

HOME SCHOOLING AND THE LAW

Provided by the Pestalozzi Trust legal defence fund for home education www.pestalozzi.org

What is home education?	<p>The law defines home education as "education at the learner's home". Therefore, a child who receives education at the home of someone else, is not being home schooled and is not covered by the protection provided for home education by law.</p> <p>Home education is, also, education within the family, that is mom, dad, grandmother, grandfather, or an older sibling provides the largest percentage of the teaching. Home education therefore does <i>not</i> include the micro-school or 'cottage school'.</p>
Is it legal?	<p>Yes, it is legal. Home schooling is provided for in the SA Schools Act (SASA) since 1996.</p>
Do I have to register my child with the education department?	<p>The various options for registration is treated later in this brochure under the title: <i>How can home schoolers comply with the law: Registration with the education department.</i></p> <p>This article explains that, sadly, the matter of registration is complicated by extensive unlawful government interference. Each family must, therefore, choose among the lawful ways of dealing with the problem. Please read this brochure several times very carefully when considering your options. Members of the legal defence fund for home education are welcome to discuss their decision with the Pestalozzi Trust.</p>
What does the law require regarding curriculum?	<p>According to the law, home education should meet the <i>minimum</i> requirements of the curriculum for public schools. The Pestalozzi Trust will dispute government claims that the entire Curriculum 2005 constitutes these "minimum" requirements (See the article below on <i>The Education Laws Amendment Act, 2002.</i>) The curriculum document is available free from the Education Department. The latest version was published in the Government Gazette on the 31st May, 2002.</p> <p>A link to the New State Curriculum appears on the home page of www.pestalozzi.org. From which page you will find a link to the curriculum. Inform yourself: Please study the curriculum as well as the manner in which government implements it, before you agree to educate your children according to those requirements.</p>
Why should home schoolers take note of (2005)?	<p>According to education departments, home educators are required follow Curriculum 2005 and to have their children assessed in conformance with that curriculum, if they wish to register. The Pestalozzi Trust will dispute the legality of this requirement on behalf of any member family.</p> <p>Even if you choose not to comply with K2005, however, you must know its contents in order to justify your decision not to comply.</p>

Why join the Pestalozzi Trust?	<p>The Pestalozzi Trust is a trust for home schoolers and promotes good education. The Trust will act in court cases on behalf of members who are confronted by government officials in relation to their home education.</p> <p>The Trust's first task, however, is to keep its members out of court if at all possible. We pursue this objective in three ways:</p> <ul style="list-style-type: none">a) To reduce the likelihood of conflict between our members and officials, we work to improve laws and policies that affect home education. This often entails that the Trust has to "take the punch" on behalf of our members.b) We provide member families with the information they need to protect their rights. Members receive a comprehensive information pack, updated by regular newsletters and circulars by mail and/or e-mail. Workshops and information days are presented according to the need.c) Member families who are confronted by government officials in relation to their home education are assisted in the pre-litigation phase of such conflict. This assistance aims to prevent conflict from escalating to a court case. In order to ensure rapid response to threatening situations, members are provided with a 24-hour emergency number to call when the need arises. <p>Remember: Apply for membership BEFORE officials confront you in relation to your home education. The Trust does not accept applications from home schooling families who have already been in negative contact with government officials about their home education.</p>
I need more info	<p>(1) Attend one of the Trust's information days, where all your questions will be considered, or (2) call 012 330 1337 after you have studied this brochure carefully. (3) Join the Trust: members of the Trust receive comprehensive information as part of their membership package. (4) Order the Trust's information pack for extensive information on home schooling and research on home schooling.</p>

**South Africa has a New Education System -
and it includes Home Education!**

The New Education System: What does it entail?

During 2002, the final building blocks of the new system for education and training were put place. The Pestalozzi Trust has completed initial assessments of the system as it is now being phased in.

The system seems to rest primarily on the following:

One National Curriculum Statement

In 2001 tens of thousands of concerned citizens protested against the content of Asmal's curriculum. See www.pestalozzi.org for particulars of the campaign in 2001.

Some changes have been introduced. Among other changes, the minister has created a forum where church leaders can advise the minister.

The curriculum itself, however, has retained all the totalitarian elements that it contained before. The interfaith aspects have been moved from the Learning Area for Life Orientation to the Learning Area Arts and Culture.

