

# Atheist Ireland



Submission to the Department of Children,  
Equality, Disability, Integration, and Youth  
on Draft 5th/6th State Report of Ireland to  
UN Committee on the Rights of the Child

30 October 2021

We are making this submission with regard to three aspects of the Draft State Report:

C. Civil Rights and Freedoms (Arts. 7, 8, 13–17), Freedom of Thought, Conscience and Religion:

“17. Please inform the Committee on the measures taken to ensure accessible options for children to opt out of religious classes and access appropriate alternatives to such classes, in accordance with the needs of children of minority faith or non-faith backgrounds.”

G. Basic health and welfare (Arts. 6, 18(3), 24, 26, 27(1)–(3) and 33):

“25(c) Ensure comprehensive, age-appropriate education on sexual and reproductive health and rights, including information on family planning, contraceptives and the risks related to early pregnancies, as well as the prevention and treatment of sexually transmitted infections.”

H. Education, leisure and cultural activities (Arts. 28–31):

“28(b) Assess the impact of the 2018 Education (Admission to Schools) Act in ensuring children’s right to education without discrimination, including in cases where admission can be denied on religious grounds;

28(c) Increase the availability of non-denominational and multi-denominational schools.”

Yours sincerely,

Jane Donnelly  
Human Rights Officer  
Atheist Ireland

Michael Nugent  
Chairperson  
Atheist Ireland

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## 1. Freedom of Thought, Conscience and Religion

The relevant section with regard to C. Civil rights and freedoms (arts. 7, 8 and 13–17), under Freedom of Thought, Conscience and Religion, appears on page 34 of the Department's draft report as follows:

*“Question 17 — Please inform the Committee on the measures taken to ensure accessible options for children to opt out of religious classes and access appropriate alternatives to such classes, in accordance with the needs of children of minority faith or non-faith backgrounds.”*

### 1.1 Primary Level

The State Response says:

*“Responsibility for providing a programme of religious education rests with the patron bodies of individual schools and not the State. There are a diverse number of patrons' programmes within the primary school system. Some are denominational or religious, emphasising the place of children's faith, spiritual and moral development in their lives. Others foster understanding of ethics and values.”*

At primary level there is no option to access another subject if students exercise their Constitutional right to 'not attend' religious instruction, or their right under the Constitution as reflected in the Education Act to 'not attend' any subject that is contrary to their or their parents' conscience, which includes religious education classes however they are classified.

Their Constitutional right to 'not attend' is not protected and enforced by the State notwithstanding the fact that the funding of schools is conditional on this right. Schools provide no supervision outside the religious instruction class and never provide another subject. Students are left sitting in the class where religious instruction takes place.

The Constitution envisages students attending publicly funded schools while having a right to 'not attend' religious instruction. Every word in the Constitution has meaning and Article 44.2.4 does not state that students need 'not participate' in religious instruction. It clearly states 'without attending religious instruction.'

In addition the Primary School Curriculum supports the integration of subjects. Religious instruction developed by various Patron bodies is integrated into all subjects under the curriculum and no opt out is possible from this teaching. Parents are never informed that this is happening and it is supported by State funding and State policy.

The 1999 Primary school curriculum framework has enabled Patron bodies, schools and teachers to promote the spiritual education of students by evangelising them into a religious way of life. It discriminates against non-religious minorities. It does not take on board the positive right of non-religious minorities under Article 42.1 in relation to the education of their children. This is also reflected in Section 15-2(b) of the Education Act 1998.

The 1999 Primary School Curriculum focuses on the 'spiritual dimension' of life in relation to the promotion of religion and religious values. It only recognises and caters for the right of individuals to choose the particular form of religious expression that reflects the spiritual aspirations that he or she seeks. It does not take into account the positive right of atheists, secularists, humanists and the non-religious to express their own aspirations through values that are not based on a religious understanding of the world.

## 1.2 Post Primary Level

The State response begins:

*“At post-primary level, the NCCA syllabuses are for students of all faith backgrounds and none. The content does not provide religious instruction and exposes students to a broad range of religious traditions and to the non-religious interpretation of life. The Department of Education does not require schools to include the NCCA-developed Religious Education programme.”*

The rights of children under the Convention is not defined in relation to religious instruction, religious education, and faith formation.

Article 44.2.4 of the constitution in relation to not attending religious instruction (which translates from the Irish language word for teaching, which takes precedence) is a sub section of Article 44.2.1 the right to freedom of conscience and religion.

