Education Equality

Submission to the Minister for Education and Skills on the Strategy for Education and Skills 2016-2018.

27th May 2016

1. **Introduction**
	1. This submission outlines the concerns of Education Equality in relation to how the education system respects people of all religious beliefs and none, celebrates diversity and respects the rights of all children and families equally. This submission is primarily relevant to the “Diversity and Choice for Parents” priority area as identified in the *Programme for a Partnership Government*. This submission aims to provide comprehensive responses to the questions raised in the Consultation Paper on the Minister for Education and Skill’s Statement of Strategy 2016-2018.
2. **Education Equality**
	1. Education Equality is an independent, voluntary, human rights organisation established to campaign for equality in the provision of education for all children regardless of religion. Education Equality is calling for an end to all religious discrimination in State-funded schools.
	2. Education Equality’s efforts are focused on two twin goals: removing discrimination in access to school places and promoting equal respect during the school day. We work on the principle that equal respect for children and for the beliefs of their parents requires equal access to schools regardless of religion, the ability to choose whether or not a child receives religious instruction, and a curriculum that does not impose the beliefs of one religion on children of different religions or no religion.
	3. Specifically, Education Equality is advocating for:

(i) The repeal of the section 7(3)(c) of the Equal Status Act 2000 so that no child can be refused entry to a State-funded school because of their religious status;

(ii) Faith formation in all State-funded schools to be confined to a distinct period of time (not permeated throughout the school day) and taught after core school hours so that parents can effectively choose whether or not their children receive religious instruction in a particular religion.

