



Northern Ireland  
Assembly

**Committee for the Executive Office**

# Report on the Fair Employment (School Teachers) Bill

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Ordered by the Committee for the Executive Office to be published  
11 March 2022

This report is embargoed until 00.01am 11 March 2022

Report: NIA 195/17-22 Committee for the Executive Office

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# Powers and Membership

## Powers

The Committee for the Executive Office is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Executive Office and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports; and
- consider and advise on matters brought to the Committee by the First Minister and deputy First Minister.

## Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Ms Sinéad McLaughlin MLA (Chairperson)
- Mr John Stewart MLA (Deputy Chairperson)
- Mr Pádraig Delargy MLA
- Mr Alex Easton MLA
- Mr Trevor Lunn MLA
- Ms Diane Dodds MLA
- Mr Pat Sheehan MLA
- Ms Emma Sheerin MLA

<sup>1</sup> With effect from Monday 4 May 2020 Doug Beattie replaced Mike Nesbitt.

<sup>2</sup> With effect from Tuesday 1 June 2021 John Stewart replaced Doug Beattie.

<sup>3</sup> With effect from Monday 21 June 2021 Diane Dodds replaced Trevor Clarke.

<sup>4</sup> With effect from 27 September 2021 Pádraig Delargy replaced Martina Anderson.

<sup>5</sup> With effect from 27 September 2021 Alex Easton replaced George Robinson.

<sup>6</sup> With effect from 18 October 2021 Sinéad McLaughlin replaced Colin McGrath as Chairperson.

<sup>7</sup> The Committee pays tribute to the late Christopher Stalford MLA who died on 19 February 2022 while a Member of the Committee. Mr Stalford has not been replaced on the Committee.

## **List of Abbreviations and Acronyms used in this Report**

CCMS: Council for Catholic Maintained Schools

CSTS: Catholic Schools' Trustee Service

FETO: Fair Employment and Treatment (Northern Ireland) Order

TEO: The Executive Office

PCI: The Presbyterian Church in Ireland

RaISe: Assembly Research and Information Service

ECHR: European Convention on Human Rights

## Executive Summary

1. This report sets out the Committee for the Executive Office's consideration of the Fair Employment (School Teachers) Bill.
2. The Fair Employment (School Teachers) Bill was introduced on 17 January 2022 and was referred to the Committee for the Executive Office on 3 March 2022.
3. The purpose of the Bill is to amend the Fair Employment and Treatment (Northern Ireland) Order 1998 ("the 1998 Order") to revoke Article 71 (exception in relation to school teachers).
4. Article 71 disapplies Part VII of the Order to employment of teachers in schools, and disapplies the other provisions of the Order to the recruitment of teachers. The primary effects of the disapplication are that employers of teachers do not have obligations to monitor the community composition of persons applying for jobs, persons appointed to jobs and persons promoted to jobs and that teachers are not able to bring complaints of religious discrimination relating to their recruitment.
5. Revocation of Article 71 will put school teachers in the same position as other employees. The Bill has four clauses and one schedule.
6. The Committee received a total of 388 responses to its public call for evidence on the Bill. In addition to the Department of Education, the Committee took oral evidence from seven organisations, including Equality Commission for Northern Ireland, Transferor Representatives' Council, Council for Catholic Maintained Schools, Catholic Schools' Trustee Service, Integrated Education Fund, Ulster University UNESCO School of Education and Oakgrove Integrated College.
7. During its consideration of the Bill, the Committee noted concerns following the removal of the exception with regard to the preservation of ethos in faith-based schools, the legal basis of the requirement for the Certificate in Religious Education and the financial and administrative impacts of the introduction of monitoring of religious background.

