

The role of denominational religion in the school admissions process and possible approaches for making changes

CATHOLIC PRIMARY SCHOOLS MANAGEMENT ASSOCIATION

Table of Contents

CPSMA - WHO WE ARE	2
BACKGROUND	2
INTRODUCTION	4
THE ROLE OF RELIGION IN SCHOOL ADMISSIONS	5
THE IMPACT ON MINORITY FAITH SCHOOLS	7
OVERSUBSCRIPTION IN THE GREATER DUBLIN AREA	8
The Role of other Patronage Bodies in Oversubscription.....	10
Oversubscription - Summary of the evidence	11
The Greystone Model	12
CPSMA RESPONSE TO THE FOUR OPTIONS	12
A WORKABLE SOLUTION	18
Possible impacts on minority religions	19
Possible constitutional issues	19
Possible impacts on the management/administration of individual primary schools/ of a primary school system of 3200 schools	19
Possible unintended impacts on other goals of education policy	20
CONCLUSION AND RECOMMENDATIONS	20
Appendix A – Admission CPSMA Advice to Member Schools.....	22
Appendix B – Greystones Model	22
MAP A	23
MAP B	23

CPSMA - WHO WE ARE

Catholic Primary Schools Management Association (CPSMA) provides advice and support to Chairpersons of Boards of Management and Principals in over 2,800 schools. We collaborate with other management bodies and negotiate on behalf of these schools with the Department of Education and Skills and other education partners.

The Boards of Management we support and advise, represent one of the largest volunteer forces in the country, with over 23,000 persons serving without payment or public recognition. Through their service, Catholic Primary Schools are connected to the communities they serve.

BACKGROUND

On January 16th the Minister for Education and Skills, Richard Bruton T.D., announced his intention to hold a consultation on the role of Religion in School admissions.

In the speech the Minister stated that he believes:

- It is unfair that a non-religious family or a family of a different religion, living close to their local publicly-funded school, finds that preference is given to children of the same religion as the school, living some distance away.
- It is unfair that parents, who might otherwise not do so, feel pressure to baptize their children in order to gain admission to the local school.

CPSMA would like to point that no Catholic school wishes to refuse any child and it is only in cases of oversubscription that preference is given to Catholic applicants, and that in fact most Catholic Primary Schools already operate a catchment policy (see Appendix A).

CPSMA only advises Catholic schools to give preference to members of their own faith living outside the catchment area which they have set, when applications are received from a parish where there is no local Catholic school (and therefore the pupil is not in a catchment area of a Catholic school.)

Furthermore, the CPSMA appreciates the fact that due to an absence of alternative provision, parents may have felt that they should baptise their child solely for the purpose of securing admission to a particular oversubscribed school.

However it should be pointed out that it is the responsibility of Government to ensure that there are sufficient school places in a locality to meet local demand, and it is Governments' responsibility to ensure that there is sufficient diversity of

patronage to meet local demand. What is “unfair” is not the admissions policies of Catholic schools but that Government has failed to provide sufficient schools places to meet demand in some locations and sufficient educational options for these who wish alternative types of patronage.

There is nothing intrinsically unfair about a faith based school established to cater primarily for parents and children of a particular denomination giving preference to those parents and children.

Accordingly if one frames the question correctly, it is clear that the only unfairness in the first example cited by the Minister arises from the failure of the State (or other faith or secular denominations) to establish publicly funded schools to cater for those who would wish for their children to be educated in such an environment.

As part of this process the Minister has outlined four options to address these issues:

Catchment Area

A catchment area approach would prohibit religious schools from giving preference to children of their own religion who live outside the catchment area over non-religious children or children of other faiths who live inside the catchment.

Nearest school rule

A nearest school rule would allow religious schools to give preference to a child's religion only where it is that child's nearest school.

Quota System

A quota system would allow a school to set a certain proportion of places for children of its own religion.

Outright prohibition

This would involve an outright prohibition on faith based schools using religion as a factor in admission which would mean that all places would be allocated based on other factors.

Before examining the particular proposals put forward by the Minister, it is also important to emphasise that the consultation process instigated by the Minister is limited in nature and constrained by what the Minister has stated are the “*four possible approaches*”. Any observations made regarding the four possible approaches should be viewed as specific submissions addressed to each of the four

possible approaches identified. The observations should not be taken as in any sense an acknowledgment:

- That only four approaches are possible.
- That the Oireachtas would be entitled to impose one of the four possible approaches upon the matter being presented to it by way of primary legislation.

What follows is the CPSMA's response to the Ministers Consultation.

INTRODUCTION

Fundamentally Catholic schools, other faith schools, and non-faith schools, exist to give life to the principle that parents, not the State, are the primary educators of their children and as such have a right to determine the religious, moral and intellectual ethos within which their children are to be educated. The State should, as far as is practicable and reasonable, support this right through the funding of a plurality of school types.

Catholics believe that all persons “since they enjoy the dignity of a human being, have an inalienable right to an education”. We believe that “true education aims at the formation of the human person in the pursuit of his or her ultimate end and of the good of societies of which they, as an individual, are a member and in whose obligations, as an adult, they will share”.

Therefore, we believe that “children and young people must be helped ... to develop harmoniously their physical, moral and intellectual endowments so that they may gradually acquire a mature sense of responsibility in striving endlessly to form their own lives properly and in pursuing true freedom as they surmount the vicissitudes of life with courage and consistency.”

“Moreover they should be so trained to take their part in social life that ... they can become actively involved in various community organisations, open to discourse with others and willing to do their best to promote the common good.”

Catholic schools do not impose the Catholic faith on their students, but rather propose it to them, training them in the necessary critical skills by which they may, as adults, make an informed and reasoned judgment as to their religious and ethical beliefs.¹

For the avoidance of doubt the CPSMA does not take the view that Catholic Schools should give preference to members of their own faith living outside the catchment area, *unless they come from a parish where there is no local Catholic school.*

¹ All quotation in this section are taken from *Gravissimum Educationis*, October 1965

Furthermore, the CPSMA, as a core principle, takes the view no-one should ever feel pressurized into baptizing their child to secure admission to schools.

THE ROLE OF RELIGION IN SCHOOL ADMISSIONS

The role of religion in Admissions has generated considerable public commentary, a consultation process, and two hearings of the Oireachtas Committee on Education and Skills and a Labour Party Private Members' Bill.

Intriguingly, much of the debate, led by a small group of advocacy groups and lobbyists, has occurred within the context of a complete absence of hard data to quantify either the scale *or indeed the nature of the problem*.

This lack of data has not stopped a small group of advocates from claiming the role of religion was the "serious issue concerning school admissions".

