

The Connection between the Disciplinary Rules of Primary and Secondary Education and Law on the Prevention of Juvenile Delinquency

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Abstract

The educational disciplinary measures stipulated in the Disciplinary rules of primary and secondary education are similar to those stipulated in the Law on the prevention of juvenile delinquency in terms of school management, correction by public security organs and special education. Disciplinary rules of primary and secondary education (Trial Implementation) also play an extremely important role in the governance of juvenile abnormal behavior. The connection with the Law on the prevention of juvenile delinquency is also the meaning of the legalization of juvenile affairs governance. In view of the fact that the Disciplinary rules of primary and secondary education (Trial Implementation) belong to the department rules at the legal level, and the legal effect is lower than that of Law on the prevention of juvenile delinquency, the principle of its connection is that it does not conflict with the Law on the prevention of juvenile delinquency. The convergence of the two is mainly manifested in the convergence of adjustment objects, specific measures and legislative spirit.

Keywords

Educational Disciplinary, Correction Education, Specialized Education, Juvenile Delinquency

1. Introduction

In order to strengthen the governance of juvenile affairs, the revised “Law on the Prevention of Juvenile Delinquency” by the National People’s Congress at the end of 2020 clarifies the responsibilities of schools, education administrative departments, and public security organs, and stipulates that schools should

strengthen management education for underage students who engage in misconduct; Public security organs may take corrective education measures, specialized education measures, and specialized corrective education measures depending on the situation for minors who have serious misconduct. At the same time, the “Disciplinary Rules for Primary and Secondary Education (Trial)” issued by the Ministry of Education at the end of 2020 also detailed the three categories and fourteen types of educational disciplinary measures that can be applied to primary and secondary schools. These are two legal norms mainly aimed at educating and correcting various behaviors of minors that need to be regulated. Both of them list specific targeted measures in the form of legislative examples, including management education measures, corrective education measures, specialized education, educational punishment measures, and the specific measures they contain, which have the problem of duplication and unclear concepts.

The Central Committee’s “Opinions on Strengthening the Construction of Specialized Schools and Specialized Education Work” clearly proposes to “promote the matching connection between specialized education and public security management penalties, detention and rehabilitation, criminal penalties, etc.”. In order to better promote the rule of law in the governance of juvenile affairs, targeted measures for educating and correcting various behaviors that need to be governed by minors need to be smoothly connected to avoid infringing on the rights and interests of minors due to negligence. Most of the time, minors study in schools. Therefore, the educational punishment measures in the “Rules for Punishing Primary and Secondary School Education (Trial)” also play an extremely important role in the governance of juvenile behavior. The connection with the protection and punishment measures for juvenile misconduct and serious misconduct in the “Law on the Prevention of Juvenile Delinquency” is also a necessary part of the legalization of juvenile affairs governance. Given that the “Disciplinary Rules for Primary and Secondary Education (Trial)” belong to departmental regulations in terms of legal hierarchy and have lower legal effectiveness than the “Law on the Prevention of Juvenile Delinquency”, its connection with the “Law on the Prevention of Juvenile Delinquency” is based on the principle of not conflicting with the provisions of the “Law on the Prevention of Juvenile Delinquency”.

2. Adjust the Connection of Objects

The adjustment objects of the punishment rules for primary and secondary education and the Law on the Prevention of Juvenile Delinquency are the deviant behavior, disciplinary violations, and illegal crimes of minors. It also plays an important role in the governance of minor affairs. Because most of the time minors receive education in schools, the punishment rules for primary and secondary education are specifically adjusted and standardized for the management and education of students who violate rules and regulations by primary and

secondary schools and teachers. The Law on the Prevention of Juvenile Delinquency also has specific provisions for schools to manage and educate minors on their misconduct and serious misconduct. Therefore, there is an overlap between the two in terms of applicable objects.

According to Article 7 of the “Disciplinary Rules for Primary and Secondary School Education (Trial)”, behaviors regulated by educational discipline include violations of school rules and discipline by underage students. At the same time, it is stipulated that if students engage in misconduct or serious misconduct as stipulated in the Law on the Prevention of Juvenile Delinquency, schools and teachers should stop and implement educational discipline, and strengthen discipline. Therefore, the student behavior adjusted by the punishment rules for primary and secondary education also includes the bad behavior and serious bad behavior stipulated in the Law on the Prevention of Juvenile Delinquency.

1) Defining deviant behavior among minors

The Law on the Prevention of Juvenile Delinquency does not establish a unified upper concept for the three types of juvenile behavior (misconduct, serious misconduct, and criminal behavior) that it regulates. At present, there are several main formulations in the academic and practical circles.

a) Abnormal behavior. At the National People’s Congress in October 2019, member He Yiting submitted a statement on the revised draft of the Law of the People’s Republic of China on the Prevention of Juvenile Delinquency, defining various types of juvenile behavior that need to be addressed as deviant behavior. deviant behavior includes three levels, from mild to severe, such as misconduct, serious misconduct, and criminal behavior. Corresponding measures are taken for different levels. Among them, bad behavior refers to the behavior of minors who self-harm and have not yet begun to harm others and society, but if not intervened, it will become increasingly serious. Serious misconduct is an illegal act that seriously endangers society (He, 2021).

b) Offensive behavior.

