

**ATHEIST IRELAND SUBMISSION TO  
THE CHILDREN'S RIGHTS ALLIANCE  
ON THE CONVENTION ON  
THE RIGHTS OF THE CHILD**



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**1. Article 2 - Non Discrimination**

1.1 Article 2 of the Convention on the Rights of the Child obliges the state to guarantee the rights enunciated in the Convention to all children without discrimination. Ireland does not protect the children of atheist/secular families from religious discrimination as the Supreme Court elevated the constitutional free practice of religion guarantee over the non-discrimination guarantee. There is no effective remedy for atheist/secular families to vindicate the rights violated under the Convention on the Rights of the Child.

1.2 General Comment 1 – the Aim of Education of the Convention on the Rights of the Child states that:

*“10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. ....All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.”*

1.3 In April 2014 in a Submission to the Minister for Justice Equality and Defence the Equality Authority [i] (IHR & Equality Commission Designate) stated that:

*“In spite of recognising the need to protect religious interests, the Supreme Court elevated the constitutional free practice of religion guarantee over the non-discrimination guarantee. A similar analysis to that of Quinn’s Supermarket was provided by the Supreme Court in McGrath v Trustees of Maynooth College which concerned the argument of the plaintiffs who were dismissed on grounds relating to their religion that this action constituted “discrimination on grounds of religious status” within Article 44.2.3 of the Constitution. In following the reasoning of Quinn’s Supermarket, the Supreme Court concluded that the purpose of the prohibition on religious discrimination was to protect the free practice of religion. This resulted in the prohibition on religious discrimination effectively being superseded or overcome by the protection of the right to free practice of religion”. [ii]*

1.4 The Irish Constitution clearly does not protect atheist/secular families from religious discrimination. The Irish state provides exemptions in the Equal Status Act 2000, Education Act 1998, and Employment Equality Act 1998/2004 for bodies with a religious ethos (schools/hospitals) to discriminate on religious grounds. The European Convention on Human Rights Act 2004 only applies to ‘organs of the state’ and publicly funded schools in Ireland are not considered ‘organs of the state’. The vast majority of schools in Ireland are publicly funded but essentially private and there is no parallel system of non-denominational schools.

1.5 Article 40.1 of the Constitution reads:

*“All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”*

1.6 The Irish Human Rights Commission in their Report to the UN under the UPR, recommended a Constitutional Referendum on Article 40.1 to proscribe discrimination. They also made the following comments in their Submission on the List of Issues to the UN Human Rights Committee under the ICCPR. [iii]

*“The IHRC has also called on the State to expand the definition of equality in Irish law. In particular, the IHRC considers that Article 40.1 of the Constitution should be amended to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds. To the IHRC’s knowledge there has been no discussion by State authorities of the need for the equality guarantee under Article 40.1 of the Constitution to provide (or be interpreted to provide) equivalent protection to the right guaranteed under Article 26 of the Covenant. As noted, nor has the matter of the current interpretation of the equality guarantee under Article 40.1 of the Constitution been referred to in the Terms of Reference of the Constitutional Convention.”*

1.7 The United Nations Committee on Economic, Social and Cultural Rights in their concluding observations in 2002 stated the following on Article 40.1:

*“The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee’s 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.”*

1.8 The Constitutional Review Group Report 1995 also recommended Constitutional change to Article 40.1 to bring Ireland in line with international human rights instruments.

1.9 Despite these observations and recommendations, there has been no change and no commitment to a Constitutional Referendum on Article 40.1 and consequently Ireland is in breach of its obligations under the Convention as it will continue to discriminate against atheists/secular families and their children.

1.10 The Education Act 1998, Equal Status Act 2000 and Employment Equality Act provide exemptions on religious grounds and fail to protect atheists and secularists and their children from religious discrimination because the State gives priority to religious beliefs. Atheist/secularists families are not protected from religious discrimination in the education system.

## **2. Proposed Admission to Schools Bill**

2.1 In September 2013 the government published a Draft General Scheme for an Education (Admission to Schools) Bill, as well as Draft Regulations. The proposed Education (Admission to Schools) Bill will not remove religious discrimination in access to schools or provide non discriminatory exemptions that would suit the wishes of parents.

