implementation of home education for her or his child; and undertakes to:

- (i) make suitable educational resources available to support the learner's learning;
- (ii) monitor the learner's academic progress;
- (iii) arrange for the learner's educational attainment to be assessed at a standard that is not inferior to that which is determined in the NCS; and
- (iv) provide the HOD with the learner's assessment report signed by the competent assessor, as evidence at the end of each phase.

(b). the proposed education programme:

- (i) is suitable for the learner's age, grade, level and ability;
- (ii) covers the acquisition of content and skills at least comparable to the relevant national curriculum outcomes as determined by the Minister; and
- (iii) is approved by the HOD.

(2) The Provincial Education Department shall conduct a pre-registration home education site visit to verify information and provide support where necessary. The parent must notify the Provincial Education Department should there be a change in the location of the home education site.

The registration of a learner for home education

- (1) The HOD should keep a register of learners registered for home education.
- (2) The HOD shall, in accordance with the Act, register the learner for home education if satisfied that the conditions for registration will be complied with.
- (3) The HOD must take all reasonable steps to respond within 30 days after receipt of the application on the prescribed form.
- (4) As part of the approval process the HOD should:
 - (a) enter the child on the register; and
 - (b) provide the parent with a certificate of registration for the child.
- (5) If the HOD declines the application to register the learner for home education, s/he shall in writing, inform the parent:
 - 1. (a) stating the reason(s) for declining the application; and
 - 2. (b) of the right to appeal to the MEC within 14 days of receiving the notice.

(6) The MEC should take all reasonable steps to respond to the appeal within 30 days of receipt thereof.

The duration of registration of a learner for home education

(1) The certificate of registration should reflect the period of registration and the relevant phase for which the learner is registered for home education.

Protection of personal information

(1) The PED, parent and any relevant person are bound by the Protection of Personal Information Act, 2013¹³ (POPIA)¹⁴ with regards to the processing

Home education site

(1) A parent should determine an appropriate teaching and learning space within the home wherein her or his child will receive education.

(2) Such a teaching and learning space should include the following as basic minimum requirements for implementing home education:

(a) an area in the home environment that is conducive for the learner to complete her or his education programme; and

(b) an area for and/or access to an area for physical education or social play within the surroundings of the home or community.

Curriculum

Curriculum choice

(1) The parent may choose to offer any curriculum that will be of a standard not inferior to the standard of education provided at public schools.

Planning

(1) A parent should keep evidence of planned activities and tasks to be completed by a learner in accordance with the curriculum followed by the learner.

Teaching and learning

(1) A parent should organise teaching, learning and assessment such that a learner is able to achieve the minimum outcomes and standards prescribed in the NCS.

The scope of tutoring a learner registered to receive education at home

(1) The parent may, if necessary, enlist specific services of a tutor for specific areas of the curriculum.

(2) The tutor in providing her or his services in respect of specific areas of the curriculum:

(a) may not replace the primary responsibility of the parent in respect of providing home education to the child; and

(b) may not attempt to play the role of a school under the pretext of providing a tutoring service to the learner, e.g. taking over the full responsibility for delivery of the curriculum at the learner's home or at another place away from the home education site.

Assessment

(1) A parent should ensure that the results of assessment tasks such as tests and examinations are valid and reliable through implementing measures such as invigilation of the learner during the process of completion of such tasks.

Recording and Reporting

(1) A parent should use the services of a competent assessor to assess the progress of her or his 1) A parent shall:

1. (a) monitor the progress of the learner between Grades 1 to 9 and keep the record which should be available on request;
2. (b) submit the reports from the competent assessor at the end of Grades 3, 6 and 9 to the HOD.

(2) A report from a competent assessor which shows that a learner has not met the minimum outcomes and standards at the end of the phase assessed by the competent assessor may provide grounds for a review of a learner's registration for home education by the HOD. The HOD may conduct an investigation to determine whether or not to withdraw the registration of a learner.

(3) A parent should maintain a portfolio of evidence that must contain:

(a) samples of writing, worksheets, workbooks and creative materials used or produced by the learner; and

(b) a summative record or assessment schedule recording the achievement of the learner.

(4) A parent must keep:

(a) the portfolio of evidence for at least three (3) years; and

(b) a summative record or assessment schedule for three years after the home education programme is terminated.

Promotion and retention

A parent may set her or his own promotion and retention requirements provided these are equal to or exceed the standard or requirements set in the National Policy

Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement (NCS) Grades R – 12.

Barriers to learning

1. The White Paper 6 (*On Special Needs Education: Building an Inclusive Education and Training System*) provides for an education system that promotes the full participation and inclusion of children with disabilities in a manner that maximises their personal development and enables their ongoing participation and inclusion in the society.

2. The SIAS (*Screening, Identification, Assessment and Support, of 2014*) Policy could be used:

(a). to manage and support teaching and learning processes for a learner who experiences barriers to learning within the framework of the National Curriculum Statement; and

(b). as a tool for early intervention to help practitioners to:

(i) assess the needs of the learner at an early stage, and

(ii) work with families together with other practitioners and service providers to meet the identified needs of the learner.