In recent years the Department of Education has made huge and welcome strides in gathering data through the Primary Online Database and the use of demographic information from the Census and General Register's Office.

But, whilst this can predict demographically driven demand, we do not have any real information on the level of oversubscription in Irish schools.

The lack of data was confirmed in a recent reply to a Parliamentary Question on the number of primary schools which were oversubscribed for admissions for entry to junior infants in August and September 2015 and 2016.

The Minister replied that "Schools are not required to report to my Department on the number of applicants who are refused and the therefore the information requested by the Deputy is not available".

In order to better inform the debate on Admissions, the CPSMA and the Education Secretariat of the Archdiocese of Dublin has conducted an internal survey of Catholic Primary Schools in the Greater Dublin Area

Within the Irish Primary School Education system Dublin is one of the areas generally regarded as being the more socially diverse, less religious, and the area most prone to over subscription.

The objective of our research was to attempt to look at a number of areas in greater depth in order to try and understand the forces driving over subscription in the area.

One of the key results of the survey is that only 1.2% of unsuccessful applications were due to the lack of a baptismal certificate or 97 out of 26,968 applications.

It is critically important to note these figures refer to applications not individual children and therefore it is likely, due to multiple applications, that the number of families affected is much lower.

The survey cannot also tell us the number of applicants who went on to find a place in a Catholic School which was not their first choice; our experience suggests that it is likely to be quite high.

The one thing the survey tells for definite however is that the role of religion in un-successful school admissions is at 1.2% a minor one, when compared to a much greater issue of a lack of school places in certain areas of the city.

CPSMA wishes to stress the above information comes from an internal volunteer study.

The results, however, suggest a real need exists for a genuinely independent, comprehensive, national, evidence based survey of this issue.

We suggest that such a proper independent study, covering Dublin and other large urban areas should be under-taken as part of our ongoing commitment to evidence based policy-making.

We believe that it would be not just unwise, but, from a legal perspective, irrational, if fundamental changes were to be made to a school admission system which is broadly working, solely on the basis of anecdotal evidence.

We would welcome a comprehensive evidence centered study and believe this is necessary before any final decisions are made on this issue.

In our view, the evidence suggests that the real issue in schools access is a lack of places, we are facing a Buildings Barrier not a baptism barrier.

The Media obsession over the role of religion in admission policies has overshadowed far more significant factors when it comes to school admissions problems.

Two of these include:

- Soft barriers used to discourage children with special needs applying to some schools and
- Problems experienced by the travelling community in accessing some schools.

CPSMA believes that any national survey of barriers to admission, to be comprehensive should include an investigation of major systemic issues such as the above.

This will allow us to utilize a nation-wide properly researched over-view of the real issues behind a growing level of public unease about school accessibility and barriers to school entry.

THE IMPACT ON MINORITY FAITH SCHOOLS

It is clear from the Ministers speech at the Equate Conference that his real area of concern is with the admissions policies of Catholic Primary Schools which form the majority of Primary Schools in Ireland.

However, under the law of unanticipated consequences, the impact of the Minister's proposals will arguably be far greater on the schools of minority faiths.

All of the options outlined by the Minister pose challenges for the schools of minority faiths such as the Church of Ireland, the Presbyterian Community, or the Muslim Community.

In the case of Protestant schools, the catchment option is highly problematic as most minority faiths will serve areas far greater than an area equivalent to a traditional parish.

In rural Ireland, in particular, the imposition of a catchment area would create a crude 'hit and miss approach to accommodating families in their faith community who will be widely dispersed geographically.

The outright prohibition on faith based schools using religion as a factor in admissions would end the existence of most Protestant Schools almost overnight as they would be unable to prioritize members of their own faith.

In this regard Protestant schools would be victims of their own popularity for, given their high reputation, they would be swamped with applicants of other faiths and none.

This would create the bizarre scenario where a measure designed to ensure access for the un-baptized to Catholic Schools would erase Church of Ireland Schools from the educational landscape.

It would be a very strange form of pluralism that would erase Protestant schools from our schools network.

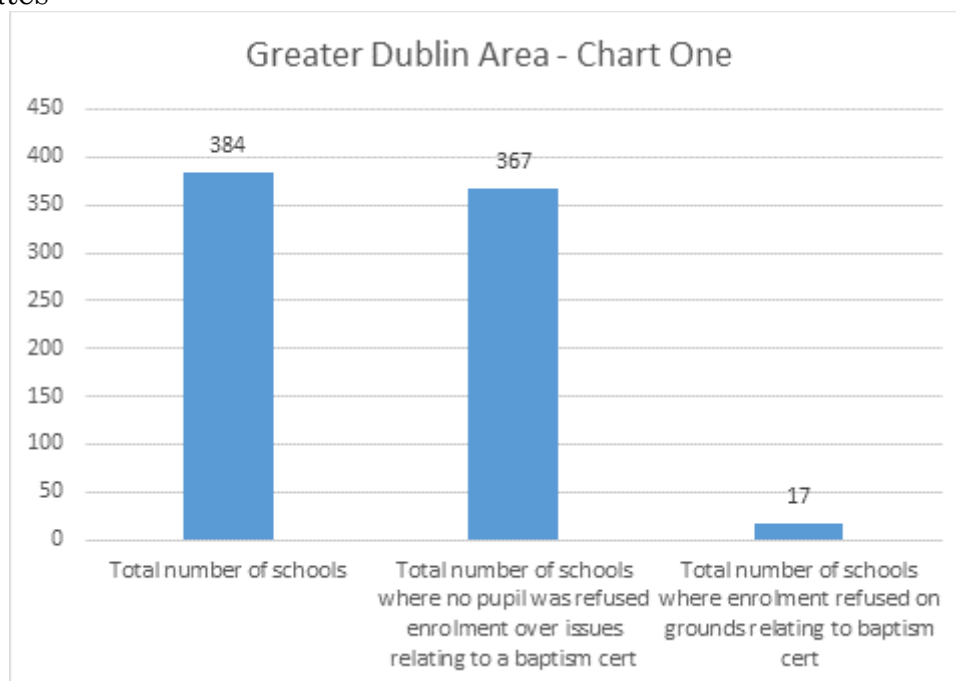
Certainty in the context now of a renewal in political and public discourse on the matter of the unification of Ireland, the sensitivities of the Protestant community in the North should be taken into account when addressing matters concerning the historic Protestant community that has endured in the Republic since Independence.

OVERSUBSCRIPTION IN THE GREATER DUBLIN AREA

The majority of Catholic schools are not over-subscribed and only a small minority are forced through over-subscription to refuse admission to any child, Catholic or non-Catholic.

