Questionnaire: The place of religion in state-funded educational institutions

I. Religious instruction organised during the school hours (in lower and in secondary education) in state funded schools

1. Is – and if affirmative please refer to the provisions in the law (add the text separately) – is the teaching of religion in your country organised during school time in public educational institutions:
   a. in primary education
   b. in secondary education

   Yes, both in primary and secondary education

   Annex I: Refer to the provisions in the law.

2. What choices amongst the religious education possibilities are offered in public educational institutions, e.g. catholic religion, Islamic teaching, ….

   Teaching of religion is guaranteed in Article 27.3 of the Spanish Constitution and in Article 2 c) of the Spanish Law of Religious Freedom of 1980. Pursuant to those provisions, teaching of religion in Public Schools was regulated specifically in the Agreement between the Holy See and the Spanish State on Education and Cultural Matters of 1979 (specially articles 2, 3, 6 and 7), and in article 10 of each of the three cooperation Agreements, concluded by the Spanish State with the Evangelical Religious Entities Federation, the Federation of Jewish communities in Spain, and the Islamic Commission (Laws 24/1992, 25/1992 and 26/1992, Official State Gazette December 11, 1992).

II. State funded denominational schools and state supervision

3. Are there state funded denominational schools in your country?

   Yes. According to Article 27.9 of the Spanish Constitution, “The public authorities shall help the educational centres which meet the requirements established by the law.

   a. If affirmative, what is the numeric importance of state funded schools

   There are 2,445 state funded denominational (Catholic) schools.

   b. If affirmative, what is the numeric importance of Islamic state funded schools.

   Up to the present, there are not Islamic state funded schools in function.

   c. Please refer to statistical information on-line

   See Annex II
4. Are there non-state funded denominational schools in your country (private)?

Yes.

a. If affirmative, what is the numeric importance of private schools

_in Spain there are non-denominational and denominational private schools. Among denominational schools (2.777 approximately), there are 2.445 Catholic schools (approximately), 2 Evangelical schools, and 1 Jewish school._

b. If affirmative, what is the numeric importance of Islamic private schools

_A new Islamic private state-funded school is now under construction in Ceuta (one of the Spanish North-African autonomous cities)._  

c. Please refer to statistical information on-line


5. How do the authorities control the teaching in state funded denominational schools and are there any special questions about the control of the content of teaching in state-funded denominational schools? Please refer to the provisions in the law.

_Concerning curricula: There aren’t any controls about the curriculum, which freely is decided (both about the content and pedagogical aspects) by the representatives of each religious group (Catholics, Evangelicals, Jews and Muslims). Acting this way, Spanish State shows deference to religious autonomy in deciding what and how is to be taught in teaching of religion._

_Concerning teachers appointment: no control is exercised in state funded denominational schools: teachers of religion follow the same regulations as the others teachers. However, in state schools the situation is different: they are (i) public servants (like teacher of any other subjects) who wish to teach religion and have the required qualification to do so; or (ii) teachers of religion hired by the State according to Royal Decree 696/2007, under two conditions: (i) required diploma on the knowledge of the religion to be taught; (ii) eligibility declaration issued by religious authorities._

_Provisions in the Law_  

_Additional disposition LOE: In any case, the proposal for teaching will be made by religious organizations and is automatically renewed each year. The determination of the contract, full time or part time as required by the needs of schools, shall be the competent authorities. The removal, where appropriate, will be according to the law_
Rules about the curriculum:

Determining the curriculum for the teaching of the Catholic religion and of different religious denominations with which the State has signed cooperation agreements in education shall be the responsibility, respectively, of the ecclesiastical hierarchy and the relevant religious authorities.