At school level, one national curriculum statement determines education for state and private schools as well as home education. The National Curriculum Statement promulgated in the Government Gazette on 31st May 2002 is explicitly aimed at transforming South African society by instilling in children an approved set of knowledge, skills, values and attitudes (See the link on the home page of the Pestalozzi Trust's web page www.pestalozzi.org). The curriculum shows all the hallmarks of revolutionary education practice based on Marxist theory as applied by followers of Che Guevara and Castro, among others.

The revolutionary mechanisms employed include the following:

- ***Interfaith***: Children are not only compelled to study religious practices of other faiths. They are forced (in the Learning Area Arts and Culture) to take part in spiritual practices from other cultures. These include song, dance, and rituals of spiritual and erotic nature. One outcome requires creating designs reflecting "nature gods" from various cultures.
- ***Multiculturalism***: Children are compelled to spend much more effort on cultures other than their own and are assessed accordingly. Research on cultural transmission (and the curriculum itself) claims that children will, therefore, adopt little of their own cultures and that a combined "Fusion"-culture will develop.
- ***De-individuation***: Children's religious and cultural identities are shifted by interfaith and multiculturalism from diverse religions and cultures to common identities. The individual identities of children will however also be affected by promotion of early autonomy and by stripping away the child's personal and family privacy. By means of blatant sex education and amongst others compulsory intimate dancing even the child's physical privacy is dismantled.

The effect of these measures is insecurity and the development of diffuse personality ("multiple and shifting identities"). Many children become dependent personalities craving totalitarian power to identify with.

- ***Transformation***: "Transformation" is a term used in revolutionary and Marxist education practice in the place of the old word "revolution".

Children subjected to de-individuation are ready to develop "critical thinking". By "critical thinking" is *not* meant the accepted notion of an objective search for truth.

In this curriculum it refers to the habit of dismantling all relationships of authority in society, including family, religious and cultural relationships – except totalitarian state power. In time, it is hoped, all loyalties will be replaced with loyalty to the state alone.

- ***Ideological coercion***: Throughout the curriculum almost all creative expressions of science and culture must, in true Stalinist fashion, pay homage to the ideologically selected set of prescribed values. Children are forced to interpret almost all projects, analyses, investigations and other work in such a way that it pays homage to the prescribed value system.

The approved curriculum is scheduled to be phased in from 2004. Gauteng is, however, already enforcing aspects of it, and it can be expected that other provinces will soon follow suit. According to a wide variety of authoritative legal opinion, government's enforcement of this curriculum is unlawful.

Also, the Constitution provides that parents have a duty to protect their children against unlawful government interference.

One National Assessment Process

One national assessment process and procedure that applies to state and private schools as well as home education will ensure that children are taught according to the national curriculum.

This system includes “bench mark assessments” at Grade 3 and Grade 6. These will ensure that all children are assessed in the same manner.

It also includes the new General Education and Training Certificate (GETC), which comprises a national certificate at Grade 9 level. Persons who fail to obtain the GETC will not be allowed to receive further education and training.

The system is backed up by the new “whole school evaluation system” where schools are “audited” by teams of specialist inspectors. Several provinces insist on inspecting the homes of home learners in a similar manner. Such inspections are unlawful and in accordance with the Constitution parents are responsible to protect their children against such violation of their privacy.

One National Learner Records Database (NLRD)

The National Learner Records Database (NLRD) records all recognised qualifications in the country, all institutions accredited to provide those qualifications, and the details of every learner who has achieved qualifications recognised on the NLRD (<http://www.saqa.org.za>).

Clearly, no person who is not registered on the NLRD will be able to obtain skilled work, further education, or training. The National Curriculum Statement demonstrates that the government will deny registration on the NLRD to persons who refuse to internalise, confess and live out the state approved value system.

This system comprises an unlawful violation of children's right to education. In accordance with the Constitution, parents are responsible for protecting their children against such violations.

Registration can no longer be recommended

According to legal advice obtained by the Pestalozzi Trust, various aspects of the new education system are in conflict with law and the constitution. (See the article below: ***How can home schoolers comply with the law: Registration with the education department.***) The Trust therefore supports all lawful actions to avoid or prevent the imposition of the system. *In accordance with legal advice, the Trust can no longer recommend the registration of members of the Trust with education authorities as provided for by legislation.*

The Education Laws Amendment Act 2002

The Education Laws Amendment Act 2002 was adopted by Parliament on 26th September 2002.

Private schools, like home education, will now also be subjected to a wrongful requirement to teach the new Curriculum 2005. According to officials in the Gauteng Education Department, this will have a

major impact on private schools that will soon be felt.