2.2 Atheist/Secular parents will still be legally obliged to send their children to schools that discriminate on religious grounds. The vast majority of schools at both primary and second level operate with a religious ethos/religious objectives and can legally discriminate on religious grounds.

2.3 The Draft General Scheme of an Education (Admission to Schools) Bill 2013 states that:

*“The Head reinforces the principle of maximum accessibility to and inclusiveness in recognised schools but does not displace the existing exemptions provided to schools under Sections 7(3) (a) and 7(3) (c) of the Equal Status Act, 2000. Section 7(3) (a) provides that a single sex school may refuse admission to a pupil who is not of the gender concerned. Section 7(3) (c) provides that schools where the objective is to provide education in an environment that promotes certain religious values, can admit a student of a particular religious denomination in preference to other students or that such a school can refuse to admit a student who is not of that denomination, provided it can prove that this refusal is essential to maintain the ethos of the school. The Head*

*provides that schools to which equality legislation exemptions apply will reflect those exemptions in their admission policy statement.” [iv]*

2.4 One of the intentions of the Bill is to ensure that enrolment policies will include a statement setting out the position of the school in relation to its arrangement for upholding the constitutional right of student not to attend religious instruction. There are no proposals to oblige schools to provide non-discriminatory exemptions that would suit the wishes of parents. The Bill does not deal with the practical application of the right to opt out of religious instruction classes and does not oblige schools to provide another subject.

2.5 This Bill will not protect atheist/secular families from the religious integrated curriculum as it only refers to religious instruction classes. There is no proposal to ensure that the curriculum is delivered in a neutral and objective manner. This Bill does nothing to change the situation on the ground and protect the rights guaranteed under the Convention. There is no proposal to amend or remove Section 15 (2) (b) and (c) of the Education Act 1998 which obliges Boards of Management to uphold and be accountable to the Patron for so upholding the ethos/religious objectives (Characteristic Spirit) of the school. This new Bill will not require schools to ensure a neutral studying environment.

2.6 The UNHRC under the ICCPR asked the Irish delegation in July the following question regarding this Bill: [v]

*“Is it true that even under the new Draft general Scheme Bill, children of non-Christian families or atheist families may be discriminated against in admission to denominational schools if they do not fit with its ethos, provided a preference to the school’s denomination children is stated explicitly in the admissions policy of that school?”*

*“How does the Delegation explain the compatibility with the Covenant of a state of affairs that allows private schools, which have a near monopoly in Ireland on a vital public service, to openly discriminate in admission policies between children on the basis of their parents’ religious convictions?”*

*I would appreciate, whether orally or in writing, the Delegation’s theory on this point, on this legal point. And whether the State believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from?”*

2.7 And the Concluding Observations included:

*“Ireland should introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.”*

### 3. Article 28 and 29 - Access to Education

3.1 The education system in Ireland is publicly funded but essentially private. The vast majority of schools in Ireland have religious objectives and there is no parallel system of non-denominational schools. Schools operate under Patron bodies and the Equal Status Act 2000 permits schools with a religious ethos/religious objectives to give preference to co-religionists and to refuse admission to a child if it is proved that the refusal is essential to maintain the ethos of the school.

3.2 The Education Act 1998 also supports religious discrimination by giving powers to Patron Bodies and Boards of Management of schools to discriminate in order to uphold their religious ethos. The vast majority of schools at both primary and second level operate with a religious ethos and there is no parallel system of non-denominational schools available in Ireland.

3.3 Section 7 3 (c) of the Equal Status Act states that:

*“Where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school,”*

3.4 The Report from the Forum on Patronage and Pluralism states that over 90% of schools at primary level in Ireland are run by religious bodies<sup>vi</sup>. Schools do not necessarily need to be under a religious body to operate with a religious ethos. The remainder of schools in Ireland are either-denominational, interdenominational or multi-denominational. The Irish State that is failing to guarantee and protect the right to be free from religious discrimination in the Irish education system and have access to a local school without religious discrimination. [vi]

3.5 At second level the vast majority of schools operate with a religious ethos and operate in an environment which promotes certain religious values. At second level there are schools under the control of religious bodies but also schools and colleges under Education & Training Boards (ETB), these schools operate under agreements with the Catholic Church and the Church of Ireland. The Supreme Court has referred to these schools as denominational.