Specific regulations about curricula:

a. In general

- Royal Decree 1630/2006, of 29 December, establishing minimum contents of 2nd-level early childhood education
- Order ECI/3960/2007, of 19 December, laying down the curriculum and regulating the structure of early childhood education. (1st Additional Provision)
- Royal Decree 1513/2006, of 7 December, establishing the minimum contents of Primary Education.
- Order ECI/2211/2007, of 12 July, laying down the curriculum and regulating the structure of Primary Education. (3rd Additional Provision)
- Royal Decree 1631/2006, of 29 December, establishing the minimum contents in obligatory secondary education
- Order ECI/2220/2007, of 12 July, laying down the curriculum and regulating the structure of obligatory secondary education. (3rd Additional Provision)
- Royal Decree 1467/2007, of 29 December, regulating the basic structure of the baccalaureate and laying down minimum contents. (3rd Additional Provision)
- Order ESD/1729/2008, of 11 June, regulating the structure and laying down the curriculum of the baccalaureate (3rd Additional Provision).

b. Catholic religion curriculum:

- Order of 26 September 1979, establishing the remuneration of teachers of "Religion" at official Secondary Education Schools.
- Order of 9 January 1985, providing compliance with the terms of the sentence issued by the Supreme Court on 9 October 1984 in the administrative contentious appeal brought by the Professional Association of Teachers of Religion in state schools.
- Order of 5 October 1993, establishing the curriculum of Catholic Religion in the baccalaureate.
- Order ECD/3509/2003, of 15 December, laying down the curricula for the area or subject of Society, Culture and Religion (Denominational Catholic Option) corresponding to Primary Education, Obligatory Secondary Education and Baccalaureate, and for the teaching of Catholic Religion in early childhood education.
- Order ECI 1957/2007, of 6 June, laying down the curricula for the teaching of Catholic religion corresponding to early childhood education, to primary education and to obligatory secondary education.

c. Evangelical religion curriculum:
2010 Bruges Conference  
From Passive Toleration to Active Appreciation of Diversity

- Order of 28 June 1993, providing the publication of the curricula of Evangelical Religious Education, corresponding to Primary Education, Obligatory Secondary Education and Baccalaureate.

d. Islamic religion curriculum

- Order of 11 January 1996, providing the publication of the curricula of Islamic Religious Education corresponding to Primary Education, Obligatory Secondary Education and Baccalaureate.

Specific regulations about teachers:

- Agreement regarding the economic and labour-related system for teachers in charge of Catholic religious education in Public Schools for Early Childhood, Primary and Secondary Education, Order of 9 April 1999.
- Agreement regarding the appointment and economic system for persons in charge of evangelical religious education in Public Schools for Primary and Secondary Education, Resolution of 23 April 1996.
- Agreement regarding the appointment system and economic system for persons in charge of Islamic religious education in Schools for Primary and Secondary Education, Resolution of 23 April 1996.
- Royal Decree 696/2007, of 1 June, regulating the labour relations of teachers of religion.

III. Refusal or limitations on the number of pupils of another conviction/belief by the governing board of a confessional (catholic) school

6. Does the head of a state funded denominational (e.g. Catholic) school have the right to refuse pupils from other religious beliefs? Please refer to the provisions in the law.

They don’t have the right to refuse pupils. Discrimination isn’t allowed. It is important to note that rules of admission of students in state funded private schools are the same as the rules for admission in state public schools.

Article 84,3 of the Law on Education (Ley Orgánica de Educación) prescribes: “In no case will there be discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance”.

7. Does the head of a state funded denominational (e.g. Catholic) school have the authority to limit the number of pupils from other religious beliefs (e.g. Muslim pupils) in order to support the specificity of the project?

They can’t limit the number of pupils. There is not system of quotas.
IV. Points of view of the authorities concerning the teaching of Islam in denominational (Catholic) education, Islam instruction or instruction on other convictions/beliefs in denominational (Catholic) schools for (a number of pupils requesting it) and alternative ethical course

**There is no official position on this issue.**

Is there a legal obligation to organise, if parents ask for, classes of Islamic religion in denominational (Catholic) education funded by public authorities?

**No. There isn’t any legal obligation to organise classes of Islamic religion in denominational Catholic education funded by public authorities. In state funded schools, the right to religious education will be exercised unless it is in contradiction with the nature or ethos of that school.**

- a. for any pupil for whom a request has been made?
- b. from a minimum number of pupils for whom a request has been made?