Private schools and home education will now, wrongfully, also be subject to the same national “assessment process and procedure” that applies to state schools. Home learners whose parents

choose to comply with these unlawful requirements will almost certainly have to be assessed by schools on a regular basis.

Effectively, this means that private schools and home education will henceforth be treated as if they

are just different delivery systems for state education.

The Pestalozzi Trust will dispute, on behalf of member families who come into conflict with education authorities, most of these measures as they apply to home education.

How can home schoolers comply with the law?

Registration with the education department

Introduction

According to the research of De Waal (2000), less than 15% of home schoolers are registered with education departments. This suggests that there are serious problems with registration. Recent developments in law and policy have, if anything, exacerbated such problems as there are.

What are the real issues? Some of these will be addressed in this document. It is clear that there are important choices to be made. The information in this document will assist in evaluating the merits and demerits of the available options.

Registration of home learners

Section 51 of the South African Schools Act 84 of 1996 (SASA) provides that parents may register their children (learners) for education at home. Many education officials interpret this to mean that parents need “permission” to educate their children. This is, of course, not so.

The law does not – and in terms of the Constitution and international law, SASA may not – prevent parents from educating their children. This is true whether the children attend schools or not and irrespective of whether they are registered for home education or not.

No parent can be prosecuted for educating a child at home or anywhere else. A parent may only be prosecuted if the parent fails without just cause, in respect of a child for whose school attendance he or she is responsible, to cause the child to attend school.

Compulsory school attendance

Every child in South Africa must attend a school between the ages of seven and fifteen (sec 3 of SASA) unless there is legitimate reason for not doing so. If a child is not enrolled at a school or does not attend a school, the head of the education department must first investigate the matter and take “appropriate measures” to remedy the situation. If this does not cause the child to attend school, the head of education must notify the responsible parent in writing that the child must attend a school. If the parent still does not send the child to school after having been notified properly, the parent may be prosecuted and sentenced to a maximum sentence of imprisonment of six months per child or a maximum fine of R10 000 per child.

Lawful non-compliance and exceptions

As SASA itself indicates, non-compliance with its provisions does not automatically or in all circumstances constitute an offence. SASA provides three exceptions to the rule that children must be caused to attend schools:

a) A child may be exempted from compulsory school attendance (sec 4 SASA). In practice, provisions like these have been used in the past for children who, for some reason such as long-term illness, severe disability or distance from schools cannot reasonably be expected to attend a school.

b) A child may be registered for education at home (sec 51 SASA). Such a child must receive an education that meets the minimum requirements of the curriculum and the standard of education in state schools. The parents must also comply with such other reasonable conditions as the education department may set.

c) There may be “just cause” as contemplated in section 3(6)(a) of SASA for a parent who has received a written notice from the provincial head of education to fail to send a child to school.

If one of the three situations (a, b or c above) applies to a child, the requirement to cause a child to attend school is simply not applicable.

Legal principles applied to home education

There are, therefore, three different ways for home schoolers to comply with the law.

a) *Exemption from school attendance: The exemptions clause - Section 4*

The exemption clause (a above) is very seldom used, and will not be discussed here.

It has, however, led to much confusion among certain education departments. Officials tend to assume that home learners must be exempted in terms of this clause, even though they are registered as well. This assumption is obviously based on an incorrect interpretation of SASA. This problem appears most severely in KwaZulu-Natal, Eastern Cape and Limpopo.

b) *Registration for home education: The registration clause - Section 51*

Parents who have studied the duly authorised documents specifying the minimum requirements of the curriculum, the standard of education in public schools and the other requirements set by their provincial education department, must decide whether meeting all three these criteria is in the best interests of their children.

The following should be noted: The documents that specify the curriculum requirements and standards of education until the end of 2003 have been investigated by a ministerial committee. The committee found the documents to be too complicated for most professional teachers to implement. Also, the standard of education provided in public schools is not really known at present. All this raises serious doubts about the practical implementability, reasonableness and validity of such documents.

If a parent judges that the specified criteria (curriculum, education standard and conditions) are in the best interests of their children, the parent should apply to the relevant provincial education department for the child to be registered for education at home. In the Free State Province, parents may apply for registration after having commenced home education. In all other provinces, registration must be completed before the home education may commence. Several provinces have closing dates by which registrations must be submitted.

c) *Possible applicability of section 3(6) – the “just cause” clause*

Parents who have reasonable grounds to believe that attendance at a school, as well as an education according to the section 51 specifications (curriculum requirements, education standard and other conditions) are contrary to the best interests of their children, may possibly wish to rely on the “just cause” clause in section 3(6) of SASA.