3.6 Figures published in a recent report from the Catholic Schools Partnership outline the situation at second level where there are approximately 722 schools. The majority of these schools operate with religious ethos/objectives and can therefore discriminate on religious grounds given the religious exemptions in Irish legislation. [vii]

- 374 schools at second level are under direct religious patronage.
- 94 Community and Comprehensive schools, these schools are denominational and are either Catholic or Protestant.
- 254 Community Schools and Community Colleges, various Education & Training Boards throughout the country are the patron of these Schools and Community Colleges. These Schools and designated Community Colleges are either Catholic or Protestant and operate under Deeds of Trust/Model Agreement between the ETB and various religious bodies. All these Schools are Colleges operate with a religious ethos.
- The remainder of the Community Colleges approximately are obliged to provide religious instructions and worship under Circular Letter 73/74 issued by the Dept of Education. [viii]

3.7 There is no parallel system of non-Denominational schools available at second level and schools are either Denominational, Interdenominational or multi-Denominational. For non-religious parents or religious minorities living adjacent to a school does not mean that your child has a right of access to that school. [ix]

3.8 In addition to the above a new policy issued by the Dept of Education will disproportionately affect atheist/secular families and religious minorities in gaining access to the small number of multi-Denominational Schools that do not discriminate in access. This new policy will not affect the vast majority of schools that have a religious ethos/objectives as they can still deny access on religious grounds (Section 7- 3 (c) Equal Status Act 2000).

3.9 In reply to a Dail question (parliament question) the Minister for Education stated that:

*“The criteria for the recognition of new schools specifies that a patron must confirm willingness to enrol children from the area for which the Department has identified the need for the school. The school in question was established to help meet the demographic increases in the general Dublin 2 and Dublin 4 areas.” [x]*

3.10 The majority of non-religious parents and religious minorities do not have access without religious discrimination to their local schools, when possible and despite the burden some parents enrol their children in schools in another district. The criteria for the recognition of new schools has now changed and minorities will not now have access on a first come first served basis to the small number of multi-Denominational schools in an adjacent district as this small number of schools (Educate Together) are now obliged to give priority of access to the children in the area that the Dept of Education has identified.

3.10 The Report from the Forum on Patronage and Pluralism Recommends that:

*“The Advisory Group endorses the Minister’s view that equitable enrolment policies are essential for achieving fairness and diversity. Particularly in some Stand Alone schools, the Group noted that the derogation in the Equal Status Act, 2000, Section 7(3)(c) may impede the Department of Education and Skills duty to provide for education for all children. In the light of experience, further consideration might need to be given to the amendment of this derogation.” [xi]*

3.11 The Irish Human Rights Commission in a Submission to the government on School enrolments recommended that:

*“The IHRC recommends that pending further diversity in school provision the Government amend section 7 of the Equal Status Acts 2000 - 2008 which allows primary and second - level schools which have a particular denominational ethos to give preference in admission to students of a particular religious denomination over others and to refuse admission to such students where this is essential to uphold the ethos of the school.” [xii]*

#### **4. In Ireland, non-denominational schools are effectively banned**

4.1 There are no non-denominational schools in Ireland. All recognised schools in Ireland are obliged by the Education Act 1998 to operate in accordance with legislation, policy and curriculum as determined by the Minister for Education & Skills, Section 9 – (b) Education Act 1998). [xiii]

4.2 The legislation, policy and curriculum oblige schools to promote the spiritual development of students (Section 9 – (d) Education Act 1998), while having regard to the Characteristic spirit (ethos) of the school. The vast majority of schools at both primary and second level operate with a specific religious ethos.

4.3 One of the key areas of the Primary School Curriculum is to promote the spiritual dimension of life. The concept of spirituality is not defined in the Education Act 1998 and in the Primary School Curriculum it is assumed that it based on a transcendent element within human experience. Spirituality is linked to religious education and developing spiritual and moral values and a knowledge of god.