8. Does the same obligation exist for the offer of
   - a. other religions and/or philosophical convictions
   - b. an alternative class of conception of life, philosophy, ethics

**In state funded Catholic schools, attendance to Catholic religion classes is not compulsory. Under the actual regulation, there is no alternative of any kind (other religions, philosophical convictions, alternative conceptions of life, etc.)**

9. Can you shortly mention the pro and contra standpoints that have been expressed concerning the respect of fundamental rights (among others, freedom of education and right to education) in relation with this obligation?

In some instances it has been said that any option concerning teaching of religion, or teaching about religion may infringe the negative freedom of those parents and/or students who do not want to have any to do with religion, since options may reveal their position on this topic. Neither the Law nor Courts of Justice have taken into consideration this argument. Positive aspects of the right to choose teaching of religion seem to prevail over the negative aspect of this option.

10. Reference to the legal basis, with Website address, and also if possible to the parliamentary preparation of texts.

Ministry of Justice website, legislation on freedom of religion and education:

Ministry of Education, statistics:
http://www.educacion.es/mecd/jsp/plantilla.jsp?id=51&area=estadisticas

Government Foundation “Pluralismo y Convivencia”, pedagogical resources:
http://www.pluralismoyconvivencia.es/recursos_didacticos/
IV. Teaching of Islam in denominational (e.g. Catholic) schools at their own initiative

No data exists

11. Can you confirm or invalidate the following affirmations, whenever possible with a short explanation? There is a general guideline defined by
   a. the Bishops’ Conference
   b. another body, namely . . .

There aren’t any guidelines

12. This guideline implies that:
   a. the teaching of other religions is organised when:
      i. one parent asks for
      ii. a sufficient number of parents ask for (how many?)
   b. only teaching of Islam is offered as alternative religion when
      i. one parent asks for
      ii. a sufficient number of parents ask for (how many?)

13. There is no guideline and:
   a. in fact, teaching of Islam is never proposed in Catholic schools
   b. the teaching of Islam is organised in some schools, which have taken themselves the initiative
   If possible, explain the importance of this option

The teaching of Islam is organised in public schools according to law that rules this issue between Spanish state and authorities of Islam religious. And it is also possible create private school. Catholic school has his educational project and specific mission and the law gives priority to their nature.

VI. Religious symbols in public schools

14. Are religious symbols (e.g. crucifix) in public schools compulsory, allowed, or forbidden?

Religious symbols in public schools aren’t forbidden by the law. There is no specific regulation on this topic. A recent decision of a Regional High Court (see below) rules that crucifix will be taken away if parents request to do so.

15. Is a teacher allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.

Freedom of religion allows wearing Islamic headscarf unless it was a barrier to communicate into the classroom from the pedagogical point of view. E.g. hiding the face. There are no official regulations concerning teachers’ headscarf.

Spanish Constitution

Section 16

1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.

2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs.
3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions.

16. Is a pupil allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.

So far the conflicts about Islamic headscarf have been resolved by administrative authorities allowing wearing headscarf. There are no general rules concerning the topic and probably it is better to maintain this situation, according to which the right to education of any child overrides other important interests (dress code) if basic rules (respect to public order, safety health, morals and the right of others) are observed.

17. Who decides on the dress code in schools? Please refer to the law.

There aren’t general rules in state schools. For the moment the school council decides on the dress code in school.

18. Can a pupil and/or a teacher be exempted from the dress code when she considers it her religious duty to wear the Islamic headscarf?

Yes. In some cases it has been the solution adopted by school council.

19. Who is the regulatory authority in this sphere?

The school council:

ARTICLE 127 LOE. POWERS AND RESPONSIBILITY OF THE SCHOOL COUNCIL.

a) Approve and assess the projects and norms referred to in Chapter II of Title V of the present Law. (Article 121, 1. School education projects will include the values, objectives, and action priorities. In addition, they will incorporate the specifications of the curriculum established by the Education Administrations, which the Teachers Council will set and approve, as well as the cross-curricular treatment of education in values and other teaching. 2. This project, which must take into account the characteristics of the social and cultural environment of the school, will include ways of meeting student diversity and tutorial procedures, as well as the school community plan. It must respect the principle of non-discrimination and educational inclusion as fundamental values, as well as the principles and objectives of this Law and the Organic Law 8/1985 of July 3rd, Regulator of the Right to Education)

f) Be aware of the resolution of disciplinary conflicts and ensure that they abide by the regulations in force. When the disciplinary measures adopted by the head are the result of student misconduct which are seriously damaging to the school community, the School Council, at the request of parents or tutors, can review the decision taken and propose appropriate measures, if applicable.