A small minority of Catholic schools are over-subscribed, primarily in the greater Dublin area, in pockets of the surrounding commuter belt and in some of the other major urban areas.

CPSMA, in conjunction with its members, recently conducted a survey of schools in the greater Dublin area. Surveys were sent out to 456 schools, of which 384 schools have responded on the questions concerning admission policy and baptism certificates



Of the 384 schools who responded, only 17 schools refused enrolment for a reason relating to baptism certificates. This represents 4.4% of the total. All of these 17 schools were over-subscribed with an average of 2.1 applications per enrolment place. Many children from Catholic families were also refused on grounds unrelated to any issue concerning baptism certificates.

A total of 314 schools have responded to the survey in full, providing the total number of applications and the numbers that were newly enrolled in the current school year.

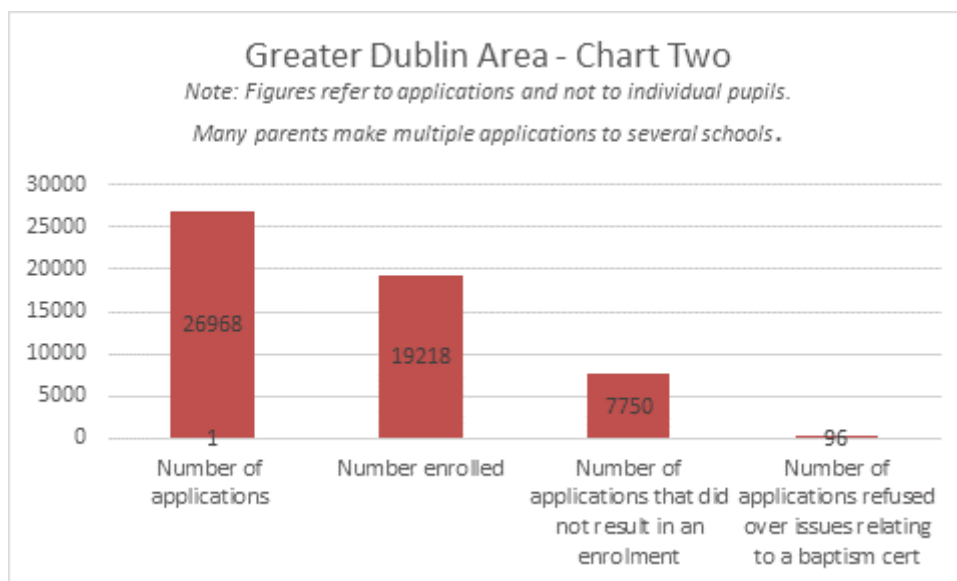
A total of 26,968 applications were received for 19,218 places.

Of the 7,750 applications that did not result in an enrolment in a given school, only 97 were refused over issues in relation to a baptism cert.

It is very important to bear in mind that these children, including the several thousand who were turned down a place in a chosen school for reasons unconnected with religion, will have been offered places in other schools.

It is also important to note that in every case where applications were refused on the basis of lack of baptismal certificate children without such a certificate will have been offered a place due to the siblings rule.

It is important to point out that there is no Catholic Primary School in the Greater Dublin area that is solely Catholic in terms of intake.



In the course of conducting the survey CPSMA identified 42 schools that were oversubscribed (see attached Map A). From the attached map it can readily be seen that the majority of oversubscribed schools are in middle class areas or in areas which are experiencing rapid population growth.

It is significant that not one of the oversubscribed schools is a Deis School.

We also mapped all of the schools that had unsuccessful applications on religious grounds (see attached Map B).

As one would expect all were in either middle class areas or in areas experiencing rapid population growth.

It is notable that all but one of these schools were in areas where there was already an existing plurality of Patronage.

In speaking to the Principals of oversubscribed schools, a number of issues were highlighted;

- Parents are making multiple applications, thus making it very hard for schools to estimate the real demand for places in their schools.
- Principals are taking action to try to manage the issue, from raising the enrolment age, lobbying for extra resources or converting the school library to a class room.
- Parents were bypassing their local Deis Schools to apply to schools that were perceived by them to be middle class.
- Principals complained that schools of other Patron bodies were recruiting pupils from outside the catchment area and thus increasing the pressure for places within the locality.

The practice of parents making multiple applications is well known.

The lack of over subscription in Deis Schools - and the fact that some Deis Schools are struggling to fill places - supports the view that some parents are bypassing Deis Schools - leading to oversubscription in other schools perceived to be more middle class.

The above evidence indicates that issues surrounding baptismal certificates, most of which are anecdotal, are symptomatic of greater stress flaws in the design of the admissions policy for all schools be they faith schools or multi-denominational schools.

These for the main part, are:

1. Absence of sufficient school places in some areas of rapid growth
2. Parental practice of multiple applications which means, for example, that the figure of 97 cited in our evidence may well double count certain pupils and misrepresent the actual numbers of individual pupils affected
3. Refusal or avoidance of DEIS school options.
4. Lack of places in multi-denominational schools (with a first-come, first-served admissions policy, with no catchment area) having an effect on local Catholic schools (with a narrower catchment area).

The Role of other Patronage Bodies in Oversubscription

CPSMA is also strongly of the view that any analysis of anecdotal claims about the baptism barrier must examine the impact of the admissions policies by schools of other Patronage Bodies on oversubscription in Catholic Schools.

There has been no specific scientific study into this but there is evidence from the media which supports the view of CPSMA Principals that this is an issue.

For example, in an article on the December 12, 2013, an Irish Times writer said of her own difficulties getting her child into a local school that;

“The other two schools, one a non-denominational Gaelscoil and the other multi-denominational, should surely be more welcoming and as I had his name down with the multi-denominational since he was three weeks old I was hopeful. However, when I called I was told he was “about 220th on the list”. The enrolment secretary told me parents travelled from across Dublin to enroll their children there, such is the demand. Again at the Gaelscoil, with parents travelling from across the city to get their kids in, he’s 239th on the waiting list.”²

CPSMA contends that a first come first served enrolment policy may be creating artificially long waiting lists which may be putting unnecessary pressure on parents who apply to these schools.

For example, according to Norma Sheehan;

“I baptised my kids because I thought they would need it to get into schools. I didn’t think they would be lucky enough to get into an Educate Together because there are 650 on the waiting list for this September for our school, and they have only 50-something places so the demand is so high..... Luckily we got the Educate Together so we didn’t need to wash the sins off their head.”³

No oversubscribed Catholic School reported a waiting list as large as the one cited here and certainly, no one so far down on a list could expect to gain entry to a Catholic school.