* 1. There is an obligation on the state to vindicate its citizens’ constitutional rights and the human rights contained in international human rights instruments. All citizens have the right to freedom of religion, to religious non-discrimination and to education under international human rights treaties and under the Irish Constitution. Education Equality’s goal is to achieve the realisation of those rights for everyone in Ireland.
	2. Education Equality takes a multi-pronged approach to ending discrimination: by raising awareness of religious discrimination in schools, lobbying, legal actions through the courts, through the UN treaty bodies, empowering parents, and encouraging the public to demand change.
	3. Further information and support materials in relation to Education Equality’s work can be found at [www.educationequality.ie](http://www.educationequality.ie).
1. **Discrimination in Access to Education**
	1. Education Equality is concerned that religious discrimination in enrolling students is legally permitted and commonly practiced in State-funded schools.
	2. Many Irish national schools operate on a “Religious First” basis in enrolling students, requiring the production of a baptismal certificate or equivalent as a condition for admission. As a result, non-baptised children as young as four are turned away from schools, especially in urban areas where schools are over-subscribed.
	3. While discrimination in the provision of education is generally prohibited by the Equal Status Acts 2000, a specific exemption is given for schools that provide education in an environment that promotes certain religious values. Section 7(3)(c) of the 2000 Act provides that a school does not discriminate where it admits one child in preference to another, or refuses to admit a child who does not belong to the denomination of the school, where this refusal is essential to maintain the ethos of the school.
	4. The permission for schools to discriminate exists in a context where over 96% of primary schools are run by a religious denomination. 90% are Catholic. In a worrying number of cases, the lack of alternatives for non-Catholics results in parents being unable to find school places for their children, or choosing to carry out “pragmatic baptisms”, i.e. baptising their children for the sole purpose of getting them into a school.
	5. Education Equality has worked with a very large number of parents who have been forced to drive very long distances to schools that will accept their children and other parents who have had to keep their children in childcare for an additional year because they could not secure a school place in time for their child to start school.
	6. It is submitted that current practice in schools admissions in the Irish education system is discriminatory and violates the right to freedom of religion protected by Article 44 of the Irish Constitution and the right to freedom of thought, conscience and religion guaranteed in Article 18 ICCPR. Article 18 of the International Covenant on Civil and Political Rights (ICCPR).
	7. The operation of religion-based admissions policies by schools has the effect that individuals who do not conform to the “right” religion are effectively penalised for their choice of religion by being refused access to school places. Access to a basic public good is being denied to their children as a direct consequence of their “profession and practice of religion”. Being penalised for the exercise of one’s religion is the antithesis of religious freedom. Parents who are pressurised into baptising their children in order to get a school place, and contrary to their own beliefs, also suffer a violation of their right to freedom of religion.
	8. Article 44.2.3° of the Irish Constitution provides that “*the State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.*” Section 7(3)(c) makes precisely such a discrimination. Furthermore Article 44.2.4° explicitly applies the principle of non-discrimination to the context of schools in admitting students. It provides that “*legislation providing State aid for schools shall not… be such as to affect prejudicially the right of any child to attend a school receiving public money*”. It is also submitted that the exemption from non-discrimination law for religious schools constitutes a violation of Article 26 ICCPR which requires that the law prohibit any discrimination on the grounds *inter alia* of religion. It is also contrary to the Article 2 ICCPR right to non-discrimination in the enjoyment of ICCPR rights.
	9. Finally the right to education of some non-religious and religious minority children is being infringed by discrimination in admissions policies in densely populated areas. In Article 42.4 of the Constitution the State undertakes to provide for free primary education. This is not fulfilled where children have to travel unreasonable distances to school or are delayed in starting school because of difficulties finding a school place on account of their religion. It is submitted that the discriminatory nature of school admissions policies infringes the right to education under Article 13 of the International Covenant on Social Economic and Cultural Rights (ICESCR). The State is also failing in its obligation under Article 28 of the Convention on the Rights of the Child (CRC) to achieve the right to education on the basis of equal opportunity and to make primary education available (free) to all.
	10. Recognising the above shortcomings, the UN Human Rights Committee recommended during Ireland’s universal periodic review in 2011 that the State should “*introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children*.”[[1]](#footnote-1) These recommendations have remained unfulfilled. This month (May 2016) the State was repeatedly questioned on the issue of religious discrimination in the school system during Ireland’s second universal periodic review.
	11. On 4 February 2016 the UN Committee on the Rights of the Child in its report following the State’s periodic review before that committee, expressed its concern that Irish schools “*continue to practise discriminatory admissions policies on the basis of the child’s religion”, and was also “concerned that children are not ensured the right to effectively opt-out of religious classes and access appropriate alternatives to such classes.*”
	12. The above recommendations are only the latest of a long line of calls from the UN human rights treaty bodies to end religious discrimination in the access to school places in Irish schools.
	13. Education Equality is concerned that the Department of Education and Skills considers the exemption from equality legislation contained in Section 7(3)(c) of the 2000 Act to be necessary to protect religious freedom. Education Equality’s legal group consider that there is no constitutional barrier to the repeal of this section, and in fact believe the section to be unconstitutional for the reasons outlined above.
	14. Article 44.2.5° of the Constitution provides that “*Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.*” National schools are not religious institutions but educational establishments. They are funded by the State in order to fulfil the State’s obligation to provide for free primary education for all children. As State-funded educational institutions, national schools cannot rely on Article 44.2.5° to claim an entitlement to non-interference by the State in their admissions policies. To the contrary, as bodies funded by the State, schools are required to respect human rights as prescribed by the Irish Constitutional and international human rights laws, and are therefore prohibited from discriminating on the basis of religion.
	15. By requiring State-funded schools to treat all children equally, the State would not be preventing religious institutions from “managing its own affairs” by privately running schools for children of that faith alone. It would simply be making equal treatment a condition of State funding.
	16. Furthermore, even if denominational schools could invoke a Constitutional right to protect their ethos, it would still be necessary for each school to demonstrate that prioritising children of its own religion is necessary to protect its ethos. It is difficult to see how the ethos of a school would be damaged by the presence of children of other faiths attending a school. Religious schools which are not over-subscribed typically welcome all children of all beliefs with no destructive impact on the ethos. There does not appear to be any reason why the outcome would be different where schools are over-subscribed.
	17. Education Equality is also concerned at comments made in the first brief for Richard Bruton as Minister for Education and Skills 2016 that *“in the majority of schools that are not oversubscribed (approx. 80%) this issue does not arise, and in most cases children seeking a school place are accommodated.”* [[2]](#footnote-2) We urge the Minister to be cognisant of the fact that where even a single child is discriminated against on the grounds of his/her parents’ religious beliefs, this is a serious violation of both the child and parents’ human rights and is not acceptable.
	18. The wish of the majority cannot be imposed on the minority in disregard of their rights to freedom of religion, non-discrimination and education just because the numbers are bigger. It is a mistake to suggest that numbers alone give the rights of the majority greater weight. The purpose of having a bill of rights in our Constitution, and of ratifying international human rights treaties, is to protect the rights of minorities from being disregarded by the majority.
	19. Education Equality therefore urges the Minister to repeal Section 7(3)(c) of the 2000 Act without any further delay so as to end all religious discrimination against children in accessing school places. We recommend that the repeal of Section 7(3)(c) be included in proposed legislation on school admissions as a matter of priority.
2. **Equal respect during the school day**
	1. It is submitted that all children should be treated equally during the school day, with no child being disadvantaged or made to feel inferior, alienated or excluded because of their religious beliefs. Furthermore, it is imperative that the right to religious freedom of all parents and children is not interfered with by what the child learns at school. In particular, it is essential to religious freedom that religious instruction in any religion is not imposed on a child against the parents’ wishes.
	2. Article 42.1 of the Constitution provides:

*“The State acknowledges that the primary and natural educator of the child is the Family guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.”*

* 1. Where a child is taught conflicting religious beliefs to those of his/her parents, this undermines the family’s right as the primary educator to choose and provide the moral education of their children.
	2. The Constitution specifically recognises the right of children to attend State-funded schools without attending religious instruction. Article 44.2.4 provides:

*“Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.”*

* 1. Current opt-out arrangements are inadequate to protect children of minority faiths and the non-religious from indoctrination. Parents frequently report to us that their children sit at the back of the class during religious instruction and preparation for sacraments, are required to attend religious services with their class, and come home singing hymns and reciting prayers.
	2. In January 2016 Rule 68 of the Rules for National Schools 1965 was removed. Rule 68 required that a religious spirit “inform and vivify” the entire work on the school day, making opting out of religious instruction practically impossible in schools. Education Equality welcomed the move as an important symbolic gesture that the Department was willing to address religious inequalities in the education system.
	3. However, the gesture alone did not guarantee equal respect for children and families and their beliefs. The “integrated curriculum” introduced in 1971 and continued in the Primary School Curriculum 1999 continues to encourage that the teaching of school subjects is informed and linked with the teaching of other subjects, including faith formation. Furthermore, while the removal of Rule 68 means that schools are no longer *obliged* to imbibe the teaching of secular subjects with religious ideals, this does not prohibit schools from doing so. It is submitted that a clear direction from the Department of Education is advisable, to the effect that schools should not mix faith formation with any other subject.
	4. Education Equality is calling for faith formation to be confined to a distinct period of time at the end of the school day, after core school hours, so that families have a real and effective choice as to whether their children attend religious instruction in the religious beliefs of the school’s patron.
1. **Choice is not an alternative to equality**
	1. Education Equality welcomes the commitment in the *Programme for a Partnership Government* to increase the number of non-denominational and multi-denominational schools to 400 by the year 2030 as an important step in reflecting current demand for schools. There is a clear need for greater diversity in the schools available to parents, and the huge waiting lists for Educate Together schools indicate that parental demand for these schools massively exceeds supply. Many of Education Equality’s members believe that choosing an Educate Together school is the best way to ensure that their children are educated in a way that respects their beliefs equally to those of all their classmates.
	2. However, Education Equality cautions that creation of choice is not an alternative to vindicating the rights to freedom of religion and equality of every person in Ireland. The increase in non-denominational schools and multi-denominational school alone will not change anything for families who do not live within a reasonable distance to those schools. Even with an increase to 400 non- denominational and/or multi-denominational schools, the vast majority of schools will still remain under religious patrons and must cater for all children equally. The right of every child to an equal opportunity to attend his/her local school must be vindicated.
	3. The Minister is hereby urged to prioritise equality in *all* State-funded schools as a separate and distinct goal from provision of choice in the type of schools available.
	4. In addition, Education Equality emphasizes the importance that new multi-denominational and non-denominational schools must be created according to an equality-based model that genuinely respects all children equally. Education Equality is concerned that new schools would take the form of the Community National School model, in which children are divided during the school day into different faith groups, encouraging religious segregation and potentially fostering an environment of alienation, exclusion and bullying.
2. **Conclusion and recommendations**
	1. This submission concludes that the Irish education system fails to respect the rights of non-religious and minority religion families in failing to provide adequate alternatives to religious schooling, in failing to protect all children and parents from discrimination on the grounds of religion in school admissions policies, and in failing to make adequate provision for children to opt out of religious sessions which are contrary to their beliefs and/or conscience.
	2. Education Equality urges the Department of Education to take a human rights-based approach to reforms in the education system, with a focus on vindicating the rights of parents and children as the first and foremost consideration. We therefore recommend the following actions to the Minister:
3. Immediate repeal of s 7(3)(c) of the Equal Status Act 2000;
4. Prohibition of all forms of religious discrimination in the education system, including in admissions and employment and within the school day;
5. The adoption of a requirement that all schools confine faith formation to a clearly delimited period of the school day, after core school hours, so that religious instruction in any form is not imposed on any child against their family’s conscience;
6. Provision of adequate and appropriate alternatives to religious education and education in accordance with particular denominations;
7. Establishment of multi-denominational and non-denominational schools within a reasonable distance from all families.

