



# IT IS LEGAL TO HOME EDUCATE YOUR CHILD

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explain some of the legalities concerning home education

South African law defines home education as "education at the learner's home" and it has been legal since 1996. However, information provided by the media and government officials on the legal status of home education in South Africa is often confusing to parents. The purpose of this article is to provide legal information on home schooling in South Africa with references to the sources so that parents can verify the facts for themselves.

International law, the South African Constitution and the South African Schools Act make provision to register children for education at home. However, the practical reality is that many provincial departments do not have administrative processes in place to effect these registrations. Those departments that do have processes in place are often administered by officials that do not understand home education or the law on home education, and these officials often require parents to meet various conditions that are not required by the law. As a result more than 90% parents do not register their children for home education, because they are not convinced that it will be in the interest of their children to meet these illegal conditions.

## The legal situation

The supreme law in South Africa is the Constitution. The cornerstone of the constitution is the Bill of Rights that is described in Chapter 2 of the Constitution. According to article 29(1) of the Constitution, everybody in South Africa has the right to basic education, including children. This means that everybody has the right to decide whether they want basic education, where they want to receive this education and what the content of this education should be.

However, children are not capable of making these decisions for themselves. That is why article 28 (1) (b) of the Constitution states that children have the right to parental care. This means that parents must make decisions on behalf of the child, and in the best interest of the child. Obviously this care also includes decisions on education, and parents must decide what type of education a child should receive, be it school education, or home education. When interpreting the Bill of Rights, the Constitution also requires in article 39(1)(b) that courts must consider international law. One section of international law that is applicable to this situation is article 26(3) of the Universal Declaration of Human Rights, which states that parents have a prior right to choose the kind of education that shall be given to their children. This confirms that the interpretation of the Constitution described in the previous paragraph is correct, and that parents have a constitutional right to educate their children at home.

This means that only parents have the authority to decide whether their children should receive their education at home or at a school. The Constitution does not state that government officials have the authority to make that decision, and that parents must provide "... supporting arguments to substantiate that education at home will be in the interest of the learner ..." when they ask for permission to educate their children at home. If you have the right to do something, you do not need to ask for permission. If you have to ask for permission, it is not a right, but a privilege.

The media mentions a number of things that parents must submit when they ask for permission to educate their children at home, for example, parents must submit their highest qualification. Neither the Constitution nor the South African Schools Act state that the right to choose home education can only be granted to parents with certain levels of education. There is therefore no legal basis for requiring parents to submit their qualifications. Research has shown repeatedly that the qualification of the parents has no influence on the success of home education. There is thus no educational basis to ask parents to submit their qualifications.

Other media reports mention that parents must submit the curriculum that they plan to follow. This implies that the Department of Education should approve the content of the home education before permitting parents to educate their children at home. Apart from the fact that this requirement cannot be derived from the Constitution nor the Schools Act. On 25 March 2012 judgment was granted in the North Gauteng High Court, Pretoria by Judge Cynthia Pretorius, to the effect that the State curriculum is neither binding on independent schools nor on parents who educate their children at home.

### The practical situation

The South African Schools Act requires parents to register their children for education at home. This registration must be done at the Provincial Department of Education. As mentioned earlier, most provincial departments do not have the administrative capability to register children for home education.

Some of the larger provincial departments have limited administrative capabilities to register children for home education. However, the officials in those departments have a very limited understanding of home education. Home-schooling parents are intimately involved with their children and know exactly what their children can or cannot do. However officials often require parents to keep "record of attendance, records of progression as well as records of assessment." What value do cabinets full of records add to education? To ensure that mom will remember that her children were at home on 25 April 2011 in three years' time?

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Officials also do not understand the law that they are supposed to apply. Although the South African Constitution, international law and court judgments all confirm that only parents have the authority to decide the type and content of the education for their children, provincial officials still require parents to submit the curriculum they plan to follow for approval. Officials act as if home education is a privilege and not a right.

At public meetings officials often talk about "our" children, as if the children belong to them, and as if they have the authority to make decisions on behalf of these children. The statement is often made that it takes a village to raise a child, and the department of education is regarded as an important part of this village. History and research has however shown that it does not take a village to raise a child, but committed parents.

### What parents do

Parents who register their children for home education at the provincial Department of Education are at risk that they will be required to meet various conditions that are not stipulated by the law. According to the research of De Waal (2000), less than 15% of home-schoolers are registered with education departments, implying serious problems with the registration process. Recent developments in law and policy have, if anything, worsened such problems. To date, not a single home-schooling parent has been successfully prosecuted for not registering their children for education at home.

In America there are close to 2 million home educators. Leendert van Oostrum (M.Ed) of the Pestalozzi Trust for Home Educators in Pretoria estimates that there are between 30 000 to 120 000 home educators in South Africa (see more info on the legality of home education worldwide.)



*Dynamis is operated from Clarens and is a nation-wide ministry to equip families and home educators. The goal is to let parents understand that they can take responsibility and have the authority in defining their child's education and success in future.*



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*A New Generation of families*

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