The Opinions on Strengthening the Construction of Specialized Schools and the Work of Specialized Education issued by the General Office of the Communist Party of China and the State Council use the term juvenile delinquency. This term originates from the concept of juvenile delinquency in English and American law. Some scholars in China have translated it as “juvenile delinquency” and referred to it as a collective term for various behaviors of juveniles that violate social rules and authority (Yao, 2009).

Most scholars have also used this concept, referring to the collective term “juvenile delinquent behavior” as “juvenile delinquent behavior”, which includes misconduct (suspected criminal behavior), serious misconduct (police violation behavior), illegal behavior (or “criminal behavior”), and criminal behavior. Establish a prevention system that integrates informal intervention and formal intervention for juvenile delinquency. The responsible parties for informal intervention are guardians, schools, and communities. Clarify the disciplinary rights

of guardians and schools, as well as the intervention responsibilities of the community; The responsible parties for formal intervention are the state administrative and judicial organs (Yao, 2020).

c) Delinquency. “juvenile delinquent” or “disobedient child” is a legal concept in the Japanese Juvenile Law. The theoretical and practical circles of juvenile law in Taiwan China are also accustomed to using this concept as a collective term for three types of juvenile incidents: illegal behavior, criminal behavior, and suspected criminal behavior. Its meaning refers to all behaviors and behaviors that violate laws and social ethics. Including criminal behavior, that is, behavior that may have the potential to violate the law in the future; Violation of the law refers to the situation where a minor commits an act that violates the criminal law but is not held accountable due to dissatisfaction with the age of responsibility; Criminal behavior refers to crimes committed by adolescents aged 14 and above (Cheng, 2020).

Although criminal behavior is currently a commonly used concept, upon closer examination, the word “criminal error” does not fully correspond to various behaviors that require governance among minors. In the Chinese context, “crime” has the legal concept of violating the law and being punished by the state, while “error” represents a negative value evaluation. It is not appropriate to use “crime and error” to collectively refer to various behaviors of minors that need to be governed. Due to the provisions of the Law on the Prevention of Juvenile Delinquency, many bad behaviors are not wrong in terms of their nature, such as smoking, drinking, absenteeism, skipping school, staying up late, running away from home, becoming addicted to the internet, and entering places that are not suitable for minors to enter. From the perspective of adults, these behaviors are not regulated by the law and cannot even be considered immoral. These behaviors themselves are not unjustified, and the reason why the law regulates them is based on the premise that the subject who carries out these behaviors is a minor. The implementation of these behaviors by minors has self-harm, and the state regulates them based on the responsibility of state guardianship. For example, the act of reading, watching, or listening to obscene, pornographic or other content such as reading materials, audiovisual products, or online information. For adults, as long as there is no gathering behavior, no dissemination behavior, and no violation of the law, this behavior belongs to the privacy of adults, is not regulated by the law, does not interfere with social ethics and morals, and is protected by privacy rights. Therefore, attributing these behaviors to “criminal and wrong” behavior is inappropriate, and attributing them to delinquency also has certain discrepancies.

Moreover, there are still some illegal behaviors in society that are based on the lack of value in the outcome rather than the lack of value in the behavior, such as excessive defense and avoidance behavior. Based solely on the harmful consequences caused by the actual behavior, illegal behaviors can be recognized, regardless of whether the behavior itself is legitimate or not. There are even a large

number of behaviors that meet social expectations but may not necessarily meet legal expectations. This does not necessarily equate to delinquency in English and American law. Therefore, labeling some behaviors of minors that do not meet the expectations of the adult world as “wrong” is an excessive criticism of minors and may not necessarily conform to and respect their personality and self-development concepts.

There is another issue, which is the qualitative issue of “prostitution and soliciting prostitution” in the serious misconduct of minors as stipulated in Article 38 of the Law on the Prevention of Juvenile Delinquency. According to the Eleventh Amendment to the Criminal Law implemented in March 2021, Article 236 of the revised Criminal Law clearly stipulates that those who commit rape to a young girl under the age of fourteen shall be punished severely as rape. Individuals who have special responsibilities such as guardianship, adoption, care, education, medical treatment, etc. for underage women who have reached the age of 14 but are under the age of 16 and have sexual relations with such underage women shall be deemed as rape. Masturbation of young girls and sexual intercourse between individuals with special responsibilities and women who are over 14 but under 16 years old are both considered rape and do not require the objective element of “violence, coercion, or other means” as the crime of rape. Given the special physical characteristics of young girls, the specific scope of sexual intercourse with young girls should be broader than sexual intercourse. Therefore, sexual intercourse with young girls is also considered rape. The Ninth Amendment to the Criminal Law in 2015 abolished the crime of soliciting and accommodating young girls. Therefore, “prostitution” of young girls itself is a false proposition, and in this behavior, young girls are the victims and the object of legal protection. In addition, there are still many gaps in the protection of sexual rights for underage males in China’s laws, but this does not mean that underage males will not be sexually assaulted or even raped. According to scholarly surveys, the proportion of boys who have been sexually assaulted has been increasing year by year since 2013 to 2018 (He, 2019). However, the subject of rape in China’s Criminal Law is limited to women. In 2015, the Amendment (9) of the Criminal Law changed the crime of forced indecent assault and insult to the crime of forced indecent assault and insult to others, which to some extent filled the gap in the criminal law’s provisions on sexual assault of underage men, but this is still far from enough. Like girls engaging in prostitution, boys engaging in prostitution is also a false proposition. Behind these behaviors lies the social problem of minors being sexually abused. Therefore, the behavior of minors engaging in prostitution and soliciting prostitution is not a violation of social ethics or a criminal act of minors, but rather an illegal and criminal act of adults, which is a pathological behavior in society, It is not possible to attribute the illegal and criminal behavior of adults to minors.