8. Following consideration of written and oral evidence and discussions with the Bill Sponsor and stakeholders the Committee agreed that it wished to see the Bill amended.
9. At its meeting on 9 March 2022 the Committee agreed to amend the Bill as follows:

Clause 3(2) to read:

*The preceding provisions of this Act come into force at the end of the period of 24 months beginning with the day on which this Act is passed if by that time no order has been made under subsection (1) bringing the preceding provisions of this Act into operation.*

## Introduction

10. The Fair Employment (School Teachers) Bill was introduced on 17 January 2022. At its meeting of 19 January 2022, the Committee for the Executive Office agreed to issue a Call for Evidence on 31 January 2022 in anticipation of the Committee Stage of the Bill.
11. The purpose of the Bill, which contains four clauses and one schedule, aims to remove the exemption for school teachers from the Order. The effect of this would be that schools employing teachers could not discriminate on the grounds of religious belief. This would have an impact on schools where aspects of religious observance, such as sacraments, are taught in school. This may also affect schools that need to discriminate to ensure a religious balance, such as integrated schools.
12. Further information on the background and policy objectives of the Bill can be found in the Bill's accompanying Explanatory and Financial Memorandum.



## Committee Approach

13. The Committee was briefed by the Bill sponsor, Chris Lyttle MLA on the principles of the Bill at its meeting on Wednesday 26 January 2022. The minutes of this meeting can be found at Appendix 2.
14. A public notice inviting written submissions on the Bill was placed in the Belfast Telegraph, Irish News and Newsletter. In addition, the Committee invited views from a number of key stakeholders and both affected departments: The Executive Office and the Department of Education. The Committee also wrote to the Committee for Education, which had been taking evidence on this issue from March 2021 to May 2021. That Committee kindly provided ten written submissions relevant to the Bill.
15. In all, the Committee received sixteen written submissions in response to its call for evidence and from the Committee for Education. Copies of the written submissions are included at Appendix 4.
16. During the period covered by this report the Committee considered the Bill and related issues at seven meetings. The related Minutes of Proceedings are included at Appendix 2 of this report.
17. At its meeting on 26 January 2022 the Committee agreed to write to the Business Office to consider scheduling a Second Stage debate of the Bill at the earliest possible date.
18. At its meeting on 2 March 2022 the Committee agreed to write to the Speaker's Office to request that the remaining stages of the Fair Employment (School Teachers) Bill should be scheduled after the Committee for the Executive Office completed its Committee stage on 9 March 2022.

19. The Committee heard oral evidence from seven organisations:

- Equality Commission for Northern Ireland
- Transferor Representatives' Council
- Council for Catholic Maintained Schools
- Catholic Schools' Trustee Service
- Oakgrove Integrated College
- Integrated Education Fund
- Ulster University UNESCO Centre

The Committee also received a briefing from the Department of Education.

The Minutes of Evidence for these sessions are included at Appendix 3 and a list of witnesses who gave oral evidence is included at Appendix 6.

20. The Committee would like to place on record its thanks to the organisations who responded in writing and provided oral evidence on this Bill.

21. The Committee carried out informal deliberations on the clauses of the Bill at its meeting on 9 March 2022. The Committee undertook its formal clause by clause scrutiny of the Bill on 9 March 2022.

22. At its meeting on 10 March 2022 the Committee agreed its report on The Fair Employment (School Teachers) Bill and ordered that it should be published.

23. The next section of the report sets out the Committee's consideration of the provisions of the Bill and outlines the amendment the Committee wishes to see made to the Bill.

## Consideration of the Bill

24. The Fair Employment and Treatment (Northern Ireland) Order 1998 outlaws discrimination on the grounds of religious belief and political opinion in a number of areas including employment. Article 71 of the Order exempts school teachers from the legislation. The reason for this is to enable certain schools to maintain a religious ethos.
25. The Bill aims to remove the exemption for school teachers from the Order. The effect of this would be that schools employing teachers could not discriminate on the grounds of religious belief. This would have an impact on schools where aspects of religious observance, such as sacraments, are taught in school. This may also affect schools that need to discriminate to ensure a religious balance, such as integrated schools. The Bill contains four clauses and one schedule.
26. The Committee's consideration of the clauses and schedules of the Bill was informed by the written and oral evidence it received. The Committee received sixteen written submissions in response to its call for evidence and heard oral evidence from seven organisations.
27. The Fair Employment (School Teachers) Bill passed its second stage on 2 March 2022.
28. The Committee received a briefing from Assembly Research and Information Service (RaISe) on the background and impact of the provisions of the Bill. From the paper provided, the Committee learned how there are a number of similar legislative exceptions documented in other jurisdictions, including the European Union, Great Britain, Republic of Ireland, Malta and Australia, which accommodate limiting anti-discrimination law where it can be demonstrated there is a genuine occupation requirement.
29. The Committee sought advice from the Examiner of Statutory Rules in relation to the delegated powers contained within the Bill. The Examiner for Statutory Rules advised that she was satisfied that the delegation of legislative power presently provided for in the Bill is not inappropriate. She also advised that it is

not inappropriate that the exercise of this legislative power is not subject to an Assembly scrutiny procedure.

