

SEA POINT NEEDS AFFORDABLE HOUSING TO PROMOTE ACCESS TO QUALITY EDUCATION

EQUAL EDUCATION AND EQUAL EDUCATION LAW CENTRE

Joint submission on the proposed sale of the Tafelberg property

1. Overview

- 1.1. This is a joint submission by Equal Education (EE) and the Equal Education Law Centre (EELC). EE is a membership-based, democratic movement of learners, parents, teachers and community members. Its core objective is to work towards achieving quality and equality in education in South Africa.
- 1.2. The EELC is a public interest law centre specialising in education law. EELC works closely with EE in pursuit of their mutual goals of an equal education system and quality education for all.
- 1.3. Learners in South Africa face unequal access to quality education. The state has a Constitutional obligation to redress this inequality and provide a good education to all learners.
- 1.4. Schools in wealthy areas generally offer greater educational opportunities than schools in poor areas. Economically inclusive zoning has been shown to improve educational outcomes for poor students as bringing poor learners closer to better equipped schools will lead to increased access to better school infrastructure and improved teaching and learning.
- 1.5. Affordable housing in Sea Point would allow learners who would otherwise be forced to reside in historically disadvantaged communities to access Sea Point schools safely. It would also allow Sea Point teachers and support staff to live where they work.
- 1.6. With the Tafelberg site, the province has an opportunity and the obligation to make a principled step toward redressing the legacies of spatial apartheid and to fulfil its Constitutional mandate to promote equality and access to education for disadvantaged learners, teachers, and school personnel.

2. Redressing education inequality and disrupting apartheid geographies – a Constitutional imperative

- 2.1. Section 7(2) of the Constitution places an obligation on the state to respect, protect, promote, and fulfil the right to equality and the right to a basic education. Section 29 of the Constitution has been interpreted by our courts to entail a package of rights and services and to impose an obligation on the State to not only provide education but to also

simultaneously redress past imbalances caused by the racially discriminatory laws and practices of the apartheid era.¹

- 2.2. That there is an “inextricable link” between geography and race in South Africa is indisputable. In *City Council of Pretoria v Walker*, the Court held that “[t]he effect of apartheid laws was that race and geography were inextricably linked and the application of a geographical standard, although seemingly neutral, may in fact be racially discriminatory”.²
- 2.3. In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*, the Court discussed how the legacy of apartheid persists in the shortage of housing in Cape Town: “...that legacy is sharply reflected in the desperate shortage of adequate housing for African people in one of our major urban centres, Cape Town ...that shortage arose in part because of the apartheid government’s ‘Coloured labour preference policy’ in terms of which African people were not afforded rights to reside in the Western Cape; and housing was not built for them.”³
- 2.4. The legacy of historical and persistent inequality that traces apartheid’s geographical boundaries limits the full and equal enjoyment of the right to basic education for the majority of black children.
- 2.5. The Constitutional Court has on repeated occasions bemoaned the continued imbalance in access to education based on the legacy apartheid’s racist spatial planning. As the Constitutional Court has stated:

“...the lasting effects of educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners.”⁴

“...radically unequal distribution of resources—related to a history of systemic discrimination—still makes the constitutional guarantee of the right to a basic education ‘inaccessible for large numbers of South Africans.’”⁵

- 2.6. EE, represented by EELC, recently intervened as *amicus curiae* in the matter of *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another*. In the FEDSAS case, EE challenged the use of geographically-based feeder zones in Gauteng as racially discriminatory and a violation of Section 9(3) of the Constitution. The Constitutional Court acknowledged that there was traction in EE’s arguments. This signals recognition

¹ *Minister of Finance and Another v Van Heerden* 2004 (6) SA 121 (CC) at para 31.

² *City Council of Pretoria v Walker* 1998 (2) SA 363 (CC) at para 32.

³ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* 2010 (3) SA 454 (CC) at para 264.

⁴ *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC) at para 42.

⁵ *MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others* 2013 (6) SA 582 (CC) at para 1.

by the courts that there is a need to actively disrupt the legacies of apartheid spatial planning and the unequal access to opportunities it has created.

3. Evidence shows that geography influences educational outcomes

3.1. Despite formal desegregation, the legacy of apartheid spatial planning persists across South Africa and in Sea Point. Various academic studies conclude that in post-apartheid South Africa geography, race, and socio-economic status remain highly correlated.

3.1.1. It has been shown that both historical constraints (apartheid inequality and spatial segregation) as well as financial constraints play a significant role in limiting access to quality education.⁶ Despite the removal of apartheid restrictions on mobility, poorer people are prevented from moving to well-off areas that have better education opportunities because of financial constraints. Ultimately, the opportunity for better education is geographically correlated with land prices. One study showed that “*formerly white schools are located in subplaces where the population of whites is still the majority.*”⁷

3.1.2. Furthermore, children born to very poor residents of urban informal settlements face considerable barriers when trying to access well-resourced schools.⁸ While there is formal desegregation, the way in which class and race are embedded into access to schooling has become far more complex. Research has highlighted that school admissions processes, both formal and informal, is one of the primary factors shaping the inequality in schools in South Africa.⁹ In the Western Cape, schools generally establish feeder zones on the basis of geographical proximity, affording preference to local learners when making admission decisions. Because spatial apartheid persists in South Africa, this preference generally excludes poor learners from high-quality schools in wealthy neighbourhoods and may amount to indirect racial discrimination.