Therefore, this article adopts the concept of deviant behavior, as the expression of deviant behavior is more neutral and objective, and can cover behaviors

such as disobeying education, management, and disrupting the order of education and teaching in the punishment rules of primary and secondary education.

2) The Connection between the Punishment Rules for Primary and Secondary School Education and the Prevention of Juvenile Delinquency in the Law on Juvenile Delinquency

The intentional failure to complete teaching tasks, disobedience to education and management, disruption of classroom order and school education and teaching order in the punishment rules for primary and secondary education are not abnormal behaviors stipulated in the Law on the Prevention of Juvenile Delinquency. They can be completely resolved by the punishment power granted to teachers in the punishment rules for primary and secondary education.

For smoking, drinking, violating student rules, engaging in dangerous behaviors that are harmful to one's own or others' physical and mental health, bullying classmates, beating and scolding teachers, or infringing on the legitimate rights and interests of others, and other behaviors that violate school rules and discipline, they mostly overlap with the bad behaviors and serious bad behaviors stipulated in the Law on the Prevention of Juvenile Delinquency and sometimes are even milder than the bad behaviors stipulated in the Law on the Prevention of Juvenile Delinquency. In terms of positioning, the "Implementation of Education Punishment Rules for Primary and Secondary School Teachers (Trial)" is also a concretization of Article 31 of the "Law on the Prevention of Juvenile Delinquency", which stipulates that schools should strengthen management education for underage students who have engaged in misconduct. It is necessary to intervene in the abnormal behavior of minors in advance within the management scope of primary and secondary schools. The implementation of educational punishment by primary and secondary school teachers is also an early intervention measure for the abnormal behavior of primary and secondary school students. It is only necessary to combine the relevant provisions of the Law on the Prevention of Juvenile Delinquency with the implementation of educational punishment.

3. The Connection between Educational Disciplinary Measures and Management Education Measures, Corrective Education Measures, and Specialized Education Measures

As German scholar Albrecht once said, "Although adolescents are also responsible for their crimes, the most fundamental thing is to educate and rehabilitate them. The treatment of adolescents is not based on their crimes or the severity of their crimes but on the needs of the juvenile offenders." (Haidian District People's Court in Beijing, 2013) Research has shown that juvenile offenders have a strong need and dependence on their families (Lu et al., 2013), they hope to be cared for, accompanied, accepted, and recognized, and they crave the warmth of a family. The early stages of juvenile delinquency—all types of deviant beha-

behavior—are the same. The root cause of juvenile deviant behavior is a lack of care and companionship. They often engage in deviant behavior just to gain attention. If they are not accepted at home and school, they will seek acceptance from other groups, but due to the immature mentality of minors, once they make friends carelessly and blindly identify with the behavior and values of friends and partners, they are easily involved in illegal and criminal activities. Therefore, the correction of abnormal behavior among minors should focus on the individual and their needs, so that they can receive care and companionship.

The social problem reflected by the abnormal behavior of minors is the problem of their family guardianship. According to the provisions of the Civil Code, China has established a guardianship system for minors, including family guardianship, social guardianship, and state guardianship, with state guardianship being the sole responsibility (Song, 2020), when the parents of a minor are unable to fulfill their guardianship obligations appropriately, the state should naturally intervene and exercise parental rights in the capacity of a minor's guardian. The state has the same rights as its parents to regulate the behavior of minors (Wang, 2009). Minors lack cognitive and self-control abilities, and are not willing to voluntarily give up freedom and abide by rules. Therefore, in order to promote the formation of rule awareness among minors, their parents should take appropriate measures for education based on their actual situation, which inevitably involves the use of compulsory and punitive measures. When the state exercises parental authority on behalf of minors, it also has the right to use these means to regulate their behavior, such as forcing minors to receive compulsory education (Wang, 2007). The psychology and physiology of minors are still in a developmental state and have strong plasticity. Compulsory education, as an educational tool, can correct the abnormal behavior of minors and encourage them to consciously integrate into the group, optimize their thinking habits and action inertia for those with poor self-control. Therefore, educational corrective measures characterized by compulsory education should be the only way to address the abnormal behavior of minors. This is also an inherent requirement for the state to fulfill its guardianship duties. Educational corrective measures are not only corrective measures but also a response to the need for care and companionship of minors with deviant behaviors, making them aware of the care and protection that the state and society have for them. The state, society, and schools have not abandoned them. Therefore, whether it is the management education measures, corrective education measures, specialized education measures stipulated in the Law on the Prevention of Juvenile Delinquency, or the educational punishment measures stipulated in the rules of primary and secondary education, compulsory education should be the fundamental feature.