The Supreme Court has found that the rights of parents under Article 42 of the Constitution must be read in the context of Article 44.2.4 the right to not attend religious instruction. Justice Barrington in the Supreme Court in 1998 stated that: <sup>1</sup>

*“But the matter does not end there. Article 42 of the Constitution acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of the parents of provide for the religious and moral, intellectual, physical and social education of their children. Article 42 S.2 prescribes that the parents shall be free to provide “this education” (i.e religious moral intellectual physical and social education) in their homes or in private schools or “in schools recognised or established by the State”.*

In other words the Constitution contemplates children receiving religious education in schools recognised or established by the State but in accordance with the wishes of the parents. It is in this context that one must read Article 44 S.2s.s.4 which prescribes that:

*“Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.” (Campaign to Separate Church and State case 1998 – page 25, 26)*

The State response continues:

*“Where any school opts to teach a programme of religious instruction/faith formation that is rooted exclusively or almost exclusively in a particular religious tradition, parents must be advised and the school must offer an alternative subject(s) for those who do not want religious instruction.”*

Claiming that Article 44.2.4 on Religious instruction refers only to not attending religious instruction according to the rites of a particular religion has no constitutional or human rights basis, especially given that the Constitution is a living document.

Irish courts and the European court as well as the UN have recognised the philosophical convictions of atheist and secular parents. Our philosophical convictions are protected by Article 42 (education, which includes the inalienable right and duty of parents) and Article 44.2.1 (freedom of conscience) and by Article 9 and Article 11 of Protocol 1 of the European Convention (the Right to Education). We are also protected under various UN Treaties.

In the High Court in 2011, Justice Hogan stated that:

“35. There is thus no doubt at all but that parents have the constitutional right to raise their children by reference to their own religious and philosophical views.”

“27. Along with the guarantee of free speech in Article 40.6.1, Article 44.2.1 guarantees freedom of conscience and the free practice of religion. Taken together, these constitutional provisions ensure that, subject to limited exceptions, all citizens have complete freedom of philosophical and religious thought, along with the freedom to speak their mind and to say what they please in all such matters....” (AB v Children’s Hospital Temple Street & CD & EF, January 2011)

Justice Costello in the High Court in the Campaign case in 1996 stated that: <sup>2</sup>

“In making this acknowledgement and in recognising that the desire of parents to pass on their religious beliefs to their children is a right which is entitled to be legally protected the Irish constitution is by no means unique. The state – parties to the U.N Universal Declaration of Human Rights recognise (Article 10) that the Family (which is declared to be the natural and fundamental group unit of society) should be protected “particularly while it is responsible for the care and education of dependant children” and the State – parties undertake (Article 13) to respect the liberty of parents “to ensure the religious and moral education of their children in accordance with their own convictions”.

The parties to the First Protocol of the European convention for the Protection of Human Rights and Fundamental Freedoms agreed that the States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions” (Article 2).

The Irish Constitution has developed the significance of these parental rights and in addition has imposed obligations on the State in relation to them. It declares (in sub-paragraph 2 of this Article) that parents are to be free to provide for the education of their children in their homes, or in private schools or in schools recognised or established by the State, that the State shall not oblige parents in violation of their conscience to send their children to schools established or designated by the State, and that the State shall require (in view of actual conditions) that children receive a certain minimum education, moral, intellectual and social.”

As the State has a constitutional obligation to respect the liberty of parents with philosophical conviction to ensure the religious and moral education of their children is in conformity with their convictions then the State is undermining their rights by putting in place a curriculum course that seeks to develop values in their children to enable them to see the relevance of religion to their lives and relationships.

The UN General Comment on Article 13 states: <sup>3</sup>

“Article 13 (3) and (4): The right to educational freedom

28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>14</sup> The Committee is of the view that this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”

The main aim of the NCCA developed curriculum Religious Education is: <sup>4</sup>

“to develop knowledge, understanding, skills, attitudes and values to enable young people to come to an understanding of religion and its relevance to life, relationships, society and the wider world.”

The State would never introduce any course whose main aim was to develop knowledge, understanding, skills, attitudes and values to enable young people to come to an understanding of atheism and its relevance to life, relationships, society and the wider world, given the rights of parents under the constitution and the convention in relation to the religious and moral education of their children.

The State is claiming that a Religious Education course whose main aim is to develop values in students to enable them to come to an understanding of religion and its relevance to life, relationships, society and the wider world is suitable instruction for students from families with philosophical convictions such as atheism and secularism.

