



**Complaint from Atheist Ireland
to the Comptroller & Auditor General
on the Misuse of Public Funds
by the Department of Education
and the NCCA**

December 2021

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Executive summary

Under Article 44.2.4 of the Constitution, it is a condition of State funding for schools that any child can attend that school without attending Religious Instruction at that school.

“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.”

This right is supported by other Constitutional Articles, laws, and policy which we outline in this complaint. The funding of schools is conditional on this right being vindicated, yet the State is currently providing funding while ignoring this Constitutional condition. This is a misuse of public funds.

Every word in the Constitution has meaning. For example, under Article 42.4, the State provides ‘**for**’ education. The word ‘**for**’ has had an enormous impact on our education system. Similarly, article 44.2.4 refers specifically to the right to attend a school receiving public money ‘without **attending**’ Religious Instruction. Not **attending** is a stronger right than not participating.

‘Religious Instruction’ is the only type of teaching that the Constitution explicitly links with school funding. This means the funding duties explicitly associated with it are stronger than the funding duties implicitly associated with other teaching. Also, because ‘not attending’ is explicitly linked with funding, it encompasses the right to be supervised or taught another subject while ‘not attending’ Religious Instruction.

Parents have a legitimate expectation that the State will fulfil its Constitutional duty to protect their Constitutional rights, and to fund the protection of these rights, and to not fund the erosion of these rights. The Department of Education is aware that many schools refuse to vindicate this right, yet the Department still gives them funding.

Schools argue that they do not have the resources to vindicate this right as those resources have not been allocated by the Department of Education. But by accepting any State funding, schools are obliged to allocate existing funds to vindicating this right, in accordance with the Constitutional condition under which the State funding was given.

If the schools do not have the resources, it is because they have misallocated funds that they were obliged to allocate as a Constitutional condition of accepting State funding, and the State is failing in its Constitutional duty to ensure that schools meet this condition. This is not a matter of the State interfering in the right of schools to manage their own affairs (Article 44.2.5), because vindicating the right to not attend is a Constitutional condition of State funding.

The Minister currently argues that it is up to schools how they implement this right and duty, but there is a difference between **how** they implement a right and duty and **whether** they implement a right and duty. The Minister is aware that schools are **not** implementing the right and duty, and is doing nothing about this while continuing to provide these schools with State funding.

Part 1 of this complaint outlines the Constitutional rights of atheist, humanist, and secular families, and how the State is ignoring its funding duties in relation to the conditions attached to State funding of schools. This includes duties in the Constitution, the law, and policy.

Part 2 of this complaint shows how the Department of Education and the NCCA are rendering these Constitutional rights and funding duties theoretical or illusory. They are not being transparent in how they are doing this, which includes trying to redefine the terms ‘Religious Instruction’ and ‘Religious Education’ with no legal basis for doing so, using redefinitions that are not consistent with how the Supreme Court and the High Court have interpreted the Constitutional meanings of these terms.

1. The State has Funding Duties regarding not attending Religious Instruction

1.1 Atheists and secularists have equal rights in the education system

1.1.1 The equal Constitutional rights of atheists and secularists

The purpose of Article 44.2.4 with regard to not attending Religious Instruction is to ensure that the State, in its decisions on funding of schools, safeguards the rights of religious and nonreligious minorities in the schools that it funds.

The Constitution Review Group stated in 1995 that:

“If Article 44.2.4° did not provide these safeguards, the State might well be in breach of its international obligations, inasmuch as it might mean that a significant number of children of minority religions (or those with no religion) might be coerced by force of circumstances to attend a school which did not cater for their particular religious views or their conscientious objections. If this were to occur, it would also mean that the State would be in breach of its obligations under Article 42.3.1°.”
(emphasis ours)

Article 44.2.1 of the Constitution protects the right to freedom of conscience. This right is not just confined to a religious conscience. Atheists, humanists, and secular parents have exactly the same Constitutional rights with regard to our philosophical convictions as religious parents have with regard to their religious beliefs.

Both Article 44.2.1 and Article 44.2.4 are subsections of Article 44.2, and neither should be read in isolation from the other.

In the High Court in 2011, in the case of AB v Children’s Hospital Temple Street & CD & EF, Justice Hogan stated that: ¹

“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.i, 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....”
(emphasis ours)

Under Article 44.2.3, the Supreme Court found that the State cannot discriminate between religions and those that have no religion. In the case of Mulloy v Minister for Education 1975, Justice Walsh stated that:

“The reference to religious status, in both the Irish text and the English text of the Constitution, relates clearly to the position or rank of a person in terms of religion in relation to others either of the same religion or of another religion or to those of no religion at all.”
(emphasis ours)

Because of irreconcilable differences between theists and atheists, we do not agree that the State should help us with the ‘Religious Education’ of our children. In fact that would be against our conscience, particularly as the State is developing morals through ‘Religious Education’. It would also undermine the authority of atheist, humanist, and secular families under Article 41.1 and 42.

¹ <https://www.casemine.com/judgement/uk/5da0559a4653d07dedfd5b59>

1.1.2 The practical application of these Constitutional rights

These Constitutional rights correspond with a Constitutional duty on the State to vindicate them in practice in its decisions on school funding. In reality, there is no practical application given to the right to 'not attend' Religious Instruction, and the State's funding duties associated with that right.

Section 6 of the Education Act 1998 states that:

"6. Every person concerned in the implementation of this Act shall have regard to the following objects in pursuance of which the Oireachtas has enacted this Act:
(a) to give practical effect to the constitutional rights of children, including children who have a disability or who have other special educational needs, as they relate to education;
(l) to enhance the accountability of the education system;
(m) to enhance transparency in the making of decisions in the education system both locally and nationally."

In the High Court in 1996, in the case Campaign to Separate Church and State v the Minister for Education, Justice Costello stated that parents have more rights under the Irish Constitution in relation to their religious and philosophical convictions than they have under human rights law (page 37-38 High Court judgment.)²

The European Court has repeatedly highlighted, including in Airey v Ireland 1979-80, that:

"The Convention is intended to guarantee not rights which are theoretical or illusory but rights which are practical and effective."

The Minister currently argues that it is up to schools how they implement the right, but there is a difference between **how** they implement a right and **whether** they implement a right. The Minister is aware that schools are **not** implementing the right, and is doing nothing about this while continuing to provide these schools with State funding.

1.2 The State has funding duties in the Constitution

1.2.1 Article 44 of the Constitution

Article 44.2.4 states that:

44.2.4 "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."

- Note that the Irish language version of the Constitution, which takes legal precedence, uses the phrase 'teagasc creidimh', which mean 'religious teaching'. This is significant because the State is now trying to redefine 'Religious Instruction/teagasc creidimh' to limit it to instruction according to the rites of a single religion.
- Note also that the Constitution does not state 'while opting out of' or 'while not participating in'. It unambiguously states 'without attending'. This is significant because the State is allowing schools to keep such children in the classroom during Religious Instruction, which is not what the Constitution says and is against the wishes of parents.