Oversubscription - Summary of the evidence

It is clear from the results of the survey and from speaking to Principals:

- That, where it comes to difficulties in placement, the real issue is resources not religion
- That we are dealing with a Buildings Barrier not a Baptism Barrier in some areas of rapid growth of Dublin;

² <http://www.irishtimes.com/news/education/for-children-with-no-baptismal-certificate-the-school-gates-seem-to-be-closed-1.1624522> Accessed 14/3/17

³ <http://www.irishtimes.com/life-and-style/health-family/parenting/baptism-barrier-a-reality-at-the-school-gates-1.2768215> Accessed 14/3/17

- That, whilst in some areas, over subscription is driven by rapid growth, in more settled areas it would appear that other factors are at play, such as a demand for perceived middle class schools or access to feeder schools for popular Secondary Schools;
- That the first come, first served policies of other patrons is contributing to oversubscription in nearby Catholic Schools.

Public Policy should be driven by evidence and it is clear that there are many factors in relation to admissions and oversubscription for which we have little or no hard data on which to make informed policy decisions.

CPSMA would strongly urge that before any option is adopted or indeed considered that the Minister must commit to an independent study on the issue of oversubscription being conducted to better understand the scale of the problem and the underlying factors which cause it.

The terms of reference should be agreed by all impacted parties.

The Greystone Model

One of the key issues obscuring the real level of demand for schools in the greater Dublin area is the practice of parents making multiple applications. One way to deal with this, which has proved very successful, was pioneered in Greystones and that is the creation of a common applications process for all schools in an area.

This approach has the benefit of not only assisting schools to manage admissions but also of providing the Department with accurate figures on which to assess the level of demand in an area. It is a model of partnership which we consider has great merit and we would urge its adoption in all areas faced with over subscription. For an account of how this has worked in practice (see Appendix B).

CPSMA RESPONSE TO THE FOUR OPTIONS

The following section considers each of the four options as outlined by the Minister.

Catchment Area

A catchment area approach would prohibit religious schools from giving preference to children of their own religion, who live outside the catchment area, over non-religious children or children of other faiths who live inside the catchment.

The current advice of the CPSMA to its members on admission policy criteria (see Appendix A) is with this option. Such advice is also being implemented in many Catholic schools including in areas where over-subscription is an issue.

In practice this is a progressive idea which has worked well.

Translating this into legislation however, may turn that which works easily and well, when discretion is applied by practitioners on the ground, into a legal quagmire.

The Minister rightly points out that there is no statutory basis for the creation of “*catchment areas*”.

By way of preliminary observation, it would appear that the legislative change being canvassed by the Minister in this regard, would only affect schools which had been established by faith communities. It is not apparently anticipated by the Minister that the structures to be imposed by legislation would affect schools which have not been established by faith communities. It is apparently not to be the case that a catchment area approach, if implemented, would prohibit such schools with a secular ethos from giving preference to children of parents who shared that secular ethos who live outside the “*catchment area*” ahead of Catholic children or children of other denominations who live inside the catchment area of the school with the secular ethos.

A failure to include such schools in primary legislation would be demonstrably discriminatory and constitutionally suspect. If it be the intention of the Minister to impose restrictions on schools of a secular ethos on a similar basis to schools with a faith ethos, then that is not clear from the Minister’s proposal.

The Minister states that legislation would have to reflect the differences between different denominations and religions. What is a denomination? What is a religion?

Certainly there is case law to suggest what might or might constitute a “*religious denomination*” where that phrase appears in Article 44.5 of the Constitution. A religious denomination within the meaning of the Article “*was intended to be a generic term wide enough to cover the various churches, religious societies or religious congregations under whatever name they wish to describe themselves*”. This being the case it is clear that legislation cannot group all facets of the Catholic family together as “*the Catholic denomination*”.

Parents may wish to send their child to a (Catholic) parish school, rather than a (Catholic) Sisters run school. At post primary level, parents may opt for a (Catholic) Brothers run school but may not wish to send their child to a (Catholic) co-educational school. The validity of parental choices in this regard will apparently no longer be recognised as one Catholic school but will be equated with another despite the tremendous diversity in (Catholic) educational provision.

Presumably it is the intent of the Department to seek to put into primary legislation the distinction between an adherent of the Catholic religion and an adherent of another Christian denomination. Again, as between different Christian denominations, the primary legislation would presumably set out the tenets of the different faiths in order to allow a school to establish whether in fact

somebody did come within a particular faith. One does not have to look far to see that such an approach would be inviting inappropriate interference by the State in the entitlement of denominations to determine matters for themselves as regards faith and adherence to a particular religion or denomination.

A further issue arising in respect of the catchment area option is the proposal to distinguish and discriminate between Catholic schools and schools of other Christian denominations as regards the size of a particular catchment area. Clearly and in light of Article 44.4 of the Constitution disparity in treatment would be entirely impermissible and a school founded to serve a faith community belonging to one denomination could not be discriminated against or dealt with differently from a school established to serve a different faith community. Ultimately such primary legislation would have to take account of the distinctions not merely between schools established to serve members of the Catholic community, the Church of Ireland community, the Methodist community, the Presbyterian community, the Jewish community, the Shiite community, the Sunni community, and other religious denominations who have genuinely held and mutually respectful differences.

The reference to “*religious organisations*” is not entirely understood. It is not clear if this is a reference to, in the Catholic context, the Catholic Church or whether this is a reference to a Bishop who is patron of a number of schools, or whether the phrase is intended to cover schools in the patronage of, for example, the Christian Brothers. Whether a faith based school should have as its catchment area a particular parish or a particular community who are intended to be served by that school is a matter in the first instance for the patron and for the Board of Management of that school. Primary legislation which seeks to set aside decisions taken within the relevant faith community would be constitutionally suspect. There may indeed be two or more Catholic schools within a Catholic parish. Whereas clearly such schools may appropriately be asked to cooperate with each other and will ultimately no doubt find a solution in respect of oversubscription should that arise in one school and not the other, that is a matter to be addressed primarily by the schools in question rather than by primary legislation.

The Minister speaks of boundary disputes. It is stated that initial work suggests that these should be adjudicated upon by the relevant church or religious authorities. It is not clear what “*initial work*” is being referred to. It would be helpful if the Department were to publish this.

It is stated that exemptions would be made for Gaelscoileanna. It is not clear why special exemptions would be provided for those who wish their children to be raised in the Irish language, which exemptions would not apply to those who wish to have their children to have the benefit of a faith based education in a Catholic school.

Nearest school rule

A nearest school rule would allow religious schools to give preference only where it is that child's nearest school of that religion.

