



Cape Home Educators

Cape Town, South Africa

Email: capehomeed@gmail.com

<http://www.capehomeed.co.za/>

7 March 2022

Attention:

Mrs BP Mbinqo-Gigaba

Chairperson: Portfolio Committee on Basic Education

Care of:

Mr LA Brown

belabill02@parliament.gov.za

Portfolio Committee on Basic Education

Comments on Section 51 of BELA Bill (B2-2022)

Dear Mrs BP Mbinqo-Gigaba

Cape Home Educators (CHE), established in 1996, is a voluntary association that strive to promote home education as an education modality. CHE also provides advice and support to home educators in the Western Cape.

The BELA Bill has been a controversial bill from the start and the first call for public comment resulted in an unprecedented avalanche of comments received. A fifth (20%) of those pertained to section 51 on Home Education.

New rules, regulations and laws should address a problem. In 2012, minister Motshekga stated that home education would be incorporated in the formal school system. She never gave a reason for this course of action. Why is home education a problem? The call for comment (in 2017) was not accompanied by a Socio-Economic Impact Assessment on Section 51 and the minister admitted that no research on home education was done. Is there proof that home education does not provide a basic education? And how does incorporating it in the formal school system address the supposed problem when the school system fails to fulfil its mandate? Cape Home Educators made numerous requests (both written and verbal) asking for more detail on what the DBE perceived the problem to be. We never received an answer.

Home education is not school or institutional education (it never was, and it never will be). It is an education approach that is child-paced, not limited to one curriculum and with flexibility in regard to adherence to the age-grade bands. Home education allows the child to progress through levels once the current level is mastered or completed. This might correspond to the age-grade band but is not the case for all children or for all subjects. The parent is the facilitator, not the teacher. The choice and number of subjects depend on the approach to education the family follows. The approaches to home education include (but are not limited to) the Classical approach, Natural Learning, Charlotte Maison, Montessori, and Eclectic (a mix of different approaches and materials) and over the past 25 years it has proven itself a successful modality with increasing popularity.

Distance learning (also known as online schooling and home schooling) is lumped together with home education purely because the place where the child receives their education is primarily the home (and current legislation does not make provision for institutionalised education away from the institution). The Covid-19 pandemic and subsequent lockdown was a key driver in the growth of distance learning and CAPS-aligned service providers and online schools have become household names.

Prejudice regarding the demographics of home educators persist despite the rich diversity of home educators across all races, religions, economic background, etc. Unfortunately, research on home education in South Africa is scant and this contributes to the persistence of misconceptions.

Parents choose home education for a number of reasons, topmost of which is the desire to give their children a quality, individualised education that will equip them for their adult life in an ever faster changing world.

Home education offers poor families the opportunity to provide their children with a high quality education - one that is child-directed, child-paced and with strong community involvement. The proposed regulations in Section 51 of the BELA Bill were not based on research and will subsequently make home education unaffordable for these (and even middle income) families. It is lamentable that children in dire need of quality education will be denied the opportunity.

Compulsory school attendance is no longer an effective means through which to realise every child's right to a basic education. In February 2022, learners at Wesbank Secondary School in Malmesbury protested in the streets because of over-crowding, unsafe conditions, and poor quality education. The school has a capacity of 800 learners, but 1600 learners attend. Nationwide there is a dire shortage of schools and teachers. This has been an issue of concern for the past 20 years and will most probably remain one indefinitely. In the Western Cape alone, 14 new schools must be built every year and an additional R600 million need to be spent on maintenance per annum. This is not sustainable.

The Western Cape Education Department has approximately 1500 registered home educators. By our best estimates, this amounts to about 15% of home educators in the Western Cape. (This is based on the members of home education support groups as we do not have accurate figures as provincial level research was not done and the last census data is from 2011). If the 9 500 home educated learners were to return to school, the WCED would need to build or provide an additional 9 schools with a capacity of 1000 learners and at a learner teacher ratio of 30:1 an additional 317 teachers will be needed.

The Department of Basic Education's (DBE) Draft Discussion Document (DDD) of 2015, compiled by Dr Trevor Coombe states that *"home educators and education departments alike should have no difficulty agreeing that **education is to enable each child to develop its personality, talents, and abilities to the full without discrimination; to prepare them for a life of dignity and responsibility in a democratic society; and to foster values of tolerance and respect for others.**"* Despite this acknowledgement the BELA Bill places the national curriculum as the benchmark for education and restricts learners to CAPS-aligned learning.

