

Atheist Ireland



Submission on the NCCA Background Paper for the redevelopment of Junior Cycle SPHE

2 November 2021

Dear NCCA,

We are making this submission in the context of our submission from October 2019 on the Review of Relationship and Sexuality Education (RSE) which forms part of SPHE. We attach that submission below as our concerns about SPHE are the same as our concerns about RSE.

Your background paper on SPHE refers back to the consultation on RSE. That section concludes: “Overall, all stakeholders concurred that **teacher professional development** is the key enabler for more effective RSE.” This statement is not true, and you should correct it.

Atheist Ireland did not concur with this. Neither did the Catholic Church, which in most cases is the body legally managing the schools. For different reasons, both Atheist Ireland and the Catholic Church concur that **the impact of school ethos** is the key enabler for more effective RSE. We include below some extracts from the Catholic Bishops’ response to that review process.

The Catholic Church wants the course delivered through its ethos, while we argue that the course must be delivered objectively if all students from different backgrounds and beliefs are to be included. This is international best practice, and students have a right to objective SPHE/RSE.

The NCCA has already explicitly acknowledged the impact of school ethos on the delivery of SPHE/RSE in your Final Report on the Consultation on the proposals for a curriculum in Education about Religions and Beliefs (ERB) and Ethics. In that you stated:

“While the debate regarding school patronage may be seen as separate to the development of a curriculum in ERB and Ethics, the ownership and management of schools has a significant impact on how the primary curriculum is taught by teachers and experienced by children. This is evident in the Education Act (1998), Section 30(2)(b), which states that in prescribing a curriculum for schools, the Minister ‘shall have regard to the characteristic spirit of a school’. With this provision, among others in the Act, schools and patrons have the right to teach elements of the primary school curriculum in accordance with the ethos of their schools.

In denominational primary schools, the rights of the patron under the Act (1998) enable the school to teach the curriculum from the faith perspective of the patron: this would be evident in, for example, the teaching of Relationships and Sexuality Education (RSE) within the Social, Personal and Health Education (SPHE)³ curriculum. Therefore the patronage and ownership of schools has a direct impact on how some elements of the primary school curriculum are presented to children.”

https://ncca.ie/media/1898/consultation_report_erbe_february2017.pdf

The NCCA has a Public Sector Duty to eliminate discrimination and protect human rights, yet your background paper does not even mention the words ethos or characteristic spirit, despite you being aware of the significance of the issue for equality and human rights. Young teachers in particular cannot be expected to simply ignore official school policy on the teaching of SPHE and deliver the course objectively.

In order for the content to be delivered objectively without religious influence, the law will have to be amended. We therefore ask the NCCA to:

1. Explicitly refer to the impact of school ethos on the delivery of SPHE/RSE in at least the same language that you used, as quoted above, in your Final Report on the Consultation on the proposals for a curriculum in Education about Religions and Beliefs (ERB) and Ethics.
2. Explicitly acknowledge that, under the current legislation, the NCCA has no power over how the curriculum is delivered, and therefore cannot guarantee that any revised curriculum will be delivered in accordance with the NCCA's Public Sector Duty to eliminate discrimination and protect human rights.
3. Recommend amending Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which the NCCA has already identified as problems in 2017, and amending Section 37 of the Employment Equality Act to protect teachers from discrimination.

As always, we would be happy to take part in any discussions you are arranging on this issue.

Yours sincerely,

Jane Donnelly
Human Rights Officer
Atheist Ireland

Michael Nugent
Chairperson
Atheist Ireland

The position of the Catholic Church

The Catholic Church is not just one of many stakeholders. In most cases it is the body legally managing the school. That makes its position particularly significant in relation to the rights of minorities to objective SPHE/RSE.

1. ERBE Review

The Catholic Bishops made a written submission to the NCCA consultation on Education about Religions, Beliefs and Ethics. In this they said about RSE:

“In the area of Relationships and Sexuality Education... it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Similarly, NCCA proposals in areas such as religion and ethics should accord with the characteristic spirit of the school. The determination of the ethos or characteristic spirit of a school is not the function of the NCCA or the Minister but rests with the Patron.”

The Catholic Primary Schools Management Association also made a written submission to the NCCA consultation on ERBE. In this they said about SPHE and RSE:

“Based on this, the development of NCCA proposals in areas impinging on religious education and the characteristic spirit of the school are of a different nature than other NCCA proposals. This is already acknowledged in the area of Relationships and Sexuality Education as part of the NCCA SPHE curriculum where it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Education about Religious Beliefs and Ethics is another such area.”

2. First Phase of RSE Review

In the first phase of the Review of RSE, the Catholic Bishops said:

“In a Catholic school, children and young people are understood to be gifts. Each and every one of them – without exception – is made in the image and likeness of God... In terms specifically of RSE in a Catholic school, the Catholic school seeks to be a community inspired by Gospel values and transmitting Gospel values... It is also important to remember that faith schools exist, at primary and post primary levels, because there are parents who wish to have their children educated in accordance with their religious convictions.”

In the first phase of this review, the Catholic Primary Schools Management Association said:

“Relationships and sexuality education in Catholic schools is situated within a morals and values framework that is derived ultimately from the life and teaching of Christ and transmitted through the teachings of the Catholic Church ... Relationships and Sexuality Education ought therefore to be an integral part of the curriculum in a Catholic school. It should present the positive, yet challenging, Catholic vision for relationships, chastity, marriage and the family.”

