



The Actual Law: The changes of the BELA Bill to the SA Schools Act

The yellow sections are the BELA Bill changes and additions; the white sections are the parts of the present SA Schools Act which remain the unchanged.

We quote directly from the SA Schools Act and BELA Bill, to give you an overview of what the law says.

CLAUSE 1

Definitions

‘basic education’ includes *grade R* to grade 12, as evidenced in the National Curriculum Statement;

‘competent assessor’ means an *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), a recognised professional body in the field of education, 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);’;

‘home education’ means a purposeful programme of education for a *learner*, alternative to *school* attendance, which—

(a) is provided under the direction of the *learner’s* parent, primarily in the environment of the *learner’s* home;

(b) may include tutorial or other educational support, if necessary, secured by the *parent* on specific areas of the curriculum followed by the *learner*; and

(c) meets the requirements for *home education* contemplated in section 51 of *this Act*;’;

‘learner’ means any person receiving education or obliged to receive education in terms of this Act;

‘parent’ means—

(a) the biological or adoptive parent or legal guardian of a learner;

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner’s education;

‘special education needs’ means education designed to facilitate the learning of individuals who, for a wide variety of reasons, require additional support and adaptive pedagogical methods in order to participate and meet learning objectives in an educational programme;

CLAUSE 2

Section 3 of the South African Schools Act, 1996, is hereby amended—

(1) Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to attend *school*, starting from *grade R* on the first *school* day of the year in which such *learner* reaches the age of six years and not leaving *school* until the last *school* day of the year in which such *learner* reaches the age of 15 years or will complete grade nine, whichever occurs first.”;

(2) The *Minister* must, by notice in the Government Gazette, determine the ages of compulsory attendance at *school* for *learners* with special education needs.

(3) Every *Member of the Executive Council* must ensure that there are enough *school* places so that every child who lives in his or her *province* can attend *school* as required by subsections (1) and (2).

(4) If a *Member of the Executive Council* cannot comply with subsection (3) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the *Minister* on the progress achieved in doing so.

(5) 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* 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).

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

- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, 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 12 months, or to both a fine and such imprisonment; or
- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending *school* is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”; and

(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a *school*, or hinders or obstructs any *school* in the performance of the *school’s* official educational activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”

CLAUSE 35

The following section is hereby substituted for **Section 51** of the South African Schools Act, 1996:

Home education

51. (1) If the *parent* of a *learner* who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the *learner* at home, such *parent* must apply to the *Head of Department* for the registration of the *learner* to receive *home education*.

(2) The *Head of Department* must approve the application and register the *learner* as contemplated in subsection (1)—

- (a) if he or she is satisfied that—

(i) education at home, as provided for in *this Act*, is in the best interests of the *learner*;

(ii) the *parent* understands what *home education* entails and accepts full responsibility for the implementation of *home education* for the *learner*; and

(iii) the proposed *home education* programme is suitable for the *learner's* 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 *Minister*; and

(b) if the *parent* 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 by a *competent assessor*—

(aa) at the end of each phase, up to the end of the year in which the *learner* reaches the age of 15 years or completes grade 9, whichever occurs first; and

(bb) against a standard that is not inferior to the standard determined in the National Curriculum Statement; and

(iv) submit to the *Head of Department*, at the end of each phase and as evidence of the *learner's* educational attainment, the *learner's* assessment report, signed by the *competent assessor*.

(3) In considering the application, the *Head of Department* may, on just cause shown and after notification to the parent, require a delegated official to conduct a pre-registration consultation with the *parents* and *learner* to verify the information supplied in the application documentation and to provide support, where necessary, with the application process.

(4) If the *Head of Department* is satisfied that the *parent* does not meet the requirements set out in subsection (2), or if the outcome of the process set out in subsection (3) fails to satisfy the *Head of Department* that *home education* is in the best interests of the *learner*, the *Head of Department* must decline to register a *learner* to receive *home education*.

(5) If a *parent* educates a *learner* at home, and that *learner* has, at the time of the commencement of this section, not been registered as contemplated in this section, the *parent* must, within 30 days after the commencement of this section, apply to the *Head of Department* for the registration of the *learner* to receive *home education*.

(6) If the *Head of Department* does not respond within 60 days of receipt of an application for *home education* 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 produce proof that an application for registration to receive *home education* was submitted.

(7) A *learner* who is registered to receive *home education* is exempted from *school* attendance as contemplated in section 3.

(8) The *parent* of a *learner* who has been registered as contemplated in subsection (1) or (5) must notify the *Head of Department* at the end of the—

(a) Foundation Phase (grades R to 3);

(b) Intermediate Phase (grades 4 to 6); and

(c) Senior Phase (grades 7 to 9),

of his or her intention to continue educating the *learner* at home.

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(9) A *parent* who wishes to continue educating a *learner* at home after the *learner* has reached the age of 15 years or has completed grade 9, whichever occurs first, or who wishes to start educating such *learner* at home at such time, is not required to apply for registration, as contemplated in subsections (1) and (5), or to notify the *Head of Department*, as contemplated in subsection (8).

(10) After a home-educated *learner* has completed grade 9 or has reached the age of 15 years, whichever occurs first, the *parent* may enrol the *learner* at a *public school* or an *independent school* for the completion of grades 10 to 12.

(11) If the *parent* of a *learner* contemplated in subsection (9) desires the *learner* to eventually write the National Senior Certificate examination, such *parent* must, before the *learner* embarks on any studies following grade 9, ensure that the *learner* 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 *learner* receiving *home education*.

(12) The *Head of Department* must cancel a *learner's* registration to receive *home education* if, after investigation, the *Head of Department* is satisfied that *home education* is no longer in the best interests of the *learner*.

(13) The *Head of Department* may not decline to register a *learner*, as contemplated in subsection (4), or cancel the registration of a *learner*, as contemplated in subsection (12), before—

- (a) informing the *parent*, in writing, of his or her intention so to act and the reasons therefor;
- (b) granting the *parent* a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;
- (c) giving due consideration to any such representations received; and
- (d) providing the *parent* with written reasons for his or her decision.

(14) (a) The *parent* of a *learner* may appeal to the *Member of the Executive Council*, within 30 days of receiving notice—

- (i) that the *Head of Department* has declined the application to register the *learner* to receive *home education*; or
- (ii) that the *Head of Department* has cancelled the *learner's* registration to receive *home education*.

(b) If the *parent* of a *learner* is of the opinion that any decision of the *Head of Department* in relation to the *home education* of the *learner* in question is unreasonable, such *parent* may appeal to the *Member of the Executive Council* within 30 days of receiving notice of such decision.

(15) If an appeal contemplated in subsection (14) is received, the *Member of the Executive Council* must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the *parent* of the outcome of the appeal.

(16) The *Minister* may make regulations relating to registration for, and the administration of, *home education*.”.