1) Connection between educational disciplinary measures and management education measures

The management education measures stipulated in Article 31 of the Law on the Prevention of Juvenile Delinquency include guidance, compliance with spe-

cific behavioral norms, participation in specific thematic education, participation in school service activities, receiving psychological counseling and behavioral intervention, and other appropriate management education measures.

General educational disciplinary measures, including Verbal criticism, ordering apologies, written or oral self-examination, adding teaching tasks or class public welfare services, punishment stations, after-school teaching, and other appropriate measures stipulated by school rules, class rules, and class conventions, can complement the management and educational measures stipulated by the Law on the Prevention of Juvenile Delinquency.

Serious educational and disciplinary measures, including training, undertaking public welfare services on campus, receiving education on specialized behavior rules, suspending or restricting participation in collective activities outside, and other appropriate measures stipulated by school rules and discipline. Among them, the suspension or restriction of participation in collective activities outside is an educational and disciplinary measure that is not included in the management education measures stipulated by the Law on the Prevention of Juvenile Delinquency. Although this educational disciplinary measure is not inappropriate, it is important to consider not isolating minors and alternative measures to prevent them from participating in collective activities outside, ensuring their safety and continuity of education. Research in child psychology has shown that certain concepts developed by individuals during childhood and adolescence can have an impact on their entire lives. These concepts are largely manifested as maladaptive to society, leading to childhood trauma and emotional disorders. One important concept is social isolation or alienation, which refers to the belief that one is isolated from the surrounding world, different from others, and does not belong to any group or community (Cui, 2011). According to the spirit of the Law on the Protection of Minors and the Law on the Prevention of Juvenile Delinquency, the correction of various abnormal behaviors of minors lies in education, and educational measures, whether positive rewards or negative punishments, should be positive actions. The essence of education lies in exploring and understanding the various events that occur in life. The understanding here is not only logical analysis, but also includes the meaning expressed by a French proverb, “understanding is tolerance,” which is practical and applied to practical life (Alfred 2019). The initial education was based on practical life needs, and people obtained knowledge, experience, and basic human ethics and morals in production and life through education (Locke, 2003). The inherent meaning of education includes the content of adapting and integrating into society. The implementation of various deviant behaviors by minors is essentially a manifestation of social maladaptation and has a certain degree of antisocial nature. Research has shown that antisocial personality is more prone to alcohol addiction and further leads to aggressive behavior (Cheng & Yang, 2018). Therefore, education on various deviant behaviors of minors should focus on helping them understand and abide by rules, in order to cultivate their ability

to integrate and adapt to society, rather than isolating or distancing themselves from them. The education and punishment of minors should be shown as a positive action, which is to take measures to integrate minors with deviant behavior into group activities, rather than excluding them. Therefore, suspending or restricting students from participating in outdoor collective activities poses a risk of isolating students and requires careful consideration.

Serious educational disciplinary measures, including suspension of classes or classes, admonitions, arranging specialized courses or educational venues for psychological counseling and behavioral intervention, disciplinary action, and specialized education. Disciplinary action and specialized education have specific legal provisions, which will not be discussed here for the time being. Regarding admonishment, it actually belongs to the field of juvenile justice as an educational punishment measure. The standardized name is admonishment education, and the specific operation is to hold a solemn ceremony when declaring admonishment, so that minors and their guardians can feel the dignity and inviolability of the law, and thus establish legislative awareness (Chen, 2017). The subject of admonition should be judicial personnel, and according to the provisions of the Law on the Prevention of Juvenile Delinquency, admonitions should be implemented by public security organs. Regarding the suspension of classes and schools, during the revision of the Prevention of Juvenile Delinquency Law in 2020, some experts and scholars suggested that teachers and schools should be given disciplinary powers to underage students who engage in misconduct, and disciplinary measures should be taken, including suspension of classes or schools (Yao, 2020). However, it has not been adopted by the Law on the Prevention of Juvenile Delinquency, and the management and education measures stipulated in the Law on the Prevention of Juvenile Delinquency cannot be expanded to mean that schools can suspend classes or classes for students with bad behavior. Otherwise, it contradicts the provision in Article 33 of the Law on the Prevention of Juvenile Delinquency that schools have the responsibility to supervise students who skip classes or skip classes to return to school for learning. The disciplinary measures of “arranging specialized courses or educational venues for psychological counseling and behavioral intervention by social workers or other professionals” and the management education measures of “requiring psychological counseling and behavioral intervention by social workers or other professionals”, although both belong to psychological counseling and behavioral intervention measures, in terms of expression, “arranging specialized courses or educational venues for psychological counseling and behavioral intervention” emphasize specialized venues, Both specialized courses and educational venues require a dedicated venue, but the management education measures in the Law on the Prevention of Juvenile Delinquency do not require a dedicated venue. Even the corrective education measures taken by public security organizations against minors with serious misconduct, such as ordering them to receive psychological counseling and behavioral correction, do not specify a dedicated ve-

nue. Therefore, the regulation of punishment rules for primary and secondary education carries the risk of transferring students with abnormal behavior to a separate class, forcing them to transfer, and changing their original learning and living environment, which may lead to the risk of isolation and exclusion of these minors.