3. Second Phase of RSE Review

In the second phase of the Review of RSE, the Catholic Bishops said:

Aspects of the proposed approach

“A Christian anthropology of the person combined with an inclusive and invitational approach to teaching and learning and a community experience that affirms the dignity of each person are at the heart of how good RSE is approached in Catholic schools. We believe that each person is created in God’s image and because of that dignity each person should be treated with care and respect.”

“In other school types other answers to these important philosophical questions will be provided and that also needs to be respected in line of course with students’ needs, parents’ wishes and the ethos of the school. That is why provision into the future has to be made in line with the Education Act’s guidance around characteristic spirit.”

What else is important about the approach

“Once again, we highlight the absence of the spiritual dimension of the child/young person’s life... it is at the level of the spiritual that the human person engages with the ‘big questions’ around the meaning of one’s own life, the meaning and purpose of relationships and of course, for Christians and all people of faith, the question of the divine and what God wants for us in our relating to one another.”

“Previous iterations of SPHE... include the spiritual. No reasons have been given by the NCCA for the omission as part of the review of RSE of this key part of the child/young person’s life... In all faith schools, not just Catholic schools, and in line with the Constitution and the Education Act, the spiritual matters in education and in our consultations with parents, the failure by the NCCA to acknowledge the spiritual dimension of life in this area is problematic.”

The curriculum

“This ‘whole school’ dimension to the provision of RSE as part of SPHE will only be fully coherent when the programme for RSE is fully consistent with the wider characteristic spirit of the school. It is through this whole school reality that the NCCA’s ‘continuity of experience’ can most optimally take place.”

Teacher professional development:

“In terms of teachers needing in-depth and sustained training and support in the area of SPHE/RSE, we are in broad agreement. However, to this we would add: If characteristic spirit is to remain an integral part of RSE/SPHE provision going forward (and we and the parents with whom we engaged believe it must), such training will have to include this dimension of the work. This will mean providing meaningful tools and opportunities for teachers to engage with questions relating to characteristic spirit in and through training.’

Atheist Ireland

Submission on the NCCA Draft Report
on the Review of Relationship and
Sexuality Education (RSE)
October 2019



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1. Executive Summary

1.1 Introduction to Atheist Ireland

Atheist Ireland is an advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not support or finance or give special treatment to any religion.

Since being formed in late 2008, we have campaigned for a secular Irish Constitution, parliament, laws, government, and education and healthcare systems. We are partners in the dialogue process between the Government and religious and nonreligious bodies.

We have addressed various Oireachtas Committees, the Constitutional Convention, Citizens Assembly, United Nations Committees, the OSCE, Council of Europe bodies, and the Presidents of the European Union.

1.2 Failure of the NCCA to Uphold its Public Sector Duty

The NCCA has a duty under Section 42 of the Irish Human Rights and Equality Commission Act to 'protect the human rights of the persons to whom it provides services'. This Draft Report fails to do this, including by omission. The Draft Report explicitly accepts a human rights based approach as the foundation upon which it is building its findings, which we welcome. It states:

"The approach to provision for RSE set out here is grounded in the rights and needs of children and young people as set out in numerous international human rights treaties and instruments that refer to the right to education and to the highest standard of health... These foundational agreements form the basis for comprehensive sexuality education in all countries that ascribe to upholding these rights."

However, it does not follow through on the consequences of accepting this human rights based approach, and it fails to make recommendations that necessarily flow from this approach. Human rights are not worth the paper they are written on if no practical application is given to them. The European Court has stated that:

"The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" (ECHR Airey V Ireland)

The Draft Report gives no practical application to the right of all students to objective RSE based on human rights principles, despite the fact that is the duty of the NCCA under Section 42 of the Irish Human Rights and Equality Commission Act 2014 to 'eliminate discrimination' and 'protect the human rights of the persons to whom it provides services'.

The NCCA seems to believe that its public sector duty does not oblige it to have regard to the practicalities on the ground of protecting human rights even though Section 41 (3)-(d) Education Act 1998 obliges the NCCA to have regard to the practicalities of any advice which it proposes to give to the Minister.

1.3 Religious Ethos and the Need to Change the Law

The Draft Report fails to recommend that school ethos should not be used to prevent students from exercising their human right to access objective sex education, a right that has been highlighted by the Minister for Education in the Dail in 2018; the Irish Human Rights and Equality Commission in 2015; the UN Human Rights Committee in 2014; Circular Letter 0037/2010; and the European Social Charter.

The Draft NCCA Report states that:

“The review concludes that at this point school ethos cannot be separated out from other factors that influence the teaching of RSE.”

If school ethos cannot be separated out from other factors that influence the teaching of RSE, then this means that the NCCA is suggesting that ‘school ethos’ takes precedence over the right of students to objective RSE based on human rights and in particular the European Social Charter.

It also means that the NCCA is suggesting that school ethos takes precedence over the policy of the Department of Education (Circular Letter 0037/2010) that all students have a right to objective RSE.

The only way that denominational Patron bodies will change their approach is if the law is changed to oblige them to reflect these human rights. The legal changes required include amending Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017.

