Education Equality

Submission to the Minister for Education and Skills on the Action Plan for Education 2016-2019: Actions for 2017

16th November 2016

1. **Introduction**
	1. This submission aims to provide feedback to the Department of Education and Skills on the commitments undertaken in the Action Plan for Education 2016-2019 (hereinafter “**the Action Plan**’”), and in particular to address the additional actions that should be taken in 2017 to address religious inequalities in the education system. The submission responds to the following questions posed by the Department in its consultation call: (a) are there new actions that we should include for 2017?; (b) are there actions that we should prioritise in 2017?; and (c) how, based on your knowledge and experience of the area, should the achievement of specific actions be measured?
	2. Education Equality is concerned that the Action Plan does not undertake to remove religious discrimination in school admissions policies or commit to introducing concrete measures to ensure that children of all beliefs are respected at school. This submission therefore recommends that clear actions be undertaken in 2017 to introduce equal treatment for all children and families in the education system.
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 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 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 instruction in a particular religion.

* 1. There is an obligation on the State to vindicate its citizens’ constitutional rights, and also to uphold 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, by empowering parents and by 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 more than 96% of primary schools are run by a religious denomination, with 90% of schools under Catholic patronage. 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 large number of parents who have been forced to drive very long distances to schools that will accept their children, and we have also met 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 of the International Covenant on Civil and Political Rights (ICCPR).
	7. The operation of religion-based admissions policies by schools has the effect that parents who do not conform to the ‘right’ religion are effectively penalised for their choice of religion by being refused access to school places for their children. 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 or beliefs 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 and lawful preference, 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 schools under religious patronage 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 religious status. 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 vindicate 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. In 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 in a long line of calls from the UN human rights treaty bodies to end religious discrimination in admission to Irish schools.
	13. Education Equality is concerned that the Action Plan does not undertake to repeal the exemption from equality legislation contained in Section 7(3)(c) of the 2000 Act. Objective 87 undertakes firstly to enact the Education (Admissions to Schools) Bill by 2017, but this Bill does not address religious discrimination in admissions policies.
	14. Secondly, the Department under Objective 87 states: “*We accept the principles laid out in the Equal Status (Admissions to Schools) Bill 2016, but believe there are issues that require scrutiny, as laid out in the motion proposed by the government and passed by the Dáil. These include possible impacts on minority religions, the issue of mandatory catchment areas, impact on school transport, and issues of competing rights and the Constitution. We will consider proposals on this issue following consideration by the Oireachtas committee.”*
	15. Education Equality is concerned that the Equal Status (Admissions to Schools) Bill 2016 does not remove religious discrimination from schools. While the Bill would represent an improvement on the current position, with religious children from outside the catchment area being preferred over non-religious children from within the catchment area, the Bill as currently phrased would continue to allow children of certain beliefs from the school’s catchment area to be prioritised over other local children. For the reasons outlined above, we believe that schools in receipt of State funding should not be allowed to prioritise children on the grounds of adherence to a particular religion in any way.
	16. Education Equality is concerned by the decision to delay all action on the issue of equality in admissions policies and urges that prompt action be taken in 2017 to introduce full equality for children of all beliefs. We recommend that the Equal Status (Admissions to Schools) Bill be amended to delete Section 7(3)(c) of the 2000 Act. The Education Equality Legal Group considers that there is no constitutional barrier to the repeal of this section, and in fact believes the section to be unconstitutional for the reasons outlined above.
	17. Education Equality has received an independent legal opinion from Michael Lynn SC that confirms our view that the repeal of Section 7(3)(c) is constitutional. This opinion advises that “*there is no constitutional requirement for [Section 7(3)(c) of the Equal Status Act] and that its repeal or substantial amendment would not give rise to constitutional difficulties”.* The opinion further notes that: “*While Section 7(3)(c) gives life and reality to Article 44 guarantees for some, it tramples upon those same guarantees for others. Accordingly, the distinctions drawn by virtue of Section 7(3)(c) are not a proper balance of the competing rights outlined above.”* It concludes that: “*While legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, there is no constitutional impediment to the State requiring that all publicly funded schools cease discriminating on the grounds of religion in their admissions policies. Thus there are no “thorny constitutional issues” at play in this context…Simply put, nothing in the Constitution obliges the State to fund or continue to fund educational establishments which choose to operate discriminatory admissions policies.”*
	18. Furthermore, even if denominational schools could invoke a Constitutional right to protect their ethos, each school would still be required to demonstrate that prioritising children of its own religion is necessary to protect that 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 that are not over subscribed (some 80% of schools) typically welcome all children of all belief backgrounds with no adverse impact on their ethos. There does not appear to be any reason why this outcome would be different where schools are over subscribed.
	19. We urge the Minister and the Department 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. Education Equality therefore urges the Minister to repeal Section 7(3)(c) of the 2000 Act in 2017 without any further delay in order to end all religious discrimination against children in accessing school places.
2. **Equal respect during the school day**
	1. It is recommended that concrete measures be taken in 2017 to ensure that children are treated equally during the school day, with no child being disadvantaged or made to feel inferior, alienated or excluded because of their religious beliefs. It is also 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, in order to vindicate the right to religious freedom it is essential that religious instruction in any religion not be imposed on any child against their 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 and 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 for 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 this 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 be informed by, and linked to, the teaching of other subjects, including faith formation. Furthermore, while the removal of Rule 68 means that schools are no longer *obliged* to infuse the teaching of secular subjects with religious ideals, this does not prohibit schools from doing so. It is submitted that the Department of Education should urgently advise schools not to mix faith formation with any other subject.
	4. Education Equality welcomes the Bill’s proposed insertion of a provision referring to the obligation that every State-funded school be organised so as to enable the right to attend publicly funded schools without attending religious instruction effectually to be enjoyed. We recommend that the Bill be amended to insert that obligation as a free-standing provision of the Education Act 1998 in order to secure equal respect for children of all beliefs during the school day.

* 1. 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 meaningful choice as to whether or not 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 Action Plan to increase the number of non-denominational and multi-denominational schools to 400 by 2030 as an important step in reflecting current demand for such 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 and multi-denominational schools 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, approximately 85%, of schools will still remain under religious patronage 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 the provision of choice in the type of schools available.
	4. In addition, Education Equality emphasizes the importance that any 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 segregated into different faith groups during the school day, potentially fostering an environment of alienation, exclusion and bullying. Education Equality therefore recommends that the number of genuinely equality-based schools be increased substantially in 2017.
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 by failing to provide adequate alternatives to religious schooling, by failing to protect all children and parents from discrimination on the grounds of religion in school admissions policies, and by failing to make adequate provision for children to opt out of periods of religious instruction that are contrary to their beliefs and/or conscience. While the Action Plan features some moves to create equality for people of all beliefs, more specific actions should be taken in 2017 to remove all discrimination from the education system.
	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 Department for the year 2017:
3. Immediate repeal of Section 7(3)(c) of the Equal Status Act 2000;
4. Prohibition of all forms of religious discrimination in the education system, including in admissions policies, employment policies and toward pupils during 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. The provision of adequate and appropriate alternatives to religious instruction and instruction in accordance with particular denominations.
7. The establishment of multi-denominational and non-denominational schools within no more than 30 minutes’ drive of all families throughout the country.
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)