

Legal Guarantee and Governmental Responsibility in Chinese Preschool Education Development: Roles of the Preschool Education Law of the People's Republic of China

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Abstract: *The Preschool Education Law of the People's Republic of China (Draft) is instituted in response to issues arising in the development of Chinese preschool education, such as a lack of explicit definitions of governmental responsibility, incomplete regulation mechanisms, and insufficient general accessibility of preschool services. This article focuses on discussing the law's significance for building a preschool education system that aims to provide pre-primary service as a public good and is under stringent regulation at all levels of government.*

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THE equity and quality of preschool education have significant impacts on a nation's development as well as the future achievement of individuals (Shi, 2022). La Chalotais states in his *Essay on National Education* that the responsibility of education shall be primarily assumed by the state because education, particularly child education, is a national affair in nature (as cited in Wu, 1989). UNESCO's World Conference on Early Childhood Care and Education (2010) also emphasizes that the government should act as the main provider of early childhood care and education, who must formulate potent and clear policies to ensure fairness in quality and quantity of early childhood education and establish solid legislation to guarantee the right of the child to preschool education (Feng & Zhou, 2011).

China initiated the nationwide construction of early childhood education in the 1950s (Sun, 2021). Against the backdrop of its reform and opening up, the Chinese government encouraged government agencies, troops, schools, factories, mines, and other enterprises to establish early childhood care and education institutions such as nursing rooms, day care centers, and kindergartens to meet the increased needs of the public in this regard (Zhang, 2022). In the meantime, the marketization of preschool education has been intensifying. However, there has been a lack of mature legislation for the regulation of preschool education, resulting in the absence of effective governance mechanisms (Sun, 2021).

Legislative endeavors are highly necessary for the long-term development of preschool education in China. In September 2018, the Standing Committee of the 13th National People's Congress of China included the legislation on preschool education in the priority category of legislative planning, marking the official initiation of the legislative proceedings of the Preschool Education Law (Hou, 2022). In September 2020, the Ministry of Education made public the Preschool Education Law of the People's Republic of China (Draft for Soliciting Opinions) to solicit comments from the public (State Council of China, 2020). In June 2023, the Executive Meeting of the State Council of China approved the Preschool Education Law of the People's Republic of China (Draft) [hereinafter referred to as the Preschool Education Law (Draft)] and submitted it to the fifth meeting of the Standing Committee of the 14th National People's Congress for review in August 2023 (State Council of China, 2023).

The Preschool Education Law (Draft) represents the Chinese government's strategies for the reform and development of preschool education and its determination to augment the supply of public pre-primary services, as well as its commitment to universalizing preschool education; it also officially defines pre-primary education as the initial phase of formal schooling. Hence, it marks a vital effort in advancing the construction of an education

system that serves the needs of the whole population for lifelong education (Pu, 2023).

The Evolution of Preschool Education in the People's Republic of China

Preschool education development experienced a shift from the state-run paradigm to plural forms of ownership in New China. On the founding of the People's Republic of China, the Chinese government took over all private kindergartens while establishing public kindergartens. In the meantime, the government mobilized diverse forces to develop early childhood education in enterprises including factories, mines, and villages and established a preschool education system where kindergartens run by state-owned and collective organizations predominated (Yang & Wu, 2020). "Provisional Regulations for Kindergartens (Draft)" (Ministry of Education of China, 1952) and the "Provisional Kindergarten Curriculum" issued by the Ministry of Education stipulated that the establishment and suspension of kindergartens were in the charge of municipal- and county-level governments (Wang, 2014). In this period, the government acted as both the provider and regulator of preschool education.

At the onset of China's reform and opening up, the State Council made public "Minutes of the National Conference on Childcare and Preschool Education Work," proposing the "dual ownership" policy for the growth of preschool service. In other words, non-state preschool institutions should be run in parallel with their state counterparts (Jing & Pang, 2010). As China's economic reform advances, the development of preschool education has become increasingly market oriented. Local governments often applied the methods for restructuring businesses to change the ownership of kindergartens. At the same time, they cut back on or stopped investing in state-run kindergartens, which led to a sharp drop in the number of public kindergartens (Hong & Pang, 2009). Relevant data shows that the decade from 1980 to 1990 witnessed a reduction in the percentage of state kindergartens to less than 10% (Cai et al., 2019). Thus, the neglect of the government's responsibility in the process of marketizing preschool education has resulted in several challenges in the preschool education sector (He, 2012).