It is the duty of the NCCA under Section 42 of the Irish Human Rights and Equality Commission Act to ‘protect the human rights of the persons to whom it provides services’. It is therefore imperative that the NCCA does both of two things:

1. Describe what must be done in order for an objective RSE curriculum to be designed and delivered in a way that meets human rights standards; and
2. Acknowledge that the NCCA has not got the legal power to ensure that any revised curriculum on RSE is delivered according to human rights standards, and recommend that the law be changed to enable this to happen.

1.4 The UNESCO Report Position on School Ethos

The NCCA Draft Report says that it is working from the definition of Comprehensive Sexuality Education used in UNESCO’s ‘International Technical Guidance on Sexuality Education: an Evidence-informed Approach.’ This is:

“A curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of relationships and sexuality. It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to: realise their health, wellbeing and dignity; develop respectful social and sexual relationships; consider how their choices affect their own wellbeing and that of others; and, understand and ensure the protection of their rights throughout their lives. (UNESCO, p.16 2018)”

Given that choice of working definition, it makes sense to also work from the UNESCO conclusions on delivering effective programmes in the same Report. UNESCO concludes that the delivery of CSE is as important as its content. It also concludes that evidence shows that the delivery works best where the school ethos reflects the principles of the content.

“When developing and delivering CSE, it is important to build on existing standards or guidelines, and to develop clear steps for its implementation and evaluation. Evidence is increasingly showing that the delivery of CSE is as important as the content.

Effective sexuality education must take place in a safe environment, where young people feel comfortable to participate and their privacy is respected, where they are protected from harassment and where the school ethos reflects the principles of the content (Pound et al., 2017).”

Note the sequence here: UNESCO is saying that CSE delivery works best when the school ethos reflects the principles of the content, not when the principles of the content reflect the school ethos. Obviously we cannot suddenly change the ethos of denominational schools to reflect

objective RSE content, but we can move towards the UNESCO approach by preventing a religious ethos from influencing the delivery of this specific subject.

1.5 Religious Exemptions in Employment Equality Act

The NCCA Draft Report fails to mention the religious exemption in the Employment Equality Act (Section 37) and the fact that teachers are legally obliged to uphold the ethos of the Patron. It is the Patron of the schools that set the ethos, and Boards of Management are legally obliged to uphold the ethos of the Patron (Section 15-2(b) Education Act).

If it is the public sector duty of the NCCA to eliminate discrimination and protect human rights, then surely any Draft Report should have referred specifically to the legal obstacles that prevent students from accessing the right to objective RSE based on human rights and in particular the European Social Charter.

The legal obligations of Boards of Management and teachers to uphold the ethos of the Patron would seem to be a priority issue that needed to be addressed given that it is these issues that prevent access to human rights based RSE.

The Draft Report concludes:

“As part of ongoing development work in SPHE/RSE, the NCCA will work with schools to explore how an enabling understanding of school ethos can inform good practice in RSE across a range of contexts.”

This discussion-based approach will not resolve the problem. The problem is not that Patrons of schools do not understand the issues involved. The problem is that most Patrons have a particular ideological position on the issue, and their position denies students their human right to objective sex education.

No amount of ongoing development work with schools exploring “an enabling understanding of school ethos” will change the fact that teachers are subject to Section 37 of the Employment Act, that Boards of Management are obliged to uphold the ethos of the Patron (Section 15-2(b) Education Act 1998) and that teachers can actually lose their jobs if they refuse to comply with the ethos of the Patron.

Why does the NCCA even want to put teachers in this position, what does an enabling understanding of school ethos mean for a teacher. Are they expected to challenge the ethos of schools when they are contractually obliged to uphold that very ethos?

1.6 Teacher Competence, Confidence, and Conditions

The Draft Report also states that:

“The key enabler to more confident and comprehensive teaching of RSE is the development of teacher competence and confidence. In addition, teachers need to be supported by a clearly articulated curriculum which all schools are supported in providing and a clear RSE school policy that is enabling and supportive.”

We agree that supporting teacher competence and confidence with a clearly articulated curriculum is important, but regardless of this, all teachers are still contractually obliged to uphold the ethos of the Patron.

The Draft Report fails to recognise and articulate the legal conditions that schools and teachers operate under. There is no mention of Section 37 of the Employment Act. It is as if it simply does not exist. The Oireachtas had the opportunity to remove the exemption on religious grounds in 2015 under the Equality (Miscellaneous) provisions Act 2015 but they did not do so. It is extraordinary to not even mention it.

At the time the Catholic Schools Partnership made a Submission and stated that:

“Section 37 allows employers with a religious ethos to give “more favourable treatment” to employees on the religion ground. Thus a church, a temple, a synagogue, a mosque does not discriminate if it requires that certain employees must share the faith that is supported and celebrated in these institutions.

If there were no such provision then these religious employers could never use religious adherence as a ground for employment even where it is clearly a relevant and important aspect of a particular position.”

<https://www.catholicbishops.ie/2014/10/30/catholic-schools-partnership-calls-balance-amendment-employment-equality-laws/>

The recent Education (Admission to schools) Act 2018 also protects the ethos of Patron which is articulated in the ‘Admissions policy’ of the school and which goes to the Patron for Approval (Section 62-7(a)) and or amendment. Boards of Management and Teachers have no legal control over ethos and no amount of enabling understanding of ethos will change that fact.

The mostly-Catholic influence on the attitudes, values and experiences of the teachers who will be delivering RSE begins during their training. In order to train as a teacher and gain employment, trainee teachers must take a Certificate in Religious Studies (CRS). As the vast majority of schools in the state are religious, it is nearly impossible to gain employment as a teacher without a CRS.