This proposal, which would remove parental choice, would have clear implications for the rights of parents. To equate the important role that preference plays in a parent deciding upon the education suitable for their child to rules adopted in respect of the funding of school transport is inappropriate. Put simply, it would be highly problematic if the State were to enact legislation which would force parents into sending their child to a particular school. Issues surrounding the definition of what constituted a "*religious*" child would, of course, arise for immediate consideration.

Presumably the "*nearest school rule*", would also apply to schools of a non-religious ethos who could only give preference to a "*non-religious*" child, only where the secular school was the nearest school to the child's place of residence. One only has to contemplate a parent claiming that a child who has been baptised is in truth a "*non-religious*" child in order to gain admittance to a school with a secular ethos.

The application of tests in respect of religion or the lack of religion would clearly offend the provisions of the Constitution as well as being entirely inoperable in practice.

Again, it is not clear why special consideration should be given to parents who wish their child raised in a particular language tradition and not to parents who wish their child to have a faith based education in a particular school chosen by the parents.

Quota System

The quota system, if enacted in primary legislation, would run the risk of breaching the provisions of the Constitution in several respects. It is entirely unclear why the State would seek to preclude a patron and a Board of Management of a school founded and established for the purposes of providing a faith based education from accommodating local children whose parents had chosen a faith based education as suitable for their child. The consultation document acknowledges that legislative change would need to include the principles and criteria that would determine how the quota would be set. Indeed, that is the case. It is difficult to conceive, however, what principles and criteria could accommodate themselves to the constitutionally recognised entitlement of a religious denomination to manage its own affairs, own, acquire and administer property, moveable and immovable, and maintain institutions for religious or a charitable (including educational) purposes.

Outright prohibition

This would involve an outright prohibition on faith based schools using religion as a factor in admissions which would mean that all places would be allocated based on other factors.

The outright prohibition of religious grounds for admission to faith based schools would have a disastrous impact on Protestant Schools as the removal of the right to prioritize members of the Protestant Community would see Protestant schools which are very popular fill quickly with non-Protestants.

As noted above Protestant Schools are critical to the sustainability of the Protestant Community in Ireland.

It would seem perverse to implement a policy change aimed at dealing with a perceived issue with Catholic Schools whose principal impact was the destruction of Protestant Schools.

It is also difficult to see why Catholic Schools should not be allowed to prioritize the admission of Catholic Pupils to Catholic Schools where one of the contributing factors to oversubscription in the school area is the admission policies of other Patron Bodies which enrolls pupils from outside the catchment area.

The removal, or the amendment of Section 7.3.(c) of the Equal Status Act, 2000 is highly problematic.

The suggestion, for example, is that this might be amended to allow minority schools to reserve a certain percentage of places for children of their own religion.

This is to be facilitated by leaving or modifying the second part of section 7.3(c), allowing a school to refuse “to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school”.

In this way, under sub-option (iii), schools of minority religions if oversubscribed, could potentially be permitted to reserve a certain percentage of places for children of their religion is obviously repugnant to Article 44.2.4

This states that “Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations”

It is also important to note that S.7.3(c) of the Equal Status Act 2000 was introduced precisely to protect the right of minority faiths to prioritize members of their own faith and thus run schools which serve the needs of their community.

It should also be noted Article 2 of Protocol 1 to the ECHR provides that;

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

If the state is proposing a policy that in essence makes it impossible for a faith based community to operate faith based schools; which in essence would be the impact of the removal of S.7.3(c) of the Equal Status Act, the state would in fact be in breach of its obligations under the ECHR and open to a case being taken against by that community.

Given the historical sensitivities of the Protestant Community and the new Muslim stakeholders in this state, it seems rather insensitive even to raise the possibility that the legitimate rights of the minority community might be swept aside in a rush to push a secularization agenda aimed mainly at the Catholic Church (Deputy Joan Burton's comment during a Dáil debate on schools admissions is instructive here: "Ironically, even though *those who want a change in the law are chiefly targeting Catholic schools*, only these schools would survive the impact of such a change."⁴)

We note that such a process may also open the state to a multiplicity of civil suits by those parents who wish to retain a Catholic faith ethos for their children.

It should be noted, however, that if the impact of any new legislation was to force parents to send their child to any particular school that might create constitutional problems.

Article 42 of the Constitution acknowledges that the primary and natural educator of the child is the family. The State "*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*".

Parents are free to provide this in their homes or in private schools or in schools recognised or established by the State.

There is no reference in these provisions to the State being entitled to direct parents to send their child to one school over another. If the practical effect of the proposals now advanced by the Minister was to direct a parent to send a child to a particular recognised school or else have no schooling available for the child funded by the State, this would in my view cut across clear constitutional provisions. The State must provide for "*free primary education*". If, in effect, the only option available to a parent is to send a child to a particular school by virtue of the enactment of new primary legislation, this would indeed not merely run

⁴<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016062800046?opendocument#TT00300> Accessed 14/3/17

counter to the spirit of the Constitution, but also give rise to major issues which the courts would have to address.

It is also important to note that the Constitution specifically states that the State cannot “*oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State or to any particular type of school designated by the State.*” To oblige parents in violation of their lawful preference (and perhaps their conscience) to send their child to a particular school established by the State gives rise to major concerns. The courts will look to the substance of whatever proposal is enacted by the Minister. If the substance of the proposal is to effectively preclude parents in violation of their conscience from sending a child to a school of their choice, it would be very difficult to uphold the constitutionality of such a legislative choice.

A WORKABLE SOLUTION

Based on a review of the above options CPSMA considers Option 1 the Catchment Area to be the least problematical and the most realistic in terms of implementation.

While the Catchment Area is CPSMA’s preferred option it is by no means without difficulties.

The primary, and most obvious, problem is that there is no legal definition of a Catchment area in Irish law and defining it may not be as easy as some think. Where there is more than one school in the parish, consideration will need to be given as to how a catchment area will operate in practice. This can be far more complex than one might think. It presumes for example that all schools use the same geographic and spatial rules to define catchments. *This emphatically is not the case.*

It also assumes parents will respect the catchment rule. Absolutely nothing in the history of school admissions suggests this will be the case.

One case of the ongoing rule of un-expected consequences suffices to justify our concerns:

In one Parish in the Dublin Archdiocese, a decision was taken to divide the catchment area of two schools using a major road which bisected the Parish as the boundary between the schools. Unfortunately, one of the Schools had a greater proportion of disadvantaged pupils leading to problems in that school.

The Consultation document asked that parties making submission comment on the possible impacts on minority religions, constitutional issues, impact on management and administration of schools and unintended consequences.

Possible impacts on minority religions

As noted above the impact could be problematic on minority faith schools.

