

Atheist Ireland



To: Paraic Joyce,
Deirdre Shanley,
Department of Education

cc Emily Logan, IHREC Chief Commissioner
Niall Muldoon, Ombudsman for Children
Helen Dixon, Data Protection Commissioner
Nessa White, general Secretary ETBI

28 January 2020

Dear Paraic and Deirdre,

We are writing to outline our concerns regarding the undermining of the Constitutional right of parents to ensure that their children do not have to attend religious teaching in schools (Article 44.2.4) and the inalienable right of parents under Article 42.1 of the Constitution.

The reason that we are highlighting this issue with you is because of the recently commenced Section 62 7 (n) of the Education (Admissions to Schools) Act. Section 62 7 (n) of the Education (Admissions to Schools) Act legally obliges schools in their Admission policies to inform parents about the arrangements the school has for parents who exercise their Constitutional right for their children to not attend religious instruction.

In its recently updated Guidelines on the inclusion of other beliefs in Catholic second-level schools, the Catholic Church claims that Catholic schools do not teach religious instruction anymore. As the Department of Education has no Guidelines, statutory or otherwise, on the practical application of the right to opt out in schools, these Catholic Guidelines are used in publicly funded denominational schools and also ETB schools.

We request that the Department of Education takes practical measures to ensure that all schools recognise and vindicate the rights of parents and their children under the Constitution by ensuring that all Admission Policies state the arrangements for students who do not wish to attend any type of religious teaching.

Data Protection

In addition to undermining the Constitutional Rights of parents and their children, the Guidelines also ignore Data Protection by seeking to negotiate the opt out, and identifying the religion or belief of the student when they do opt out. The Guidelines put in place different opt out arrangements for students who have a faith and those who have no faith and the teacher is to supervise this and can decide what they see as suitable reading for the student that is opted out.

Education (Admissions to Schools) Act 2018

Section 62 7 (n) of the Education (Admissions to Schools) Act states that:

- (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),

New Catholic Guidelines

The new Catholic Guidelines try to exclude parents from using their Constitutional right to not attend the NCCA religion course, by falsely claiming that it does not qualify as instruction:- <https://www.jmb.ie/LinkClick.aspx?fileticket=bvfg2Cvau3s%3d&portalid=0&resourceView=1>

“When commenced, section 62(7)(n) of the Education Act 1998, as inserted by section 9 of the Education (Admission to Schools) Act 2018, will require schools to provide details of the school’s arrangements in respect of any student where the parent, or a student aged 18 or over, has requested that they attend the school without attending religious instruction. In terms of the school’s arrangements for the rights of parents/guardians and students over 18 years to withdraw from participation in religious instruction, it needs to be clearly stated that Catholic schools teaching the NCCA curricula are not offering religious instruction.

It is important to note that the NCCA curricula are written to encompass all beliefs; students are invited into dialogue with the Christian vision as well as with one another’s beliefs. There is no reason why students of different faiths or students with no religious belief in a Catholic school should not participate fully in this curriculum, whether the class is sitting the state examination or not. All parents should be made aware of the new Junior Cycle Religious Education specification (NCCA, 2019) which can be taught with students of all faiths and none.”(p15)

The new Guidelines accept that you can opt out of what they call Religious Education under the Education Act 1998 but that it is not ‘Religious instruction’ under the Constitution (Article 44.2.4). The Guidelines say that parents have to ‘negotiate’ the opt out under the Education Act 1998 with the school management, which breaches the right to privacy about your beliefs, and they say that the student may have to remain in the class while not participating.

“Withdrawal of students from Religious Education class needs to be negotiated with school management and hopefully addressed during their enrolment meeting. Parental concerns around religious instruction or the conversion of their child to Catholicism need to be addressed in a spirit of understanding, especially with parents of different beliefs. Some ways of addressing this could include:

- A member of the Religious Education team could be invited to present an outline of the RE specification or programme at an evening for the parents of incoming first years.
- The school could offer a copy of the RE textbook to parents to review at home if they are concerned about the content being covered in RE class.

While it is a parent’s right to withdraw their son or daughter from RE class, the supervision of the student can present the school with considerable logistical and supervision dilemmas. In cases such as this, a school should make it clear that they may not have capacity for the individual supervision of the student outside of the RE classroom due to the limitations of the Department of Education and Skill’s staff allocation to the school. Students who opt out of Religious Education may often have to remain in the classroom while not participating.”

They also say on page 10 that:

“Religious Education, therefore, always has a formational aspect.”

This undermines even their claim that what they call Religious Education is suitable for members of all faiths and none. They also don’t intend to inform parents that the NCCA Religious Education course will be delivered through the ethos of the school. Trainee teachers take modules in teacher training colleges to enable them to deliver NCCA Religious Education through a Catholic or Protestant lens.

Constitutional obligations on the State

In the High Court case in 1996, Campaign to Separate Church and State v Minister for Education, Justice Costello (High Court) cited the Rights guaranteed to parents under the European Convention and the United Nations. He said that the Constitution had developed the significance of these parental Rights and has imposed an obligation on the State in relation to them.

“The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that 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.”

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

One of the General Principles of the European Court is that any religious teaching must be objective, critical and pluralistic. The main aim of the NCCA Religious Education Course launched last year is to teach students about the relevance of religion to their lives. That is not objective, critical or pluralistic and parents who seek secular education for their children obviously have issues with it on conscientious grounds. This NCCA RE course is not even up to human rights standards never mind the higher standards in the Irish Constitution.

In addition like all subjects, the NCCA Religious Education course is delivered through the ethos of the school (Section 15 Education Act 1998). As well as denominational schools most ETB schools including non designated schools operate with a Catholic ethos.