Research conducted by Learn Free shows that 89% of home educators do not follow the CAPS curriculum. The same research indicates that only 7% of home educated learners plan to write the National Senior Certificate. The national curriculum is thus not applicable to the remaining 93% who plan to obtain alternative matric qualifications such as the American High School Diploma, the

Cambridge International Exam, and the General Education Diploma (GED). With information at our fingertips content should not be given such prominence and the national curriculum should not define basic education. Basic education should focus on the skills required to equip our children for the future. The national curriculum must therefore comply with this requirement and is a tool for public schools to use in the education of their learners.

Government is seeking a legal solution to an educational crisis instead of finding an educational solution. This can be found by doing research into emerging educational modalities and to take cognisance of the evolution of education.

It is time to move from compulsory school attendance to compulsory education.

Section 51 of the Basic Education Law Amendments (BELA) Bill is more in accordance with distance learning than it is with home education. Parents who choose distance learning will have fewer concerns about the provisions in Section 51, but a point of shared contention is the requirement that parents must ask for permission to educate their children from home and that they must convince the head of the provincial education department that they are acting in the best interest of their children.

The Draft Discussion Document of 2015 states in point (71) that *“Home educating parents who, on conscientious grounds or for other reasons have not registered their children in terms of s. 51 of SASA probably number in the tens of thousands. None has yet been charged. **The evidence is clear that future attempts to persuade non-compliant parents to register on pain of criminal sanction are likely to be met with precisely the same indifference by the vast majority of home educators as at present.** There must be a better way. The issue needs to be debated and research on the alternatives should be intensified.”*

At a meeting with the DBE in July 2015, a second Draft Discussion Document was distributed to home educators. Officials from the WCED also attended this meeting. This document makes the following recommendation: *“The CEM will be requested to agree that the discussion document be released for public comment. Thereafter a draft policy document and draft legislation will be prepared, and the interested public will again be asked for advice before both are finalised.”* (p.4) The Draft Discussion Document was never published for public comment and the DBE went ahead to draft a Policy and a Bill that does not reflect the DDD nor the practice and reality of home education.

Despite 6 years’ worth of consultation and sharing international and local research with the Department of Basic Education and the Western Cape Education Department section 51 of the BELA Bill does not reflect the practice and reality of home education. Section 51 of the BELA Bill is impractical and unimplementable.

Concerns with definitions and specific clauses related to Home Education:

In the following table we detail our concerns and comments on relevant clauses from the BELA Bill.

BELA BILL	Comments
<p>“‘home education’ means a purposeful programme of education for a learner, alternative to school attendance, which—</p> <p>(a) is provided under the direction of the</p>	<p>The proposed definition is very narrow and does not make provision for the different philosophies of and approaches to education used by home educators. The definition must reflect the reality and practice of home</p>

<p><i>learner's</i> parent, primarily in the environment of the <i>learner's</i> home;</p> <p>(b) may include tutorial or other educational support, if necessary, secured by the <i>parent</i> on specific areas of the curriculum followed by the <i>learner</i>; and</p> <p>(c) meets the requirements for <i>home education</i> contemplated in section 51 of <i>this Act</i>;"</p>	<p>education.</p> <p>Not all parents use their home as it might not be a suitable venue. Some use the houses of family members and friends; others use the library or a shared community space. In a survey conducted by CHE in 2021 among home educators in the Western Cape, 26.3% of the respondents indicated that they use a site other than their home as the primary home education site.</p> <p>The definition does not allow for parents who use the full-time assistance of family members (such as the grandparents) or the services of a full-time tutor.</p> <p>CHE has proposed the following definition to the WCED. "<i>Home education shall mean a form of non-institutional education, alternative to compulsory school attendance, managed and controlled by the parent and where appropriate the learner, that shall include the choice of educational method and or curriculum, assessment, and educational resources.</i>"</p>
<p>'competent assessor' means an <i>educator</i> registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), or a person or body registered with the South African Qualifications Authority as defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);"</p>	<p>The assessment criteria of home educated learners should be amended so that it is in line with the practice of home education and not only subject to assessment by competent assessors as defined in the BELA bill.</p> <p>The primary educator of the child (the parent or person appointed by the parent) should be recognised as a competent assessor. If a teacher in a class can assess the progress of the learners in the class, a parent is equally able to assess the progress of his/her child.</p> <p>Educational psychologists should be recognised as a competent assessor.</p>
<p>51. (1) If the <i>parent</i> of a <i>learner</i> who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the <i>learner</i> at home, such <i>parent</i> must apply to the <i>Head of Department</i> for the registration of the <i>learner</i> to receive</p>	<p>Parents are opposed to and reject registration that requires approval.</p> <p>In a survey conducted by CHE in 2021 among home educators in the Western Cape, 94.1% of the respondents indicated that they are not in favour of asking for permission to home educate their children.</p>