Article 44 (Religion) also encompasses:

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

- 44.2.1 Freedom of conscience and the free profession and practice of religion
- 44.2.2 The State guarantees not to endow any religion
- 44.2.3 The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

1.2.2 Other relevant Articles in the Constitution

The Supreme Court has said that Article 42.1 and 42.2 (parents' rights regarding the education of their children) must be read in the context of Article 44.2.4 (page 25-26 Campaign to Separate Church and State v Minister for Education 1998, Justice Barrington).³

The Court of Appeal in 2019 has stated in the recent Burke case that:⁴

“191. This Court considers that the case law demonstrates that the relationship between parents, the State and the child as envisaged by Articles 40, 41 and 42, is a trifecta not just of the participants but of the rules under which constitutional engagement on education must take place; namely rights, duties and powers.”

Article 40 (Equality) encompasses:

- 40.1 All citizens shall, as human persons, be held equal before the law
- 40.3.1 The State guarantees to respect and defend and vindicate the personal rights of the citizen.

Article 41 (The Family) encompasses:

- 41.1.1 The family as the natural primary and fundamental unit of society and a moral institution possessing inalienable and imprescriptible rights
- 41.1.2 The State guarantees to protect the Family in its constitution and authority.

Article 42 (Education) encompasses:

- 42.1 The inalienable rights and duties of parents with regard to their children's education, including religious and moral education
- 42.2 The right of parents to provide this education, including religious and moral education, in private schools or schools recognised or established by the State
- 42.3.2 The State's duty to ensure children receive a certain minimum moral education, but not religious education
- 42.4 The State's duty to have due regard to the rights of parents, especially in the matter of religious and moral formation, while providing for education.

1.2.3 Legal Opinions from Conor O'Mahony and James Kane

Conor O'Mahony, Professor of Constitutional Law and Child Law, has said about the right to not attend Religious Instruction that:⁵

“As noted above, Article 44.2.4 appears stronger than the ECHR in giving a seemingly absolute right to opt-out of religious instruction, regardless of the character of that instruction. Moreover, it specifically uses the phrase “without attending religious instruction”. The use of the word “attending” (as opposed to “participating in”, or something

³ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

⁴ https://www.courts.ie/acc/alfresco/4a492524-b29b-4dc3-be10-ad483ee18ac6/2021_IECA_67.pdf/pdf#view=fitH

⁵ <http://constitutionproject.ie/?p=554>

similar) could reasonably form the basis of an argument that anything short of leaving the room fails to vindicate the right to opt-out.”

“The integrated curriculum does not operate in secondary schools in the same way, and while over 95% of primary schools are denominational, this can only be said of about 50% of secondary schools. Castletroy College initially sought to resist the request to opt-out on the basis that the subject being provided was multi-denominational rather than doctrinal instruction.

Nonetheless, the view taken by the Supreme Court in the passage quoted above suggests that this distinction is irrelevant. The right to opt-out applies to the formal timetabled period of “religious instruction”, and would seem to capture whatever form that instruction might take. Thus, while the distinction between “religious instruction” and the overall school ethos or “religious education” is often pointed to as undermining the right to opt-out in a primary school context, it might ironically serve to strengthen it in a secondary school setting.”

Atheist Ireland obtained a legal opinion in 2020 from James Kane Barrister-at-Law on this issue. ⁶ This concludes that Article 44.2.4 encompasses:

- the right to physically leave the classroom during religious instruction, while
- at a minimum remaining supervised (otherwise funding would not be an issue), or
- at a maximum being taught another subject.

As between these possibilities, there is a decent legal argument that schools should not give more teaching time to some students over others on the basis that the latter is exercising the constitutional right to not attend religious instruction, as to do so is to discriminate against the student on religious grounds.

Here are relevant extracts from the legal opinion that expand on this:

First, the right to not attend religious instruction in State funded schools subsists and must be protected whether or not public funding to any particular school might be said to be generous. Where a child is attending a school which is in receipt of some State funding, the child is entitled to not attend religious instruction regardless of the level of that funding. This right must be respected by the State and individual schools. Secondly, there is an express and separate obligation on the State to ensure that the issue of funding alone does not prejudicially affect the right. (para 4).

Schools are obliged to use their existing State funding to facilitate that right without demanding extra State funding (paras 88-89). To come to any other conclusion would render the enjoyment of the right contingent on the level of funding. This would fly in the face of the plain text of Article 44.2.4 (para 89). Provided the school is a public school receiving some State funding, the right must be respected, whether or not the funding is adequate (para 90).

What precisely does the right protect and require? The first possibility is that a student has a right to simply leave the school or sit at the back of the class room during religious instruction. But that would never cause any additional funding requirements for schools, and the issue of funding would therefore never effect the right. Thus, this interpretation of the Constitution seems invalid (para 94-98).

From a constitutional perspective, it seems to me that the right encompasses, at the very least, the right to leave the classroom during religious instruction while remaining supervised or to be taught another subject. As between these two possibilities, there is a decent argument that schools should not give more teaching time to some students over others on

⁶ <https://www.teachdontpreach.ie/2020/08/legal-opinion-on-the-constitutional-right-to-not-attend-religious-instruction/>

the basis that the latter has opted out as to do so is to discriminate against the student on religious grounds (para 100).

1.2.4 Statement by Micheál Martin as Minister for Education

Micheál Martin as Minister for Education was asked in the Dáil in 1999 about the position of a child in a post-primary school who does not wish to participate in religious knowledge classes, or a pupil in a second level school where the school authorities require all pupils to either study one or a variety of religions. Minister Martin responded: ⁷

“The constitutional and legal rights of students to attend schools without attending classes in religious instruction is beyond doubt. Article 44.2.4 of the Constitution provides, among other provisions, that legislation providing for State aid for schools shall not affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school. This provision is supported by other constitutional provisions, notably Article 42 relating to the primary role of parents as the educators of their children and their rights in respect of any violation of their conscience.”

This is a reflection of Justice Barrington in the Supreme Court in 1998 stating that:

“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. (page 25) It is in this context that one must read Article 44 S.2s.s.4...” ⁸

The Department has since started using a completely different set of definitions relating to these issues. It now claims that ‘Religious Instruction’ under Article 44.2.4 is understood as instruction in accordance with the rites of a single religion, schools integrate Catholic faith formation into Syllabus ‘Religious Education’, and the Department claims that the course is suitable for all and the need to opt our does not arise.

The Department has not at any stage referred to the source of these changes, and typically refers to them in the passive tense using phrases like “is understood as”.