2) The connection between educational disciplinary measures, corrective education measures, and specialized education measures

The Central Committee's Opinion on Strengthening the Construction of Specialized Schools and Specialized Education proposes the establishment of protective and disciplinary measures for juvenile delinquents with the fundamental characteristics of "early intervention and using education as a substitute for punishment". These protective measures need to integrate specialized education, public security management penalties, detention and rehabilitation, criminal penalties, and other punishment measures targeting juvenile delinquents, and construct four types of protective measures including educational penalties, observation penalties, confinement penalties, and rehabilitation penalties. (Yao, 2019) Regarding the content of educational sanctions, according to Article 7 of the German Juvenile Court Law, educational sanctions include reprimands, delivery to authorized educators or schools for training, special obligations, detention in other suitable places of detention, protective surveillance, guardianship education, and other types of educational sanctions declared and recognized by the federal government with the consent of the Senate. (Ebert, 1936) Therefore, educational punishment measures include corrective education measures and specialized education measures stipulated in the Law on the Prevention of Juvenile Delinquency.

a) The connection between educational disciplinary measures and corrective education measures.

According to the regulations on preventing juvenile delinquency, the main body responsible for implementing corrective education measures is the public security organs. Specific measures include reprimand, order to apologize, compensation for losses, order to express repentance, order to regularly report activities, order to comply with specific behavioral norms, order to receive psychological counseling and behavioral correction, order to participate in social service activities, order to receive social observation, and other appropriate corrective education measures. The admonitions in the punishment rules for primary and secondary education belong to corrective education measures, which are implemented by the public security organs as mentioned earlier and will not be repeated. The disciplinary measures of "arranging specialized courses or educational venues for psychological counseling and behavioral intervention by social workers or other professionals" and the corrective education measures of "ordering social observation and protection, and educating, supervising and regulating minors in appropriate places by social organizations and relevant institutions" both emphasize specialized "venues" (as mentioned earlier), Specialized

“places” mean restricting or even depriving personal freedom, and there is also a problem of depriving minors of their right to education. However, “ordering social protection” is a corrective and educational measure taken by public security organization against minors who have serious misconduct, and its application is reasonable. The educational punishment measures that require psychological counseling and behavioral intervention are only aimed at students who have serious violations or have a negative impact. From the expression of the punishment rules for primary and secondary education, they do not belong to the nine serious bad behaviors stipulated in the Law on the Prevention of Juvenile Delinquency. Moreover, the punishment measures for primary and secondary education are implemented by schools, Therefore, there are issues that contradict the corrective education measures stipulated in the Law on the Prevention of Juvenile Delinquency.

b) The application of specialized education in educational disciplinary measures should pay attention to the prerequisite conditions.

Article 43 and Article 44 of the Law on the Prevention of Juvenile Delinquency stipulate corrective measures for minors who engage in serious misconduct to be sent to specialized schools for specialized education. But it is not as stipulated in Article 10, Paragraph 3 of the Punishment Rules for Primary and Secondary School Education that for students who have serious misconduct, schools can, in accordance with legal procedures, cooperate with parents and relevant departments to transfer them to specialized schools for education and correction. The application of the measures for sending minors with serious misconduct to specialized schools for education and correction as stipulated in the Law on the Prevention of Juvenile Delinquency is conditional:

The first method is to transfer according to the application. The subjects that have the right to propose include the parents or other guardians of minors who have engaged in serious misconduct, as well as their schools. The applicable conditions are that their parents or other guardians, or schools have already undergone discipline, but the discipline is ineffective, or they are unable to discipline at all. The applicable procedure is to apply to the education administrative department, and after evaluation and approval by the specialized education guidance committee, the education administrative department decides to transfer it to a specialized school.

The second option is to decide to transfer in. The decision-making body is the education administrative department and the public security organs, and the two will make a joint decision. The applicable conditions are that the act of serious harm to society is committed, the circumstances are severe, or serious consequences are caused; Or, although it has not caused serious consequences or reached the level of heinous circumstances, it has repeatedly committed serious acts that endanger society; Refusing to accept or cooperate with the corrective education measures taken by the public security organs; Other circumstances stipulated by laws and administrative regulations. The applicable procedure is to

first obtain the evaluation and approval of the specialized education guidance committee, and then the education administrative department, in conjunction with the public security organs, decides to transfer them to specialized schools for specialized education.

So only serious misconduct cannot meet the punishment measures for transferring to specialized schools. The punishment measures for minors who engage in serious misconduct are only applicable to those who apply to transfer to specialized schools. However the prerequisite for applying for transfer must be that the parents or school are “unable to discipline or ineffective in discipline” (Cheng, 2020). Schools need to fulfill their legal obligations first, that is, the first thing schools need to do is to strictly discipline and demand strict discipline from their parents or other guardians. The implicit legislative intention behind the provision of the Law on the Prevention of Juvenile Delinquency is that serious misconduct by minors can still be corrected on their own, and based on the principle of not giving up, minors who have committed serious misconduct should be given a second chance. Therefore, schools cannot initiate the process of transferring minors to specialized schools immediately upon discovering serious misconduct.