<p><i>home education.</i></p> <p>(2) The <i>Head of Department</i> must approve the application and register the <i>learner</i> as contemplated in subsection (1)—</p> <p>(a) if he or she is satisfied that—</p> <p>(i) education at home, as provided for in <i>this Act</i>, is in the best interests of the <i>learner</i>;</p> <p>(ii) the <i>parent</i> understands what <i>home education</i> entails and accepts full responsibility for the implementation of <i>home education</i> for the <i>learner</i>; and</p> <p>(iii) the proposed <i>home education</i> programme is suitable for the <i>learner's</i> age, grade level and ability and predominantly covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the <i>Minister</i>; and</p>	<p>CHE is of the opinion that parents are better equipped than the HOD to decide what is in the best interest of their child.</p> <p>This regulation treats parents disrespectfully and assumes that they are uncaring, negligent, and incompetent in providing their children with an education. Requirements for registration should be as few as possible and respect the role of the parents and treat them with dignity.</p> <p>The challenge is to strike a balance between the rights and responsibilities of parents and the responsibility of government bodies. The Children's Act of 2005 2(b)(i) states that the objective of the act is to give effect to the constitutional right of children namely family care or parental care. The definition of care includes (e) guiding, directing, and securing the child's education and upbringing. The education of a child is the responsibility of the parent. The constitution gives every child the right to a basic education, and it is the DBE's responsibility to ensure that this right is realised. Section 51 of the BELA bill fails to find a balance.</p> <p>The Draft Discussion Document of 2015 states in point (71) that "Home educating parents who, on conscientious grounds or for other reasons have not registered their children in terms of s. 51 of SASA probably number in the tens of thousands. None has yet been charged. The evidence is clear that future attempts to persuade non-compliant parents to register on pain of criminal sanction are likely to be met with precisely the same indifference by the vast majority of home educators as at present. There must be a better way. The issue needs to be debated and research on the alternatives should be intensified."</p> <p>Regrettably, research was not done and neither the DBE nor the WCED engaged with CHE re. registration.</p> <p>In a survey conducted by CHE in 2021 among home educators in the Western Cape, 87.5% of the respondents indicated that they would register their children IF they were able to follow the educational approach and</p>
--	--

philosophy of their choice.

The focus on age-grade bands and on following a programme that mirrors the national curriculum do not reflect the reality of home education. It is also not acting in the best interest of the child. Children do not all develop at the same rate, and they should be granted the opportunity to progress at their own pace. Even if this means that their language skills are at a grade 6 level and their maths skills at a grade 3 level when by age (according to the DBE) they should be in grade 5.

A survey conducted by CHE in 2021 among home educators in the Western Cape shows that only 15.8% of the respondents follow the age-grade bands as in school.

Research conducted by Learn Free indicates that only 7% of home educated learners plan to write the National Senior Certificate. The national curriculum is thus not applicable to the remaining 93% who plan to obtain alternative matric qualifications such as the American High School Diploma, Cambridge International Exam, and the General Education Diploma (GED).

Home education is focused on achieving the goals of individual development and allows for flexibility and can rapidly respond to the changing needs of the child, the introduction of new technology, the changes in the environment and the economy, and the rise of never-before-known jobs. The national curriculum is not as flexible and cannot rapidly respond.

With information at our fingertips content should not be given such prominence. Basic education should focus on the skills required to equip our children for the uncertain future.