1.3 The State has funding duties in the law

1.3.1 Education Act 1998

Section 30(2)(e) and 15(2)(e) of the Education Act 1998 support the Constitutional funding conditions for schools under Article 44.2.4 (not attending religious instruction), 44.2.1 (freedom of conscience) and and 42.1 (rights of parents). It states: ⁹

⁷ <https://www.oireachtas.ie/en/debates/debate/dail/1999-02-16/212/>

⁸ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

⁹ <https://www.irishstatutebook.ie/eli/1998/act/51/enacted/en/print#sec30>

“30(2) The Minister (e) shall not require any student to attend instruction in any subject which 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.”

“15(2) A School Board shall (e) have regard to the principles and requirements of a democratic society and have respect and promote respect for the diversity of values, beliefs, traditions, languages and ways of life in society.”

Section 30(2)(d) is also relevant to this. It states:

“30(2) The Minister (d) shall ensure that the amount of instruction time to be allotted to subjects on the curriculum as determined by the Minister in each school day shall be such as to allow for such reasonable instruction time, as the board with the consent of the patron determines, for subjects relating to or arising from the characteristic spirit of the school.”

1.3.2 Education (Admission to Schools) Act 2018

Section 62(7)(n) of the Education (Admission to Schools) Act 2018 obliges schools to provide in their admission policies details of the school’s arrangements in respect of any student who will not be attending religious instruction. It states: ¹⁰

“62(7) An admission policy shall (n) provide details of the school’s arrangements in respect of any student, where the parent of that student, or in the case of a student who has reached the age of 18 years, the student, has requested that the student attend the school without attending religious instruction at the school (which arrangements shall not result in a reduction in the school day in respect of the student concerned).”

The purpose of this requirement is to provide transparency from the outset, so that parents know these details before they choose a school for their children that will respect their Constitutional right to not attend Religious Instruction. Minister for Education Richard Bruton told the Dail: ¹¹

“The Education (Admission to Schools) Bill includes a specific requirement that school enrolment policies must include details of the school’s arrangements for any students who do not wish to attend religious instruction. This is an important measure which will help ensure transparency from the outset as to how a school will uphold the rights of parents in this regard.”

Atheist Ireland compiled a report last year that shows that schools are defying this section of this new law. We examined a sample 100 admission policies and found that: ¹²

- 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 not 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 of any description thus breaching the right to privacy.
- These evasions are coordinated, based on common templates from either the Catholic Church, the Edmund Rice Schools Trust, or the Education and Training Boards.

We sent this report to the Minister over a year ago yet these practices continue.

¹⁰ <https://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/print#sec9>

¹¹ <https://www.kildarestreet.com/wrans/?id=2017-07-06a.103>

¹² <https://atheist.ie/2020/11/schools-defy-new-law/>

1.3.3 Intermediate Education (Ireland) Act 1878

The Intermediate Education Act 1878 includes duties of an Education Board.¹³ These duties were transferred to the Minister for Education under the Ministers and Secretaries Act 1924.

Under this Act, the Minister for Education cannot fund schools that do not observe strict legal conditions as to the right to not attend religious instruction, and the onus is on the Minister to be satisfied that the legal conditions are met before funding a school.

(a) Funding of schools is dependent on ‘Religious Instruction’ conditions

The Intermediate Education Act restates the Constitutional ban on payment to schools unless the conditions as to religious instruction are observed.¹⁴

“7. No payment unless conditions as to religious instruction be observed

The Board shall not make any payment to the managers of any school unless it be shown to the satisfaction of the Board that no pupil attending such school is permitted to remain in attendance during the time of any religious instruction which the parents or guardians of such pupil shall not have sanctioned, and that the time for giving such religious instruction is so fixed that no pupil not remaining in attendance is excluded directly or indirectly from the advantages of the secular education given in the school.”

These conditions for funding schools are much stronger than merely a right to not attend. The onus is on a State-funded school to ensure that parents sanction their child attending religious instruction, not on the parents to ask they not attend. In practice, most schools automatically enrol all children in Religious Instruction, and leave it up to parents to raise the issue. Also, the school cannot exclude such children, directly or indirectly, from the advantages of the secular education given in the school. And the onus is on the Board (now the Minister) to be satisfied that this is happening.

Micheál Martin as Minister for Education said in the Dáil that Sections 30(2)(e) and 15(2)(e) of the Education Act 1998 give a modern restatement and support to Section 7 of the Intermediate Education Act.

(b) Syllabus ‘Religious Education’ is ‘Religious Instruction’

The Intermediate Education Act used to ban the holding and funding of exams in ‘Religious Instruction.’

“5(4) Generally by applying the funds placed at the disposal of the Board for the purposes of this Act as hereby directed: Provided, that no examination shall be held in any subject of religious instruction, nor any payment made in respect thereof.”¹⁵

This was a problem for the framers of the Education Act 1998, who wanted to be able to hold and fund exams in religion at Junior and Leaving Certificate levels. Their legal advice was that the Intermediate Education Act was still in force. So the Education Act 1998 amended it as follows:

¹³ <https://www.irishstatutebook.ie/eli/1878/act/66/enacted/en/print.html>

¹⁴ <https://www.oireachtas.ie/en/debates/debate/dail/1999-02-16/212/>

¹⁵ <https://www.irishstatutebook.ie/eli/1878/act/66/section/5/enacted/en/html#sec5>

“35(1) Section 5 of the Intermediate Education (Ireland) Act, 1878, is hereby amended in subsection (4) by the deletion of “; provided that no examination shall be held in any subject of religious instruction, nor any payment made in respect thereof”.”¹⁶

The explanatory memorandum for the Education Act 1998 explained why this was done:

“The Act is the basis for the conduct of the Junior and Leaving Certificate examinations and the amendment will permit the introduction of religion as an examination subject.”¹⁷

It follows from this that the funding of Syllabus ‘Religious Education’ as an exam subject comes under the category of ‘Religious Instruction’. Otherwise it would not have been necessary to amend the ban in the Intermediate Education Act regarding ‘Religious Instruction’ in order to hold and fund examinations in Syllabus ‘Religious Education’.

1.4 The State has funding duties in policy

Rule 69-2(a) of the 1965 Rules for National Schools states that:¹⁸

“No student shall receive or be present at any religious instruction which his parents disapprove.”

¹⁶ <https://www.irishstatutebook.ie/eli/1998/act/51/enacted/en/print#sec35>

¹⁷ <https://data.oireachtas.ie/ie/oireachtas/bill/1997/67/eng/memo/b6797d-memo.pdf>

¹⁸ <https://www.into.ie/media-centre/circulars/rules-for-national-schools-1965>

2. The State is Misusing Public Funds and not being Transparent or Accountable

2.1 Overview

The Minister is obliged to leave reasonable instruction time for subjects relating to or arising from the characteristic spirit (ethos) of the school. In denominational schools these subjects are indisputably 'Religious Instruction' where the Constitutional right to not attend applies.