Article 10, Paragraph 3 of the “Rules for Punishing Primary and Secondary Education (Trial)” stipulates that it is inconsistent with the provisions and legislative spirit of the Law on the Prevention of Juvenile Delinquency, and does not set a prerequisite for parents or schools to be “unable to discipline or ineffective in discipline”. It is not clear whether “serious misconduct” here is limited to the nine serious misconduct behaviors stipulated in the Law on the Prevention of Juvenile Delinquency, In practice, Article 10 (3) of the “Disciplinary Rules for Primary and Secondary Education (Trial)” may evolve into an excuse for primary and secondary schools, especially high schools, to indirectly expel underperforming students in order to improve their enrollment rates.

Even though the Law on the Prevention of Juvenile Delinquency has established a procedure for parents or schools to first discipline and the evaluation and approval of specialized education guidance committees, how can we ensure the fairness of the admission process for specialized schools, and what are the admission standards for specialized schools? How to solve the current problem of the lack of management system in specialized schools, how to ensure that students enjoy the same education as ordinary schools in specialized schools, and so on. These problems have no legal provisions, which may lead to the abuse of specialized education punishment measures in primary and secondary school and may lead to judicial arbitrary and arbitrary enforcement by public security organs, infringing on the legitimate rights and interests of minors. (Dan, 2020) At present, specialized schools in China are generally facing survival difficulties, with uneven regional distribution, inconsistent school types, inconsistent regulatory authorities, non-standard student sources, different disciplinary methods, and non-standard evaluation mechanisms and standards. There is a shortage of

teachers in specialized schools, and the operation, safety, and management systems of schools are chaotic. Whether they can bear the heavy burden of ensuring student cultural education while correcting their various deviant behaviors is still unknown. (Xiao, 2020)

4. The Connection of Legislative Spirit

The disciplinary rules for primary and secondary education, as an important normative document for educating and correcting abnormal behaviors of minors, also need to be consistent with the basic legislative spirit of the Law on the Prevention of Juvenile Delinquency.

1) Connection with education and protection principles

The existing laws in our country stipulate the principle of education as the main focus and punishment as the auxiliary, as well as the principles of education, persuasion, and rescue for the illegal and criminal acts of minors. In 2012, the Criminal Procedure Law also established a special chapter to provide provisions, focusing on education and correction for minors involved in crimes, and building a juvenile justice system based on educational punishment measures. (Chen, 2017) Education, persuasion, and rescue are not only the goals of juvenile criminal justice, but also the shared responsibility of families, schools, governments, and the entire society. (Song, 2012) The Law on the Prevention of Juvenile Delinquency also emphasizes the need to focus on education and protection of minors, adhere to prevention as the main focus, and intervene in advance. Whether it is early intervention, education, persuasion, or rescue, the focus is on correcting and treating the personality, habits, and behaviors formed by minors in adverse environments, in order to ensure their normal learning and life. Therefore, the fundamental measure is to address the various deviant behaviors of minors, change their unhealthy living environment, and ensure their normal learning and life.

Most of the disciplinary measures in primary and secondary education also adhere to the principles of education and protection, but there is a risk of inconsistency between the suspension of classes and schools and the policies of education, probation, and rescue. Article 10 of the “Disciplinary Rules for Primary and Secondary School Education (Trial)” stipulates that for those who have serious violations or have a negative impact, schools can take educational disciplinary measures, including suspension of classes or classes, and transfer to specialized schools. Because the punishment rules for primary and secondary education do not specify a specific scale for serious violations or negative impacts, if this scale is controlled by primary and secondary schools, then driven by interests, it is highly likely to be related to the enrollment rate. Therefore, this regulation has been abused by primary and secondary schools and has evolved into a measure to treat underperforming students. Moreover, the disciplinary measures of suspension of classes and schools are no longer only aimed at punishing the bad behavior of primary and secondary school students but also have the meaning of

implementing negative sanctions on the students themselves. Disciplinary action itself is a negative sanction on the person being punished, because the above penalties must be recorded in the student's file, and high school disciplinary action also includes expulsion from school, which is a negative sanction and educational abandonment on the students themselves. It is truly impossible to align with the principles of education and protection.

According to Article 31 and Article 43 of the Law on the Prevention of Juvenile Delinquency, schools and teachers should strengthen management and education for underage students who have engaged in misconduct and should not discriminate against them. Only when discipline is ineffective can schools impose disciplinary action or take disciplinary measures as stipulated in the Law on the Prevention of Juvenile Delinquency. Schools should first provide management education to underage students who have serious misconduct. Only parents or schools who are unable to discipline or have ineffective discipline can apply to transfer to specialized schools. Therefore, for the misconduct of minors, it is the legal responsibility of schools to first discipline them, and the legislative spirit of the school's first management education measures stipulated in the Law on the Prevention of Juvenile Delinquency is to keep students in school, in the classroom, and even in specialized schools for education.