## Oral Evidence

30. The Committee heard oral evidence from a range of stakeholders. All witnesses were either in favour of the removal of the exemption for teachers or acknowledged the reasons for its removal. The key concern raised in relation to the removal was how the ethos of a school could be maintained without the exemption.
31. The Equality Commission for Northern Ireland believed the exemption should ultimately be removed in all schools, but that a staged approach would be appropriate. Timescales in the legislation should specify removal of the exemption in post-primary schools, primary schools, and for the introduction of monitoring requirements. There would be costs to schools for the introduction of monitoring and additional costs to the Equality Commission to undertake its compliance and monitoring roles.
32. The Transferor Representatives' Council asked, if the exemption were removed, how would the ethos of a school be maintained? The Bill could contain some provision to protect the ethos of schools. A staged approach may also be appropriate, with post-primary schools first to lose the exemption, then primary schools.
33. Catholic Schools' Trustee Service and Council for Catholic Maintained Schools believed that the exception is no longer appropriate or required. Catholic schools would still want to be able to promote their Catholic ethos and have a right to ensure teachers are committed to a Catholic ethos. The Certificate of Religious Education will continue to be a genuine occupational requirement for Catholic primary schools and for some posts in post-primary schools.
34. Integrated Education Fund and Ulster University stated that, while the exception is rarely, if ever, used, its existence means that teachers from one tradition only apply to schools in one sector. The exception has also been used to justify intra-faith discrimination, allowing questions to applicants about

religiosity. Removal of the exception would not have an immediate effect on the teaching of religious observance.

35. The Department of Education stated there has not been sufficient consultation across the full breadth of the education sector.

## **Written evidence from stakeholders – Call for Evidence**

36. The Committee received written evidence from a range of stakeholders in response to the call for evidence and written evidence was also received from stakeholders via the Committee for Education in relation to its deliberations on this issue from March to May 2021.
37. The Transferor Representatives' Council stated it would be opposed to the removal of the exemption if it were to result in a loss of the non-denominational Christian ethos of Controlled schools. The Council would also be opposed to the removal of the exemption for Controlled schools only.
38. Research from the Transforming Education project of Ulster University indicated that the exemption is one component that inhibits teacher mobility between sectors.
39. NASUWT The Teachers' Union supported the removal of the exemption.
40. The Presbyterian Church in Ireland stated that the exemption creates the context for an open conversation on faith during the recruitment of teachers to maintain a non-denominational Christian ethos. PCI would also like to have a conversation about the implications for schools of introducing religious monitoring, especially in small schools.
41. The Executive Office did not provide a response. At the time of the Committee Stage of the Bill, there was no Minister in place.
42. The Department of Education was not supportive of the Bill. The concern was that there has been insufficient consultation on the implications of the Bill.

43. The Northern Ireland Human Rights Commission welcomed the Bill as an advance in equality legislation. The exemption fails to provide teachers with protection of particular rights from the European Convention on Human Rights (ECHR):
- a. Article 8: Right to a private and family life
  - b. Article 9: Right to freedom of thought, conscience and religion
  - c. Article 14: Right to non-discrimination

However, the Commission recommended that a Human Rights Impact Assessment would provide insights with regard to a balance of rights.

### **Written evidence from stakeholders provided by the Committee for Education (2021)**

44. The Department of Education indicated that amendments to FETO are a matter for the Executive Office, but that sensitive consultation with all school sectors was necessary.
45. The Governing Bodies Association NI stated the exemption is no longer required.
46. The Church of Ireland Board of Education wished to engage in dialogue in relation to fair employment in schools and how to protect the ethos of the small number of Church of Ireland schools.
47. The Council for Catholic Maintained Schools stated that it opposed the removal of the exemption until it could be demonstrated how the Catholic ethos could be maintained in Catholic schools without it.
48. The Northern Ireland Council for Integrated Education supported the removal of the exemption in post-primary schools and primary schools at the same time or shortly afterwards.