In 2000 the Department and the NCCA introduced Syllabus 'Religious Education' into the curriculum at second level. In addition the Department and the NCCA have also introduced into Community National Schools at Primary level a course called 'Goodness Me Goodness You' (GMGY) which includes elements of religious and moral education.

A significant amount of public funding was used to develop both these courses, and continues to be used each year.

The State has recently started to argue that these courses do not fall into the category of 'Religious Instruction' and therefore argues that the Constitutional right to not attend 'does not arise'. However:

- To make this case, the State relies on new definitions that have no legal basis, and that are not consistent with the rulings of the Supreme Court and the High Court. Also, the specific arguments that the State uses to justify this have shifted over time, including within Circular Letters and answers to Oireachtas questions, so they are not based on a consistent foundation.
- Atheist, humanist, and secular parents object on the grounds of conscience to the content of these courses, and we have the same Constitutional rights of conscience as religious people.
- At primary level, the GMGY course is the patron's programme. At second level, Syllabus 'Religious Education' is in practice integrated with the patron's programme. It is not taught separately, as that would mean two separate Religion classes would be happening during the school day.

The State has introduced syllabus 'Religious Education' courses that teach morals through religion and not objectively and claim that they are not 'Religious Instruction' but 'Religious Education' or in the case of the GMGY course 'Ethical Education'.

In 2019 Minister for Education Richard Bruton said that Syllabus 'Religious Education' is just like any other subject such as history or geography.¹⁹ However, unlike history or geography, the Department of Education and the NCCA developed the Syllabus 'Religious Education' course with the intention that the Catholic Church would use it to support their 'faith formation' or 'catechetical' requirements.^{20 21 22}

Also, in order to introduce syllabus 'Religious Education' and assessment at Junior and Leaving Certificate level the Department of Education needed to amend the Intermediate Education Act as that Act did not permit the holding of exams in Religious Instruction (see Section 1.3.3 of this document above).

¹⁹ <https://www.gov.ie/en/press-release/b8e7c6-department-issues-a-new-circular-that-clarifies-opt-out-requirement/>

²⁰ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-1.pdf>

²¹ <https://circulars.gov.ie/pdf/circular/education/2018/13.pdf>

²² <https://circulars.gov.ie/pdf/circular/education/2018/62.pdf>

The result of the above on the ground is that Catholic faith formation is integrated into Syllabus 'Religious Education' while the Department of Education, the NCCA, the Catholic Church and Education and Training Board schools claim that it is not 'Religious Instruction' but 'Religious Education' and the right to not attend 'does not arise'. This is a significant claim to make and, as this document shows, it is not supported by the evidence.

2.2 The Department is trying to redefine key Constitutional terms

In 2000 the Department and the NCCA introduced Syllabus 'Religious Education' into the curriculum at second level. In addition the Department and the NCCA have also introduced into Community National Schools at Primary level called the Goodness Me Goodness You course.

In recent years the Department of Education has been trying to redefine the phrases 'Religious Instruction' and 'Religious Education'. They then claim that Syllabus 'Religious Education' does not fall under the category of 'Religious Instruction' for the purposes of Article 44.2.4 of the Constitution, which includes funding duties.

But the redefinitions they are using have no basis in law, do not take due regard to the Constitutional rights of parents, and are inconsistent with the findings of the Supreme Court. Atheist Ireland obtained a legal opinion from James Kane, barrister-At-Law, about Article 44.2.4. This opinion states that:

“50 Moreover, the name assigned to a particular course will not be determinative of the question whether the subject is religious instruction or religious education. Were it otherwise, it would be permissible to simply teach religious instruction without offering an opt out by simply calling the subject “religious education.” This would clearly frustrate the right to not attend religious instruction.

51. In a similar manner, the question whether a course is religious instruction or education, does not turn on the question who is providing the course. If a course constitutes religious instruction, which is a question going to the substance of the course, the right to opt out will be engaged.”

A Government press release in October 2018 stated: ²³

“The other significant clarification is that classes following the NCCA Religious Education syllabuses cannot have any element of religious instruction or worship, which also means that opt out does not arise.”

This press release claims that Syllabus 'Religious Education' is educational. It also claims that 'Religious Instruction' refers to classes in accordance with the rites and practices of a particular religious denomination. But the Department has also said (in Circular 0013/2018 page 4) ²⁴ that the NCCA-developed syllabus for 'Religious Education' serves to meet the Religious Instruction requirements of the Catholic Church. Those statements are contradictory.

As recently 26 November 2021 the Department stated in an email to Atheist Ireland that: ²⁵

“At the outset, it is important to distinguish between Religious Education as an educational activity that deepens young people’s understanding of religions, whatever their background or beliefs, and Religious Instruction, understood as initiating or nurturing young people into a particular religious way of life (sometimes also referred to as faith formation or catechesis).

²³ <https://www.gov.ie/en/press-release/b8e7c6-department-issues-a-new-circular-that-clarifies-opt-out-requirement/>

²⁴ <https://circulars.gov.ie/pdf/circular/education/2018/13.pdf>

²⁵ <https://www.teachdontpreach.ie/2021/12/response-to-department/>

It is not the aim of Religious Education to facilitate Religious Instruction or a type of learning that has as its aim nurturing into a particular religious tradition or set of beliefs.”

Note the use of the passive phrases “understood as...” and “sometimes also referred to as...” which do not attribute any source or justification to the definitions that follow.

This email from the Department to Atheist Ireland also stated:

“Currently at Primary level, Religious Education is one of 12 subjects in the 1999 Primary School Curriculum. It holds a unique position in that the responsibility for providing a programme of Religious Education rests with the patron bodies of individual schools and not the State. There are a number of patrons’ programmes within the primary school system reflecting the diversity of patronage. Some of these are denominational or religious in nature, emphasising the place of children’s faith, spiritual and moral development in their lives. Other patrons’ programmes are ethical in nature and emphasise fostering children’s understanding of ethics and values.”

This adds another level of confusion, and lack of transparency and accountability, to the Department’s definitions of ‘Religious Education’ and ‘Religious Instruction’. The Department is saying here that at primary level ‘Religious Education’ is delivered through patrons’ programmes that are “denominational or religious in nature, emphasising the place of children’s faith, spiritual and moral development in their lives.”

This contradicts the same email’s “at the outset” paragraph, which states that ‘Religious Education’ is not denominational or religious in nature, but is “an educational activity that deepens young people’s understanding of religions, whatever their background or beliefs.”

None of the Department’s contradictory definitions are based on the judgment of the Supreme Court in the Campaign to Separate Church and State v. Minister for Education 1998, which the Court of Appeal in the recent Burke case has said is binding authority.

2.3 What the Courts have said

These various claims by the Department and the NCCA have no legal basis because of what the High Court and Supreme Court have said about the Constitutional rights of parents in relation to the religious and moral education and formation of their children. The duty of the state to protect these rights has an impact on the funding of any Syllabus ‘Religious Education’ courses.