Section 3(6) may possibly constitute an indirect ground on which school attendance may be lawfully avoided and home education provided. If the parent is prosecuted in terms of section 3(1) of SASA for failing to cause a child to attend school after receiving a notice from the education authorities, the parent may submit that there is a “just cause” for failing to comply with the notice.

The basis of a defence in terms of this clause is for the parent to be able to adduce evidence that the child’s best interests pertaining to education are served by non-attendance of a school. This would obviously necessitate evidence on the nature and quality of the home education and a reasonable explanation on why registration of a learner for home education was not sought or obtained.

As in other criminal prosecutions, it will be for the State to prove that there was no “just cause” for the parent to fail to act in terms of the notice from the head of education - it is not for the parent to prove that there was indeed a “just cause”. However, the parent will, as stated, have to provide some evidence to illustrate the reasonableness of the parent’s stance.

The Pestalozzi Trust has sought legal advice on the new requirements specified in the National Curriculum Statement (NCS) that was promulgated in the Government Gazette on 31st May 2002. According to the advice obtained by the Trust, many Christian and other families should be able to show that the NCS places an unreasonable burden on their children regarding education and that the State would not be able to compel them to cause their children to be educated in terms of the NCS. Insofar as the NCS is also required for home education, this may probably provide reasonable grounds for a parent to fail to send a child to school or to seek permission to educate a child at home on the basis of the NCS.

Does this mean that home schooling parents may ignore the education department and do what they like?

The impression may arise that opting for the “just cause” provision would leave home schoolers in the position of being able to ignore the education departments, doing what they like. This is not so.

Firstly, “just cause” is merely a defence when a parent is criminally charged with unlawfully failing to react to a proper notice from the education authorities to send a child to school. It cannot be used to avoid *legitimate* burdens that the state may place on the child or the parents.

Secondly, families may have to go through the unpleasant experience of defending the education of their children in court. They must, therefore, be ready to do so, and to offer evidence that their children have received an education that is in their best interests and that they have acted reasonably.

Thirdly, families will have to comply with the NCS to the extent that this does not conflict with the fundamental rights and the best interests of their children.

Finally, children being educated outside the official education system cannot receive accredited qualifications to enter the job market or to be admitted to further education. There are, however, some ways of dealing with this:

Alternatives to government qualifications

a) **Qualifications at a mature age.** Some families accept that their children will not receive any qualifications at the “normal” age. These families plan to let their children reach maturity first (while receiving a good non-accredited education at home). They can, if they need or want them, obtain the necessary qualifications through the Adult Basic Education system when they are mature enough to resist undesirable elements of the government education system.

b) **Court order for access to further education or to employment.** For the education department to use exams such as the GETC as a mechanism to prevent access to employment or further education is a severe infringement of constitutional and statutory rights. Children who are disadvantaged by such requirements may, therefore, approach the courts for an order to allow them access to employment or further education commensurate with their proven abilities.

c) Court order to acknowledge foreign qualifications. The Education Minister has indicated that recognition of foreign qualifications may be prohibited for South African residents. Such a prohibition can also be challenged in court.

d) Overseas qualifications / entrepreneurship. Many families are, like some experts, of the opinion that South African qualifications are, in any event, losing their authority at an alarming rate, and may soon hold no attraction for the purpose of employment or personal development. Some of these families plan to educate their children abroad. Others have concluded that their children will be much better prepared if they learn entrepreneurship, and establish themselves in business – irrespective of what accredited or non-accredited education they received.

Summary of possible options

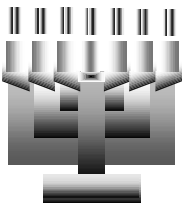
There are grounds on which the education authorities may be accused of abusing the education system by using it as a tool for social engineering in a manner that infringes the Bill of Rights in the Constitution. This governmental action can obviously be challenged in court.

Appropriate home education is one way of escaping the effects of this, but families will have to be prepared to accept some inconvenient effects if they educate their children “outside the system”.

One consequence is the possibility of having to defend themselves against criminal prosecution, but many families are also likely to be inconvenienced by having to find suitable alternatives for accredited government qualifications.

Information on registration is for use by members and prospective members of the Pestalozzi Trust legal defence fund for home education only.

Pestalozzi Trust
Don't stay home without us!



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