g) Propose measures and initiatives which foster the school community spirit, gender equality and the peaceful resolution of conflicts in all areas of personal, family and social life.
20. What kind of disciplinary measures and proceedings are taken if the pupil or teacher fails to comply with the rules on dress codes?

There are no uniform rules for all the Spanish school system. It depends on each Autonomous Community (general guidelines) and on each public school (internal regulations). However, it is difficult to envisage the possibility of expulsion and/or school attendance suspension.

21. Please describe the case-law in your country.

Administrative appeal procedure No. 0257/09 brought by the Autonomous Govt. of Castile-León and by the association E-Cristians against the sentence by Administrative Court No. 2 of Valladolid No. 288/08, 14.11.2008, issued in the administrative appeal No. 05/08 following the steps of the special procedure for protecting Fundamental Individual Rights. In this administrative appeal No. 5/2.008, following the special procedure to safeguard fundamental rights brought by representatives of Asociación Cultural Escuela Laica de Valladolid, against the Agreement of the School Board of the Macías Picavea Public School in Valladolid, adopted on 17 March 2008, as regards not removing religious symbols; it is declared that the contested administrative act violates the fundamental rights recognized in articles 14 and 16.1 of the Spanish Constitution, so it should be annulled and it is annulled, with the said Macías Picavea Public School being obliged to withdraw religious symbols from classrooms and common areas.”

In the appeal against this sentence, the Higher Court of Justice partially upholds it, establishing that:

“...the educational legal system attributes School Boards with multiple functions, and this Court understands these include the decision regarding the presence or not of religious symbols, currently under review. The said boards are not bodies whose members come exclusively from the State but rather they have an essentially plural composition, with less presence of public authorities and a marked presence of third-party users of the public education service. Therefore, these boards’ decision is not so much a decision of the public authorities, which it is, but essentially and mainly of society itself. And although their decision may be reviewed by the education authorities, shall essentially be controlled by legality and not by opportunity, as this specific case has shown”.

“However, it is clear that the decision of this School Board is legally reviewable in order to protect any fundamental right that may be deemed to be infringed, as now requested by the party bringing the relevant action before the court”.

“In accordance with the unequivocal doctrine of our European Court of Human Rights, this Court can understand that the presence of any religious symbols (and also ideological or political symbols) may make students feel (especially vulnerable being under instruction) that are being educated in a school atmosphere characterized by one religion in particular, understanding the State to be more closely aligned with one denomination than with another, or more aligned with religion itself. And as this circumstance may be emotionally disturbing for the free development of their personality and contrary to parents’ right for their children to receive an education according to their religious and/or moral convictions, it therefore applies to declare the decision of the School Board to impose the presence of such symbols as wholly void, pursuant to articles 16 and 14 of the Spanish Constitution, to art. 9 of the Rome Convention of 4 November 1950, for the Protection of Human Rights and Fundamental Freedoms and to art. 18 of the International Covenant on Civil and Political

“However, this absolute nullity cannot be declared indiscriminately and in general. It is obvious that in cases where there is no such request to withdraw religious symbols, no conflict exist neither does the infringement of fundamental rights. Accordingly, what this Court is unable to do is presume the existence of breach of article 16 of the Spanish Constitution. It would clearly incur in a defect of incongruity that goes beyond the pleadings. This was in fact the declaration of the European Court of Human Rights; if there is a specific request, there is conflict, if there is not, there is none”.

"In conclusion, in classrooms and for specific school courses where there has been a request to withdraw any religious or ideological symbol, a request made by the student's parents and which has the minimum guarantees of seriousness, shall produce its immediate withdrawal. The same shall be carried out in the common areas of public schools. In classrooms where there are students whose parents have not declared they are contrary to the persistence or positioning of such symbols, there shall not be deemed to exist conflict and, therefore, their maintenance or existence shall be applicable”.