Issues with Market-Oriented Preschool Education in China

In the context of the market economy, non-governmental organizations, the third sector, for-profit organizations, and individuals increase investment in preschool education services. There has been a proliferation of private kin-

dergartens with varied forms of ownership, such as community-based kindergartens, joint venture kindergartens, and sole proprietorship kindergartens. The increased types of preschool service providers have increased the accessibility of kindergartens to the public; on the other hand, the drastic reduction in state-run institutions has compromised the public nature of preschool education (Guo, 2013).

Insufficient Regulation of Preschool Education by the Government

In 2004, private kindergartens outnumbered public ones in China, representing more than half of the total number of kindergartens. Kindergartens with public-private mixed ownership also accounted for a considerable share (Fan & Pang, 2013). These non-state institutions have made up for the gap in the supply of preschool services to a certain extent. Nevertheless, the Chinese government has not implemented effective regulation of them regarding the qualification of the runner, operational conditions, teacher qualifications, registration and approval, educational quality, and supervision and evaluation (Zhan & Li, 2019).

The absence of state-level legislation specialized in preschool education in China has become an institutional barrier to its healthy, orderly development. Under the leadership of the Constitution, China has formulated a legal system for education constituted by the Education Law, Teachers Law, and Compulsory Education Law (Liu, 2019). However, relevant educational policies, rules and regulations, and governmental documents primarily regulate and guide preschool education in China, which are not as binding as legislation. Despite there being workable norms and standards for preschool education, the lack of accountability mechanisms in them, such as penalty and sanction stipulations, weakens their authority (Zhan & Li, 2019).

The lack of a binding law on preschool education not only deprives relevant departments of legal assurance in regulating the operation of private kindergartens but also makes it difficult for them to take effective measures to address illicit behaviors of the latter. In existing regulations on preschool education such as the “Regulations on the Operation of Urban Kindergartens,” “Regulations on the Management of Kindergartens,” “Standard Procedure of the Operation of Kindergartens,” and “Regulations on Non-state Education Institutions,” there are either loopholes or overly general principles, placing relevant departments in a predicament when exercising regulation over preschool education institutions (Zhang, 2022).

Deviation from Preschool Education’s Role as a Public Good

Early policies on preschool education in China recognized preschool education as a public good. In 1987's "Notice of the State Council's General Office on Circulating the Request of the National Education Commission and Other Departments on Clarifying the Division of Responsibility for Leadership and Management of Early Childhood Education," it is underscored that early childhood education is a cause of public welfare and that governments at all levels should place a premium on its reform and development (State Council of China, 1987). The subsequent policies have all emphasized the principle of general accessibility in preschool education. 1991's "Opinions on Improving and Strengthening the Management of Pre-primary Classes" clearly state that the pre-primary class shall not be a for-profit practice (National Education Commission of China, 1991). 1997's "Opinions on the Development Goals of National Early Childhood Education during the Ninth Five-Year Plan Period" reaffirms the public nature of early childhood education (National Education Commission of China, 1997).

Nevertheless, in the milieu of China's economic reform, preschool education became a market-oriented sector with an influx of private capital. Some entrepreneurs utilized fiscal financing, state-owned assets, collective assets, or donated assets to establish for-profit private kindergartens. Certain private investors control state kindergartens and non-profit private kindergartens for profit through acquisitions, mergers, agreements, and other means (Wang et al., 2016). 2011's "Interim Measures for the Management of Kindergarten Fees" stipulate that public kindergartens are not for-profit institutions and shall charge fees based on their operation costs (Ministry of Education of China, 2011). Unlike their public counterparts, private kindergartens can pursue desirable returns (Li, 2011). Gradually, the profit-seeking tendency intensifies in preschool education institutions, with its general accessibility being disregarded.