1.7 The Role of Religious External Providers

The NCCA Draft Report States that when those working on RSE were considering the connection between ethos and RSE that ethos ‘seemed’ to come way down the list of priorities (page 78 Draft Report).

The Draft report acknowledges the value of external provider’s inputs when they are planned in partnership with the school and are complementary to the wider SPHE/RSE teaching and learning taking place. It concludes that:

“The development of additional guidance for schools on the use of external providers in this area of education will be undertaken on foot of this review.”

The NCCA Draft Report has failed to take on board the fact that external agencies such as Accord and Pure in Heart are paid by schools out of public money to teach RSE through religion.

Schools that pay these agencies (Denominational and ETB) give priority to delivering RSE through religion and the Catholic religion in particular. These organisations are registered Charities and are legally obliged under the Charities Act to ensure that their activities advance their charitable purpose only. Delivering RSE through religion is the very purpose of what they do and what they are legally obliged to do.

Any additional guidance developed by the NCCA on the use of external providers for RSE will have no bearing on the fact that at present the majority of external providers deliver RSE through religion and they are legally obliged to do so.

We believe that the use of the word ‘seemed’ in the context of ethos is indicative of the failure of the NCCA to take on board their duty to protect human rights. The NCCA Report fails to take on board the fact that schools that pay external RSE providers such as Accord and Pure in Heart are delivering RSE through religion. How can that not be classed as a priority for these schools, when they are using school resources to pay these external providers?

1.8 Circular Letters issued by the Department of Education

The Draft Report states that:

“The role of the Inspectorate, and Department of Education and Skills (DES) circulars, in supporting good practice in SPHE/RSE should also be emphasised.”

There is no mention in the Draft Report of the fact that Circular Letter 0037/2010 issued by the Department of Education failed to guarantee that all students had access to:

“1.5. Access to sexual and health education is an important right for students under the terms of the Article 11.2 of the European Social Charter. The Council of Europe European Committee of Social Rights, which examines complaints regarding breaches of the Charter, has indicated it regards this Article as requiring that health education; “be provided throughout the entire period of schooling” and that sexual and reproductive health education is “objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception or different means on maintaining sexual and reproductive health.”

Obviously Circular Letters issued by the Department of Education are of no use when a school has a religious ethos. Suggesting Circular Letters as a means to support good practice in SPHE/RSE is meaningless given that Circular Letter 0037/2010 has already failed to guarantee access for students to objective RSE education based on human rights.

2. Report Endorses then Ignores Human Rights Approach

2.1 Importance of Using a Human Rights Based Approach

The Approach section of the Draft Report starts very well, by explicitly placing the approach to RSE on the foundations of human rights, as set out in numerous international human rights treaties that Ireland has signed up to. It says:

“The approach to provision for RSE set out here is grounded in the rights and needs of children and young people as set out in numerous international human rights treaties and instruments that refer to the right to education and to the highest standard of health. These include the Universal Declaration of Human Rights; the UN Convention on Economic, Social and Cultural Rights; the UN Convention on the Rights of the Child; the UN Convention on the Rights of Persons with Disabilities; and the UN Convention on the Elimination of All Forms of Discrimination Against Women.”

This reflects two of our first three recommendations from our original submission to this process:

- (a) *The mandatory provision in Irish schools of sexual and reproductive health education targeted at adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016;*
- (c) *Scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on Elimination of Discrimination against Women in 2017.*

The Draft Report then cites two quotations from United Nations human rights committees that we had included in our original submission. Indeed, the CEDAW recommendation came from Atheist Ireland raising the issue with the United Nations Committee before it questioned Ireland. This was the first time that CEDAW addressed this issue.

“These foundational agreements form the basis for comprehensive sexuality education in all countries that ascribe to upholding these rights. During its last review under the UN Convention on the Rights of the Child in 2016, the Committee on the Rights of the Child recommended that Ireland:

‘Adopt a comprehensive sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education is part of the mandatory school curriculum and targeted at adolescent girls and boys.’

This was reiterated in 2017 in recommendations from the Committee on the Elimination of All Forms of Discrimination Against Women, calling on Ireland to:

‘Integrate compulsory and standardised age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviours and focused on preventing early pregnancies; and ensure that it is scientifically objective and its delivery by schools is closely monitored and evaluated’.”

The European Social Charter is another factor that must be considered. Circular Letter 0037/2010 issued by the Department of Education to all second level schools states that:

“1.5. Access to sexual and health education is an important right for students under the terms of the Article 11.2 of the European Social Charter. The Council of Europe European Committee of Social Rights, which examines complaints regarding breaches of the Charter, has indicated it regards this Article as requiring that health education “be provided

throughout the entire period of schooling” and that sexual and reproductive health education is “objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception or different means on maintaining sexual and reproductive health.”

Under the Education Act 1998, Section 9(b) Boards of Management are obliged to implement the policy of the Minister. The policy of the Minister stated that students had a right to objective sexual and reproductive health education under the European Social Charter. Despite this, many students cannot access their right to objective sex education because of the ethos of their school. We will discuss this in more detail later in this submission.