4.4 Non-Denominational schools could not comply with the legal requirement under the Education Act 1998 to promote the moral and spiritual development of all students through religious education and develop spiritual and moral values and a knowledge of god.

4.5 The Primary School Curriculum states that: [xiv]

*“The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience. The importance that the curriculum attributes to the child’s spiritual development is expressed through the breadth of*

*learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum, and through the child's engagement with the aesthetic and affective domains of learning.” (Introduction Primary School Curriculum, page 27)*

*“The spiritual dimension is a fundamental aspect of individual experience, and its religious and cultural expression is an inextricable part of Irish culture and history. Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.” (Primary School Curriculum Page 58)*

4.6 By their very nature non-denominational schools could not follow the Primary School Curriculum and consequently there are no non-denominational schools registered with the Dept of Education in Ireland. The Education Act 1998 and the Primary School Curriculum effectively ban non-Denominational schools.

## **5. Ethos / Religious integrated curriculum at Primary and Second Level**

5.1 The Religious Integrated Curriculum in Irish schools operates beyond the confines of religion classes, and it is impossible for parents to opt their children opt out of it. Section 9 (d) of the Education Act 1998 obliges all recognised schools to promote the moral, spiritual, social and personal development of students. This becomes a huge issue as the moral and spiritual development of all children is promoted through religious education which is integrated into the state curriculum and the daily life of the school and the vast majority of schools operate with a religious ethos/religious objectives.

5.2 Schools are not obliged to deliver the state curriculum in a neutral and objective manner nor are they legally obliged to inform parents where exactly they are integrating religion into the state curriculum. There are no non-discriminatory exemptions from the religious integrated curriculum or alternatives that would accommodate and protect the philosophical convictions of atheist/secular families. Trying to identify the areas of the curriculum that are of a religious nature is an impossible burden for atheist/secular parents to overcome. The Irish State does not protect the rights of atheist/secular parents to ensure that the religious and moral education of their children is in conformity with their own convictions.

5.3 Section 9 (b) of the Education Act 1998 obliges all recognised schools to follow the curriculum as prescribed by the Minister.

5.4 In their Report Religion and Education; A Human Rights perspective, the Irish Human Rights Commission stated that: [xv]

*“The Education Act, may also be regarded as providing indirect sanction to the integrated curriculum insofar as it makes Boards of Management accountable to the patron for upholding the characteristic spirit of the school. Section 15(2)(b) of the Education Act 1998.”*



5.6 Section 15 (2) (b) and (c) of the Education Act 1998 reads:

*“A Board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall –  
Uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school,  
(c) consult with and keep the patron informed of decisions and proposals of the board,”*

5.7 In addition to the above Rule 68 of the Rules for National Schools reads:

*“Of all parts of a school curriculum, Religious Instruction is by far the most important, as its subject matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school.”*

5.8 The Education Act 1998 indirectly sanctions a religious integrated curriculum. The Irish Human Rights Commission has recommended that the Education Act 1998 be amended to ensure that the curriculum is delivered in an objective, critical and pluralistic manner. In their Report on Religion and Education in 2011 they stated (p.104): [xvi]

*“Section 15 of the Education Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority faith or non faith children are also recognised therein. In this regard, the State must take sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.”*

5.9 The Report from the Forum on Patronage and Pluralism recommends that:-

*“The Advisory Group recommends that the introduction to the Primary Curriculum should be revised to ensure that, while the general curriculum remains integrated, provision is made for denominational religious education/faith formation to be taught as a discrete subject“. [xvii]*

## **6. Opting out of Religion Classes and Religious sacraments**

6.1 Section 30(2)-(e) of the Education Act 1998 permits parents to opt their child out of any subject that is contrary to the conscience of the parent of the student or in the case of a

student who has reached the age of 18 years, the student. In Ireland Parents are responsible for the supervision of their children if they opt them out of religion classes. Religious instruction and worship in primary schools and second level is organised and sanctioned by the relevant religious authority. Parents are deterred from exercising the right to opt out of religion classes and worship because of the burden and problems it creates for their children.