The Department of Education and the NCCA ignored key aspects of the Supreme Court judgment in the Campaign to Separate Church and State case in 1998 when Syllabus ‘Religious Education’ was introduced in 2000. They failed to take ‘due regard’ (Article 42.4) to their duty in relation to the rights of atheist parents regarding the moral education and moral formation of their children and the connection to Religious Instruction.

Justice Barrington stated in the Campaign case at the Supreme Court:

“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 to provide for the religious, 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.2 s.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.”

2.3.1 Religious Education, Formation, and Instruction

Barrington went on to say that:

“The Constitution therefore distinguishes between religious *“education”* and religious *“instruction”* – the former being the much wider term. A child who attend a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious *“ethos”* of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

Note here that the distinction that Barrington makes is that ‘Religious Instruction’ is the timetabled Religious Instruction/Teaching (‘Teagasc Creidimh’) that you can physically not attend, while ‘Religious Education’ relates to the ‘ethos’ or the ‘general atmosphere’ of the school.

By contrast, the State makes different and contradictory claims about this distinction. The State claims that Syllabus ‘Religious Education’ is suitable for all religions and none, while it also developed the course to suit the faith formation requirements of the Catholic Church.

The State also claims that, while a patron cannot change the content of the syllabus to suit its ethos, it can use its ethos to influence how the course is delivered and the resources used in that delivery. This overlaps with the teaching of sex education and the resources given to that. ²⁶

The High Court in 1996 had previously distinguished between ‘Religious Education’ and ‘Religious Formation’ under Article 42 as:

“I have underlined the words *“religious and moral formation”* to draw attention to the fact that this Article recognises that parents have rights not only to provide for the religious education of their children (sub-paragraph (1)) but also rights in the matter of their religious formation (sub-paragraph (4)) and that it specifically enjoins the State when providing educational facilities to have regard to both these distinct rights.

The difference between the ordinary meaning of these two concepts is not difficult to identify; broadly speaking, the religious education of a child is concerned with the teaching of religious doctrine, apologetics, religious history and comparative religions, whilst the religious formation of a child involves familiarising the child not just with religious doctrine but with religious practice (by attendance at religious services) and developing the child’s spiritual and religious life by prayer and bible reading and I think that the Constitution should be construed so as to reflect this meaning. In the case of parents who profess the Catholic faith the religious formation of their children involved ensuring that their children attend Mass and that they pray and receive the sacraments on a regular basis.”

The High Court in the same case went into further detail about the meanings of ‘Religious Education’ and ‘Religious formation.’

The Court said that ‘Religious Education’ encompasses doctrine, apologetics, religious history and comparative religions. The Court also said that there were two distinct rights under Article 42, one was ‘Religious Education’ and the other was ‘Religious Formation.’ The Court said that the ‘Religious Formation’ part of ‘Religious Education’ includes familiarising a child with doctrine and in the case of a Catholic child ensuring that they attend Mass and say their prayers.

²⁶ <https://youtu.be/e8ELNsene98>

So 'Religious Formation' is an extra dimension to the 'Religious Education' of children. 'Religious Education' comes under Article 42.1 of the Constitution and 'Religious Formation' comes under Article 42.4. 'Religious Instruction' comes under Article 44.2.4 and is simply religious teaching (Teagasc Creidimh).

Articles 42.1 and 42.4 relate to the rights of parents in relation to the religious and moral, intellectual, physical and social 'Education' of their children. An element of that 'Education' is 'Religious Education' and an element of 'Religious Education' is 'Religious Formation'.

For example Justice Keane in the Supreme Court in the Campaign case said that chaplains are constitutionally sanctioned:

“Having regard to the recognition in Article 42.4 of the rights of parents in relation to the religious and moral formation of their children,”

And Justice Barrington said in the same case that:

“In community schools it is no longer practicable to combine religious and academic education in the way that a religious order might have done in the past. Nevertheless parents have the same right to have religious education provided in the schools where their children attend. They are not obliged to settle merely for religious “instruction”. The role of the Chaplain is to help provide this extra dimension to the religious education of the children.”

So the role of the Chaplain is to help parents with the Religious and Moral 'Formation' of their children (Keane) which is an extra dimension to the 'Religious Education' of the children (Barrington). 'Faith Formation' is familiarising a child with doctrine and in the case of a Catholic child ensuring that they attend Mass and say their prayers (Costello).

In summary, the definitions that the Department are using are contrary to how the Supreme Court has defined Religious Instruction, Education, and Formation.

2.3.2 Other relevant Court findings

In the Campaign case, Barrington said in relation to Chaplains that:

“Secondly while it is obviously right and proper that a Chaplain should counsel and advise any child who may consult him about its problems it would be constitutionally impermissible for a Chaplain to instruct a child in a religion other than its own without the knowledge and consent of its parents.”

The contract for Chaplains requires them to teach for four hours per week. There is no difference in principle between a Chaplain and a Religion teacher instructing a child in a religion other than its own through Syllabus 'Religious Education'.

In the recent Burke case at the Court of Appeal in 2019 (currently being appealed to the Supreme Court) the Court stated that: ²⁷

“191. This Court considers that the case law demonstrates that the relationship between parents, the State and the child as envisaged by Articles 40, 41 and 42, is a trifecta not just of the participants but of the rules under which constitutional engagement on education must take place; namely rights, duties and powers. It is only through understanding the interwoven nature of those relationships, that clarity can be brought to the complex constitutional provisions on education. It appears to us that the right of the child to education does not stop at the point where “a certain minimum education” has been

²⁷ https://www.courts.ie/acc/alfresco/4a492524-b29b-4dc3-be10-ad483ee18ac6/2021_IECA_67.pdf/pdf#view=fitH

imparted but is interwoven with the parents' right to choose how to provide for secondary education and also the State's power to make provision for such education."

The Court of Appeal also stated that:

"171. The decision of the Supreme Court in the Campaign to Separate Church and State v. Minister for Education is binding authority."

This is a significant point, as much of the State's evasion of its funding duties depends on the State ignoring the distinctions between 'Religious Instruction' and 'Religious Education' made by the Supreme Court in the Campaign case, and replacing those distinctions with new definitions that they have invented with no legal basis for doing so.

2.4 Legal Opinions from James Kane and Conor O'Mahony

Dr. Conor O'Mahony has said about the right to not attend religious instruction that: ²⁸

"The integrated curriculum does not operate in secondary schools in the same way, and while over 95% of primary schools are denominational, this can only be said of about 50% of secondary schools. Castletroy College initially sought to resist the request to opt-out on the basis that the subject being provided was multi-denominational rather than doctrinal instruction. Nonetheless, the view taken by the Supreme Court in the passage quoted above suggests that this distinction is irrelevant. The right to opt-out applies to the formal timetabled period of "religious instruction", and would seem to capture whatever form that instruction might take. Thus, while the distinction between "religious instruction" and the overall school ethos or "religious education" is often pointed to as undermining the right to opt-out in a primary school context, it might ironically serve to strengthen it in a secondary school setting."