2.2 Consequences of Using a Human Rights Based Approach

Atheist Ireland welcomes that the Draft Report has included human rights principles as the foundation for its Approach to RSE. However, the rest of the recommendations do not follow through on the consequences of this foundation. This is significant, because, as the European Court stated in *Airey v Ireland* 1979:

“The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, mutatis mutandis, the judgment of 23 July 1968 in the “Belgian Linguistic” case, Series A no. 6, p. 31, paras. 3 in fine and 4; the above-mentioned Golder judgment, p. 18, para. 35 in fine; the Luedicke, Belkacem and Koç judgment of 28 November 1978, Series A no. 29, pp. 17-18; para. 42; and the Marckx judgment of 13 June 1979, Series A no. 31, p. 15, para. 31).”
<http://hudoc.echr.coe.int/eng?i=001-57420>

This means that you cannot start the Draft Report by saying that you accept, as the foundation of the Approach, human rights principles that Ireland has signed up to, then make recommendations that do not vindicate these rights in practice.

Also, you cannot supersede human rights requirements by appealing to majority views among stakeholders, or even consensus among stakeholders. As the UN Human Rights Committee told Ireland in 2014, this approach strikes at the very core of human rights law as a safeguard against the tyranny of the majority. Minister for Justice Frances Fitzgerald completely accepted this principle.

Yuval Shany: “I am however quite, well, very troubled, frankly, by the sweeping claim that has been made, that the free will of the Irish electorate may, by virtue of Article 25 of the Covenant, allow the Irish State to violate other provisions of the Covenant, including nonderogable provisions such as Articles 6 and 7 of the Covenant. I find this argument to be completely unacceptable, I should say, and one that strikes at the very core of human rights law as a safeguard against the tyranny of the majority, and one that cuts against the very raison d’être of having an international regime of universal human rights protections.”

Yuji Iwasawa: “I would like to join my colleague Mr Shany in pointing out that human rights cannot be denied by a majority vote in the Parliament. Arguments to justify a deviation from the protection of human rights under the Covenant by invoking article 25 of the Covenant cannot be accepted.”

Cornelis Flinterman: “There is no disagreement that a full and free discussion is crucial in any society, and that it is the cornerstone of any democratic and free society... Yet the outcome of such a discussion, even if it is full and free and informed, the outcome of such a discussion in the form of a parliamentary majority decision can never be used as an argument to legitimise the violation of substantive rights under the Covenant. As has been said, such an argument would indeed undermine the essence of the human rights framework both domestically and internationally.”

Frances Fitzgerald, Justice Minister: “On question 12, I would want to begin my comments in relation to this by referring to the comments of Mr Shany, Mr Iwasawa and Mr Flinterman. And I want to make it absolutely clear that the Government of Ireland recognises entirely the points made by the members of the Committee in relation to Article 25, that the majority will does not and can not derogate from human rights obligations, and I hope that’s a very clear statement of our position.”

<https://atheist.ie/2014/08/irish-government-accepts-abortion-rights-cannot-be-denied-by-majority-votes-video-and-transcript/>

3. School Ethos and the Need to Change the Law

3.1 The Draft Report Fails to Vindicate Human Rights

This section of the Draft Report begins by saying that:

“In 2007, Maynock et al., concluded that the issue of school ethos, and its impacts on RSE, remains shrouded in ambiguity, leading to personal interpretations of ‘ethos’ on the part of teachers and differences in how they approach the content of RSE. (p. 30)”

This section of the Draft Report is then written with the very same ambiguity that it refers to in the quote from Maynock et al. But it fails to vindicate the human rights principles that the Draft Report says that its whole approach is based on.

If the ethos of a denominational school denies a student their human right to objective sex education, then the law should be changed to prevent school ethos from being used to deny this human right. The Draft Report simply does not address this. It concludes that:

“At this point school ethos cannot be separated out from other factors that influence the teaching of RSE ...”

It is not clear whether the above is being expressed as an observation or an endorsement of this situation ‘at this point’. But we do know what the consequences are of not separating out school ethos from other factors that influence RSE. And we do know that the NCCA has a Public Sector Duty under the IHREC Act to eliminate discrimination and protect human rights.

3.2 Catholic School Ethos Opposes Objective Sex Education

The Council for Catechetics and the Council for Education (Irish Bishops Conference) and the Catholic Schools Partnership made a written submission to the first stage of this review process. This submission says about ethos:

“In a Catholic school, children and young people are understood to be gifts. Each and every one of them – without exception – is made in the image and likeness of God ... In terms specifically of RSE in a Catholic school, the Catholic school seeks to be a community inspired by Gospel values and transmitting Gospel values ... it is also important to remember that faith schools exist, at primary and post primary levels, because there are parents who wish to have their children educated in accordance with their religious convictions...”

The Catholic Bishops also made a written submission to the NCCA consultation on Education about Religions, Beliefs and Ethics. In this they said:

“In the area of Relationships and Sexuality Education... it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Similarly, NCCA proposals in areas such as religion and ethics should accord with the characteristic spirit of the school. The determination of the ethos or characteristic spirit of a school is not the function of the NCCA or the Minister but rests with the Patron...”

The Catholic Primary Schools Management Association also made a written submission to the first stage of this review process. This submission says about ethos:

“Relationships and sexuality education in Catholic schools is situated within a morals and values framework that is derived ultimately from the life and teaching of Christ and transmitted through the teachings of the Catholic Church ... Relationships and Sexuality Education ought therefore to be an integral part of the curriculum in a Catholic school. It should present the positive, yet challenging, Catholic vision for relationships, chastity, marriage and the family...”