And Article 34 of the Law on the Prevention of Juvenile Delinquency specifically stipulates the responsibility of schools to urge students to return to school for learning in response to their absenteeism and truancy behavior. If, according to the punishment rules for primary and secondary education, students who have serious violations or have a negative impact are punished with suspension of classes or classes, and repeated absenteeism or truancy is considered as a bad behavior under the Prevention of Juvenile Delinquency Law, then it should be considered a more serious situation in the punishment rules for primary and secondary education. However, if the punishment measures for suspension of classes or classes are applied to students who have repeatedly missed classes or skipped classes, This directly contradicts Article 34 of the Law on the Prevention of Juvenile Delinquency, which stipulates that schools have the responsibility to urge students who skip classes or classes to return to school and that the main causes of juvenile delinquency, such as smoking, drinking, skipping classes, skipping classes, staying up at night, running away from home, addiction to the internet, and gambling, are due to skipping classes and classes, Only then can we carry out the above-mentioned bad behaviors. Therefore, what is the significance of applying disciplinary measures such as suspension of classes or studies to the above-mentioned misconduct? Isn't driving these students out of the classroom, out of school, letting their bad behavior go unchecked?

Even if smoking, drinking alcohol, or engaging in dangerous behaviors that are harmful to one's own or others' physical and mental health are stipulated in the punishment rules for primary and secondary education, most of them overlap with the bad behaviors stipulated in the Law on the Prevention of Juvenile

Delinquency, and it is not appropriate to use suspension of classes or schools as punishment measures. The behavior of primary and secondary school students disrupting classroom teaching order, school education and teaching order, and disobeying educational management itself includes the subjective intention of students not wanting to stay in school or in the classroom. If the disciplinary measures of suspension of classes or classes are applied, it is not punishment but to help them realize their subjective intention of skipping classes or classes. As for the behavior of beating and scolding classmates and teachers, bullying classmates or infringing on the legitimate rights and interests of others, the emergence of these violent tendencies is closely related to the environment in which minors live, and is closely related to the interruption and threat of their parents' attachment relationship, (Timmerman & Emmelkamp, 2010) it is the result of the interaction between individual susceptibility genes and adverse environmental factors. (Cheng & Yang, 2018) These negative environments can be attributed to domestic violence and community violence. Therefore, driving students with violent tendencies out of the classroom or school will only have more serious consequences, making them completely infected in a negative environment and more likely to breed illegal and criminal behavior.

According to the research report on juvenile delinquency released by the China Association for the Prevention of Juvenile Delinquency in 2013, more than 70% of minors have engaged in previous misconduct. (National People's Congress Internal Affairs and Justice Committee Working Women Room, 2013) According to a 2012 study titled "Breaking School Rules" released by Texas, students who have been suspended or expelled are three times more likely to be involved in juvenile justice incidents than those without disciplinary records. (Liu, 2015) And suspension of classes and classes makes it impossible for them to receive home education, which is no different from absenteeism and skipping school in practice. According to the "Investigation Report on the Family Guardianship Status of Minors Involved in Cases" released by the Criminal Law Science Research Institute of Beijing Normal University in June 2015, 55.52% of the 308 minors involved in cases were not disciplined by their guardians or caretakers. There is a close relationship between distant parent-child relationships, lack of family guardianship, and juvenile delinquency. (Wang, 2015) At present, family relationships in our country are loose, functions are weakened, and support among members is weakened. The phenomenon of family centrifugation is prominent. In terms of parent-child relationship, communication between parents and underage children is not smooth, emotional supply is insufficient, and family guardianship is just a formality, lacking effective guardianship in substance, resulting in underage children often falling into a de facto state of no guardianship. (Wang, 2018) The survey shows that the majority of juvenile offenders in the early stages of life are in a state of dropping out of school or other leisure activities (occasionally working), accounting for 59%; In the early stage of juvenile delinquency, the most common illegal activities are causing trouble and

disrupting public order, accounting for 50%, followed by theft, robbery, robbery, and extortion. Property type violation are often aimed at meeting one's own material needs. All of these indicate that the loss of family discipline leads to a lack of livelihood, improper methods of family discipline, and the loss or inadequate supervision of minors by families and schools are the main inducements for minors to embark on the path of illegal and criminal activities. (Xiao, 2016) The root cause of minors engaging in various deviant behaviors is the lack of parental discipline and companionship. If the disciplinary measures of suspension of classes and studies are applied to them again, no school discipline is like pouring oil from a volcano, forcing them to associate with those who engage in bad behavior, and even join criminal gangs.

Receiving education is not only the best correction for delinquent minors, (Xiao, 2016) but also the best correction for minors with various deviant behaviors. "If a teenager has only one right, it is the right to education; if there is only one obligation, it is the obligation to obediently obey the educator." (Yao, 2014) Therefore, the disciplinary measures for suspension of classes and studies are inconsistent with the basic spirit of the Law on the Prevention of Juvenile Delinquency and the Law on the Protection of Minors.

