

10th April 2019

Ministry of Education

Western Cape Government

Att: Deborah Schafer

Email: edumin.edumin@westerncape.gov.za

Dear Deborah,

Re: Your response to correspondence with Anelle Burger regarding home schooling

You wrote a response to Anelle Burger on the 5th March 2019, of which I have seen a copy, though I have not seen her original letter to you. I am simply writing in response to your response, which I have attached for your convenience, as it highlights a few issues which I feel would be useful for me to explore with you. We can only make progress as a country when the citizens engage with their elected representatives in a constructive and honest dialogue. I appreciate you mentioning clearly that you are not opposed to homeschooling as a possible form of education and very deeply appreciate that you are still in communication and discussion with the wider homeschooling community.

I am a homeschool mother who was involved with the previous incumbent in your role, Donald Grant. I also was in correspondence with you at that time. You might recall some of it, in regard to the publishing of the draft Policy for the Registration of Home Learners around the beginning of 2014. Indeed, we are still going on with the journey of working together to try to resolve the rather tricky issue of government involvement in homeschooling. I was also involved in the policy drafting process in Pretoria with the working group. This was a highly unsatisfactory process and one which has left me very disgruntled with the public participation in the promulgation of same. Sadly, I have the original working document and the final document and so can very clearly see where changes were (and were not) made from our original document to the final one. That comparative analysis is a sad indictment against a democratic government. Even more sadly, in our particular correspondence and discussion, is that the Western Cape government does not seem to have determined to use such powers, as it has, to correct such a wrong. Be that as it may, let us move onto your letter.

I think before discussing the issue of the form that is on your website for homeschooling families, it is useful to have a wider context for the form. In the first instance it is useful to become well versed in the United Nations Convention on the Rights of the Child. This establishes the definition of education as something which should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights of their parents, and education should aim to develop respect for the values and culture of their parents.

It also outlines the overall approach to dealing with children, in that the best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how

their decisions will affect children. This particularly applies to budget, policy and law makers. Additionally, when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making -- not give children authority over adults. Article 12 does not interfere with parents' right and responsibility to express their views on matters affecting their children.

It also outlines the role of government, some of which are as follows:

- (1) Governments should make the Convention known to adults and children.
- (2) Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services.
- (3) Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones.

It also outlines the role of parents in that both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children – the Convention does not take responsibility for children away from their parents and give more authority to governments.

So, taking all of that together, when I look at the form that is required, I am left with more questions than answers. My questions are:

1. How does this form support the requirement for education to develop each child's personality, talents and abilities to the fullest?

Further questions arise from this one

- a.) What are each of my child's fullest personality, talents and abilities?
 - b.) How are those developing and changing over time?
 - c.) What kind of learning materials/resources do they need to develop such personalities, talents and abilities?
 - d.) What role does my child's motivation or interest in developing such personality, talent and ability have in the context of learning vs. teaching and self-determination?
2. How does this form support the requirement to encourage my children to respect others, human rights and their own and other cultures?
 3. How does this form support the need for them learn to live peacefully, protect the environment and respect other people?
 4. How does this form support the fact that education should aim to develop respect for the values and culture of their parents?
 5. How does this form ensure that the best interests of my children is of paramount importance?

Further questions arise from this one

- a.) What are the best interests of each of my children?
 - b.) How do my decisions affect my child? What are the consequences of different courses of action? What is the likely future my children need to be prepared for?
 - c.) What makes one ability or talent or skill more worthwhile for this child than others?
6. How does this form allow my children to say what they think should happen and have their opinions taken into account?
 7. How does this form make the convention known to the public?
 8. How does this form show the government are meeting their obligations in protecting the above mentioned rights?
 9. How are the minimum standards set by the convention being met by this form?

Additionally, the form is required to pass the test of the Constitution of South Africa. Both documents really complement each other and the only additional item worth raising is the right to a basic education. Sadly, this is not defined in the Constitution, but happily we have a definition of education within the Convention.

So, it is with these background documents and questions that we turn to your reply. I am sure you appreciate there is vehement opposition to the previous form WCED 087 as well as its update. Principally, it would seem that the opposition is in the form of people simply not completing the form for the lack of assurance that either it passes all the legal hurdles, and/or, that it does not, in itself, infringe on their children's right to education.

Be that as it may, you mention the only material change is the inclusion of the necessity for assessment of the learner. The wording of this section is so unclear that a person would be terrified to put their signature next to it in agreement. What am I signing up to? I am not sure who would meet the definition of a "independent, suitably qualified person(s)" I am also struggling to see that there is anyone on the Earth who understands what my children know and don't know and what personality, talents and abilities they have or don't have better than my children themselves. Coming in a close second would be me, as I spend the most time with them of anyone on Earth. If you want to know if my child knows how to read a certain book, just ask. If you want to know if they can greet you in Xhosa, just ask. If you want to know if they can recite their 5 times tables, just ask. It seems rather comical for me to pay for a total stranger to come to our home to quiz my children on what skills, abilities and talents they have, and then for that same stranger to go away and write a report to tell them what they know and what they don't know, as if they have no idea of who they are.