VII. Additional comments

VIII. Bibliography


VVAA. José María Rodríguez de Santiago. La vertiente más social del principio de solidaridad en materia educativa: el binomio escuela e inmigración. Fundación Europea Sociedad y Educación. Consejería de educación de la Comunidad de Madrid, 2008
ANEX I. Provision of the law about the place of religion in state-funded educational institutions.

Spanish Constitution. Section 27

1. Everyone has the right to education. Freedom of teaching is recognized.
2. Education shall aim at the full development of human personality with due respect for the democratic principles of coexistence and for basic rights and freedoms.
3. The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions.
4. Elementary education is compulsory and free.

LOE 2/2006 of 3 may.

ARTICLE 84. STUDENT ADMISSION.

1. The Education Administrations will regulate student admission to public and publicly-funded private schools in order to guarantee the right to education, equal conditions of access and freedom of choice for parents and guardians. In any case, there will be an adequate, balanced distribution between the different schools of students who need specific educational support.

2. When there are not sufficient places, the admission procedure will be governed by priority criteria, namely brothers and sisters already attending the school or parents or legal guardians working there, proximity to the home or place of work of one of the parents or legal guardians, annual income of the family unit, with specific calculations applied in the case of large families and disability of the student or one of the parents or brothers or sisters. None of these conditions are of an exclusive nature or are of prejudice to what is established in item 7 of this Article.

3. In no case will there be discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance

ARTICLE 86. EQUALITY IN THE APPLICATION OF ADMISSION RULES.

1. The Education Administrations will guarantee equality in the application of admission rules, which includes the establishing of the same catchments areas for public and publicly-funded private schools of the same municipality or region.

2. Without prejudice to their own authority, the Education Administrations may set up commissions or admission bodies, which should in any case be formed when the demand for places in a school within the commission’s area of responsibility exceeds the number of
places available. These commissions will receive from the schools all the necessary information and documentation to carry out their functions. They will supervise the students’ admission process, the fulfilment of the norms and propose to the Education Administrations the measures they consider appropriate. These commissions or bodies will be composed of representatives from the Education Administrations, from local government and of parents and teachers from the public and publicly-funded private schools.

3. Families may submit applications for admission to the schools they wish their children to attend, which in all cases must be processed.

Second additional provision. (LOE 2006)

Teaching of religion.

1. The teaching of the Catholic religion shall comply with provisions of the agreement between the Holy See and the State Spanish on educational and Cultural Affairs. To this end, and in accordance with stipulating that agreement, Catholicism as area or matter in educational levels, as appropriate, will be included which will be mandatory for centres offering and voluntary for students.

2. The teaching of other religions shall comply with provisions of the cooperation agreements concluded by the Spanish State with the Spain, the Israelites Spain communities, the Islamic Commission of Spain Federation bodies religious Protestant Federation, and in his case, that in the future can subscribe with other faiths.

Third additional provision.

Teachers of religion.

1. Teachers who taught the teaching of all religions must meet the qualification requirements for different teachings regulated in this law, as well as those laid down in the agreements between State Spanish and different faiths.

2. Teachers who do not belong to the bodies of teaching staff, provide the teaching of religion in public centres will do so in labour recruitment scheme in accordance with the Statute of workers with the respective competent authorities. The regulation of its labour regime will be with the participation of representatives of the teaching staff. Access to the destination using objective criteria of equality, merit and ability. These teachers will receive salaries that correspond in the respective educational level interim teachers. In any case, the proposal for teaching will correspond to the religious entities and will be automatically renewed each year. The determination of the contract, full-time or part-time according to requiring the needs of the centers, corresponds to the competent authorities. Clearance, where appropriate, it will fit right.
AGREEMENT BETWEEN THE SPANISH STATE AND THE HOLY SEE ON EDUCATION AND CULTURAL AFFAIRS. November 1979

Article I
In light of the principle of religious freedom, educational action shall respect the fundamental right of parents on moral and religious education of their children at school. In any case, the education provided in public schools will be respectful of the values of Christian ethics.