Atheist Ireland obtained a legal opinion in 2020 from James Kane Barrister-at-Law on this issue. This states that: ²⁹

"45. The suggestion that religious teaching is religious instruction only when that teaching relates to one religion arises above and also as the Department appears to be of the view that religious instruction arises (thereby triggering an opt out right) only where the teaching in question relates to one religion.³⁵

46. For a number of reasons, it is my view that an argument that a course is not religious instruction by dint of the fact that the course refers to more than one specific religion is not necessarily correct.

47. First, Article 44.2.4° simply refers to "religious instruction." Accordingly, if a course is religious instruction, the right is engaged. Article 44.2.4° says nothing whatsoever about religious instruction relating to one religion only. No such qualification is found within Article 44.2.4°. In the context of a family of an atheist perspective, it appears that it would be impermissible to refuse an opt out by arguing that the course in question relates to more than one religion. If one takes an extreme example whereby a publicly funded school offered a course which relentlessly pressed theistic beliefs and sought expressly to reject atheist views with the aim to convert atheist students to persons of theistic beliefs, it is almost certain in my view that such a course would engage the opt out right. The fact that such a course related to multiple theistic religions would not remove the right to opt out.

²⁸ <http://constitutionproject.ie/?p=554>

²⁹ <https://www.teachdontpreach.ie/2020/08/legal-opinion-on-the-constitutional-right-to-not-attend-religious-instruction/>

48. Second, there is no great difference in principle between a person of one faith who wishes to opt out of religious instruction in another particular faith and a person of no faith who wishes to opt out of religious instruction in a number of faiths. It would appear to me that drawing a distinction between these persons would fly in the face of the freedom of conscience which is expressly protected by Article 44.2.1° and which extends to protect persons of no belief. Further, it is inconsistent with the prohibition on discrimination on the grounds of religious profession, belief or status, protected under Article 44.2.3°. As the Constitution is generally to be construed in a manner which does not place constitutional articles on a collision course with each other³⁶, it appears to me to be incorrect to interpret Article 44.2.4° as confined to an opt out from teaching relating to one religion only. The sole question is whether the course is religious instruction in substance.

49. In my view, it is at least probable, if not likely, that any course which through its cumulative impression has the effect of invalidating atheist perspectives through promoting theistic views, comprises religious instruction to which an opt out must be available. This applies in my view whether the teaching in question relates to one religion only or more than one.”

2.5 Documents obtained from NCCA under Freedom of Information

2.5.1 Letter from Department to NCCA 10 March 1994

Atheist Ireland has obtained documents under FOI that show that, when Syllabus ‘Religious Education’ was being developed in the 1990s, the Department of Education raised Constitutional concerns in relation to: ³⁰

- Discrimination under Article 44.2.3 of the Constitution
- The endowment of religion under Article 44.2.5 and
- The right to not attend Religious Instruction under Article 44.2.4

This letter from the Department to the NCCA on 10 March 1994 also also says that in defending the course and examination before the courts, the State would need weighty, objective arguments to justify it on educational grounds.

“The most obvious issue to address in this context is the effect of section 5 of the Intermediate Education (Ireland) Act, 1878, which prohibits the holding of an examination in religious instruction and State support for such an exam. The primary aim of this provision appears to have been o prevent public funds being spent on denominational education. Although the legislation is now quite old and in many respects outdated, this particular provision has not been repealed. The Intermediate Education Board for Ireland which was established by the legislation was dissolved in 1923 and its powers and functions passed to the Minister for Education under the Ministers and Secretaries Act, 1924. The Rules and Programme for Secondary Schools issues by the Minister have their statutory basis in the Act. Our advice is that the provisions relating to examinations in religious instruction have not lapsed and would have to be repealed before examinations could be held in religion.

In considering a claim of discrimination in this context, a court could be expected to enquire into the education need for the course, however desirable and valuable it may otherwise be. It is also unlikely that a court would be convinced by the argument that the examination came within the provisions guaranteeing free profession of religion, as it could hardly be said that the proposed course was necessary for the free practice and profession of the Christian religions. In defending the course and examination before the courts the State would need weighty, objective arguments to justify it on educational grounds. In deciding whether or not to introduce this course, it may be desirable that this Department and the

³⁰ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-0.pdf>

NCCA marshal these arguments so that the strength and the constitutional position can be fully assessed.

In addition to this issue of discrimination, the proposed course raises issues of endowment of religion contrary to Article 44.2.2 of the Constitution. The denominational structure of our educational system is, in all probability, underpinned by the Constitution to an extent which would defeat any claim that State support for denominational schools, per se, amounted to an unconstitutional endowment of religion. A court is likely to take the view that, to the extent that such support represents endowment, the funding of denominational education and the teaching of religion is necessary to uphold the rights of parents to provide for the religious and moral education of their children and the right to freedom of religious expression. In doing so however, a court might also take the view that there should be an endowment of religion only to an extent which is objectively necessary and proportionate to the aim of inculcating moral and religious principles. A formal course of studies, leading to a formal state funded examination could well be considered to go beyond what could be considered necessary for that limited purpose.”

2.5.2 NCCA Course Committee for Religious Education

These Constitutional issues were also raised in the second draft of the report of the NCCA Course Committee for Religious Education. This states that: ³¹

“The Constitution underlines the rights and duties of parents in the provision of education for the nation’s children. Schools are to assist the parents in their role as the primary and natural educators of their children. Providing a syllabus for religious education, based on educational principles and assessed according to *those same principles state is would support* this right of the parents in this regard. A Religious Education syllabus, based on the educational principles which govern other subject areas, has a legitimate place on the school curriculum. Mindful of the rights of parents, however, such a syllabus would be **optional**. The *educational* basis for any syllabus ensures that concerns about article 44.2.4 of the constitution on issues of endowment and discrimination can be overcome.”

The very purpose of Syllabus ‘Religious Education’ and the basis on which it was developed was to help parents with the religious education of their children. The Department and the NCCA did not give any explanation as to why they would need to help atheist, humanist and secular parents with the religious education of their children and why this would not breach their constitutional rights in relation to the moral education of their children. Issues around Article 44.2.4 were not overcome, but were ignored.

2.5.3 NCCA Strategy for implementation of Religious Education

On 30 June 1998 the NCCA wrote a strategy for implementation of ‘Religious Education’ as an optional subject for assessment and certification in the Junior Certificate examination. This included: ³²

“1.3 phased introduction

It would acknowledge the unique position of Religious Education in the schools by allowing schools time to reflect on the implications of the optional syllabuses for their current Religious Education provisions and for resource and staffing requirements.”

