

Atheist Ireland



To: Norma Foley TD
Minister for Education

6 March 2023

Dear Minister,

You have recently stressed that parents have a right to ensure that their children can withdraw from the updated sex education course on the basis of conscience. But you have not put the obstacles in their way that your Department puts in front of nonreligious parents who want their child to not attend religious instruction.

Here's what you said about religious parents who don't want their children to attend the updated sex education course:

"I want to be clear around this: we operate in our schools a spirit of partnership with our parents, the wider section of stakeholders and partners within education. We retain within our schools parental consent at all times for parents to feel that they have freedom to withdraw their students from anything that is happening within a school environment...

"I think what is important is that our students in our schools feel that they are valued within the school system. I equally feel it is important that parents have a right to determine what they want their students to avail of, or not avail of, within the school context and indeed outside ... I believe in parental consent – and at no point would I seek to undermine that at any point."

You are right about this. This right is guaranteed in Article 42.1 of the Constitution and reflected in Article 30.2(e) of the Education Act 1998. Article 42.1 guarantees that the state must respect the rights of parents in relation to the education of their children.

But this Article also includes Religious Education. The Supreme Court found that in relation to Religious Education under Article 42.1 that it must be read in the context of Article 44.2.4, the right to not attend Religious Instruction (Justice Barrington - Campaign to Separate Church and State case in 1998 pages 25,26).

Furthermore, the Constitutional right of parents to remove their children from any religious teaching is actually written into the text of the Constitution. Article 44.2.4 guarantees this right and puts a duty on the Oireachtas in relation to it. The funding of schools is a condition of the right to not attend religious instruction.

Under Article 25.5.4 of the Constitution the Irish version takes legal precedence. Under Article 44.2.4, 'Teagasc Creidimh' translates directly into religious teaching and 'A freastal' translates into not be present at.

Under Article 15.2.1 of the Constitution in relation to the Separation of powers, it is only the Oireachtas that can amend the legislation in relation to not attending religious instruction. The Oireachtas has not redefined, and can not redefine, the right to not attend religious instruction. The same applies to redefining 'not attending' religious instruction to 'opt out', 'not participate' or 'withdraw'. This issue in relation to the separation of powers came up recently in relation to nursing homes.

Various Ministers for Education over the years including you, and your Department, have claimed that curriculum Religious Education is suitable for our children and the right to 'not attend' does not apply.

Your Department even put this in a Circular Letter (0062/2018). When administering a Constitutional right, the Department of Education decided to redefine the right, interfere in the constitutional right of parents, and ignore the will of the Oireachtas in Section 30-2(e) of the Education Act 1998.

Circular Letter 0062/2018

“Following on the clarification in Section 2 above in respect of the Religious Education syllabuses which may form part of the normal range of subject choice that may be provided by a school, the approach outlined in Section 4 of Circular 0013/2018 of parents seeking a withdrawal from the NCCA-developed Religious Education syllabus is no longer necessary.”

The Department Press Release stated:

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

Do you not see the contradiction in this?

- Unequivocally upholding the constitutional rights of mostly religious parents who want their children to not attend sex education teaching that is against their conscience, while
- Actively undermining the constitutional rights of nonreligious and minority faith parents who want their children to not attend religious teaching that is against their conscience.

Can you not see that you are constitutionally obliged to treat all parents equally with regard to respecting their conscience. Not only does this raise issues under Article 44.2.4 and Article 42.1 but also in relation to religious discrimination under Article 44.2.3 and Article 40.1.

In addition Justice O'Donnell in the Burke v Minister for Education case at the Supreme Court in 2022 found that under Article 42.1 the state cannot interfere in the right of parents in relation to the education of their children. So why, when administering the right to not attend religious instruction, are you interfering in our Constitutional right under Article 42.1 and Article 44.2.4.

We ask you to please respond to the points we have made in this letter, and to remove Circular Letter 0062/2018 as it breaches our Constitutional rights.

We have also written to the Attorney General in relation to the separation of powers under the Constitution and we attach a copy of that letter.

Jane Donnelly
Human Rights Officer

Michael Nugent
Chairperson