6.2 Schools are not legally obliged to supervise children outside Religion classes or provide another subject. There are no non-discriminatory exemptions from the religion classes or religious worship and there are no alternatives that would accommodate and protect the philosophical convictions of atheist/secular families.

6.3 In Ireland there is no practical application given to the right to opt out of religion, opting out in practice is a theoretical illusion. Religion classes take up two and a half hours per week and in certain age groups preparation for sacraments take up more school time.

6.4 At second level as well as doctrinal religious instruction and worship there is also a state Religious Education course that is an exam subject. This religious education course comes under the curriculum and is supposed to be for all religions and none. This course does not respect the philosophical convictions of atheist/secular parents and it puts children in a position that they will face a conflict of allegiance be what is being taught in school and at home.

6.6 One of the aims of the State Religious Education course is to contribute to the moral and spiritual development of students. The non-religious interpretation of life is merely acknowledged in passing, alongside materialism and fundamentalism, in a section of the course called '*Challenges to faith*'. The aim of the Religious Education course is to support a religious understanding of the world. The state curriculum at second level seeks to contribute to the moral and spiritual development of the children of atheist/secular parents through religious education. This is not a neutral and objective stance and does not constitute 'respect' for the rights of atheist/secular parents under the Convention. This course discriminates on religious grounds against atheist/secular parents and their children as it puts children in a position that they face a conflict of allegiance between the school and the home.

## 7. Notes

- <sup>i</sup> <http://www.equality.ie/files/letter-to-minister-from-acting-chair.pdf>
- <sup>ii</sup> <http://www.equality.ie/files/recommendation-paper-re-section-37-amendment.pdf>
- <sup>iii</sup> Para. 17 [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT\\_CCPR\\_IFN\\_IRL\\_14924\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_IFN_IRL_14924_E.pdf)
- <sup>iv</sup> Page 8 <https://www.education.ie/en/The-Education-System/Legislation/Draft-General-Scheme-of-an-Education-Admission-to-Schools-Bill-2013.PDF>
- <sup>v</sup> <http://www.teachdontpreach.ie/2014/08/un-asks-ireland-about-religious-discrimination-in-irish-schools-video-and-transcript/>
- <sup>vi</sup> Page 29 <http://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>
- <sup>vii</sup> Page 36 <http://www.catholicschools.ie/wp-content/uploads/2014/10/Catholic-education-at-second-level.pdf>
- <sup>viii</sup> <http://www.teachdontpreach.ie/2014/10/religious-worship-and-instruction-in-vec-non-%E2%80%93-designated-community-colleges/>
- <sup>ix</sup> <https://www.kildarestreet.com/wrans/?id=2014-11-25a.874>
- <sup>x</sup> <https://www.kildarestreet.com/wrans/?id=2014-11-12a.457>
- <sup>xi</sup> Page 110, <http://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>
- <sup>xii</sup> P. 18 [http://www.ihrec.ie/download/pdf/ihrc\\_school\\_enrolment\\_policy\\_submission\\_october\\_2011.pdf](http://www.ihrec.ie/download/pdf/ihrc_school_enrolment_policy_submission_october_2011.pdf)
- <sup>xiii</sup> <http://www.irishstatutebook.ie/1998/en/act/pub/0051/>
- <sup>xiv</sup> [http://www.curriculumonline.ie/getmedia/c4a88a62-7818-4bb2-bb18-4c4ad37bc255/PSEC\\_Introduction-to-Primary-Curriculum\\_Eng.pdf](http://www.curriculumonline.ie/getmedia/c4a88a62-7818-4bb2-bb18-4c4ad37bc255/PSEC_Introduction-to-Primary-Curriculum_Eng.pdf)
- <sup>xv</sup> <http://www.ihrec.ie/publications/list/religion-and-education-a-human-rights-perspective/>
- <sup>xvi</sup> <http://www.ihrec.ie/publications/list/religion-and-education-a-human-rights-perspective/>
- <sup>xvii</sup> <http://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>