“1.4 Cost

The implementation strategy below has an estimated cost of 630.000 over a period of four and a half years – an average per annum of 140.000. The initial phases of the

³¹ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-8.pdf>

³² <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-2.pdf>

implementation process are significantly less costly than the average figure. The most resource intensive year would be 2001-2002 as the vast majority of schools who wish to offer the syllabus for Junior Certificate will come on stream that year...”

This misuse of public funds has continued over the years. Syllabus ‘Religious Education’ teachers are funded by the State to teach a course that students from atheist, humanist and secular families cannot access because of their conscience.

2.5.4 NCCA Briefing concerns in relation to Episcopal Conference

In 1999 the NCCA wrote a document called ‘Religious Education in the Junior Certificate Briefing Note in relation to the likely concerns of the Episcopal Conference’. This included: ³³

“3.1 Optional Syllabus

These syllabuses are optional. Schools may continue in offering current syllabuses. Other schools may choose to offer the new syllabuses to all or some of their students.

3.2 catechetical programmes

The aim of the syllabuses make it clear that they are not designed to meet the ‘faith formation’ or ‘catechetical’ requirements of any religious denomination. However, many schools intend using them as a support for such work in school, particularly at Junior Certificate level. The syllabus for Junior Certificate has been designed to offer this flexibility. The Episcopal conference has commissioned work on guidelines in this regard and the NCCA’s education officer has briefed the working group and met with the author on a number of occasions.”

The Department of Education and the NCCA were aware before the introduction and funding of Syllabus ‘Religious Education’ that Catholic faith formation would be integrated into the syllabus. Notwithstanding the fact that schools could continue to offer the Patron’s programme, there simply would not be enough time in the school day to offer two courses in religion. Syllabus Religious Education was designed to meet the faith formation goals of the Catholic Church.

At the time the Humanist Association of Ireland had requested representation on the NCCA course committee on ‘Religious Education’ but were refused on the basis that they were not involved in religious education. That was exactly the point of requesting a place on Syllabus ‘Religious Education’ and particularly a course that promoted morals through ‘Religious Education’. The Department and the NCCA failed to take due regard of the Constitutional rights of atheist, humanist and secular parents in relation to the moral education and formation of their children while spending public funds. ³⁴

2.5.5 Meeting between NCCA and Department of Education

These are extracts from a report by the NCCA Religious Education Committee about a meeting between committee members and officials of the Department of Education held on 24 October 1995 at the Department of Education. ³⁵

“Department of Education Policy

Tom Boland stated that the delay in response to the rationale document was due to the ongoing case in the High Court concerning the payment of chaplains in community Schools. The outcome of this case could have implications for the work of the committee, although

³³ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-1.pdf>

³⁴ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-10.pdf>

³⁵ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-14.pdf>

the work of the committee was not dependent upon it. Judgement in this is due before Christmas.

A document concerning any constitutional difficulties which might arise in the provision of syllabuses for Religious Education has been sent by the Department to the Attorney General's office. While such difficulties are not expected, the matter must be clarified.

The committee stated that the provision of Religious Education syllabuses was on sound educational grounds which would further avoid any such difficulties.”

“Circulation of the Syllabuses for Consultation

The advice of the Department of Education was to defer the circulation of these drafts until the Attorney General had responded to the Departments submission. This response is expected in December. The committee and the NCCA agreed that such a deferral was appropriate.”

2.6 The aims and delivery of Syllabus ‘Religious Education’

When **State funding** was used to develop Syllabus ‘Religious Education’, the Department and the NCCA failed to take ‘due regard’ (Article 42.4) to their duty in relation to the rights of non religious parents regarding the moral education and moral formation of their children, and the connection to ‘Religious Instruction’ and the findings of the Supreme Court in the Campaign case.

The main aims were (a) and now are (b) to:

- (a) Develop moral and spiritual values through religious education and acknowledge the non religious interpretation of life (original Syllabus ‘Religious Education’ 2000) ³⁶
- (b) Develop values to enable students to see the relevance of religion to their lives and relationships. (updated Syllabus ‘Religious Education’ 2019). ³⁷

Circular letter 0062/2018 issued by the Department of Education states: ³⁸

“The NCCA-developed Religious Education Junior and Senior Cycle syllabuses, and the Religious Education specification for Junior Cycle, to be introduced in 2019, are intended for students of all faith backgrounds and none. The content prescribed in the syllabuses is intended to ensure that students are exposed to a broad range of religious traditions and to the non-religious interpretation of life. They do not provide religious instruction in any particular religious or faith tradition.”

But Syllabus ‘Religious Education’ goes much further than those aims. It is formational and not objective. Its aims are to develop morals, including for children of atheist parents, through ‘Religious Education’.

This is not just a matter of parents ensuring that their children not attend ‘Religious Education’ classes, but also a matter of the State using public funds to introduce a Syllabus ‘Religious Education’ course with exams that students from atheist families cannot access because of conscience.

³⁶ https://www.curriculumonline.ie/getmedia/c0c1f394-79c8-4455-bea5-c9e014a9945d/JCSEC22_religion_syllabus.pdf

³⁷ <https://ncca.ie/media/3785/junior-cycle-religious-education-specification.pdf>

³⁸ <https://circulars.gov.ie/pdf/circular/education/2018/62.pdf>

In addition to the content of Syllabus 'Religious Education', most schools integrate Catholic faith formation into Syllabus 'Religious Education', and inform parents that it is not 'Religious Instruction' but 'Religious Education' and suitable for all religions and none.

Section 5 of Circular Letter 0013/2018 states that:

"The National Council for Curriculum and Assessment (NCCA) Developed Curriculum for Religious Education – The NCCA developed curriculum for Religious Education currently also serves to meet the religious instruction requirements of the Catholic Church and schools can continue this arrangements for pupils whose parents elect for Catholic religious instruction or other parents who wish to follow the NCCA curriculum, and where that is the case it is important in the information provided to parents that they are made fully aware that the curriculum is not necessarily confined to learning about religions."

Circular Letter 0062/2018 states about that section that:

"In section 5 of that circular it was stated that the NCCA Religious Education curriculum at either Junior or Senior cycle level also serves the religious instruction requirements of the Catholic church and that where that is the case it is important that parents are made fully aware that the curriculum is not necessarily confined to learning about religions."

"The Irish Catholic Bishops' Conference published guidelines for the Faith Formation and Development of Catholic students which built on the content of the Junior Certificate Religious Education Syllabus 1999* and the Leaving Certificate Religious Education Syllabus 2006**. In addition, parental experience conveyed to the Department suggests that in some schools there has been a practice of delivering Catholic religious instruction within class periods where the NCCA Religious Education syllabus is time-tabled."

