

Atheist Ireland



To: Gareth Lynch
Advisory Council
Rossa Fanning
Attorney General

30 June 2023

Dear Mr Lynch and Mr Fanning,

Thank you for your response of 17 May to our letter of 6 March to the Attorney General, and to the contents of our letter of 14 April to the Department of Education. To remind you, we asked you to advise the government about the Constitutional implications of how it is dealing with the right to not attend religious instruction in publicly funded schools.

You have responded that your office does not advise or engage with parties other than Government departments and offices, save in very limited circumstances which do not apply here, and that as a consequence you are not in a position to engage with our submission.

Can we clarify that we are not asking you to advise or engage with us on this issue. We are bringing to your attention an ongoing breach of a Constitutional right and duty, which the Department and Government and other state bodies are aware of and refuse to rectify, and we are asking you to proactively advise and engage with the Department and the Government about this.

This would be consistent with your office's mission statement, which includes to support adherence to the rule of law, and your office's values, which include ensuring that the citizen is at the heart of the services you provide.

In this context, you have already engaged with the Department, as you told us we will appreciate the Department's difficulty of imposing a 'one size fits all' policy on schools nationwide. Can we clarify that we did not ask for a 'one size fits all' policy as the method of fulfilling the Constitutional right and duty. We acknowledge that local factors will influence how different schools might implement this Constitutional right and duty, and it would be unreasonable to expect the Department to micromanage the running of each individual school.

The problem we are bringing to your attention is not **how** schools implement this Constitutional right and duty, but the fact that schools **do not** implement this Constitutional right and duty. That right and duty is to attend a school receiving public money without attending religious instruction at that school. Not attending means physically leaving the classroom during religious instruction. Once they fulfil that Constitutional duty, schools can have flexibility about how to supervise children who have physically left the classroom.

A follow-on problem is that the Department and Government and other state bodies are aware of this and refuse to rectify this breach of the Constitution, notwithstanding that the right and duty is part of the text and structure of the Constitution, and a foundational pillar of the Constitution given the rights of parents (Burke case, Supreme Court). The duty placed on the Oireachtas is to guarantee that state aid given to schools must not 'affect prejudicially' the right of students to not attend religious instruction.

Whatever administrative schemes the Department puts in place, they must give practical application to the Constitutional right and duty in Article 44.2.4 of the Constitution, supported by Articles 15.2.1, 28.2, 40.1, 42, and 44.2.3, and reflected in Section 30-2(e) of the Education Act

1998, Section 62-7(n) of the Education (Admission to Schools) Act 2018, and Section 7 of the Intermediate Education Act 1878.

We are asking you to proactively advise and engage with the Department and the Government about this ongoing breach of the Constitution and ongoing failure of the Department and the Government to rectify it. Can you confirm that you can and will do this within your Constitutional remit?

Yours sincerely,

Jane Donnelly
Human Rights Officer

Michael Nugent
Chairperson