The DDD states that home educators and education departments alike should have no difficulty agreeing that education is to enable each child to develop its personality, talents, and abilities to the full without discrimination; to prepare them for a life of dignity and responsibility in a democratic society; and to foster values of tolerance and respect for

	<p>others.</p> <p>These goals of education can be attained by all the various home education approaches and philosophies and need not be restricted to the national curriculum.</p>
<p>(b) if the <i>parent</i> undertakes to—</p> <p>(i) make suitable educational resources available to support the <i>learner's</i> learning;</p> <p>(ii) monitor the <i>learner's</i> academic progress;</p> <p>(iii) arrange for the <i>learner's</i> educational attainment to be assessed by a <i>competent assessor</i>—</p> <p>(aa) annually, up to the end of the year in which the <i>learner</i> reaches the age of 15 years or completes grade 9, whichever occurs first; and</p> <p>(bb) against a standard that is not inferior to the standard determined in the National Curriculum Statement; and</p> <p>(iv) submit to the <i>Head of Department</i>, at the end of each phase and as evidence of the <i>learner's</i> educational attainment, the <i>learner's</i> assessment report, signed by the <i>competent assessor</i>.</p>	<p>Why is (i) even in the regulations? Does this perhaps reflect on the DBE's own inability to provide suitable educational resources to all the learners in schools?</p> <p>This manner of assessment (iii) is unfair to all learners who follow an alternative approach. Research conducted by Learn Free (and shared with the WCED in 2021) shows that 89% of home educated learners do not follow the CAPS curriculum.</p> <p>A survey conducted by CHE in 2021 shows that 58.6% of the respondents do not let their children take formal tests and assessments. This is especially true of the primary years.</p> <p>The survey also indicates that parents use continuous assessment in the form of immediate feedback while completing a task or learning objective and conversations about the topic (often at a later stage). This is possible due to the individual attention the child receives.</p> <p>After much discussion with the WCED we still do not have answers to the following two questions.</p> <p>(1) Should learners undergo this type of assessment and perform poorly, what will happen?</p> <p>(2) What is the purpose of the assessments?</p> <p>Will children who fail the assessment have to repeat the grade and if they have spent enough time in the grade or phase be moved to the next grade as happens in school? Or will they have to attend over-crowded schools?</p> <p>If the purpose of assessments is to ensure that the child receives a basic education, then there are many less restrictive means by which to demonstrate that this is in fact happening.</p>

	<p>In a survey conducted by CHE in 2021 among home educators in the Western Cape, 85.5% indicated that they keep record of their children’s progress and academic attainment. This includes (but is not a complete list) questions and tests from the textbooks, completed workbooks, international benchmark tests for literacy and numeracy, and participation in Olympiads and Eisteddfods. 64.5% of the respondents are willing to submit proof of learning when requested to do so.</p> <p>In the same survey 87.5% of the respondents indicated that the cost of the proposed assessments will place a heavy financial burden on their household budgets. As many home educators are already in the lower income bracket, this is unacceptable.</p> <p>CHE believes that assessments should be viewed as private and should only be requested by the DBE or HOD when there is a strong suspicion of educational neglect.</p>
<p>(3) In considering the application, the <i>Head of Department</i> may require a delegated official to conduct a pre-registration <i>home education</i> site visit and consultation with the <i>parents</i> and <i>learner</i> to verify the information supplied in the application documentation and to provide support, where necessary, with the application process.</p>	<p>Home educators want this clause to be removed. If it remains, we request that home visits be an absolute last resort in the verification process.</p> <p>In a survey conducted by CHE in 2021 among home educators in the Western Cape, 73% of the respondents indicated that they are not comfortable with home visits.</p> <p>We are of the opinion that it is not necessary to invade the privacy of the learner and parent to verify the information supplied at registration.</p> <p>Support with the application process will not be necessary if the registration process is simplified and aligned with the practice of home education.</p>
<p>(6) If the <i>Head of Department</i> does not respond within 60 days of receipt of an application for <i>home education</i> as contemplated in subsections (1) and (5), the application shall be deemed to have been approved, on condition that the applicant must be able, on request, to</p>	<p>Requirements for registration should be as few as possible and should be a simple process (such as the registration of a birth) that can be finalised quickly. Parents should not have to ask permission to fulfil their parental duties (providing for the education of their children).</p> <p>Parents who care for their children and are not an active case of a social worker should not</p>