Atheist Ireland's Legal Opinion from James Kane states about this that:

"76. The above material suggests that the NCCA religion course for junior certificate was molded with input from religious bodies who in turn designed guidelines for the supplementation of the NCCA junior certificate course with Catholic faith formation and development. It is impossible in those circumstances to see any justification whatsoever for withholding the right of a student to opt out of such a course. The intricate architecture comprising the NCCA syllabus layered with guidelines and various assertions cannot overcome the fundamental principle that a child must be permitted to not attend religious instruction in State funded schools.

Teaching Catholic instruction during the State religion syllabus, without offering a supervised opt out, represents an unlawful, systematic and stark attack on the right to not attend religious instruction* in State funded schools.

77. A student must as a matter of law be permitted by the school to opt out of Catholic instructions at school."

* our emphasis

2.7 The State-funded PDST and Catholic Diocesan Advisors

Catholic Diocesan Adviser are appointed by local Bishops and are accountable to them. The Catholic Bishops have said that the Diocesan Advisers:

"traditionally involved themselves with the resourcing and support of the mainstream syllabi for RE – including those for State examinations. This is alongside the professional development services of the DES".³⁹

³⁹ <http://cloynediocese.ie/wp-content/uploads/2016/01/Diocesan-Advisor-for-Post-Primary-reprint-sept-2013.pdf>

This also applied to the ETBs, as 'Religious Education' teachers in ETBs also attended these in-service days. We have already raised this issue with the Department of Education who have informed us that: ⁴⁰

"The PDST can on occasion be invited to provide inputs at various educational conferences and events. This can happen for all subjects including Religion. Any input provided by the PDST is directly connected to the curriculum and classroom methodologies/assessment" (Teacher Education Section (ITE & Professional Development) Department of Education)

We requested documents from the Department of Education (under FOI) relating to a letter sent by the then Minister for Education, Michael Woods in 2001 to the National Association of Post Primary Diocesan Advisers/Co-ordinators. The Minister had informed the Diocesan Advisers that it was not possible to have Diocesan Advisers at inservice courses for Junior Certificate Religious Education and why funding for local inservice by Diocesan Advisers is not possible. ⁴¹

The response from the Department states that the only documents available is a Note for the Secretary General in relation to the funding of £20,000 to the Diocese of Cork and Ross.

Initially the Department of Education provided £20,000 funding to the Catholic Church to train teachers in Syllabus 'Religious Education'. A Note for the Secretary General stated that: ⁴²

"Re: Grants for to the diocese of Cork and Ross for the project entitled "Support and Development, with special emphasis on Methodology and Teaching Skills, of Post Primary RE Teachers in the greater Cork area".

A "once off" grant of £20,000 was sanctioned for the project on 7th January 2000 - £10,000 of which was paid as an advance on 3rd April 2000. The balance of the £10,000 was due to be paid on completion of the project."

A request a year later for a further grant was refused on the grounds that the Department had by then put in place its own in-service training. But the Department had already funded at least one project by the Catholic Church to train teachers for Syllabus 'Religious Education'.

The Department of Education handed £20,000 to the Diocese of Cork and Ross for a Religion course that was supposed to be for all religions and none. No other religion or body was given such funding. There was no accountability for this funding, and it is possible that other Dioceses were given funding as well.

Religion teachers in ETB schools as well as Religion teachers in denominational schools were attending in-service days for Syllabus 'Religious Education' hosted by Catholic Diocesan Advisers where the PDST claims that "Any input provided by the PDST is directly connected to the curriculum and classroom methodologies/assessment." ⁴³

This is despite the fact that the Letter from the then Minister Michael Woods in 2001 has told them that it was not possible for them to attend in-service days for syllabus 'Religious Education.' The PDST use public funds to attend these in-service days hosted by Catholic Diocesan Advisers.

⁴⁰ <https://www.teachdontpreach.ie/2021/12/response-to-department/>

⁴¹ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-23.pdf>

⁴² <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2021/12/NCCA-FOI-Doc-24.pdf>

⁴³ <https://www.teachdontpreach.ie/2021/12/response-to-department/>

In 2018 the Department of Education told ETB schools not to integrate Catholic Faith Formation and Development into Syllabus 'Religious Education' anymore.^{44 45} However, we are aware that some ETB schools have continued to do this.

Also, the practice continues unchallenged in denominational schools. Schools under Catholic patronage still integrate Catholic faith formation into Syllabus 'Religious Education' and tell parents it is not 'Religious Instruction' but 'Religious Education'.

Part of the resources on the PDST website for the Syllabus 'Religious Education' course introduced in 2000 is a document called 'The question of faith - Factors that can influence religious beliefs and practice.' This includes:⁴⁶

"Teachers, chaplains, religious and priests can also be good role models for young people. Sometimes if young people have a good experience of Religious Education in school their belief in God can be strengthened. R.E. class can open their minds and hearts to the mystery of God and how faith can be lived. In schools they can be exposed to meditation, liturgies, opening year masses, graduation ceremonies etc which involve them in a meaningful way. This can provide a sense of union with one another and with God. It can encourage them to continue to pray, worship and to live by religious moral values in their daily lives. Seeing adults such as religious sisters and clergy who have a vocation to follow Christ, and who offer their lives in service of God and one another, can be a living example of the love of God in the world and the importance of religious faith. It reminds young people that religion has a valuable role to play in life."

The only reason that Catholic Diocesan Advisers hold in-service days for Religion teachers (alongside the State-funded PDST, with State-funded teachers attending) is because Syllabus 'Religious Education' was (as the Department has already stated) 'designed to meet the religious instruction requirements of the Catholic Church'.

Catholic Diocesan Advisers do not hold in-service days alongside the PDST for syllabus history or mathematics nor do they hold educational conferences for these subjects or provide resources and support for the mainstream syllabi in these subjects.

This is because no other subject such as history or geography has been developed to meet the religious formation requirements of the Catholic Church. Subjects such as history or geography do not have Constitutional conditions in relation to funding (Article 44.2.4).

It was at one of these in-service days attended by the PDST that a teacher was provided with an anti abortion video to show her class during Syllabus 'Religious Education'. This has constitutional issues because the Department funds the PDST.^{47 48}

Atheist Ireland raised this issue with the Oireachtas Education Committee, who forwarded it to the Department of Education and asked the Department to respond to us and copy them in on the response. In the Department's response, they relied on their own definitions of 'Religious Instruction' and 'religious Education,' which are different to the definitions of the Courts. We have responded to the Department. You can read the entire correspondence at the footnote below.⁴⁹

⁴⁴ <https://circulars.gov.ie/pdf/circular/education/2018/13.pdf>

⁴⁵ <https://circulars.gov.ie/pdf/circular/education/2018/62.pdf>

⁴⁶ <https://pdst.ie/jc/religiouseducation/cresources>

⁴⁷ <https://atheist.ie/2021/08/anti-abortion-school-video/>

⁴⁸ <https://atheist.ie/2021/08/anti-abortion-video/>

⁴⁹ <https://www.teachdontpreach.ie/2021/12/response-to-department/>