Equality in Education

Your Questions Answered
Education Equality is a 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.

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.

It works 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.

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.

Education Equality takes a multi-pronged approach to ending discrimination: by political lobbying, through the courts, through the UN treaty bodies, by empowering parents and by encouraging the public to demand change.
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.

While discrimination in the provision of education is generally prohibited by the Equal Status Acts 2000-2011, a specific exemption is given for schools which 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.

The baptismal certificate requirement exists in a context where over 96% of primary schools are run by a religious denomination. 90% are Catholic.

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.
All State-funded primary schools (national schools) are governed by the Rules for National Schools 1965. Rule 68 reads as follows:

“Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school...”

Schools are required to adopt an “integrated curriculum”, whereby all aspects of the school day reflect and are informed by religious values. Because religious instruction is not confined to one discrete period of the school day, it is impossible for children to effectively opt out of faith formation in school.

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.

Education Equality is calling for faith formation to be confined to a distinct period of time at the end of the school day, outside of core school hours, so that families have real choice as to whether children attend religious instruction in the religious beliefs of their school’s patron.
Equality in education is a human rights issue. All children and parents have the right to freedom of religion, to non-discrimination and to education. The current education system does not respect these rights of all Irish citizens.

No child should be penalised because of the religious beliefs of his/her parents. Neither should parents be coerced into baptising their children, against their own beliefs. Equally no child should have faith formation imposed on them contrary to their parents’ wishes. We believe that section 7(3)(c) is unconstitutional for a number of reasons and therefore ought to be repealed immediately.

1. Religious non-discrimination
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”.

2. Freedom of religion
Article 44.2.1° of the Constitution protects freedom of conscience and the free profession and practice of religion. Because of section 7(3)(c) and the baptismal certificate requirement, non-Catholic parents are being penalised for their choice of religion. Access to a basic public good is being denied to their children as a direct consequence of their “profession and practice of religion”. Therefore their right to freedom of religion is clearly not being protected. A system that results in parents being forced into carrying out a baptism that goes against their own religious beliefs is fundamentally at odds with this civil liberty. A system that forces children to be indoctrinated against their wishes and their parents’ wishes is clearly contrary to the right to freedom of religion.
3. Right to education

In Article 42.4 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.

The current system of schools admissions under section 7(3)(c) is contrary to Ireland’s obligations under international human rights treaties. Four different UN Treaty Bodies have called on the Irish government to repeal s 7(3)(c), to eliminate discrimination religious discrimination in schools.

The European Convention on Human Rights requires Ireland to respect freedom of religion (Article 9) and freedom from discrimination in the enjoyment of the Convention Rights (Article 14).

We are also concerned at the disproportionate effect that the rule has on immigrants and racial minorities, a higher percentage of whom are non-Catholic. The UN Committee on the Elimination of all forms of Racial Discrimination has acknowledged the “intersectionality” of religious discrimination and racial discrimination and has called on the Irish State to end the discrimination.

The inability to choose whether or not a child attends religious instruction violates the right to freedom of thought, conscience and religion protected by Article 18 ICCPR and Article 18 UDHR. The Irish Constitution, Article 42.3.1°, provides that “the State shall not oblige parents in violation of their conscience and lawful preference to send their children... to any particular type of school designated by the State”. However in reality the only alternative to Catholic schools for many parents is home-schooling. For the majority of families where economic necessity requires both parents to work, home-schooling is not a practical option. This is not a practical alternative sufficient to protect such families’ freedom of religion.
Addressing the arguments against education equality
The primary problem is not a shortage of school places but rather discrimination in the allocation of the school places that are available. The problem is discriminatory school admissions polices whereby schools enrol students on the basis of religion rather than proximity to the local school. This is discrimination carried out by State-funded institutions on one of the prohibited grounds of discrimination in the Universal Declaration of Human Rights, Article 2, the International Covenant on Civil and Political Rights, Article 2, and the European Convention on Human Rights.

Firstly, and quite simply, there is no shortage of school places in many of the areas where the issue arises. It would appear that the over-subscription problem is vastly inflated by the fact that most families apply to numerous schools. Parents whose children belong to majority religions can frequently choose between the various offers they receive, while those who belong to “other” categories often receive no offers.