49. The Controlled Schools Support Council supported fair treatment in recruitment of teachers, but would welcome engagement on how schools with a particular ethos can maintain that ethos.
50. The Presbyterian Church in Ireland was open to discussions on how the non-denominational religious ethos of Controlled schools could be maintained.
51. The Catholic Schools' Trustee Service stated that it is right and proper that the exemption exists and if it did not, it would provide a significant challenge to upholding the ethos of Catholic schools.
52. The Methodist Church in Ireland was not opposed to the removal of the exemption, but would want to engage in discussions as to how the ethos of schools can be maintained.

## **Citizen Space Call for Views**

53. The Committee gave stakeholders the opportunity to give their views on the Bill through an online call for evidence template that was made available on Citizen Space. This was open from 28 January 2022 to 7 March 2022. The Committee received 388 responses.
54. 376 returns were made from individuals and 10 on behalf of an organisation/business. 2 returns did not indicate who was responding to the call for views.
55. 2 other free-format written submissions were sent to the Committee's public email address during this time period from 2 organisational returns.
56. An overwhelming majority of respondents (86.36%) indicated that they supported exemption for school teachers to be removed from the 1998 Order.
57. A significant portion of participants detailed how a teacher's religious or non-religious beliefs should not be part of the recruitment process and that applicants who apply for a teaching post should not be discriminated against due to religious beliefs or background.

58. The collective message from respondents was that the recruitment process for teachers should be based solely on merit and that teachers should be able to teach the curriculum of a school regardless of their own faith or background.
59. There was overwhelming support for the recruitment of teachers to be in line with the 1998 Order. This would mean that schools, as with other employers in Northern Ireland whether in the public or private sector, must register with the Equality Commission and monitor the composition of their workforce (if they employ 11 or more employees). This currently does not apply to the teaching workforce.
60. There was extensive support for the need for schools to be places of diversity where there is the opportunity to meet, understand and appreciate all religious beliefs and or backgrounds. It was acknowledged by some respondents that the majority of people in Northern Ireland do identify with a particular faith.
61. A significant proportion of participants reflected that there should be fairness and equality for teachers of all backgrounds as they are teaching pupils about fairness and equality in schools.
62. There was also a suggestion that sacramental teaching and other faith-based instruction should be provided by faith communities and take place within their facilities, as in other parts of the world.
63. 12.67% of respondents were against the removal of the exception for school teachers from the 1998 Order. There were two main themes that emerged from these respondents: the maintenance of the ethos of a school and the requirement in Catholic Maintained primary schools (and some posts in secondary schools) for a Certificate in Religious Education.
64. A significant proportion of these respondents reflected the need for Maintained schools to continue with the exemption in place to maintain the Catholic ethos of these schools. It was acknowledged that Maintained schools should have the right to ensure that the teachers they employ have a sound knowledge and understanding of the faith context they are teaching in to demonstrate that ethos fully.



65. It was also acknowledged that if parents choose to send their children to maintained or Controlled schools based on their own educational experiences then parents have a right to send their children to a school which incorporates their beliefs and values as demonstrated in the ethos of the school.
66. A small number of respondents conveyed views around the Catholic Certificate in Religious Education which is currently needed for those teachers who wish to teach in a Catholic Maintained primary school and some posts in secondary schools. Some respondents suggested that if teachers are removed from the 1998 Order then a new methodology for teaching religious education to prospective teachers would need to be introduced to allow the teaching of religious education in all primary schools of all faiths.
67. Others recognised that teachers from any religious background can teach in a Maintained primary school as long as they have the Catholic Certificate in Religious Education, which is open to people from all backgrounds.
68. As the majority of Catholic religious instruction happens in primary schools, respondents were then asked if they thought that primary school teachers should still be exempt but the exemption for post-primary schools be removed. The majority of respondents (84.54%) did not think the exemption should apply to post-primary schools only.
69. A number of respondents detailed that if the exemption is to be upheld or overruled, it should be across the board in both primary and post-primary schools.
70. It was acknowledged that for Maintained schools, ethos is equally as important in both primary and post-primary schools. It was also acknowledged that those who teach in post-primary schools also have a highly significant influence on the faith development of students in that setting.
71. Some respondents recognised that the post-primary education years are when children can drift away from their faith, so it is even more important that teachers uphold the ethos of the school, regardless of their own beliefs.