The Catholic Primary Schools Management Association also made a written submission to the NCCA consultation on Education about Religions, Beliefs and Ethics. In this they said:

“Based on this, the development of NCCA proposals in areas impinging on religious education and the characteristic spirit of the school are of a different nature than other NCCA proposals. This is already acknowledged in the area of Relationships and Sexuality Education as part of the NCCA SPHE curriculum where it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Education about Religious Beliefs and Ethics is another such area...”

3.3 The UNESCO Report Position on School Ethos

The NCCA Draft Report says that it is working from the definition of Comprehensive Sexuality Education used in UNESCO’s ‘International Technical Guidance on Sexuality Education: an Evidence-informed Approach.’ This is:

“A curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of relationships and sexuality. It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to: realise their health, wellbeing and dignity; develop respectful social and sexual relationships; consider how their choices affect their own wellbeing and that of others; and, understand and ensure the protection of their rights throughout their lives. (UNESCO, p.16 2018)”

Given that choice of working definition, it makes sense to also work from the UNESCO conclusions on delivering effective programmes in the same Report. UNESCO concludes that the delivery of CSE is as important as its content. It also concludes that evidence shows that the delivery works best where the school ethos reflects the principles of the content.

“When developing and delivering CSE, it is important to build on existing standards or guidelines, and to develop clear steps for its implementation and evaluation. Evidence is increasingly showing that the delivery of CSE is as important as the content. Effective sexuality education must take place in a safe environment, where young people feel comfortable to participate and their privacy is respected, where they are protected from harassment and where the school ethos reflects the principles of the content (Pound et al., 2017).”

Note the sequence here: UNESCO is saying that CSE delivery works best when the school ethos reflects the principles of the content, not when the principles of the content reflect the school ethos. Obviously we cannot suddenly change the ethos of denominational schools to reflect objective RSE content, but we can move towards the UNESCO approach by preventing the denominational ethos from influencing the delivery of this specific subject.

3.4 Other References to Ethos in the Draft Report

The section of the Draft Report on Ethos also makes the following statements:

“When these elements (clear curriculum, RSE school policy, support materials, etc) are not in place, there is inevitable doubt about what teachers should be teaching and school ethos can then be used as a way of avoiding sensitive topics in some instances...”

This sentence creates the impression that, if these other elements were in place, then sensitive topics would not be avoided. But there is no reason to believe that this would be the case. In denominational schools, it is the school ethos that prevents certain topics from being objectively addressed. That ethos would still be in place even if the other elements were addressed.

“When those working on RSE in schools were considering the connection between school ethos and their RSE programmes as a factor in future developments related to RSE, school ethos seemed to come well down a list in which teacher qualification, teacher professional support, time allocation, an up-to-date curriculum and support materials, attracted greater priority.”

It is not surprising that people working on RSE in schools would place the role of ethos low on their list of concerns. These people are employed by the schools with an obligation to maintain the ethos of the school, and they have been trained in teacher training colleges that also have a denominational ethos.

In the context of the influence of ethos, the people who the Draft report should be concerned about are the students whose human right to objective sex education is being denied.

3.5 The Need to Change the Education Act

The section of the Draft Report about ethos concludes by saying:

“As part of ongoing development work in SPHE/RSE, the NCCA will work with schools to explore how an enabling understanding of school ethos can inform good practice in RSE across a range of contexts.”

This discussion-based approach will not resolve the problem. The problem is not that the patrons of denominational schools do not understand the issues involved. It is that they have a particular position on the problem, and their position denies students their human right to objective sex education.

In 2015 the Department of Education and Skills published a Research Paper on Advancing School Autonomy in the Irish School System Research Paper. It made clear that:

“In all primary and post-primary schools, the school’s stated ethos (or characteristic spirit as it is termed in the legislation) is decided by the owners or patrons/trustees of the school and not by central government. Autonomy over ethos does not exist at the level of the school board, principal or teachers. Indeed, one of the specific duties of a board is to uphold, and be accountable to the Patron for so upholding, the characteristic spirit of the school. Thus, depending on the unit of analysis, schools may be viewed as fully autonomous in respect of ethos, or partly autonomous if the unit of analysis is an individual school operating within a specific ethos.”

<https://www.education.ie/en/Schools-Colleges/Information/Advancing-School-Autonomy-in-Ireland/School-Autonomy-Research-Paper.pdf>

The only way that denominational Patron bodies will change their approach is if the law is changed to oblige them to reflect these human rights. The legal changes required include amending Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017.

It is the duty of the NCCA under Section 42 of the Irish Human Rights and Equality Commission Act to ‘protect the human rights of the persons to whom it provides services’. It is therefore imperative that the NCCA does both of two things:

1. Describe what must be done in order for an objective RSE curriculum to be designed and delivered in a way that meets human rights standards; and
2. Acknowledge that the NCCA has not got the legal power to ensure that any revised curriculum on RSE is delivered according to human rights standards, and recommend that the law be changed to enable this to happen.

4. Other Issues

4.1 Misleading Portrayal of Secularism

The Draft Report addresses secularism in a limited and misleading way. The only time it uses the word 'secular' is to describe it as conveying 'cold, hard, objective information.'