(3) Where the learner experiences barriers to learning and assessment, the parent should approach the nearest office of the Provincial Education Department for:

(a) assistance with the referral of the learner to a relevant practitioner or service provider, to ensure that the learner receives the necessary support in terms of the SIAS Policy;

(b) advice on access to support services provided by the Department of Social Development and Department of Health; and

(c) information on programmes run by Non-Profit Organisations (NPOs) and Disabled People's Organisation (DPO's).

(4) The learner experiencing barriers to learning and assessment can apply for accommodations and concessions in line with the National Policy Pertaining to the Conduct, Administration and Management of Examinations and Assessment for the National Senior Certificate with the relevant Provincial Education Department.

Monitoring

(1) The PED should, as far as it is practicable, monitor the implementation of home education.

(2) The PED may not be compelled to provide individualised professional support to each home education site.

(3) The PED may request for, and the parent should provide, access to any records used for home education of the learner.

Resources

(1) The PED may, if requested by a parent, provide where it is practicable, textbooks, other learning resource material and information to a parent for use in the NCS programme for enhancing and enriching the education programme in special circumstances such as those of learners with special education needs.

(2) A parent has a right to purchase textbooks and instructional material of her or his choice but these should be relevant to the education of the learner.

(3) A parent may make use of resource centres such as libraries, museums and other resources to enrich the learning experience of a learner.

(4) The Curriculum and Assessment Policy Statements (CAPS) and workbooks are publicly available and may be accessed from the website of the Department of Basic Education (DBE).

Extra-curricular activities

1. A learner may make use of available facilities to participate in extra-curricular activities.
2. Approval to participate in extra-curricular activities of a school may be granted by a governing body under conditions set out by it.

Social inclusion

The parent should-

- (a). nurture the learner and prepare her or him to play a positive role in a democratic South Africa which is founded on the values of human dignity, the achievement of equality and advancement of human rights and freedoms;
- (b). prepare the learner for global citizenship;
- (c). prepare a learner for an inclusive society based on non-sexism, non-racialism, equality, and non-discrimination which includes non-discrimination on the basis of race, colour, gender, etc;
- (d). enhance the learner's understanding of human rights;
- (e). respect the learner's right to human dignity; and
- (e). enable social inclusion in the home education programme by exposing the child to learning in and around the child's environment and by promoting integration, human rights, unity in diversity and inclusivity.

Withdrawal

(1) If a parent wishes to withdraw a learner of compulsory school going age from a home education programme and such learner is admitted or readmitted to a school, then the parent:

(a) must inform the HOD in writing accompanied by documentary proof of admission of the learner to a school; and (b) request the HOD to terminate the learner's registration for education at home.

(2) The HOD must withdraw a learner's registration for home education if, after enquiry, the HOD is satisfied that:

(a) information contained in the application for registration has been misrepresented;

(b) any criteria or conditions are not complied with; or

(c) home education is no longer in the educational interest of the learner.

(3) In terms of the Act, the HOD may not withdraw the registration of a learner for home education before:

(a) informing the parent of her or his intention so to act and the reasons therefor;

(b) granting the parent reasonable opportunity to make representations to her or him relating to such intention; and

(c) giving due consideration to any such representations received.

Admission or re-admission to a school

(1) If a learner is within compulsory school attendance when the registration contemplated in section 51 is withdrawn or terminated, such a learner must attend a school. Such a learner should be admitted or re-admitted in accordance with the admission policy of the school.

Appeal

(1) A parent may appeal to the MEC, within 14 days of receiving notice, if the HOD withdraws a learner's registration for home education.

(2) The MEC should take all reasonable steps to respond to the appeal within 30 days of receiving the appeal.

Home education post compulsory attendance

(1) A parent of a learner who wishes to continue with home education after the learner has completed the Senior Phase (Grades 7-9) or reached the age of 15 whichever comes first, is not required to apply for registration for home education as such a learner is no longer of compulsory attendance contemplated in section 3 of the Act.

(2) A learner who has completed the Senior Phase (Grades 7-9) may choose to continue with her or his education at home or enrol at a public or independent school.

Exit examinations

(1) A learner who chooses to continue with her or his education at home post compulsory school attendance is free to choose her or his own exit examinations relevant to her or his chosen curriculum under an examination body of her or his choice. This includes exercising a right to write an international examination which does not fall under the authority of Umalusi.

(2) A learner who chooses to write an exit exam other than the NSC needs to determine the status of such an exam for admission to higher education institution(s) of her or his choice.

(3) A learner who chooses to write an NSC exam needs to ensure that s/he complies with the requirements for admission of a candidate as stipulated in section 7 of the NSC Regulations (*GN No. R872 in Gazette No. 31337 of 29/08/2008*) including the following:

(4A) A learner receiving home education must register with an education provider registered with the assessment body responsible for the conduct of the final National Senior Certificate examination to ensure that he or she complies with-

1. (i) *the programme requirements for Grades 10, 11 and 12 separately;*
2. (ii) *the School-Based Assessment, Practical Assessment Task and Language Oral Assessment requirements for Grades 10, 11 and 12; and*
3. (iii) *the external assessment requirements of Grade 12 as contemplated in the Curriculum and Assessment Policy Statements of the various subjects.*

