

# Atheist Ireland



To: Norma Foley TD, Minister for Education

cc Oireachtas Education Committee  
cc Comptroller and Auditor General  
cc Oireachtas Public Accounts Committee

21 January 2022

**Re: Your letter of 17 January 2022, Ref DES-CU-04590-2021**

Dear Minister Foley,

Thank you for your letter dated 17 January 2022. We would first like to clarify the context in which you have sent this letter, as it is a duplicate of a letter from your Department to which we have already responded. Here is the sequence of correspondence to date.

- On 21 August 2021, we wrote to the Oireachtas Education Committee regarding students not attending religious instruction in schools and a recent anti-abortion video shown in a school.
- On 6 September, we wrote to you and made a complaint to the Comptroller and Auditor General about the misuse of public funds in this context.
- On 14 September, the Oireachtas Education Committee forwarded our letter to the Secretary General of your Department, and asked him to respond directly to us and to copy his response to them.
- On 26 November, Martin McLoughlin, Principal Officer at your Department, responded to our letter, and copied his response to the Oireachtas Education Committee.
- On 17 December, we responded in detail to Mr McLoughlin's letter, explaining how your Department was addressing these issues outside of its Constitutional duties and using key definitions that are different to those determined by the Supreme Court. We copied this response to the Oireachtas Education Committee.
- On 20 December, we sent a wider complaint to the Comptroller and Auditor General and the Oireachtas Public Accounts Committee about the misuse of public funds arising from the Constitutional and legal funding conditions imposed on the State regarding the right to attend State-funded schools without attending religious instruction.
- Now on 17 January, you have sent us the exact same letter that Mr. McLoughlin sent to us on 26 November, with only the final paragraph changed, but this time signed by you instead of by Mr. McLoughlin. Your letter does not address any of the points that we have already made in our response on 17 December to this same letter.

In that context, we repeat here the points that we made in response to Mr. McLoughlin's letter, as they apply equally to your letter which is the same as his. We would appreciate a substantive response to these points. We would also welcome the opportunity of an online meeting with you to discuss the issues further.

Yours sincerely,

Jane Donnelly  
Human Rights Officer  
Atheist Ireland

Michael Nugent  
Chairperson  
Atheist Ireland

## 1. Your Department's Definitions of Religious Instruction and Education

Your response begins with:

“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). 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.”

But these distinctions (from which the remainder of your analysis flows) are not based on what the Courts in Ireland have defined as Religious Education (Article 42.1), Religious Formation (Article 42.4) and Religious Instruction (Article 44.2.4).

Your response also states that:

“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 to your Department’s definitions of ‘Religious Education’ and ‘Religious Instruction’. You are 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 your “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 your 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 in 1998, which the Court of Appeal in the recent Burke case has said is binding authority:

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

Justice Barrington in the Supreme Court said that the rights of parents under Article 42 and Article 42.2 of the Constitution must be read in the context of Article 44.2.4 (pages 25, 26). The finding of the Supreme Court must have an impact on your Department’s understanding of religious education, religious formation and religious instruction under the Constitution.

Therefore our request to have the Oireachtas Education Committee look at the issue alongside our Legal Opinion remains, as our request is based on the judgment of the Supreme Court in the Campaign to Separate Church and State v. Minister for Education. <sup>1</sup>

## 2. “A particular religious way of life”

Your response defines ‘religious instruction’ as:

“initiating or nurturing young people into a particular religious way of life.”

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

But Article 44.2.4 does not state that 'Religious Instruction' is confined to instruction that initiates or nurtures students into a particular religious way of life. You also say that the NCCA Syllabus 'Religious Education' courses "do not provide religious instruction in any particular religious or faith tradition."

It is worth noting here that the Irish language version of the Constitution (Article 44.2.4), which takes legal precedence, uses the phrase 'teagasc creidimh', which mean 'religious teaching' in the place where the English version refers to 'religious instruction'. It does not refer to 'denominational' teaching, or to teaching in 'a particular religious tradition', but to religious teaching in general. That is what we have a Constitutional right to not attend.

Our Legal Opinion states that:

"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 other, 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."

### 3. Constitutional Duty of the State

The State is responsible for ensuring that schools respect the Constitutional rights of parents and the Constitutional funding duties of the State as expressed in Article 44.2.4, i.e that children have a right to not '**attend**' Religious instruction, which means physically leaving the classroom while being supervised as this is a condition of State funding of schools.