"Finally, when it comes to the kinds of learning approaches that are needed in RSE, a continuum of perspectives was evident among parents. Views ranged from those who said that the approach should be completely secular; cold, hard, objective information, and religion has no part to play in the teaching of RSE; to those who said RSE in Catholic schools needs to reflect Catholic values."

'Secular,' or even 'completely secular,' does not mean conveying 'cold, hard, objective, information'. Also, 'objective' information should not be framed with pejorative words like 'cold' and 'hard.' We realise that this paragraph is quoting a viewpoint, but it has misleading connotations because it is the only place in the Draft Report that the word 'secular' is used.

Secularists live our lives on the basis of the same evolved moral and social attributes as all people do. These include empathy, compassion, reciprocity, cooperation, fairness, and justice. It is misleading for the only reference to secularism in the Draft Report to imply otherwise.

The next paragraph says of the online survey of parents:

"Over half of all respondents named respect as the most important value. Other values included openness, kindness, inclusiveness, nurturing and being informed."

These are all values shared by most secularists. They are perfectly consistent with wanting RSE to provide scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on Elimination of Discrimination against Women in 2017, and for RSE to be delivered in an objective, critical and pluralistic manner, as recommended by the Irish Human Rights and Equality Commission in 2015.

4.2 The Need for a Single Consistent Curriculum

Under the heading of Curriculum, the Draft Report begins by saying:

"The review has highlighted the need to create one integrated curriculum that sets out the learning for SPHE/RSE as one subject."

This reflects one of our recommendations in our original submission to this process:

- (b) *A single consistent curriculum for relationships and sexuality education across all schools, as recommended by the Ombudsman for Children in 2016.*

As the NCCA Draft Report is working from the UNESCO definition of Comprehensive Sexuality Education, it makes sense to also work from the UNESCO description and key concepts that together make up the UNESCO Report on International Technical Guidance on Sexuality Education: an Evidence-informed Approach.

UNESCO says that CSE is education delivered in formal and non-formal settings that is: Scientifically accurate; Incremental; Age- and developmentally-appropriate; Curriculum based; Comprehensive; Based on a human rights approach; Based on gender equality; Culturally relevant and context appropriate; Transformative; Able to develop life skills needed to support healthy choices

UNESCO then gives details of eight key concepts, along with topics and learning objectives. These eight key concepts are: Relationships; Values; Rights, Culture and Sexuality; Understanding Gender; Violence and Staying Safe; Skills for Health and Well-being; The Human Body and Development; Sexuality and Sexual Behaviour; Sexual and Reproductive Health.

The section of the Draft Report on Approach also recommends a whole-school approach, and states that:

“This approach also recognises the opportunities for promoting RSE both within and beyond the classroom.”

A whole-school approach is described elsewhere in the Draft Report as:

“An approach in which a culture of shared responsibility is nurtured to support RSE both within the classroom and on the corridors.”

But if a school promotes RSE both within and beyond the classroom, including on the corridors, then that has consequences, in denominational schools, for the human rights requirement to ensure a neutral studying environment, including in denominational schools, outside the confines of optional religious instruction classes, as raised with Ireland by the UN Human Rights Committee in 2014.

4.3 Religious Influence on Training of Educators

The Draft Report concludes that training of educators is one of the crucial levers of success of quality sexuality education programmes. It suggests Teacher Professional Development at pre-service and in-service levels, and a specialist post-graduate qualification in SPHE/RSE. It continues:

“Furthermore, professional development for RSE is unlike other subjects, not only because teachers generally come to CPD with limited pre-service training in this area but also because CPD in RSE requires teachers to reflect upon their own attitudes, values and experiences.”

Teachers’ “own attitudes, values and experiences” are of course shaped by Section 37 of the Employment Equality Act, by their training in denominational teacher training colleges, and by the terms of their contracts in most State-funded schools.

Section 37 of the Employment Equality Act 1998 gives a school that is run by a body established for religious purposes permission to discriminate on religious grounds. It states that:

“A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or Part II if—

** it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or*

** it takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.”*

Section 37 also extends to teachers employed in ETB schools and colleges. In a 2017 case at the Workplace Relations Commission, Tipperary ETB successfully argued that Clonmel Central Technical Institute (CTI) could rely on Section 37 because it has a Christian, mostly Catholic, ethos. This case did even involve a teacher of religion, but a teacher of computer science.

The mostly-Catholic influence on the “attitudes, values and experiences” of the teachers who will be delivering RSE begins during their training. In order to train as a teacher and gain employment, trainee teachers must take a Certificate in Religious Studies (CRS). As the vast majority of schools in the state are religious, it is nearly impossible to gain employment as a teacher without a CRS.

St. Patricks Teacher Training College and the Mater Dei Institute are now colleges of Dublin City University. Both colleges still retain their religious ethos which is incompatible with human rights. The DCU website says of the Certificate in Religious Studies that:

“The part-time Certificate in Religious Studies prepares primary teachers to teach in Catholic schools in accordance with the requirements of the Council for Catechetics of the Irish Episcopal Conference. In making appointments, Catholic school management boards will normally require the CRS as a condition of employment.”

The Mater Dei Centre section of the DCU website states that:

“Within the DCU Institute of Education, the MDCCE seeks to ensure that teachers and other educators, graduating from DCU programmes, will have a deep appreciation of the Catholic understanding of the full development of the human person which informs every aspect of work in a Catholic setting.”

The Joint Managerial Body AMCSS Secretariat’s ‘Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools’ states that

“The general programme of the school will be considered as a form of pre-evangelisation.”