3.1.3. Tragically, it still matters whether a learner attends a school from a historically “black” area or a historically “white” area. Research concludes that race remains a major factor to explain school performance.¹⁰ The persistence of former racial inequalities is reflected in extremely poor pass rates in mainly black schools.¹¹ The Report on the Annual National Assessments describes how learners at Quintile 5 schools, such as Sea Point High School, typically outperform learners at all other

⁶ F Yamauchi (2011) *School Quality, Clustering and Government Subsidy in Post-Apartheid South Africa* Economics of Education Review 30: 146-156.

⁷ Yamauchi, p150.

⁸ M Hunter (2010) *Racial Desegregation and Schooling in South Africa: Contested Geographies of Class Formation* Environment and Planning A 42(11):2640-2657, p2640.

⁹ Hunter, p 2647.

¹⁰ S Van der Berg (2007) *Apartheid's Enduring Legacy: Inequalities in Education* Journal of African Economies 16(5): 849-880.

¹¹ Regressions of matriculation pass rates from school level data show that racial composition of schools—as a proxy for former school department—remains a major explanatory factor beside socio-economic background and educational inputs.

schools on academic assessments. The development of mixed-income housing in Sea Point would therefore be a step toward addressing the skewed distribution of education resources under Apartheid.

4. Evidence shows that mixed-income housing improves educational outcomes for poor learners

4.1. Evidence from other countries shows that creating affordable housing in better resourced areas improves educational outcomes for poor learners who benefit from these programs. In the United States, a program in Maryland created affordable housing in a wealthy suburb of Washington, DC. The poor students who benefitted from this housing and attended primary schools in the area experienced significant academic gains: by the end of primary school, they had closed up to half of the “income achievement gap,” or the difference in academic achievement that exists between rich and poor students in the United States.¹²

4.2. The academic gains achieved by these children resulted from living in low-poverty neighbourhoods and attending schools in those neighbourhoods. Researchers found that while the biggest benefits to students came from attending those schools, students also experienced academic gains *solely* from living in low-poverty neighbourhoods. This benefit is attributed to increased housing stability (e.g., not having to move every year due to rent hikes) as well as reduced stress levels, increased academic expectations, and increased adoption of pro-social attitudes and behaviours.¹³

4.3. Maryland—along with other American states and cities—adopted inclusionary zoning policies to counteract residential racial and economic segregation. These policies have made well-resourced schools accessible to poor students, and these students have excelled academically as a result. The Province should use the opportunity presented by the Tafelberg site to take a first step towards expanding academic opportunity to poor learners in Cape Town.

5. Poor learners who manage to attend schools in the city face trying conditions

5.1. The majority of parents living in poor suburbs of Cape Town have no alternative but to send their children to lower-quality local schools. However, some parents may be fortunate enough to work in wealthier neighbourhoods and enrol their children in schools located there.

5.2. However, these children still face difficulties in attending these schools. The strongest evidence of the difficult situation of these learners comes from their own words. Songo, a grade 10 learner at Thandokhulu from Philippi, writes that her mom is nervous for her commuting in the dark: “*I always tell her nothing will happen to me while deep inside I know something might happen any day.*” Students also write about the cost of long

¹² H Schwartz (2010) *Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland* The Century Foundation.

¹³ Schwartz, pp. 6-9.

commutes, both in terms of time and money. Yondela, a grade 11 learner at Good Hope High School, lives in Gugulethu. She wakes up at 5 am and takes two taxis and a bus to arrive to school after 7 am. At night she arrives home at 7:30 pm. After finishing chores and helping her brother with his homework, she can finally begin to study at 9:30 pm. Her situation is typical: most learners in her situation report waking up at 5 am or earlier and spending up to three hours per day commuting to and from school. And the financial cost is substantial.

5.3. Despite these difficulties, these learners are among the most “privileged” in their communities. Most of their neighbors are precluded from accessing these high-quality schools due to financial or other constraints.

6. The lack of affordable housing creates difficult working conditions for teachers and other personnel at Sea Point schools

6.1. The lack of affordable housing near quality schools also has an impact on teachers and school personnel. A primary school teacher in Cape Town earns, on average, R12,000 per month – substantially below the average monthly Sea Point rent of R20,381. School personnel earn less.

6.2. Creating affordable housing in Sea Point would enable these teachers and school personnel to live where they work. This will significantly contribute to the ability of teachers to be available to learners and to be connected to the community within which the school is located.

7. Public land should not be sold for the development of private schools

7.1. The proposed sale of Tafelberg (public property upon which a public school was formerly situated) for the development of a private school is arguably a regression in the rights of children to equal access to quality education. The buyer has expressed an interest in the development of an independent school on the property which, by its nature, has the power to limit admissions which may render it inaccessible to poor and mostly black learners.

7.2. The sale of public land for long term use as a private school is at least tacit support, on the state’s part, for the commodification of education. Such a decision would not survive constitutional scrutiny and will be a failure of the relevant organs of state to recognise and fulfil their constitutional obligations to promote and further the right to basic education and substantive equality.

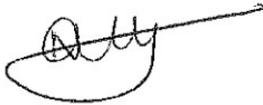
8. Conclusion

8.1. Education is the engine of any society¹⁴ and equal access to education is the key to the realisation of other constitutional rights. It is the primary way in which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the

¹⁴ *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another* 2010 (2) SA 415 (CC) Moseneke DCJ at para 2.

means to participate fully in their communities. Equal access to basic education for children in South Africa is therefore key to achieving substantive equality.

- 8.2. The development of affordable housing in Sea Point would be a step towards fulfilling the constitutional obligation to redress the legacy of unequal access to education resources under Apartheid.
- 8.3. The sale of the Tafelberg property for the purposes of developing an independent school would signal tacit support for commodification of education and would be an unreasonable and regressive decision in light of the constitutional imperative on the state to further access to public schools.



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