Possible constitutional issues

Most Catholic Schools are Parish Schools and therefore the Parish boundaries already define the Catchment area.

Dioceses are required to be divided into parishes (c. 374.1). Roman Catholic parishes are defined in the Canon Law Code as "definite communities of the Christian faithful established on a stable basis within a particular church" (c. 515.1). Parish boundaries are determined by the relevant Commission of Parish Boundaries of the relevant Diocese.

The Ministers proposals indicate that the catchment area option might require a centrally administered system in order to prevent schools from creating artificially large catchment areas in order to maximize the intake of children of the school's particular denomination.

Outside of the extra work for the Department this will generate, were the Minister to seek to change Parish boundaries this could be construed as interference in the right of a religious denomination to manage its own affairs, contrary to Article 44.5 of the Constitution.

Possible impacts on the management/administration of individual primary schools/ of a primary school system of 3200 schools

The impact on the management/administration of most Catholic Primary Schools of the catchment option would be minimal as most Catholic Primary Schools are not oversubscribed.

We take the view that most of the oversubscribed schools are already using a catchment system, so these should not be overly affected.

We note with concern though the possibility of:

1. Increased red tape and bureaucracy – change, typically in Ireland at least, always entails an increase rather than reduction in governance issues that are of dubious worth
2. A dangerous potential for litigation over contested boundaries
3. An increased administrative burden on the Department in policing such issues.

Possible unintended impacts on other goals of education policy

The creation of legally underpinned catchment areas may also have serious and systemic unintended consequences. For example:

- 1) In the UK, living in the catchment area of a top comprehensive school is associated with a house price 'premium' of around 20%⁵. House buyers willing and able to pay a substantial premium to live in the catchment area of a top school are likely, over time, to lower the accessibility of the school to those from disadvantaged backgrounds.

It has been claimed that this undermines the nature of the comprehensive system, and introduces an element of de facto selection based on ability to pay.

Such a process would, of course, be utterly inimical to the ongoing commitment of this Republic to equality of schools access.

Indeed the Sutton Trust recently recommended a reduced emphasis on proximity in school admissions would allow fairer access to the best schools and limit socially divisive house buying incentives.

- 2) In the UK fraud has become a feature of the Admissions process with parents using grandparents or friend's addresses, temporally renting flats or houses in catchment areas, and submitting false addresses in order to get into a school. There is already anecdotal evidence of such practices occurring here, the move to a legally based catchment system might well exacerbate such trends.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the CPSMA submits, based on the facts that, far from being the most serious issue concerning school admissions the issues associated with the role of religion in school are peripheral.

The so called 'baptism bar' is a symptom of oversubscription which in turn is a symptom of other underlying issues in Primary education.

Oversubscription in fact, is driven by rapid growth in some areas, competition to get into what are perceived as middle class schools in more settled areas and exacerbated by the enrollment policies of other Patron bodies in some cases.

The real issue is a mismatch of resources rather than religion.

⁵ <http://www.suttontrust.com/researcharchive/selective-comprehensives-2017/>

Legislating will not add a single school place to the system, and will simply mean that people of faith will lose places in their first choice of school to people who in many cases would prefer to go to multi-denominational school.

While all of the options pose serious challenges to minority faith schools; option four represents the educational equivalent of pressing the nuclear button.

The complete ban on the right to prioritize members of one's own faith in school admissions, would mean the effective end of Protestant schools and potentially have serious consequences for the long term sustainability of the Protestant community in the state.

Such a move would inevitably lead to legal challenge to the Supreme Court and a highly embarrassing appeal to the European Court of Human Rights.

It would arguably be subject to challenge under several provisions in the Good Friday Agreement.

It would be deeply ironic that a measure designed to deal with a perceived problem with Catholic schools had a far greater negative impact on the schools of minority faiths.

CPSMA advises the Minister, before taking any action, to commission an independent consultant's report on oversubscription in the greater Dublin Area to ascertain the level of the problem and the forces driving it.

Such a report should also examine the extent of the problem in rural communities.

In the short term also, CPSMA urges the Minister to encourage schools in oversubscribed areas to implement a common applications process based on the successful Greystones model.

This would have the benefit not only of helping schools manage the problem of multiple applications but of ensuring that Government had accurate data on the actual level of demand in an area.

CPSMA advises the Minister to seriously consider a non- legislative approach to addressing the issues he noted in his speech. Both the Catholic Patrons and CPSMA have outlined their willingness to work with the catchment area proposal.

Legislation for this issue would be difficult to draft, complex and costly to implement and would potentially raise a number of serious legal, constitutional and political issues.

It would be far more prudent to adopt a partnership approach on the catchment policy as outlined by the Minister, which would deliver the Ministers policy objectives while allowing Protestant and other Minority Faith schools to follow their existing policies.

A non-legislative solution will achieve the Minister's policy objectives without impacting on the minority faith schools.

Appendix A – Admission CPSMA Advice to Member Schools

The following is CPSMA advice on admission policy criteria, as per the February 2011 newsletter:

In regard to criteria for enrolment, the priority order in which children will be accepted, in situations where schools may be oversubscribed, should be clearly stated.

Suggested Criteria (adapt to suit circumstances):

- 1) Children from [Name of other school]: *This covers schools whose intake comes primarily from an infant, junior or other school*
- 2) Sisters and/or brothers of pupils currently in the school. This will depend on the type of school e.g. single sex schools
- 3) Catholic children living within the parish boundary
- 4) Catholic children living outside the parish boundary who do not have a Catholic school within their own parish boundary
- 5) Other children living within the parish boundary
- 6) Other children living outside the parish boundary
- 7) Children of current staff, including ancillary staff.

In the event that there are more applicants within any category than there are available places, priority will be given to children within the particular category in order of age, starting with the oldest.

Schools should ensure that criteria used do not directly or indirectly discriminate against an individual applicant or any group of applicants.

Appendix B – Greystones Model

There are eight schools in the Greystones/Delgany area under five different patronages.

Over the past 12 years or so, all of the principals in the area have worked very closely together in order to manage enrolments in this rapidly growing community. For example, in 2006 when there were only five local schools, it was realised that there was going to be an issue regarding enrolment numbers. The schools (working together as one body) contacted the Department of Education & Skills to alert them of this impending issue. The schools and the Department subsequently worked together to address the problem, resulting in the opening of two new primary schools in the area and the allocation of a school place for all those seeking a place

In 2012, the principals realised from enrolment applications for Junior Infants 2013 that there would not be space for all applicants as the applications far exceeded places available. Again, the schools worked as one with the Department to find a resolution. The resolution for the 2013 intake was that extra accommodation was sanctioned for some of the existing schools.