<p>produce proof that an application for registration to receive <i>home education</i> was submitted.</p>	<p>have to wait 60 days for a registration to be finalised.</p>
<p>(10) After a home-educated <i>learner</i> has completed grade 9 or has reached the age of 15 years, whichever occurs first, the <i>parent</i> may enrol the <i>learner</i> at a <i>public school</i> or an <i>independent school</i> for the completion of grades 10 to 12.</p> <p>(11) If the <i>parent</i> of a <i>learner</i> contemplated in subsection (9) desires the <i>learner</i> to eventually write the National Senior Certificate examination, such <i>parent</i> must, before the <i>learner</i> embarks on any studies following grade 9, ensure that the <i>learner</i> complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination (published under R872 in Gazette No. 31337 of 29 August 2008), for a <i>learner</i> receiving <i>home education</i>.</p>	<p>CHE is of the opinion that this point can be removed as it is covered in the regulations and policy mentioned below unless it makes it easier for home learners to be enrolled in school.</p> <p><i>s7(4)(A) 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- (i) the programme requirements for Grades 10, 11 and 12 (ii) separately; the School-Based Assessment, Practical Assessment Task and Language Oral Assessment requirements for Grades 10, 11 and 12; and (iii) the external assessment requirements of Grade 12 as contemplated in the Curriculum and Assessment Policy Statements of the various subjects.</i></p> <p><i>s7(1)(d) He or she must have complied with the promotion requirements for Grades 10 and 11 as contemplated in the policy document,</i></p>
<p>(12) The <i>Head of Department</i> must cancel a <i>learner's</i> registration to receive <i>home education</i> if, after investigation, the <i>Head of Department</i> is satisfied that <i>home education</i> is no longer in the best interests of the <i>learner</i>.</p> <p>(13) The <i>Head of Department</i> may not decline to register a <i>learner</i>, as contemplated in subsection (4), or cancel the registration of a <i>learner</i>, as</p>	<p>This is subject to an opinion and can unfairly restrict a parents' right to home educate their child.</p> <p>We propose that a registration can be rescinded if after numerous attempts (working with and assisting the parent) it is clear from reports by social workers, occupational therapists, educational psychologists, or other suitably qualified persons that home education is not in the best interest of the child, OR if there are child protection concerns when a child has been referred to a social worker or the police</p>

<p>contemplated in subsection (12), before—</p> <p>(a) informing the <i>parent</i>, in writing, of his or her intention so to act and the reasons therefor;</p> <p>(b) granting the <i>parent</i> a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;</p> <p>(c) giving due consideration to any such representations received; and</p> <p>(d) providing the <i>parent</i> with written reasons for his or her decision.</p> <p>(14) (a) The <i>parent</i> of a <i>learner</i> may appeal to the <i>Member of the Executive Council</i>, within 30 days of receiving notice—</p> <p>(i) that the <i>Head of Department</i> has declined the application to register the <i>learner</i> to receive <i>home education</i>; or</p> <p>(ii) that the <i>Head of Department</i> has cancelled the <i>learner's</i> registration to receive <i>home education</i>.</p> <p>(b) If the <i>parent</i> of a <i>learner</i> is of the opinion that any decision of the <i>Head of Department</i> in relation to the <i>home education</i> of the <i>learner</i> in question is unreasonable, such <i>parent</i> may appeal to the <i>Member of the Executive Council</i> within 30 days of receiving notice of such decision.</p> <p>(15) If an appeal contemplated in subsection (14) is received, the <i>Member of the Executive Council</i> must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the <i>parent</i> of the outcome of the appeal.</p>	<p>and the case is under investigation.</p>
<p>(16) The <i>Minister</i> may make regulations relating to registration for,</p>	<p>This gives the minister unlimited powers to regulate home education. This clause is overly</p>

and the administration of, *home education*."

broad and effectively delegates the entire authority of the legislature to the executive without being circumscribed in any manner.

Section 51 of the BELA Bill aims to transform home education into school education from home. Families who follow alternative approaches (89% of home educators) will be left with one of two options; to send their children to school (as the draconian regulations give them no incentive to educate their children at home) or conscious and complete non-compliance with the regulations. Neither of which is a desired outcome and will result in a situation that the DBE and the South African government can ill afford.

CHE thanks the committee for accepting comments on the BELA Bill. We understand that section 51 pertains to a small percentage of the school age population whereas the rest of the bill has a much wider and more urgent application. We thus respectfully request that you consider the removal of section 51 from the BELA Bill.

In addition, we request that you refer it back to the DBE for a complete re-draft based on current research and in participation with the home education community. It should also be considered whether home education should be regulated under the School's Act. The purpose of the School's Act is to regulate schools and educational institutions. Home education is a means of providing education. It is neither a school nor an institution.

BELA Bill should also be drafted to make provision for institutional education at home and thus create a clear distinction between this modality and home education. Allowance should also be made for hybrid forms of education.

Yours sincerely,

Anelle Burger
Chairperson