In fact in many of the areas where non-religious or minority children can’t get school places, there isn’t actually a demographic need for more school places in the area. There is inflow from neighbouring areas, and those who don’t belong to the denomination of the school are pushed further down the list by every child belonging to the school’s religion no matter how far away they live. No matter how many more school places are created, non-religious and minority religions children will always be last on the list for school places, and will only get places when everyone else from the surrounding areas are accommodated.

Children from outside the local area are prioritised over local children of beliefs different to the denomination of the school.
There is undoubtedly a shortage of school places in some areas, but the real problem is that minority religions and the non-religious will always be the last in line to get the places in their own localities. In reality, every child gets a school place eventually, but those who are discriminated against often suffer the consequences of waiting a year longer before going to school, and many have to travel onerous distances to get to a school that will accept their child. Those who are discriminated against don’t miss out on an education – they miss out on the equal opportunity to go to their local school on an equal standing with their neighbours and friends.

The parents of religious (baptised) children are often offered multiple places to choose between. Others must wait for the “leftovers” once these families have selected their preference (sometimes holding multiple places until September). Most children do get a place – eventually – but the stress for non-baptised families is immense, and they must accept the “less desirable” places.

In order to ensure fundamental fairness where schools in popular places are in demand, we must prohibit the adoption of admissions policies that discriminate on the grounds of religion. The repeal of Section (7)(3)(c) of the Equal Status Act, and not the building of more (denominational) schools, is the only way to ensure equality in the primary school system.
Discussions about the role of religion in national schools are often framed in terms of a conflict of rights: the right to religious freedom of parents who wish their children to be educated in a religious environment in denominational schools and the right to religious freedom and equality of parents and children who belong to a belief other than the school’s denomination. The latter group wish for access to their local national school without being disadvantaged in the allocation of school places, and without being exposed to faith formation which is contrary to their beliefs.

When rights conflict, we must find a proportionate solution that respects both sets of rights.

If religious instruction is confined to a discrete period at the end of core school hours, the religious practice of those belonging to the school’s religion may be limited to some extent in that it does not permeate the entire school day. It cannot be said that their religious freedom is violated.

They are still free to determine their own religion and to bring up their children in accordance with their beliefs in their own time. Their children will continue to be instructed in that religion at school.

On the other hand, there is the position of the child who belongs to another religion or non-religious belief. If religious instruction continues to permeate the entire school day, that child has no choice but to be taught a religion that is contrary to his/her parents’ conscience.

A five or six-year old child cannot distinguish between what the teacher says during geography, which he/she ought to believe, and religion, which he/she is told does not apply to him/her.

That child and his/her parent’s religious freedom becomes a fallacy – they have no choice as to what religious beliefs to follow.
Their freedom of religion is completely violated.

So a balancing of the rights of all parents illustrates that it is possible for denominational schools to respect the religious freedom of all, but that religious instruction must not be imposed on any child in order for religious freedom to be protected.

In addition, when a child is disadvantaged in accessing school places, because of his/her parent’s religion, those parents are penalised for the exercise of their religious choice.

That is the antithesis of religious freedom and constitutes a grave breach of that right.

On the other hand, it cannot seriously be said that the parent of a religious child who is not given preference because of their religion, has their religious freedom violated.

Neither is it sustainable to argue that their religious freedom is infringed by the presence of children of other beliefs in the school.

In addition, the Constitution does not provide a right for all parents to send their child to a State-funded school that teaches in accordance with their ethos.

There is no Constitutional right to have one’s children taught in a school where religious values permeate the entire school day. It wouldn’t be physically possible to provide a reasonable accessible school to teach every child of every religion around the country in a school of their own ethos. The Constitution recognises that of necessity, children will have to attend school of a different ethos to their own, by providing in Article 44.2.4 that every child has the right to attend a school receiving public money without attending religious instruction in that school.
Both Religious institutions have opposed the call for religion-neutral admissions policies on the basis that the removal of Section 7(3)(c) of the Equal Status Act 2000, which allows, religious schools to prioritise children of their own ethos in admissions policies, would infringe the right of religious institutions to uphold their ethos. Government officials have dragged their feet on the issue on the basis that the removal of s 7(3)(c) could require a referendum. However there is no explicit or implied Constitutional right of national schools to prioritise children of a religion’s own denomination over other children.

Article 44.2.5° 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.”