72. 9.28% of respondents thought the exemption should apply to post-primary schools only. The main reason given was that religious sacraments for maintained based schools should be covered before pupils begin post-primary.
73. Some respondents detailed how primary school is an important part of a child's spiritual life and how pupils should have the sacraments taught by a teacher who wholly supports and values them. It was stated that teachers should be passionate about and fully understand the sacraments.
74. The majority of respondents (64.18%) indicated that if the exemption were to be removed from either primary or post-primary level, no transitional or permanent arrangements that should be put in place. 25% of respondents believed there should be transitional or permanent arrangements put in place if the 1998 Order is removed.
75. These respondents widely acknowledged that the transition of the removal of the exception should be implemented over a period of time, suggestions being from 1-3 to 10 years. Doing so would allow time for consultation with schools, parents and teachers and for them to adapt to the change.
76. It was also advocated by these respondents that schools should be given time to develop a solution on how the ethos or religious belief of schools would be upheld going forward should the exemption be removed.
77. Lastly, respondents were also asked if they had any other suggestions in relation to the Bill. 187 respondents answered this question.
78. Responses were very mixed however a number of respondents reinforced support of the exception in the 1998 Order, citing it would ensure that children are taught appropriately about their faith in school as well as in the home. It was also expressed that should parents choose to send their child to a Maintained school to be taught within a certain faith based ethos then that decision should be respected and upheld.
79. A small number of respondents raised the issue around attaining the Catholic Certificate in Religious Education. It was stated that more effort needs to be

undertaken to ensure that trainee teachers from all backgrounds are aware that they can complete the certificate.

80. A summary of the evidence received on each clause and the Committee's consideration of the issues raised in this evidence is set out below.

## **General Remarks**

81. While some stakeholder organisations had opposed the removal of the exemption in their evidence to the Committee for Education in 2021, all of the organisations that provided evidence to the Committee for the Executive Office on the Bill in 2022 acknowledged the Order was outdated and that all teachers should be able to enjoy the same legislative protection as other workers. In some cases, this applied to organisations which had opposed the removal of the exemption in 2021.
82. The Committee shared stakeholders' views on supporting the equality of opportunity in teacher recruitment and was opposed to unfair discrimination on the grounds of religion or belief.
83. The Committee also acknowledged that the removal of the exception has been debated for a number of years and that there was consensus that the time has come for the exception to be removed.

## **Clause 1**

84. Clause 1 of the Bill revokes Article 71 of the 1998 Order.
85. The main issues raised in evidence in relation to Clause 1 were around the ethos of faith-based schools.

## **Ethos of Faith-Based Schools**

86. One written submission received by the Committee did not support the removal of the Order. The Catholic Schools' Trustee Service detailed to the Committee for Education in April 2021 that the exception contained within 1998 Order

acknowledges the right of Catholic schools to exist, to protect their distinctive ethos, and to ensure the religious nature of the schools.

87. However, when appearing before the Committee on February 2022 the Catholic Schools' Trustee Service detailed how they have never used the exemption in the 1998 Order so felt it would not have any effect if it were to be removed.
88. In its written submission, the Transferor Representatives' Council detailed how it supports the right of Controlled schools to ensure that their Christian ethos is respected and promoted and also upholds the statutory requirement placed on the teachers in all primary schools to teach Religious Education, but that they would not be supportive of the removal of the exception for Controlled schools only as this would clearly disadvantage controlled schools and reduce the relative employment opportunities for Protestant teachers.
89. The Presbyterian Church in Ireland (PCI) said that following the removal of the teacher exemption there would need to be clarity on how school ethos can be protected for any school in any sector.