This claim has enabled schools to make curriculum Religious Education a core subject. Students from all backgrounds are simply enrolled in the course. The State knew this would happen.

Despite the fact that the State does not oblige any school to offer curriculum Religious Education, many students are still forced into the course. Schools tell parents that it is suitable for all religions and none and it is not religious instruction but religious education and therefore the right to not attend does not apply. They have done this because the State claims that curriculum Religious Education is suitable for all religions and none and therefore the right to opt out does not arise.

The Irish courts have found that parents with philosophical convictions have exactly the same constitutional rights as religious parents. Developing values in students to enable them to see the relevance of religion to their lives breaches the Constitutional and human rights of parents under Article 41, Article 42, Article 44, Article 44.2.3 and Article 44.2.4.

The Irish courts have also found that because of Article 44.2.4 the State cannot discriminate between those with a religious belief and those who do not have a religious belief. The State has financed the introduction of a curriculum Religious Education course that discriminates against families with philosophical convictions. However, the State Report to the UN Committee does not even refer to the main aim of curriculum Religious Education.

The recent Burke case at the Court of Appeal found that: <sup>5</sup>

“171.... The decision of the Supreme Court in the Campaign to Separate Church and State v. Minister for Education is binding authority and the dicta of Murphy J. concerning the breadth of the parents’ duty, while quite far reaching, is at a minimum persuasive in recognising that parents have rights to provide for secondary and third level education if within their means.”

In addition to the content of the Religious Education curriculum schools with a Religious ethos (over half of all second level schools) integrate their ethos into curriculum Religious Education. They never inform parents that they are doing this and claim in their Admission Policies that the course it is suitable for all religions and none. They do not put in their Admission policies the arrangements for students that exercise their Constitutional right to not attend religious instruction (Section 62-7(n) Education (Admission to Schools) Act 218).

The Catholic Bishops have put together Guidelines for Religious Education Teachers in relation to integrating their ethos into curriculum Religious Education. The Department of Education are well aware that this is happening but have done nothing to ensure that Admission Policies reflect Section 62-7(n) of the School Admissions Act.

For example the Catholic Bishop’s Guidelines for the updated curriculum Religious Education state that: <sup>6</sup>

“Relevant documents from trustees on RE and ethos should be closely attended to as individual schools plan for their Junior Cycle RE programme, and indeed their wider Junior Cycle programme. When taken together, these documents provide a solid educational, religious educational and Catholic understanding to underpin the teaching of RE in a Catholic school. It should be noted that Circulars 13/2018 and 62/2018 do not apply to Catholic or other voluntary secondary schools.”

The Department of Education is well aware that this is happening and simply ignores it. This is not in accordance with the Constitutional Rights of parents or the Convention.

Students are never offered another subject and are just enrolled into the course. This has happened because the Department of Education disrespects the constitutional rights of families with philosophical convictions.

## **2. Basic Health and Welfare**

### **2.1 Relationship and Sexuality Education**

The relevant section with regard to G. Basic Health and Welfare (arts. 6, 18(3), 24, 26, 27(1)–(3) and 33), appears on page 56 of the Department’s draft report as follows:

*“Question 25(c) – Ensure comprehensive, age-appropriate education on sexual and reproductive health and rights, including information on family planning, contraceptives and the risks related to early pregnancies, as well as the prevention and treatment of sexually transmitted infections.”*

The State Response says:

*“Social, Personal and Health Education (SPHE) and Relationship and Sexuality Education (RSE) in school settings are an important part of the curriculum.*

*Following a major 2018 review, work on updating or developing new specifications for SPHE/RSE commenced in the NCCA in 2021, focusing on Junior Cycle. Work will include engagement with all the key education stakeholders and a further process of public consultation before any new curriculum specifications are finalised.”*

Any new updated course on sexual and reproductive health can be delivered through the religious ethos of schools. The vast majority of schools in Ireland operate under a religious ethos. Section 15-2(b) of the Education Act 1998 obliges the Board of Management of uphold the ethos of the Patron body.

Section 37 of the Employment Equality Act obliges teachers to uphold the religious ethos of the patron.

At this stage there are no plans to amend legislation to ensure that all students have access to objective sexual and reproductive health education.

The Catholic Church is patron to the vast majority of schools and have put in place Guidelines on how teachers must deliver Relationship and sexuality education through their ethos. <sup>7</sup>

Students will not be able to access sexual and reproductive education in an objective manner unless legislation is amended.