Your response states that:

"The manner in which any school ensures that the right to opt out of religion education classes is upheld is a matter for the school concerned. Each individual school must determine the particular arrangements which are most appropriate in its individual circumstances having regard to local issues such as available space, supervision requirements and how the school concerned organises classes etc."

This response refers to **how** a school vindicates this right by implementing this duty. But there is a difference between **how** a school does this, and **whether** a school does this. You as Minister and your Department are aware that schools are **not** vindicating this right by implementing this duty.

The State has the Constitutional duty to ensure that schools **do** vindicate this right, however they do it, and your Department is failing in its duty to do this by continuing to provide these schools with State funding contrary to the Constitution.

Neither schools nor your Department can evade that duty by saying that schools do not have the resources to do so. 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.

Also, 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 religions to manage their own affairs (Article 44.2.5), because vindicating the right to not attend is a Constitutional condition of State funding.

#### **4. Religious Education (Art 42.1) Formation (Art 42.4) and Instruction (Article 44.2.4)**

The Campaign to Separate Church and State case at the High Court and the Supreme Court (1996 and 1998) was about the funding of Chaplains in Community and Comprehensive schools. The case was about the endowment of religion (Article 44.2.2). The courts looked at the rights of parents under Article 42 and Article 44.2.4 of the constitution and because of those rights sanctioned the funding of Chaplains.

In the Supreme Court case in 1998 Justice Keane said that the funding of Chaplains was 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,” (page 19)

Justice Barrington in the same case stated that the funding of Chaplains was sanctioned given the rights of parents under Article 42 and Article 44 of the Constitution. (page 27)

Justice Barrington also stated that parents were not obliged to settle merely for religious instruction in schools and the role of the Chaplain was to help provide this extra dimension to the religious education of the children. He also stated that it was constitutionally impermissible for a Chaplain to instruct a child in a religion other than its own without the knowledge and consent of its parents. Chaplains in Community and Comprehensive schools are either Catholic or Protestant.

Barrington also stated (page 26) that:

“The Constitution therefore distinguishes between religious “education” and religious “instruction” – the former being the much wider term. A child who attends 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.”

Justice Barrington referred to religious education as the ethos and general atmosphere of the school. Syllabus Religious Education is not in the general atmosphere of the school as it is a time-tabled class. Religious formation (Article 42.4) is a dimension of Religious education (Article 42.1).

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).

Your response to us states that religious instruction is “understood as initiating or nurturing young people into a particular religious way of life (sometimes also referred to as faith formation or catechesis”. This is simply not correct because the Supreme Court has said that faith formation is an extra dimension to the religious education (Article 42.1) of children. Article 42.4 is after all a section of Article 42.

In the same case at the High Court, Justice Costello went into detail of what exactly religious formation (Article 42.4) and religious education (Article 42.1). He stated that:

"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 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 involves ensuring that their children attend Mass and that they pray and receive the sacraments on a regular basis..."

"Turning to the issue in this case, it is clear that one of the important reasons why chaplains as well as teachers of religion are appointed to the staff of Community Schools is for the purpose of assisting the religious formation of the children attending the school (assistance which, inter alia, is given by the celebration of Mass in the school). In effect, the State by paying the salaries of chaplains is having regard to the rights of parents vis-a-vis the religious formation of their children and enabling them to exercise their constitutionally recognised rights".

Note here that Justice Costello says that the the State by paying the salaries of chaplains is "having regard to the rights of parents vis-a-vis the religious formation of their children and enabling them to exercise their constitutionally recognised rights". So why is the State not similarly "having regard to the rights" of atheist parents vis-a-vis the moral formation of our children, and enabling us to exercise our constitutionally recognised rights?

## 5. Main Aims of Syllabus Religious Education

Your response states that:

"Junior Cycle Religious Education approved by the NCCA aims to develop the students' ability to examine questions of meaning, purpose and relationships, to help students understand, respect and appreciate people's expression of their beliefs, and to facilitate dialogue and reflection on the diversity of beliefs and values that inform responsible decision-making and ways of living."

But the main aims of Syllabus 'Religious Education' 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)
- (b) Develop values to enable students to see the relevance of religion to their lives and relationships. (updated Syllabus 'Religious Education' 2019).