Teachers would fall foul of Section 37 if they refused to pre-evangelise, as they would not be upholding the religious ethos of the school. This is completely inconsistent with the aim of providing objective sex education, particularly if it is done through “a whole-school approach” where “shared responsibility is nurtured to support RSE both within the classroom and on the corridors.”

All of these practices clearly shape the “attitudes, values and experiences” of existing teachers who will be delivering any new RSE curriculum. Ultimately, these practices should change, as they breach the human rights of both teachers and students. In the immediate term, any programme of Continuing Professional Development for teaching RSE will have to counter their influence.

4.4 The Role of Religious External Providers

The Draft report acknowledges the value of an external providers inputs when they are planned in partnership with the school and are complementary to the wider SPHE/RSE teaching and learning taking place. It concludes that:

“The development of additional guidance for schools on the use of external providers in this area of education will be undertaken on foot of this review.”

Many primary and second level schools including ETB schools invite in outside agencies to deliver RSE, including ACCORD and Pure in Heart. The purpose of inviting in organisations such as these is to provide RSE through religion, and consequently to evangelise.

These outside agencies are registered Charities. All charities are legally obliged to ensure that their activities advance their charitable purpose only.

According to the website of the Charities Regulator the purpose of Accord is:

*“Charitable Purpose
Advancement of education
Advancement of religion*

Charitable Objects

The principal object for which the Company is established is the advancement of health, education and religion to be achieved primarily by providing:

- (a) vocational courses in sacramental marriage preparation according to the Catholic Church’s teaching on marriage;*
- (b) marriage and relationship and ancillary counselling services*
- (c) relationship education programmes in schools and elsewhere from the perspective of the Catholic Christian tradition; and*
- (d) any other services whose purpose is to promote and support marriage and the family in accordance with the Church’s vision of marriage as a vocation of life and love.*

According to the website of the Charities Regulator the purpose of Pure in heart is:

*“Charitable Purpose
Advancement of religion*

Charitable Objects

The main object for which the Company is established is to bring young people into a closer relationship with God by promoting the teachings of the Roman Catholic church and particularly the following:

- a. To promote the Roman Catholic Church virtue of chastity to young people and to encourage and support the living of pure and chaste lives.*
- b. To promote respect for human life at all stages of development.*
- c. To promote an understanding of human sexuality.*
- d. To promote the Roman Catholic lifestyle to young people to better mind, heart and soul.*
- e. To promote the teachings of the Roman Catholic Church and evangelise young people by means of prayer meetings, school retreats, weekend retreats, parish missions, liturgical based events, educational courses and any other means deemed appropriate.*
- f. To publish or assist in publishing reports, periodicals, books or other information in the furtherance of the main objects.”*

Schools are willing to pay for Catholic RSE, while ignoring Department of Education policy (Circular Letter 0037/2010) and the right of all students to objective sexual and reproductive education under the European Social Charter. Department of Education policy and the Education Act have failed to secure the right of all students under the European Social Charter.

It is clear that Department of Education Policy, as expressed through Circular Letters, will not secure the human rights of students, and consequently we need a change in legislation.

ETB schools and colleges are also paying Catholic agencies such as Accord to deliver Catholic sex education. Remember also that the same ETB sector tells non-religious parents and religious minorities that they can’t afford to supervise their children outside the religion class and their children can’t choose another subject.

4.5 Recommendations from our Original Submission

We are pleased that the Draft Report reflects our first three recommendations from our original submission to this review process in August 2018.

- (a) *The mandatory provision in Irish schools of sexual and reproductive health education targeted at adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016;*
- (b) *A single consistent curriculum for relationships and sexuality education across all schools, as recommended by the Ombudsman for Children in 2016; and*
- (c) *Scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on Elimination of Discrimination against Women in 2017.*

The Draft Report accepts the above recommendations as the foundation of a human rights based approach to the issue. However, it does not follow through on the consequences of this.

In the Dail debate on Solidarity's Objective Sex Education Bill in 2018, the Minister for Education acknowledged that young people have the right to get factual information about sexual matters. But having factual content is not enough, if that content is delivered through the religious ethos of a school Patron body. As well as the content being factual:

- (d) *The content must be delivered in an objective, critical and pluralistic manner that avoids indoctrination, as part of the curriculum outside of optional religion classes, as recommended by the Irish Human Rights and Equality Commission in 2015; while*
- (e) *Ensuring a neutral studying environment, including in denominational schools, outside the confines of optional religious instruction classes, as raised with Ireland by the UN Human Rights Committee in 2014.*

In order for the content to be delivered objectively without religious influence, the law will have to be amended, because the NCCA has no legal power over how the curriculum is delivered. Instead the school Patron bodies can choose to deliver the curriculum according to their own religious ethos.

- (f) *The legal changes required include amending Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017, and which are referred to in Solidarity's Objective Sex Education Bill in 2018.*
- (g) *The NCCA should acknowledge that it has no power over how the curriculum is delivered and cannot guarantee that any revised curriculum will be suitable for all students from various backgrounds. It is the duty of the NCCA under Section 42 of the Irish Human Rights and Equality Commission Act to 'protect the human rights of the persons to whom it provides services'. It is therefore imperative that the NCCA acknowledge that it has not got the legal power to ensure that any revised curriculum on RSE is delivered according to human rights standards.*