The Department of Education acknowledged at the Oireachtas Education Committee that ethos can have an impact on the resources used to teach curriculum relationship and sexuality education. The Catholic Bishops have already put in place a new course called ‘Flourish’ which is aimed as a resource for RSE in Catholic schools. This means that it is catholic sex education for the vast majority of students or no sex education at all.

### 3. Education

#### 3.1 Admission to Schools Act

The relevant section with regard to H. Education, Leisure and Cultural Activities (arts. 28 – 31), with regard to Admission to Schools, appears on page 66 of the Department's draft report as follows:

*“Question 28(b) – Assess the impact of the 2018 Education (Admission to Schools) Act in ensuring children's right to education without discrimination, including in cases where admission can be denied on religious grounds.”*

The State Response says:

*“The Education (Admission to Schools) Act 2018, commenced in July 2018, contains a series of measures that will improve the admissions process for all parents and children across the country. The Act is intended to create an equitable and consistent approach to how school admissions policies operate for all primary and post-primary schools.*

*The Act will ensure that a school must admit all students applying where it is not oversubscribed and places are available. The Act states that a school must state in its admission policy that it will not discriminate in its admission of the student or applicant.”*

The Education (Admission to Schools) Act 2018 has meant that schools at primary level under Catholic patronage can no longer give preference to students from a catholic background that have been baptised. This is a positive change for children from non religious and secular backgrounds as well as those from minority faith backgrounds. However, minority faith schools can still discriminate in access against members of smaller minority faiths, such as Church of Ireland schools against Evangelicals and Sunni Muslim schools against Ahmadi Muslims.

Also, Catholic schools can still refuse access if they believe that a child will undermine their ethos. This is still part of the Equal Status Act. Catholic schools still put this in their Admission policies. This is not in accordance with the rights of the child under the Convention as children should have access to school without religious discrimination.

Publicly funded Second Level schools under religious patronage (over half of all schools) can still give preference to co-religionists and refuse access if they believe that a child will undermine their ethos. The Education (Admission to Schools) Act 2018 does not apply to second level schools in relation to access. Religious discrimination still takes place which is contrary to the Convention.

Section 62-7-(n) of the Education (Admission to Schools) Act 2019 obliges schools to put in their Admission Policies the arrangements for those students who exercise their constitutional right to not attend religious instruction. Schools have ignored this section of the Act and just ask parents to come into a meeting to discuss the issue. The Minister for Education is aware that this is happening and has done nothing about it.

Atheist Ireland has sent a Report to the Minister for Education in which we conclude that: <sup>8</sup>

Section 62.7(n) of the Education (Admission to Schools) Act 2018 obliges schools to publish an Admission Policy which must include details of the school's arrangements for students who do not want to attend religious instruction.

The purpose of this requirement is to protect the inalienable Constitutional rights of parents by providing transparency from the outset so that parents know these details before they choose a school for their children. However, it has failed to do this.

We have examined how 100 sample schools address this requirement in their Admission Policies for 2020/21. Some schools do not refer at all to this requirement. Of those that do refer to it:

- Most denominational schools try to evade the requirement by stating that parents must seek a meeting with the Principal to discuss the arrangements.
- Most ETB schools try to evade the requirement by making a spurious distinction with no legal basis between religious instruction and religious education.
- Most schools do not address the right to not attend the class, i.e. the right to physically leave the classroom and be supervised or get another subject.
- Some schools unlawfully ask parents to give reasons for wanting their children to not attend religion classes thus breaching the right to privacy and GDPR.

The UN General Comment on the Right to Education states that:

“(b) Accessibility. Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party.

Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);”

Religious discrimination in access to publicly funded schools breaches the convention. For many students their only local school is a school with a religious patron and at second level these schools can discriminate in access in accordance with the Equal Status Act. Five year olds cannot possibly undermine an ethos so why is it even in legislation.

### **3.2 Non-denominational Schools**

The relevant section with regard to H. Education, Leisure and Cultural Activities (arts. 28 – 31), with regard to non-denominational schools, appears on page 66 of the Department’s draft report as follows:

*“Question 28(c) — Increase the availability of non-denominational and multi-denominational schools;*

The State Response says:

*The Government’s objective is to have 400 multi-denominational or non-denominational schools in the primary system by 2030. From February 2021, access to secular schools has continued to improve, with 159 multi-denominational primary schools now available as well as 359 multi-denominational or non-denominational post-primary schools. The latter is equated to approximately 50% of the total stock of schools, and a similar representation in terms of pupils.”*

The response of the State to the question from the UN makes no sense at all and is not based on reality.