2) Connection with the principle of "no discrimination"

The principle of "no discrimination" includes no discrimination in schools and no discrimination in society. According to the provisions of the Law on the Prevention of Juvenile Delinquency, schools and teachers should strengthen management education and not discriminate against underage students who have engaged in misconduct. Minors who engage in related misconduct have the same rights as other minors in terms of resumption of education, further education, employment, etc. No unit or individual may discriminate against them. And it also stipulates the legal responsibility for violating the principle of "no discrimination", expanding the original limitation on "illegal and criminal" minors to "minors with records of bad behavior", and clearly stipulates the legal responsibility for discriminating against minors with bad behavior.

The principle of non discrimination is not only a matter of ideological understanding, but most importantly, it is reflected in the specific institutional design. Firstly, schools and teachers should adhere to the principle of not giving up and strengthen management and education for students who engage in misconduct. For students who engage in serious misconduct, the prerequisite for transferring them to specialized schools must be that their parents or schools are unable or ineffective in disciplining them. Secondly, the original records of minor misdemeanor crimes will be sealed and expanded to include records of minor misdemeanor crimes, as well as records of receiving specialized corrective education, specialized education, administrative penalties, criminal coercive measures, and non prosecution. The principle of non discrimination against abnormal behavior of minors should also be a basic principle that should be followed in the punishment of primary and secondary education.

Firstly, there is no clear provision on how to revoke the negative records generated by disciplinary actions attached to educational punishment. According to Article 10 of the “Implementation of Education Punishments Rules for Primary and Secondary School Teachers (Trial)”, schools may impose disciplinary actions such as warning, serious warning, demerit recording, or stay on campus for observation on students who have seriously violated rules and regulations or have not corrected themselves despite multiple education punishments. High school students can also be subject to disciplinary action of expulsion. From this regulation, it can be seen that educational disciplinary measures and disciplinary measures are used in combination. If educational disciplinary measures are ineffective, disciplinary measures can be applied.

Disciplinary action is to be recorded in the student file. According to the disciplinary measures for primary and secondary school students issued by local education administrative departments, the management measures for primary and secondary school student enrollment, and the disciplinary measures for on campus students issued by local primary and secondary schools, disciplinary measures must be recorded in student files. For example, Article 19 of the “Beijing Municipal Measures for Rewards and Punishments of Primary and Secondary School Students” issued in 2018 stipulates that “demerits, stay on campus for observation, and expulsion of students shall be recorded in the student files.”. Article 19 of the 2019 Qingdao Municipal Regulations on Disciplinary Measures for Primary and Secondary School Students stipulates that disciplinary decisions for students should be recorded in their personal files.

There is currently no clear national unified regulation on whether disciplinary actions recorded in student files can be revoked. However, according to Article 14 of the “Rules for the Implementation of Educational Punishments for Primary and Secondary School Teachers (Trial)”, if students are able to sincerely admit their mistakes and actively correct themselves after receiving educational or disciplinary sanctions, they may be relieved of the educational or disciplinary sanctions in advance. However, there is still a significant gap between early termination and revocation of disciplinary action, as well as the elimination of student misconduct records. Further clarification is still needed on the specific measures for early termination, including the revocation of disciplinary action and its negative records.

However, this regulation still holds significant importance for the unification of regulations on the revocation of disciplinary actions against students by education administrative departments and primary and secondary schools in various regions. From the disciplinary regulations issued by education administrative institutions in various regions, it can be seen that revocation of disciplinary actions requires students to apply in person. There is no clear requirement for schools to actively carry out revocation of disciplinary actions based on their authority, and disciplinary actions that require students to drop out or be expelled cannot be revoked, which invisibly increases the difficulty of eliminating

students' bad records.

Secondly, the specific nature of the education disciplinary record system needs to be further clarified. Article 19 of the "Implementation of Education Punishments Rules for Primary and Secondary School Teachers (Trial)" stipulates that "at the end of each school term, schools shall report the information of students who have been subject to the education penalties and disciplinary actions listed in Article 10 of these rules to the competent education administrative department for record keeping." However, this rule does not specify the purpose of such record keeping. The specific nature and role of the information filing system for educational punishment and disciplinary action still need to be further clarified. Is this record keeping intended to supervise the educational and disciplinary behavior of primary and secondary schools and teachers, or to monitor the misconduct of primary and secondary school students? Will this record keeping be a reinforcement of student record keeping? Will this regulation invisibly create a hidden danger and actually create a new negative record for minors. These issues require us to think carefully.

Finally, the question that needs to be considered is whether educational punishment needs to be recorded in student files and whether it needs to be clarified. Is it reasonable for disciplinary actions to be recorded in the student's file, which disciplinary actions need to be recorded in the student's answer, and whether it needs to be unified nationwide.

5. Conclusion

The biggest problem facing the governance of abnormal behavior among minors is that they do not have the right to speak. Although we can assume that minors are mentally immature and their opinions do not meet the requirements for adoption, this does not mean that their needs are unreasonable, let alone that measures that we naturally believe meet the needs of minors should be reasonable. This requires us to think about the reasons that trigger abnormal behavior among minors when setting and implementing any governance measures against them, in order to blame ourselves as adults, our families, schools, and society.

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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