See research on ETBs published last year: O. McCormack J. O'Flaherty B. O'Reilly J. Liston 'That's how it works here': The place of religion in publicly managed second-level schools in Ireland

<https://onlinelibrary.wiley.com/doi/10.1002/berj.3490>

You can opt out of any kind of religious teaching

The Catholic Guidelines on the right to not attend religious teaching are inconsistent with Article 44.2.4 of the Constitution and Article 42.1 as well as Data Protection. It doesn't matter what type of religious teaching it is, or whether it is called religious instruction or religious education, the Constitutional right to not attend still applies. Section 30 – 2 (e) of the Education Act 1998 is a reflection of the rights guaranteed under Article 44.2.4 and Article 42.1 of the Constitution.

The right under the Constitution belongs to parents and their children. It is not up to the Catholic Church, the NCCA, the Department of Education, the TUI, schools, Boards of Management or religion teachers to decide what type of religious teaching is suitable or not suitable for parents and their children. Nor can schools expect parents and their children to ignore Data protection laws just because publicly funded schools promote a particular ethos. As a minority we should not be expected to give up our right to privacy while accessing education for our children.

Just because the Catholic Church, and the NCCA, and the outgoing Minister for Education Joe McHugh, claim that the NCCA Religious Education course is suitable does not mean it is. They simply don't get to decide on the conscience of parents and their children. That attitude is patronising and undermines parental rights under the Constitution and fails to take into account human rights law and Data Protection. The Catholic Church also claims that their patron's programme at primary level 'Grow in Love' is suitable for all.

Irish Constitution, Article 44.2.4 states that:

Reachtaíocht lena gcuirtear cúnamh Stáit ar fáil do scoileanna ní cead idirdhealú a dhéanamh inti idir scoileanna atá faoi bhainistí aicmí creidimh seachas a chéile ná í do dhéanamh dochair do cheart aon linbh chun scoil a gheibheann airgead poiblí a fhreastal gan teagasc creidimh sa scoil sin a fhreastal.

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.

The Irish language version takes legal precedence. 'Teagasc creidimh' means teaching religion, not teaching in accordance with the requirements of one religion. The Irish version speaks about students not attending religious teaching. Religious teaching is translated into 'religious instruction' in the English version of the Constitution. So you have the right to not attend religion classes of any kind.

Education Act 1998, Section 30.2(e)

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.

Throughout the Education Act, the word 'instruction' is always used to mean simply the teaching of any subject on the curriculum. It could be history instruction, maths instruction etc. The reason that Section 30 -2 (e) also refers to the conscience of parents is that the legislators had to ensure that parental rights are fully protected given the fact that the Constitution refers to parents 'inalienable' rights (Article 42.1). Again, you have the right to not attend religion classes of any kind.

Micheal Martin as Minister for Education

Just before Section 30 – 2 (e) of the Education Act was commenced in 1999, the then Minister of Education, Micheal Martin was quite clear about the rights of parents under Section 30 - 2 (e) of the Education Act 1998.

The then Minister was asked in the Dail about students who do not wish to participate in religious knowledge classes and where the school authorities require all pupils to either study one or a variety of religions and his views in relation to the best course of action to be taken in this situation. Micheal Martin stated that:

"These constitutional guarantees are supported by statutory provisions enacted both before and after the adoption of the Constitution. Section 7 of the Intermediate Education (Ireland) Act, 1878, provides for the withholding of State funding from schools where pupils receive religious instruction which has not been sanctioned by the parents or guardians of a pupil. This provision is given a modern restatement and support in the Education Act, 1998. Section 15 of the Act requires school management authorities to 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.

In addition, section 30(2)(e) provides that the Minister for Education and Science, in prescribing the curriculum for schools shall not require a student to attend instruction in any subject which is contrary to the conscience of his or her parent or of the student where he or she is 18 or over. Both of these provisions will come into effect in the near future when I make a commencement order in respect of the sections in which they are included, after necessary planning and consultation has been completed.

The position in law therefore is quite clear and as far as my Department is concerned so is the position in practice. The teaching of religion in schools must be conducted in a manner, which allows children, who do not wish to attend religious instruction, to avail themselves of an otherwise full education without exposure to religious instruction. The precise arrangements to be made are a matter for the individual school and my Department will advise and, as far as practicable, assist any school which experiences any difficulties. My Department will also inquire into any case where it is alleged that the school's responsibilities in this matter are not being fulfilled.”

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

Conclusion

We are now in a position whereby the Catholic Church, the main patron body in the country, is yet again undermining the rights of parents and their children. Given the commencement of Section 62-7(n) of the Education (Admission to Schools) Act 2018, these Guidelines will have consequences on the ground for parents and their children, because the Department of Education leaves it up to each school to manage the opt out. The lack of statutory Guidelines by the Department of Education has created a vacuum that leaves organisations and individuals in a position to interpret the constitutional and human rights of parents and children to suit their own agenda.

A Minister for Education, Micheal Martin, has said that, “The position in law therefore is quite clear and as far as my Department is concerned so is the position in practice”. If this was the case in 1999 how has it changed? The Constitution has not changed, Section 30-2(e) of the Education Act has not changed. The Department of Education has never issued a statement saying that they have changed their understanding on the Constitutional rights of parents and their children. These Catholic Guidelines implicitly seek to define the type of religious teaching that students can opt out of under the Constitution and by contrast separating that from the type of religious teaching that students can opt out of under Section 30-2(e) of the Education Act 1998.

We request that the Department of Education takes practical measures to ensure that all schools recognise and vindicate the rights of parents and their children under the Constitution by ensuring that all Admission Policies state the arrangements for students who do not wish to attend any type of religious teaching.

Yours sincerely,

Michael Nugent
Chairperson
Atheist Ireland

Jane Donnelly
Human Rights Officer
Atheist Ireland