The programme for government includes an objective to have 400 multi-denominational schools in the primary system by 2030. It does not refer to nondenominational schools.

“Achieve the target of at least 400 multi-denominational primary schools by 2030, to improve parental choice. Expand and prioritise the transfer of viable schools to Community National Schools.”<sup>9</sup>

Community National Schools are registered with the Department of Education as multi-denominational not non-denominational. They are not based on human rights and their Goodness Me Goodness You Patron’s programme is not up to human rights standards and disrespects the rights of those parents who seek secular education for their children. No other subject is offered to students if their parents have objections to the course and Admission policies do not recognise that parents can exercise their Constitutional right under Article 44.2.4 to ensure that their children do not attend this course on the grounds of conscience.

According to the Department of Education’s website there are no non-denominational or secular schools registered in Ireland. This means that there are no non-denominational schools in the country. This was also confirmed in the Report from the Forum on Patronage and Pluralism.

According to the Department of Education’s website there are denominational schools, multi-denominational schools and inter-denominational schools in Ireland. Those terms are not legally defined. In a recent case at the Labour Court, the court found that a second level multi-denominational school had a Christian ethos. This was a non-designated ETB Community college.<sup>10</sup>

Multi-denominational schools are not secular schools. Multi-denominational schools are just that, multi-denominational. Atheism and secularism are not denominations so accessing secular education in a multi-denominational schools makes no sense, especially when the vast majority of schools in Ireland operate with a religious ethos, and where the right to not attend religious teaching is not guaranteed. If parents do manage to opt their children out, no other subject is offered.

In addition it is the policy of the State under the Primary Schools Curriculum to integrate religion into all subjects and bring children to a knowledge of god. The right to not attend religious instruction is not protected by the State notwithstanding the fact that it is a condition of state funding of schools. None of this is secular or non-denominational education. It is indoctrination of minorities into a religious understanding of the world contrary to their constitutional and human rights.

At second level it is the policy of the State (NCCA curriculum Religious Education) to develop values in students to enable them to see the relevance of religion to their lives and relationships. Second level schools with a religious ethos integrate it into curriculum subjects such as SPHE and curriculum Religious Education. That is not secular or non-denominational education; it is indoctrination by the State and contrary to their constitutional and human rights.

A study commissioned by Education & Training Boards Ireland (ETBI) shows that most ETBs discriminate on religious grounds. These are the schools that are registered with the Department as multi-denominational and inter-denominational.<sup>11</sup>

The research called ‘That’s how it works here’: The place of religion in publicly managed second-level schools in Ireland (by O. McCormack, J. O’Flaherty, J. Liston) published in October 2018 says that, “practices that were previously viewed as unproblematic now need to be questioned, challenged and changed”.

The findings of the study highlight the unquestioned position of Catholic practices within ETB schools and the religious discrimination against minorities that is such a part of how ETBs operate on the ground.

ETBs are legally obliged under the Irish Human Rights and Equality Commission Act 2014 to eliminate discrimination and protect human rights. Despite this obligation, they continue to disrespect the rights of minorities and discriminate on religious grounds.

<sup>1</sup> <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

<sup>2</sup> <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

<sup>3</sup> <https://www.refworld.org/pdfid/4538838c22.pdf>

<sup>4</sup> <https://ncca.ie/en/junior-cycle/curriculum-developments/religious-education/>

<sup>5</sup> <https://www.casemine.com/judgement/uk/60d8bcf94653d023f171dd3d>

<sup>6</sup> <https://www.religiouseducation.ie/junior-cycle-religious-education-in-the-catholic-school/>

<sup>7</sup> <https://www.religiouseducation.ie/wp-content/uploads/2016/05/RSE-Guidelines-Rofl-for-web.pdf>

<sup>8</sup> [https://atheist.ie/common/Submissions/AI\\_Schools\\_Admission\\_Policies\\_Report.pdf](https://atheist.ie/common/Submissions/AI_Schools_Admission_Policies_Report.pdf)

<sup>9</sup> <https://merrionstreet.ie/en/about/programme-for-government/>

<sup>10</sup> <https://www.workplacereactions.ie/en/cases/2021/august/eda2124.html>

<sup>11</sup> <https://www.teachdontpreach.ie/2020/03/thats-how-it-works-here/>