April Duff

Chairperson, Education Equality

See also: Appendix 1 – Testimonies

APPENDIX 1

Testimonies

The following are selected accounts of individuals’ experiences in the education system. Many people who told us of their experiences wished to remain anonymous because of the discrimination experienced by non-Catholics in Irish society. Because religion-based discrimination is permitted in the employment of teachers, nurses etc. in the public sector, individuals working in these sectors often feel forced to conceal their religious beliefs for fear of repercussions in employment. It is submitted that this situation is itself contrary to Article 18 ICCPR and the right to freedom of expression under 19 ICCPR.

*“My eldest son is due to start primary school in September 2015 in Terenure, Dublin 6/6w, however I still do not have a school place for him. Our family has no religion and would therefore prefer to access an equality based, secular or a non-denomination school. There are no such schools in our immediate community. We applied to Educate Together (equality based) schools in surrounding locations, however they are full.*

*My son is discriminated against in all the local religious schools that we have applied to. The enrolment policies categorise the children and give preference to children who are of the same religion as the patron of the schools. Proof of religious membership is required. In addition, if we did manage to secure a place for him in a religious school, the religious ethos of the school permeates the entire school day without practical options to opt out.*

*In total for 2015/2016 I have tried to apply to 13 schools…* *I am clear from the experience I have had in 2015, that the situation is not likely to change for my son next year and it is therefore likely he will have no school place within reasonable distance of our home. The experience has caused significant stress and anxiety for our family, for a prolonged duration of time. My husband and I have been under enormous pressure to baptise our son against or conscience in order to secure a school place for him. It makes us very angry that our children do not have equal opportunities to access suitable education and that our children are not treated as equal citizens.*

*I have been left with no choice but to campaign for an Educate Together school to open in our area for 2016. The campaign involves huge amount of work and takes up much of our family time together. We have no guarantee this campaign will be successful. Parents should not have to work this hard for the basic human right to send our children to school.”*  - Nikki Murphy, mother from Terenure, Dublin 6W.

*“Our children are not baptised and the local school prioritises Catholic children. The third question on the initial enrolment form (after name and date of birth) was whether the child would be taking the sacraments. This came above address, essential health and development information. We answered honestly and did not secure a place. We ultimately chose to move our family to a neighbouring town where there is a school that accepts children of all faiths and none on the same footing.”* – Elizabeth Hayes, mother.