Article II
Education plans in the levels of Early Childhood Education, Basic General Education (EGB) and Unified Multi-Purpose High School (BUP) and Degrees of Vocational Training for students of the same ages, will include the teaching of Catholic religion in all centers of Education, in conditions comparable to the other core disciplines. Out of respect for freedom of conscience, no such instruction will be compulsory for students. However, the right to receive it is guaranteed. The academic authorities take appropriate measures for the fact receive or not receive religious instruction does not involve any discrimination in school activities. Levels of education mentioned above, the relevant academic authorities allow the ecclesiastical hierarchy established in the specific conditions in that it is appropriate, additional training activities and religious assistance.

Article III
In educational levels to which the previous article, religious education will be taught by people who, for each school year, are designated by the academic authority among those proposed for the diocesan this teaching exercise. In time the diocesan report the names of teachers and people who are considered competent for such teaching. In public schools Preschool and EGB, the designation, as identified above, will fall. preferably in EGB teachers who request them. Nobody is obliged to provide religious instruction. Teachers of religion will be part, for all purposes, the faculty of the respective centers.

Royal Decree 1513/2006, of December 7, laying down the curriculum for primary education.

First additional provision. Teachings of religion.

1. The teachings of religion will be included in primary education in accordance with the second additional provision of the Organic Law 2 / 2006, 3 May, on Education.

2. Education authorities would ensure that at the start of the course, parents or guardians of pupils and students can express their will for them to receive or not receive religious education.

3. Schools provide the organizational arrangements for students and pupils whose parents or guardians have not chosen who are studying religion receive due attention of education, so that the choice of either option will not result in discrimination. This attention, in any case, behave learning curriculum related to the knowledge of religion or any area of the stage. Organizational measures available to the centres included in its educational project for parents and guardians are aware of them before.

4. The determination of the curriculum in the teaching of Catholic religion and the various
religious denominations with which the Spanish State has signed cooperation agreements in education will be competition, respectively, of the ecclesiastical hierarchy and the religious authorities concerned.

5. The evaluation of the teaching of Catholic religion was made in the same terms and with the same effect as that of other areas of primary education. The evaluation of the teaching of different faiths conformed to the provisions of the Agreements of Cooperation signed by the Spanish State.

6. To ensure the principle of equality and free competition among all students, grades that had been collected in the evaluation of the teachings of religion are not computed in the calls in which competition is to enter academic records.
### Anexo II

#### E3. LA ENSEÑANZA DE LA RELIGIÓN

**E3.1. Distribución porcentual del alumnado según religión/actividad que cursa**

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<td><strong>CENTROS PRIVADOS-ENSEÑANZA NO CONCERTADA</strong></td>
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<td>0,08</td>
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<td>0,01</td>
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<td>-</td>
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<td>-</td>
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<td>Actividades de estudio</td>
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<td>29,93</td>
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### Cuadro III.2.11.1. Alumnado que cursó enseñanzas de religión y actividades alternativas durante el curso 2008/2009 en Centros Públicos y Privados

<table>
<thead>
<tr>
<th>Ámbito Territorial</th>
<th>Católica</th>
<th>Evangélica</th>
<th>Islámica</th>
<th>Judaí</th>
<th>Historia y culturas de las religiones</th>
<th>Actividades Alternativas</th>
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<tbody>
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<td>Andalucía</td>
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<td>39</td>
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<td>1.894</td>
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<td>12.711</td>
<td>16.045</td>
<td>695</td>
<td>64.529</td>
<td>1.856.694</td>
</tr>
</tbody>
</table>

(1) Incluye el alumnado que cursa religión en las siguientes enseñanzas: E. Infantil, E. Primaria, E. S.O. y Bachillerato ordinario.

(2) No se incluye la siguiente información: Alumnado que realiza religión/actividades alternativas en centros públicos de ESO, alumnado que cursa “actividades alternativas” en Bachillerato.

(3) No se incluye la siguiente información: Alumnado que realiza religión/actividades alternativas en centros públicos.