How could the right to manage an institution’s own affairs translate into a right to receive State funding while discriminating on religious grounds when discrimination is explicitly forbidden by the Constitution? 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 educational institutions, 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. Not only is the removal of s 7(3)(c) constitutionally permissible but it is also constitutionally required in order to fulfil the State’s obligations to protect and respect freedom of religion and the right not to be discriminated against on the grounds of religion.

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 other faiths attending. 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.

Neither can there be any Constitutional or human right for religious schools to have the State fund religious education, during school time, in such a way that it conflicts with some children’s beliefs. Such a right would be in clear contradiction to the universal right to freedom of conscience of all children and parents.
“Divestment will solve the problem.”

Divestment is not an alternative to religious equality in all State-funded schools.

It is undoubtedly true that we need more choice between denominational and non-denominational / multi-denomination schools.

But unless we divest enough schools to cater for every single non-religious or minority religion child in every area of Ireland, we cannot protect the rights of every child to freedom of religion and equality.

There are not adequate resources to create a “dual” system of schools in every rural community.

Even if this were possible, there would still exist the fundamental problem of the State, by funding schools that do not treat all children equally, discriminating on one of the prohibited grounds of discrimination contrary to its obligations under international human rights law.

Divestment therefore needs to take place alongside, but not instead of, the realisation of equality for all children within existing State-funded schools.

To protect the rights of the non-religious and of minority religions to freedom of religion, to non-discrimination and to education, we need to establish equal access to schools (repealing section 7(3)(c) of the Equal Status Act) and equal respect during the school day, by removing the “integrated curriculum” and concentrating faith formation at the end of the school day (outside core school hours) so that families can effectively choose whether or not their children receive faith formation.

Divestment is not an excuse for not doing so.

We cannot have choice without equality.
All families have the right to make that choice for themselves. No-one is entitled to impose their religious views on others, no matter how well-meaning they may seem.

Freedom of conscience is a fundamental right guaranteed to all human beings by virtue of the Irish Constitution (Article 44.2.1°, the European Convention on Human Rights (Article 9) and the International Covenant on Civil and Political Rights (Article 18).

Freedom of conscience protects the right not only to practice a particular religion but equally the right not to practice any religion.\(^1\) The Constitution recognises the family as the “primary and natural educator of the child” and therefore vests decisions as to a child’s religious education in the hands of his/her parents, not his/her school, until the child is old enough to choose his/her own beliefs.

Education Equality, and most of the people we have come across who are campaigning for equality in schools, are not advocating an end to denominational schools. Equal respect for people of all beliefs is achievable within the current patronage model of schools. 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 values of one religion on children of different religions or no religion.

Creating equality within the current system requires relatively simple changes to legislation to remove exemptions for State-funded schools from equality legislation, and legislative enactments requiring all State-funded schools to teach faith formation during one distinct period of time after core school hours, so that those who wish to attend can do so and those who don’t can be collected prior to the commencement of religious instruction.
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.

The human rights of minority religions and non-religious families are not respected by the current system, which allows discriminatory admissions policies and requires faith formation to be taught throughout the school day without effective choice as to whether children receive religious instruction or not.

In addition, claims that parents want religious schools may be significantly overstated. More than anything, it appears that parents want local schools.

While most may not strongly object to the Catholic ethos, it appears that many would not choose it if given multiple options.

Acquiescence does not amount to support.

A Behaviour and Attitudes survey commissioned by Equate in December 2015 found that only 54% of those surveyed would choose a Christian school, while just under half (46%) of families would not choose a Christian school.

The same Equate national survey found that 84% believe Irish education should be reformed to prevent the exclusion of a child due to their religion or lack of religion. 77% said schools should not have the right to refuse admission to a child who has a different religion to the patron.
Indeed, the number of those actively practising the predominant religion in Ireland, Roman Catholicism – which controls 90% of primacy schools – also appears to be artificially inflated by a number of factors.

There is widespread evidence of “pragmatic baptisms”, i.e. baptisms carried out in order to secure a school place for the baptised child.

The Equate survey referenced above found that 20% of respondents knew someone who had baptised a child to help ensure access to a local school.

Indicators of active religious practice after baptism are much smaller in number.

For example, some 36% of marriages are now civil marriages.

Over 40% of children born in 2013 (the future class of 2017) had unmarried parents.

The divergence in statistics point to a significant number of people who belong to a particular religion “by tradition” but do not follow the doctrines of that religion, and who are unlikely to demand “faith-based” schools that make religion-based distinctions in admissions policies and infuse all the day’s teaching with faith formation.

