

## Bouwe van der Eems (ZA)

---

**From:** Bouwe van der Eems [bouwe.vandereems@gmail.com]  
**Sent:** 29 Julie 2011 04:15 PM  
**To:** 'features@childmag.co.za'  
**Subject:** Legal aspects of home schooling

Dear me. Lewis

The website of Child Magazine contains an article about Home Schooling. Generally this is a well researched article, but unfortunately the paragraph about legal requirements creates a number of incorrect perceptions which I would like to rectify, as discussed telephonically.

### The legal situation

The supreme law in South Africa is the constitution. The cornerstone of the constitution is the Bill of Rights which is described in chapter 2 of the constitution. According to art. 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 art. 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 about what is in the best interest of the child. This parental care also includes decisions on education. This means that 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 art. 39 (1) (b) that courts must consider international law. One piece of international law that is applicable to this situation is art. 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 article 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 also shown repeatedly that the qualification of the parents has no influence on the success of home education. There is therefore also no educational basis to ask parents to submit their qualifications.

The article also mentions that parents must submit the curriculum that they plan to follow. This implies that 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, a recent court judgement has also confirmed this. On 25 March this year, Judge Cynthia Pretorius confirmed in the Pretoria High Court that the state curriculum is not binding on independent schools and parents who educate their children at home.

### The practical situation

The article is correct that the SA Schools Act requires parents to register their children for education at home. This registration must be done at the provincial department of education. In practise however, 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. Homeschooling parents are intimately involved with their children and know exactly what their children can or cannot do. However officials 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?

Officials also do not understand the law that they are supposed to apply. Although the South African constitution, international law and court judgements 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 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.

It is because the provincial officials do not understand homeschooling or the law that more than 90% of home learners are not registered. Parents are not willing to comply to the illegal and irrelevant requirements from the provincial departments. To date, not a single homeschooling parent has been successfully prosecuted for not registering their children for education at home.

Regards



**Bouwe van der Eems**

Chairman – Association for Homeschooling

Cell : 082 907 9696

Fax : 086 657 7216

Email : [bouwe@sahomeschoolers.org](mailto:bouwe@sahomeschoolers.org)

Web : [www.sahomeschoolers.org](http://www.sahomeschoolers.org)

PS : If you need a shortened version of the above letter for publication purposes, please let me know.