## **Teaching Certificate in Religious Education**

90. Some respondents to the survey stated that the requirement for a Certificate in Religious Education to teach in Catholic primary schools and some secondary schools is necessary to preserve the ethos of Catholic schools. This is particularly required in primary schools for the teaching of sacraments. It is unclear what impact the removal of the exception will have on the requirement for the Certificate and the extent to which this can be regarded as a genuine occupational requirement.

## **Monitoring requirements**

91. The Equality Commission raised a concern that a transition period may be necessary to enable schools to adjust to monitoring requirements. In addition, there may be financial implications for schools in introduce systems for the collection and reporting of data and for the Equality Commission to include schools in its monitoring role.

## **Lack of Consultation**

92. The Department of Education was not supportive of the Bill for the reason that, while there is merit in the removal of the exception, this should be undertaken over a longer period of time than is available in this mandate to enable sufficient consultation with stakeholders as to the impacts of the Bill.
93. The Human Rights Commission was supportive of the removal of the exception but suggested that a full Human Rights Impact Assessment would provide insights into the balance of rights impacted by the Bill.

## **Clause 2**

94. Clause 2 of the Bill makes consequential amendments to the 1998 Order and the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003.
95. No evidence was received in relation to consequential amendments in addition to those associated with Clause 1.

## **Clause 3**

96. Clause 3 of the Bill provides for the provisions to be brought into force by the Executive Office. The provisions will come into force in 12 months if this is not undertaken by the Department.

## **Clause 4**

97. Clause 4 of the Bill gives the Bill its short title.

## Clause by Clause Consideration

98. Formal clause by clause scrutiny of the Bill took place on 9 March 2022.

99. The Committee agreed the following amendment to Clause 3(2) of the Bill:

*The preceding provisions of this Act come into force at the end of the period of 24 months beginning with the day on which this Act is passed if by that time no order has been made under subsection (1) bringing the preceding provisions of this Act into operation.*

100. The Committee agreed all other clauses and schedule as drafted.

## Recommendations

The Committee recommends the following amendment to the Bill;

Clause 3(2):

*The preceding provisions of this Act come into force at the end of the period of 24 months beginning with the day on which this Act is passed if by that time no order has been made under subsection (1) bringing the preceding provisions of this Act into operation.*

## Links to Appendices

### **Appendix 1: Memoranda and Papers from the Department for Education**

[View Memoranda and Papers supplied to the Committee by the Department](#)

### **Appendix 2: Minutes of Proceedings**

[View Minutes of Proceedings of Committee meetings related to the report](#)

### **Appendix 3: Minutes of Evidence**

[View Minutes of Evidence from evidence sessions related to the report](#)

### **Appendix 4: Written submissions**

[View written submissions received in relation to the report](#)

### **Appendix 5: Research Papers**

[View Research Papers produced by the Assembly's Research and Information Service \(RaISe\) in relation to the report](#)

### **Appendix 6: List of Witnesses that gave evidence to the Committee**

[View a list of witnesses who gave evidence to the Committee](#)

- Chris Lyttle MLA - Bill Sponsor, Alliance Party
- Connie Egan - Education Policy Researcher, Alliance Party
- Geraldine McGahey OBE - Chief Commissioner, Equality Commission for Northern Ireland
- Darren McKinstry - Director of Public Policy & Strategic Engagement, Equality Commission for Northern Ireland
- Karen Jardine - Member, Transferor Representatives' Council
- Dr Peter Hamill – Member, Transferor Representatives' Council
- Gerry Campbell - Chief Executive, Council for Catholic Maintained Schools



- Tony McCusker – Chair, Council for Catholic Maintained Schools  
Finance and Personnel Committee
- Patricia Carville - Vice Chair, Council for Catholic Maintained Schools  
Finance and Personnel Committee
- Bishop Donal McKeown - Chair of Council, Catholic Schools' Trustee  
Service and Chair of Council for Catholic Maintained Schools
- Paul Collins - Head of Public Affairs and Advocacy, Integrated Education  
Fund
- Matthew Milliken – Researcher, Ulster University UNESCO School of  
Education
- Katrina Crilly – Principal, Oakgrove Integrated College
- Mark Bailey - Director of Education Workforce Development, Department  
of Education
- Alison Chambers - Director of Promoting Collaboration and Tackling  
Disadvantage, Department of Education.

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