In 2015 the Department opened an 8th school in the area thus ensuring that there is a

place available for every child in this rapidly growing area.

While each school follows its own Enrolment Policy, the Principals meet on a regular basis and co-ordinate applications via a master list. The master list, which is kept up to date by all of the schools, contains the names of all of the applicants to any of the eight schools. The list indicates which schools an applicant has applied to and shows where an applicant has:-

- (i) been offered a place
- (ii) accepted a place
- (iii) declined a place (or not responded)
- (iv) accepted multiple places
- (v) received no offer of a school place.

This master list is invaluable as an administrative tool, providing all of the facts and figures that help to ensure all children are/will be accommodated. The information from this master list is at our fingertips if the DES request backup information.




As a result of working closely with the other local primary schools in the area, all children in the catchment area who were seeking a place have been accommodated in one school or another by the start of the relevant school year. This is down to co-operation, a sharing of information and a willingness on the part of all schools to see that no child is left without a school place.

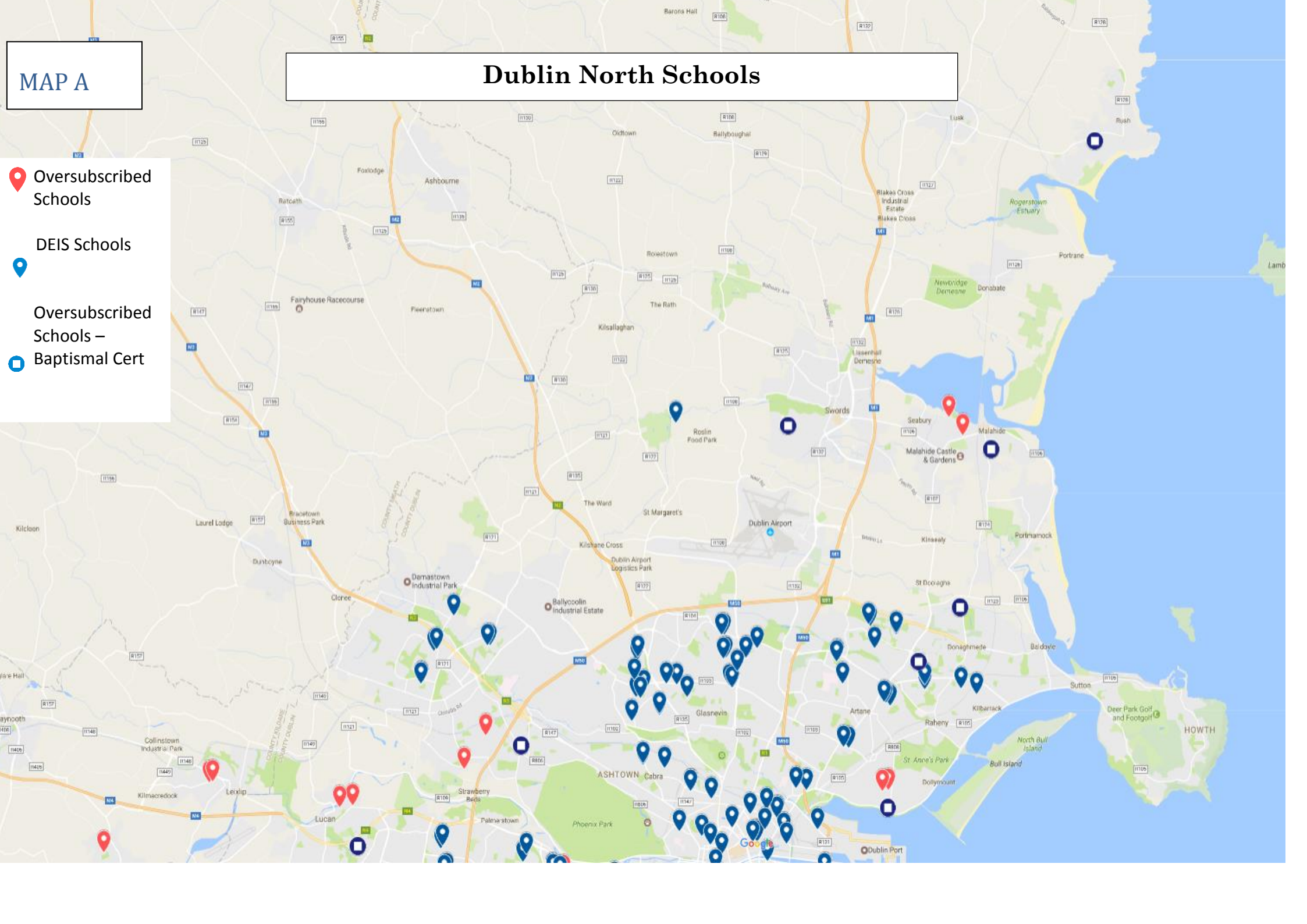
For those parents not lucky enough to be in the first rounds of offers, we try to be encouraging and reassuring as we appreciate that this can be a most stressful time for them.

Because of the co-operation between all of the schools in the area as well as the Department of Education & Skills, I have been in a position to eventually offer places to all applicants from the catchment area, irrespective of faith or lack thereof.