Even if we were to come to some agreement on what an independent and suitably qualified assessor was, and on the necessity for such a person to have access to my children, we would still be left with obstacles to overcome. What is it they are to assess? As I see from the Convention it would be that they are fulfilling their fullest potential in personality, talents and abilities. In order to assess, first we would have to define or outline what that looks like. Well, with two different children, I know for fact that they are as different from each other as night and day and so there would need to be a different assessment for each child, without doubt. Furthermore, the assessment would end up be vastly different for each child from one assessment at age 10 as from age 14 as from age 18, looking at how vastly different they have become as they have grown and matured. This creates a conundrum of the kind to which a simple solution is most elusive. It creates a real obstacle to deciding what it is that this assessor would assess. The second part of the conundrum is to what end? Should we find an agreement on what a suitably qualified assessor is, the need for such a person and the talents and abilities

this assessor must assess, then the obvious question is, what is that child's fullest potential? At this moment, most people would give up and say the difficulty with achieving an education, as required by the definition in the Convention, is that it is fluid and organic and requires day by day monitoring and adjustment and modifying. If you are more resilient to dealing with complex multi-layered problems (as I am very sure you are) then we can move on and say, once we have agreed who the assessor should be, and that such an assessor is necessary, and that we have a good grip of what the individual child's abilities and talents are and that we know what their fullest potential is in these areas, we meet the final snag which is the crux of all education which is that a child will only learn that which he/she is interested in learning. Yes, we can teach children a great many things, we can talk for hours, show interesting videos, get in world experts, but at the end of the day if the child has no motivation, no interest, no desire to learn what they consider nonsense drivel it is simply not possible to educate them in those skills, abilities or talents. This is the right which is embedded in all rights, we have the right to choose to either exercise our rights, or not. In other words, if I have the right to freedom of speech, I also have the right to remain silent. If I have the right to an education, I also have the right to remain uneducated. This starts us going down an even more complex, yet much more vital path, in answering the most critical question of "When does forcing an education onto a child become abusive, in the sense of breaching the final frontier of all freedoms – our own minds, our own thoughts, our own choices and our own self-determination?" Could a child sue a parent or a government for breaching such frontiers of freedom? They don't necessarily need to, they can simply stop paying attention, stop listening and stop learning. As all humans may exercise their right to remain silent by simply stopping speaking. It is true that people exercising their right not to exercise a right can be most infuriating and annoying, as we come face to face with the limits of our own power. This may well result in feeling the need to infringe on some of their other rights in order to threaten, coerce or manipulate them into capitulating. This includes, for example, the torturing of witnesses to get them to speak and share information. This may also include withdrawing the child's right to freedom of speech, safety, security, privacy and dignity by silencing them, publicly shaming them, beating them, enforcing a multitude of punishments and degradations, publicising their grades either in awards and prizes or in lists pinned to a board, and so on, in order to force them to grant permission for others to access their minds and for them to attain some of the skills that the government, the parents, the teachers or whoever seems "in authority", may deem necessary, against their expressed wish not to be involved in either engaging with said persons or to develop such skills. I am sure you can see we are now staring right at the coal face of a child's right to an education, and we see more plainly the difficult, complex web of powers, rights and legislation which lie behind what seems, on the face of it, a simple form which can be quickly filled in and returned.

Going back to that form, all of these issues combine to pose us with a really awkward question, what if the child fails such assessments? Who will determine why the child has failed such assessments? Who will remedy the scenario of a child not developing their personality, ability and talents to their fullest potential? What remedies should be put in place? Will those remedies truly bring about the changes that are required in the child's education? Should the child be removed from their home and their parents because they are not fulfilling their fullest potential? Where would they be removed to? Is that new scenario likely to provide them with a better education?

I'm guessing by now you are wondering if I am ever going to mention the SA Schools Act and the Policy on Home Education. No, I am not. The principal and primary reason being, as mentioned above, the wording and the legal framework on which such documents have come to pass in our country is an infringement on the right of my children to an education, as per the only definition to which I have recourse – that provided by the Convention. I do go on, and on, and on, about the need for a definition of "education" in our legal statute because

without such a thing it is simply not possible to prove one way or another that my children are or are not "educated". My children do not have a right to school or curriculum or assessment or a programme of learning or any other such term or idea or notion which may appear on the many forms and policies and laws that I have seen which have "education" in their titles. This is where I pick up your letter again about the government needing to have measures in place to ensure that children are being educated to an acceptable standard. It is back to that question of what is an acceptable standard of education, being as such a standard must meet the following criteria:

- Be in the child's best interests
- Develop the child's personality, talents and abilities
- Teach them to respect others; about human rights and their own and other cultures; live peacefully; protect the environment and develop respect for the values and culture of their parents
- Allow for children to have a say in what they think should happen and have their opinions taken into account

Such a standard would call into question a great deal of what occurs in schools as they provide for "education", as they claim to do. But that is a discussion for another day. I am only mentioning that as it highlights the necessary and possibly monumental mindshift which is required when the government engages with its need to have measures in place to ensure children are being educated to an acceptable standard at home. We are almost in a different universe to school, in our practical development of our children as well as our understanding of what education means in theoretical and ideological terms.

This is where the rub between homeschoolers and government officials truly lies. We operate on different understandings and different terms and yet must unite under the same Constitution for the advancement of the same country and the same citizens. As you state in your letter "I therefore believe that this Policy is a responsible exercise of government power and responsibility, whilst providing for parents also to home school their children. I do not believe that it is unreasonable for government to prescribe minimum standards, and assessments at intervals of the child's education. In fact, I believe that we would be failing in our constitutional responsibilities if we did not provide for same." I am sorry if I may seem to labouring on my points, but feel I need to just highlight a different view to the one you take here. A responsible exercise of government power and responsibility would be to agree a comprehensive definition of education, outline how such a definition meets the raft of legal requirements placed upon it, explain how any law or policy derived from that definition then go about ensuring a child's right to such a thing. This policy seems rather to advance an idea of education that is by the government, for the government, and that idea is that "NCS is education". NCS is not "education" and will never be "education", pretty well by any definition of that word, but most especially by the UN Convention on the Rights of the Child. I would even argue that my children being required to fulfil the requirements of the NCS is an infringement on my children's rights to:

- an education; because it does not advance their unique personality, abilities or talents in broad terms
- their best interests being of paramount importance; because they are better serviced with an education which is individualised and unique to advancing their personalities, abilities and talents to their fullest potential
- be allowed to have an opinion and to have that opinion heard and taken into account
- dignity and privacy; because they should be allowed to go about their education without unnecessary interference from government officials, assessors and others without my and their express permission

- exercise the right to an education; because there is no mechanism by which they can decline their right to an education

It is therefore my belief that you have failed in your constitutional responsibilities, by forging ahead with such laws and policies and forms and whatnot without ensuring you do so on the most solid of legal ground. This highlights a key point from your letter about governmental power. This power has huge limits placed on it by our Constitution. Checks and balances and limits on power are placed on the whole government by the various arms of government. Having said that, power is provided to the government by the people of the country, and in order for a peaceable society to exist, the people agree to it that the government, may, at time, need to infringe on an individual's rights. There is due process required for such situations and it is a well-worn legal path. Do I feel the governmental power to force my children to meet the NSC as a minimum standard and to be assessed against such a standard fall within this realm of the law? No, I don't believe so. Perhaps there is grounds for arguing that in state schools where schooling must be provided en masse to the young citizens of the country one needs a blanket one-size-fits-all programme of teaching deemed fit and necessary by the Department of Education. Perhaps by enrolling one's children in such institutions one is agreeing with the necessary infringements which will come with such a decision. Thankfully, that is a debate for another time, and of which I am not particularly well placed to have a view. It is also true that at the end of all things, the government is the ultimate guardian of the citizens of South Africa. Again, this is a well-worn legal path with necessary checks and balances in place to ensure this guardianship is only used in specific circumstances. Again, the use of this power is for a discussion at another time.

In summary, you feel your form is a correct administrative procedure of the government to ensure my children's rights to an education, and I feel your form is an infringement on such a right, as well as many others. I am sure, as is often said, the truth lies somewhere between us.

I am hoping that this letter will allow you to start making a paradigm shift away from seeing homeschooling as a home institution providing school, where there are grades and curricula and standards and programmes of learning and move towards what home schooling truly is which is a family providing a highly individualised education, in partnership with their children, in the spirit and word of what is required by the UNCRC and the Constitution of South Africa. Where the government should place itself in such an undertaking is a very prickly, difficult, complex area of legality. My view, which I have put forward many times, is that our law should reflect that of the UK, which is that parents are responsible for ensuring their children receive an education by attendance at school, or otherwise.

I think it is only through a truly honest and open discussion between parents, children and government that a mutually agreeable position will start to become clear. Sadly, the final policy working group ended up being made up solely of government officials and curriculum providers, as Leendert and I excused ourselves from the group once it became clear we were to be seen as "working for the DBE" and were there to rubberstamp a policy, which is, in my humble opinion, legally indefensible.

I am looking forward to reading your response.

Yours sincerely

Joy Leavesley (On behalf of her children)

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