Finally, it can by no means be presumed that those who belong to a majority religion in Ireland automatically support either discriminatory, segregationist admissions policies or the imposition of their religious beliefs on others. Education Equality has received huge support for its goals from people of all beliefs, including from many parents whose rights have been respected by the current education system but who wish to defend the rights of those who are less fortunate.
One of the most common arguments made in support of “religious-first” admissions policies, and section 7(3)(c) of the Equal Status Act which permits such policies, is that the rule is necessary to protect religious minorities.

In fact, the justification expressed for the enactment of the section in question during Oireachtas debates was the protection of religious minorities. In practice, the rule has been used by majority religion schools to the detriment of minorities. Because 90% of schools in Ireland are under the patronage of the Catholic Church, the rule is most frequently invoked by schools to refuse admission to religious minorities and non-religious families.

So ironically, a rule which was designed to protect religious freedom of minorities is now operating to infringe the religious freedom of this group by penalising them for their religion in refusing their children access to their local schools.

In the small number of schools run under the patronage of minority religions, “co-religionist first” admissions policies allow them to admit children of their own denomination ahead of others. It is often claimed that this is necessary to protect To use the example of Stratford National School, the only Jewish-run primary school in Ireland, it is argued that the number of children belonging to other beliefs would out-number Jewish children and that the ethos would be “swamped”.

It is questionable whether disallowing preference to children of a school’s denomination is necessary to uphold the school’s ethos. It would seem likely that a school’s ethos is expressed and maintained by the school’s teachers and staff rather than being dependent on the uniformity of the pupils’ religious backgrounds.

Most importantly, the argument that religion-based admissions policies are necessary to protect minority religions is premised on the assumption that preserving the denominational ethos of a school is necessary to protect the denomination’s religious freedom. This is essentially to equate religion with education.
This argument requires one to assume that a religious followers’ right to freedom of religion is infringed if he/she does not have access to a State-funded school to teach his/her children in accordance with his/her religious beliefs, a school that allows only that denomination’s children into the school ahead of all other children.

How could that be necessary to protect religious freedom? It is not possible for the State to build and fund a faith-based school exclusively for every religious denominational in Ireland, within a reasonable distance from the home of every follower of each of those beliefs.

If a State-funded minority religion school is required to treat all children equally in enrolling students, the followers of that religion are not banned from professing their religion, or from practising it at home and with their children. The denomination is free to build and fund an exclusive school for its follower’s children out of its own resources.

But a State-funded school that discriminates on the basis of religion is not required by the right to freedom of religion, nor (arguably) is it constitutionally permissible given the prohibition on religious discrimination in Article 44.2.3° of the Constitution.

Some political parties and the Irish Human Rights and Equality Commission have suggested that derogations could be provided to religious minority schools to allow those schools to prioritise children of their own religion. That suggestion is problematic because the question arises, how does one legitimately distinguish between different denominations, allowing an exemption from non-discrimination law to some and not to others? As noted above, Article 44.2.3° of the Constitution requires that the State make no discrimination on the grounds of religious profession, belief or status. A valid criterion might be whether the denominational school can show that a derogation is necessary to protect the ethos of the school. As outlined above, it is questionable whether this could ever be convincingly demonstrated, but if this criterion was accepted, the derogation solution runs the risk of leading to a situation where 96% of State-funded national schools (i.e. all denominational schools) are permitted to apply and receive a derogation, simply perpetuating the system of discrimination in access to schools.
“Where schools are over-subscribed, some admission policy has to be used to determine who gets the school places”

It is important to remember that “religious” schools are first and foremost State schools, in that they receive their funding from the State.

That means that all taxpayers, of all beliefs, pay for the schools to be run.

The State, under both domestic Constitutional law and international human rights law, is prohibited from discrimination on the grounds of religion. It is also required to protect freedom of conscience and religion.

Funding schools that draw distinctions between children based on religion amounts to State-sponsored discrimination and is not permissible.

When a child is disadvantaged in accessing school places, because of his/her parent’s religion, those parents are penalised for the exercise of their religious choice. That is the antithesis of religious freedom and constitutes a grave breach of that right.

Where schools are over-subscribed, places must be allocated in such a way that does not discriminate against children on a prohibited ground of discrimination, such as religion.