*“Our daughter is bottom of the list in our local schools, as they are religious ethos schools even though they are state funded. She is unlikely to secure a place due to them being oversubscribed. Although she has an equal opportunity to attend educate together schools, the school closest to us is oversubscribed for the year she would need to attend. We will probably have to pay for a private primary school. Our friends have had their children baptised to 'jump the queue' even though they are not religious. We don't want to have to do this. I have contacted the minister for equality and minister for education neither of whom will condemn the current situation or commit to changing it.” –* Identity withheld.

*“Although I had read about the unfairness of the system it is truly shocking to experience it yourself. It didn't matter that we had put our daughter down 5 years in advance. Even if we had the money to pay for private school, it didn't matter. She only got a place in St. Louis due to timing, she would have been bumped down the list by baptised kids.”* – Trish Scanlon, mother.

*“Frustrating. Disheartening. Worrying.
Limited schools will even take my daughter’s name (she would start school in 3 years) as she is not baptized.
Some "catholic" run schools will take her name but tell us chances are limited, she will be further down on the list.
This means the few non-denominational schools that are anywhere near where we live have huge waiting lists. And I am worrying years ahead of her starting school about how we will get her to school in another neighbourhood.
It is another very worrying aspect of our lives as parents trying to work full time, pay bills and raise children.”* – Identity withheld.

*“We are parents of 3 children currently in the Irish school system. We had little practical alternative but to send our children to the nearest school to us which is Catholic. We expressed our wish to the school that our children not attend First Communion preparation as they would not be making the sacrament. We found there was no educational alternative during these times and our children had to sit at the back of the class while Communion preparation was carried out. They also had to attend the Catholic church with their class as part of the same preparation. We believe that we cannot remove our children from religious instruction in a meaningful way and that the State should not be supporting an education system that allows such discrimination to occur.” –* Mark O Driscoll & Fiona Dunlea, parents from Dublin.

*“As a parent I am approaching the first steps to my daughter's education with some anxiety and trepidation. My and my husband's decision not to make a choice for our daughter about her religion will very likely result in her being discriminated against by the school we'd like her to attend, which is one kilometre from our home. The school is oversubscribed so asks for baptism certificates when allocating places. Like most parents, education is extremely important to us and we think all parents should be able to approach their child's education with positivity rather than the sense of dread perpetuated by the current system.*

*As a four year old I was discriminated against because my parents had chosen not to have me baptised. They had to fight hard to get me into a local school and found it hard not to acquiesce to the suggestion that they go and have me baptised for the sole purpose of enrolment. Many parents are afraid to fight and have their child singled out before they've even set foot inside the classroom, so they baptise their children quietly in order to access the school of their choice. I find it reprehensible that the current system forces parents to go so far astray from their usual morals in order to access what they have a fundamental right to.*

*As a teacher it is hard to reconcile my belief in open and inclusive education with many (state funded) schools' admission policies. A high number of teachers are deeply, if privately, uncomfortable with section 7(3)(c). I hope a public conversation can give teachers an opportunity to express their views on this pertinent matter, and to help bring about the changes so urgently needed.”* – Identity withheld.

*“I am an Indian-Irish father. I came to Ireland six years ago, my wife has been here for 10 years. My daughter was born in Ireland. I was finding it impossible to get a school place for her. I approached three authorities: the Minister of Justice, Minister of Education and Arch Bishop of Dublin. I got a call from the office of Arch Bishop enquiring about the problem. I explained them the reason behind my daughter not getting admission in the nearby schools is because of her being a Hindu. He offered me a solution: “To make your daughter’s admission easy and quick, why don't you baptise her?" meaning convert your religion. I was furious and when I started arguing he hung up the phone.” –* Roopesh Kumar Panicker, father from South Dublin.

1. Human Rights Committee, ‘Concluding observations on the fourth periodic report of Ireland’ (2014) UN Doc No. CCPR/C/IRL/CO/4 para. 21. [↑](#footnote-ref-1)
2. <http://www.education.ie/en/Publications/Ministers-Brief-/Ministers-Brief-2016-Overview-.pdf> at p 30 [↑](#footnote-ref-2)