



1. Parents have positive inalienable rights regarding the education of their children

Article 41.1 and 42.1 —

“The State recognises the Family as the natural primary and fundamental unit group of Society... 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...**”

Supreme Court, *Burke v Minister for Education*, 2022 —

“The State, in providing for free primary education and in endeavouring to assist post-primary education in various forms [under Article 42.4], [must] have “due regard ... for the rights of parents... This provision reflects a concern for **upholding parental authority; a foundational pillar of the Constitution** that accords with Article 41 recognising the family as “the natural primary and fundamental unit group of” Irish society.”



2. Nonreligious parents have the same positive rights as religious parents

Article 44.2.1 —

“**Freedom of conscience** and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.”

High Court, Campaign Case, 1996 —

“[European Convention States] shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and **philosophical convictions**...”

High Court, AB v Children’s Hospital Temple Street, 2011 —

“There is thus no doubt at all but that parents have the constitutional right to raise their children **by reference to their own** religious and **philosophical views**.”



3. Two constitutional articles place conditions on state funding of schools

Article 42.4 —

“The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.”

Article 44.2.4 —

“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.”**



4. The Department has a duty to put in place an administrative scheme that respects these constitutional conditions

Supreme Court, *Burke v Minister for Education*, 2022 —

“Policy... must be turned into an administrative scheme... **Any such a scheme must abide by the Constitution.** That is the overarching jurisdiction under which every organ of the State must act.”

“Can there be any more **fundamental delimiting of jurisdiction** than that which is set down by the Constitution?”

The Government made no decision to exceed constitutional limits... With the considerable stress of keeping interested parties... within the ark of consideration... **the Department of Education devised a scheme which inadvertently exceeded constitutional limits.**”



5. The Department is misusing public funds by funding schools outside the limits of its constitutional jurisdiction

Supreme Court, *Burke v Minister for Education*, 2022 —

“Article 42.4, in requiring the State to provide for “free primary education”, also places **an endeavour, but only that**, before the State “to supplement and give reasonable aid to private and corporate educational initiative” ...

An overall saver in the constitutional text is that the State [in providing for and endeavouring to assist education] have “**due regard ... for the rights of parents**, especially in the matter of religious **and moral** formation.”

This provision reflects a concern for **upholding parental authority; a foundational pillar of the Constitution** that accords with Art 41 recognising the family as ‘the natural primary and fundamental unit group of’ Irish society. Hence, society is built around the family.”



6. On the ground, the Department is allowing schools to administer this misuse of public funds

Supreme Court, *Burke v Minister for Education*, 2022 —

“It is of the essence of good administration that the principle must be fairly clear and precise so that, **in any given situation, the result should be the same**, whether it is administrator A or administrator B who has taken the decision.”

However, on the ground, the Department is allowing schools to make up their own administrative schemes that are outside the limits of the constitutional jurisdiction of the Department and every organ of the State.



7. On the ground, the Department is forcing teachers to be complicit in this misuse of public funds

Teachers are placed in a conflict of conscience between

Section 6 Education Act 1998 —

“Every person concerned in the implementation of this Act shall have regard to the following objects... (a) **to give practical effect to the constitutional rights of children...**”

Section 37 of the Employment Equality Act —

means that teachers are legally obliged **to uphold the ethos of the patron**, under threat of dismissal.



8. Summary

1. Parents have **positive inalienable rights** regarding the education of their children
2. Nonreligious parents have **the same positive rights** as religious parents
3. Two constitutional articles place **conditions on state funding** of schools
4. The Department has a duty to put in place **an administrative scheme** that respects these constitutional conditions
5. The Department is **misusing public funds** by funding schools outside the limits of its constitutional jurisdiction
6. The Department is **allowing schools** to administer this misuse of public funds
7. The Department is **forcing teachers** to be complicit in this misuse of public funds