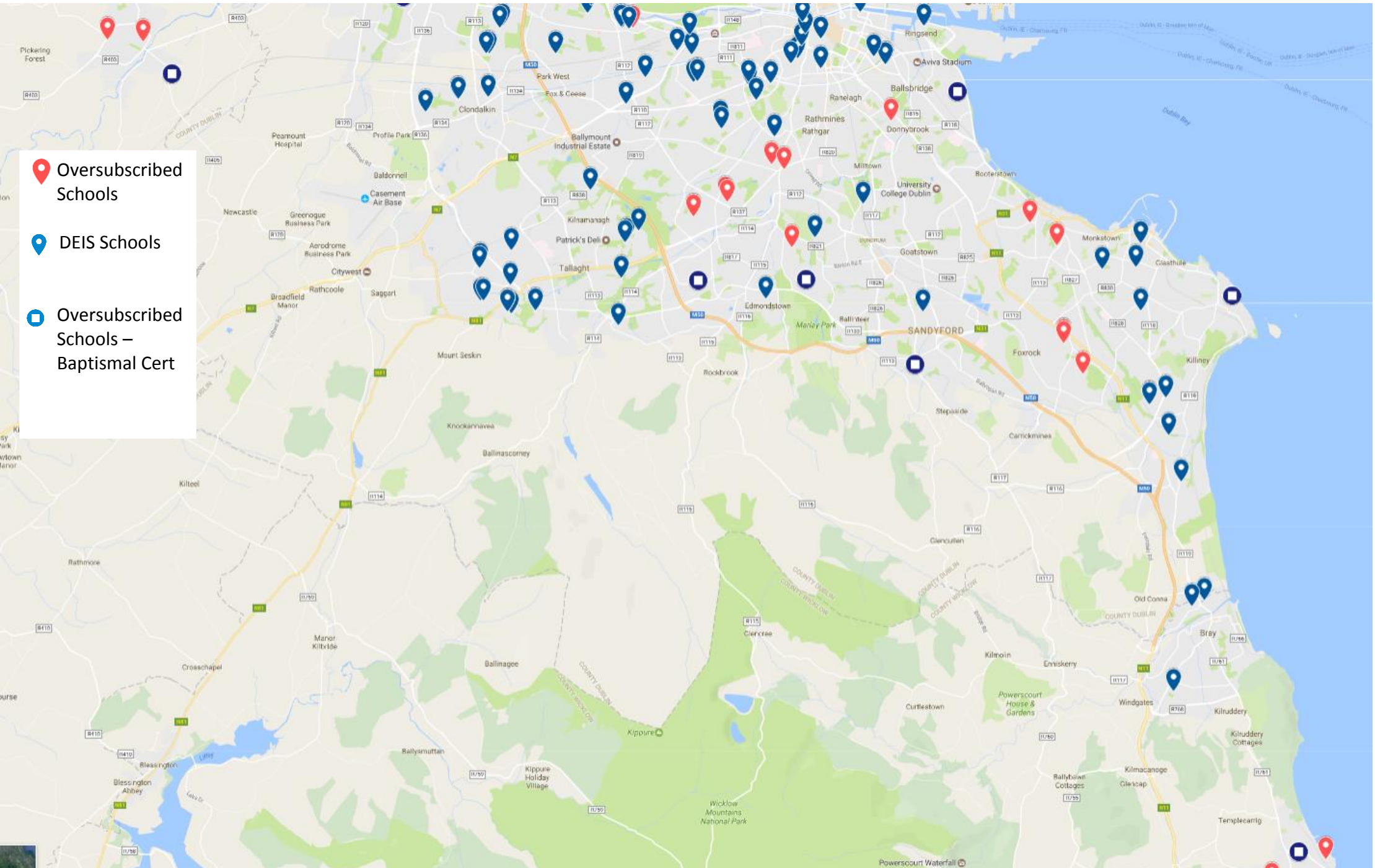
MAP A

Dublin North Schools




-  Oversubscribed Schools
-  DEIS Schools
-  Oversubscribed Schools – Baptismal Cert

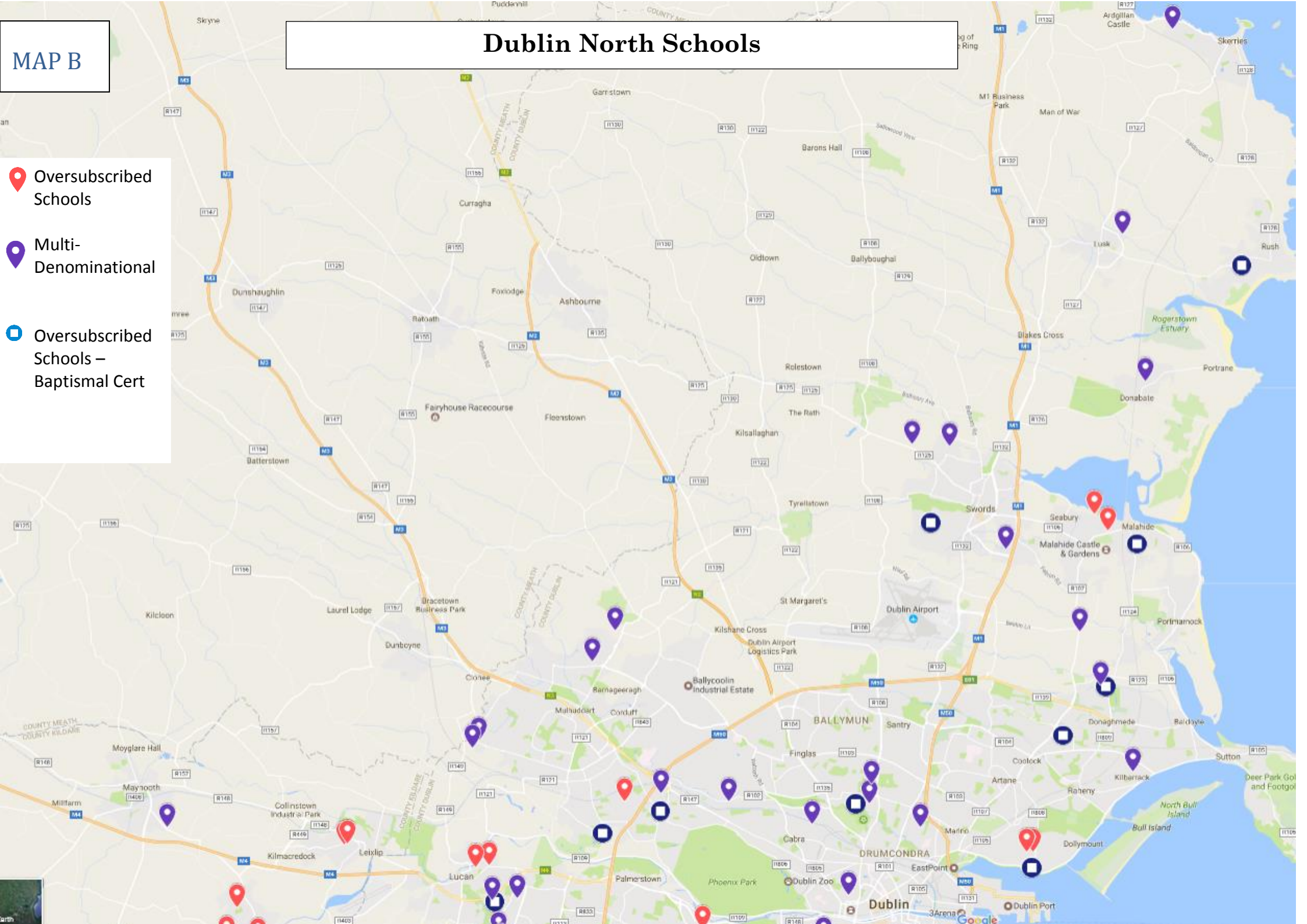


Dublin South Schools



Dublin North Schools

-  Oversubscribed Schools
-  Multi-Denominational
-  Oversubscribed Schools – Baptismal Cert



Dublin South Schools