Allocating places to those children who live closest to the school may ensure that all children are able to attend their local school.

What is clear is that religion is not an appropriate criterion for school admissions.

Of course, if a particular religious group wishes to set up a school to cater only for children of its own religion, there is no problem in them doing so using their own resources.

Equality is best seen, therefore, as a condition of State funding.
We can respect Irish traditions and culture without discriminating. We are a democratic republic which promises to respect minority rights and protects freedom of conscience and religion for everyone.

The changes needed to ensure equal access to schools and equal respect for people of all beliefs in schools are will have only a minor impact on people belonging to the Roman Catholic religion. They won’t change our public holidays or ban cribs at Christmas time or anything of the sort. Equal respect for all religions simply requires that children are not discriminated against in enrolment policies and that their parents can choose whether they attend religious instruction. These changes are necessary to protect the human rights of both Irish people and people who have moved to Ireland from another country.

In fact, the majority of people who are affected by problems in the education system because of religion are Irish people who belong to minority faiths or don’t belong to any religion. Most of the people whose rights are not being protected were born and reared in Ireland and want to be treated equally in their own country.

In relation to those individuals who have moved to Ireland from abroad, we ought to ensure that our education system is equally welcoming to them. This doesn’t require us to lose our identity, but simply to take the measures that are necessary to accommodate people of all religions.

As a nation with a long tradition of emigration, how would we and our families feel if we arrived in Britain, the USA, France and found that we were at the bottom of the enrolment lists for state education, despite paying up to 50% of our income in taxes to fund the same system?
The argument has been made that the UK is a very secular society, but has many publicly funded religious schools, which are allowed to prioritise religious children first.

This conversation is about what's right for a modern, independent Ireland. Ireland is a democratic republic that undertakes to protect the human rights of all its citizens.

The fact that another country might sanction discrimination doesn’t mean we should.

Even so, the scale of religious discrimination in Ireland is incomparable to that in the UK.

No other country has an educational landscape where 96% of schools are run by religious patrons, and 90% are run by one religion alone. In the UK, only 24% of primary schools in the UK are Church of England schools (the largest religion), whereas 90% of Irish schools are under Roman Catholic patronage.

This means that where a child in England cannot access a faith school, he/she will at least be treated equally in the majority of State-funded schools.

Combined with a denser population, this means that children in the UK at least have a choice in relation to their school attendance.
Firstly, the numbers of both types of schools are important. Religious schools account for 96% of all national schools in Ireland. That means that if religious schools are allowed to discriminate, practically all schools are allowed to discriminate. 90% of schools are run by one religion alone. That means that children who don’t belong to that religion are disadvantaged in trying to access 9 out of 10 schools.

By contrast, there are 177 gaelscoileanna representing 0.5% of all Irish primary schools. Rather than discriminating against a minority, these constitute a minority themselves.

Furthermore, discriminating on religious grounds means treating a person or group disfavourably on account of a characteristic that is fundamental to the identity of that individual or social group. That is why religion is one of the prohibited grounds of discrimination expressly set out in all of the main international human rights treaties, and in Irish equality legislation.

Drawing distinctions based on one’s skills or attributes is an ordinary part of many selection processes and is not inherently discriminatory. The Irish Constitution specifically prohibits discrimination on religious profession, belief or status (Article 44.2.3°). By contract, the general guarantee of equality before the law (Article 40.1) allows for distinctions to be made between persons based on differences of capacity, physical and moral, and of social function. This provision quite likely makes Irish language schools’ admissions policies constitutionally permissible.

Finally, even if Irish language schools are discriminating in their admissions policies, the old adage of “two wrongs don’t make a right” applies. To argue that one form of discrimination takes places does nothing to advance the argument that another form of discrimination should not be ended.
“The movement for equality in education is aimed at removing denominational schools.”

Education Equality, and most of the people we have come across who are campaigning for equality in schools, are not advocating an end to denominational schools.

Equal respect for people of all beliefs is achievable within the current patronage model of schools.

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 values of one religion on children of different religions or no religion.

Creating equality within the current system requires relatively simple changes to legislation to remove exemptions for State-funded schools from equality legislation, and legislative enactments requiring all State-funded schools to teach faith formation during one distinct period of time after core school hours, so that those who wish to attend can do so and those who don’t can be collected prior to the commencement of religious instruction.
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