This goes beyond 'reflection on the diversity of beliefs and values'. It explicitly aims to 'develop values' to enable students 'to see the relevance of religion' to their lives and relationships. If religious parents were faced with a course that aimed to 'develop values' to enable their children 'to see the relevance of atheism' to their lives and relationships, you would immediately notice the Constitutional problem.

One of the main aims of Syllabus 'Religious Education' is to develop morals through 'Religious Education'; Syllabus 'Religious Education' is therefore formational. The analysis of the aims of the course in your response to us left out this essential Constitutional issue.

This brings Syllabus 'Religious Education' firmly under Article 42.4 (religious and moral formation) which according to the courts is a dimension of Article 42.1 (religious education). Article 42.1 and Article 42.2 must be viewed in the context of Article 44.2.4 (not attending religious instruction) (Justice Barrington – Campaign case p. 25, 26).

Because of irreconcilable philosophical 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 Syllabus 'Religious Education'.

## **6. The PDST and Catholic Diocesan Advisors**

With regard to the attendance of the PDST at in-service training for Religious Education teachers alongside Catholic Diocesan Advisors, the Diocesan Advisors are appointed by local Bishops and are accountable to them. The Catholic Bishops have said that the Diocesan Advisors:

“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”.

The only reason that Catholic Diocesan Advisors hold in-service days for Religion teachers (alongside the State-funded PDST, with State-funded teachers attending) is because Syllabus 'Religious Education' was designed to meet the faith formation requirements of the Catholic Church'. In Circular Letter 0062/2018 your Department stated that:

“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.”

The majority of second level schools integrate Catholic faith formation into Syllabus 'Religious Education' and just enrol all students into the course notwithstanding the fact that your Department and the NCCA claims that the course is for all religions and none. Schools inform parents that it is not 'Religious Instruction' but 'Religious Education' and therefore inaccurately claim that the right to not attend does not arise. This is what your Department says (see Circular Letter 0062/2018 issued by your Department).

It was not until 2018 that your Department told ETBs not to do this anymore (Circular Letter 0062/2018). We are aware that this practice still goes on in some ETBs.

In 2019 Minister for Education Richard Bruton said that Syllabus 'Religious Education' is just like any other subject such as history or geography. 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.

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).

Catholic Diocesan Advisors 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. Also, 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'.  
Your response states about this:

"In relation to the press reports referenced in your letter, I wish to advise that neither the Department or the PDST has any knowledge of the video referred to in the articles."

The next paragraph is the only one in which Mr. McLoughlin's letter differs from yours. He wrote:

"For information - The Investigating Committee is the committee of the Teaching Council that looks into and gives initial consideration to complaints about registered teachers. The Committee considers the complaints in accordance with Part 5 of the Teaching Council Acts, 2001-2015 and the process is strictly private and confidential. The Teaching Council has advised the Department that it cannot provide any information relating to a complaint to any party, outside the process set out in Part 5 of the Teaching Council Acts, 2001-2015."

Whereas you wrote:

"With regard to your reference to a specific FOI request, you will understand that I am not in a position to comment on individual FOI requests but I can state that my Department complies with the Freedom of Information legislation."

Mr. McLoughlin has outlined here the position of the Teaching Council in relation to its addressing of complaints about individual teachers. But independently of the use of such videos by any individual teacher, your Department can investigate the wider issue of how such videos ended up being distributed to teachers generally. You can do this without prejudice to complaints about what any individual teacher did with such videos, and we ask you to do so because of the Constitutional rights of parents in relation to the religious and moral education of their children.

## **8. Conclusion**

Your response did not refer to one issue in our letter: that schools are ignoring the requirement in Section 62.7(n) of the Education (Admission to schools) Act 2018 that they must include in their admission policies the details of how they will accommodate students who wish to exercise their right to not attend Religious Instruction. Instead schools are inviting parents into a meeting to discuss the issue. This does not meet the requirements of the Act, which were included precisely to avoid what is now happening. Can you please respond to this?

We would appreciate a substantive response to the points that we make generally in this letter. We would also welcome the opportunity of an online meeting with you to discuss the issues further.

Yours sincerely,

Jane Donnelly  
Human Rights Officer  
Atheist Ireland

Michael Nugent  
Chairperson  
Atheist Ireland