Significance of the Preschool Education Law (Draft)

Determining the responsibilities and missions of the government is crucial for the development of preschool education. It is about the accountability of governmental authorities for this educational cause and the supervision of their involvement in it (Neuman, 2011). Countries worldwide have endeavored to establish the state as the main provider of preschool education through legislation. In its Decentralization Law of 1983, France declares that the state is primarily responsible for national basic education, including preschool education. The Code de l'éducation 2000 asserts that the state guarantees preschool education as a national public service and ensures its organization and implementation. The Nationalization of Education Law of Cuba sets forth education, including preschool education, as the public service of the state and the development of preschool institutions as the responsibility

of the state. The United States' Head Start Act of 1981 states that the federal and state governments and the family jointly bear the responsibility for the preschool education of the child; the No Child Left Behind Act of 2001 stipulates that the state shall strive to provide preschool education for all children under the age of 6 (Yang et al., 2010). Instances of legislation like these provide a basic guarantee for the state's assuming a pivotal role in national preschool education.

The Preschool Education Law of the People's Republic of China (Draft) reaffirms the standing of preschool education in the Chinese education system and proclaims the central role of the Chinese government in preschool education. It is of vital importance to the normalization of Chinese preschool education in that it sets forth directions for the development of universalized, safe, and high-quality preschool education in China (Ma, 2022).

Defining the Responsibilities of the Government for Preschool Education Development

In recent decades, major countries and territories around the world have emphasized the government being the main provider of preschool education, which is conceived of as the key concept in their reform of the early childhood education system. Under this concept, the number and share of public preschool education institutions have continuously increased. According to the World Economic Cooperation Organization's (OECD) 2008 survey on early childhood education and care, in more than half of the OECD countries, public nursery centers and kindergartens constitute over 50% of the total number of preschool education institutions. The share is over 80% in about one fifth of them, such as Luxembourg, France, Hungary, Belgium, Italy, Spain, Denmark, and more. It is noteworthy that public preschool education institutions predominate in developing countries such as Mexico, Brazil, Russia, Cuba, and North Korea. The percentages of them are 90% in Mexico, more than 95% in Russia, and 75.1% in Brazil. Cuba has nationalized its preschool education sector (OECD, 2010).

The Preschool Education Law (Draft) defines preschool education as an essential component of the national education system and an important cause of public welfare. Based on the status of preschool education, it proposes the principle that the government should provide the majority of preschool education services. To be specific, the state is accountable for universalizing preschool education by building a public preschool service system with reasonable deployment and general accessibility, covering both urban and rural areas. Thus, the government is determined to be the major actor in

improving the preschool education system, and the state is held responsible for popularizing preschool education (Ministry of Education of China, 2023).

The Role of the Government in Overall Planning

Articles 53 and 54 of the Preschool Education Law (Draft) provide that the provincial and municipal governments have responsibility for the overall planning of preschool education, which includes improving the investment mechanism through the county-level government, incorporating the financial subsidies for preschool education into the budgets at all levels, formulating policies for financial subsidies and fee charging, determining the apportionment of financing, and ensuring that public kindergartens play the main role in implementing equitable preschool education (Ministry of Education of China, 2023). These provisions set forth the main provider of preschool education, the distribution of funds for it, and the role of public kindergarten.

The Role of the Government in Implementing Preschool Education

Article 19 states that the distribution and deployment of kindergartens shall be based on the division of county regions, and the construction of generally affordable kindergartens shall be integrated into the overall planning of urban and rural public facilities (Ministry of Education of China, 2023). The government must balance education resources and guarantee young children's right to preschool education.

The Role of the Government in Securing Preschool Education for Vulnerable Groups

The Ministry of Education of China (2023) states that Article 16 guarantees subsidies for generally affordable preschool education to children from economically disadvantaged families, and provides free preschool education to orphans, de facto unsupported children, children from extremely impoverished families, and disabled children from low-income families. These provisions serve as a legal guarantee for the right of all children to a generally affordable preschool education.

The Role of the Government in Accrediting Preschool Education Institutions

Article 24 sets forth standards for the operational conditions of kindergartens to ensure their quality of education. The Ministry of Education of China (2023) says that Article 25 makes it clear that opening a kindergarten requires permission from the county-level education department or higher, in line with the rules, and then getting a school license. By rectifying the issues of a low threshold for the institution of kindergartens and lax approval criteria in the past, this provision ensures the educational quality of the kindergarten.

Highlighting the General Accessibility of Preschool Education as a Public Good

Major countries and territories in the world strive to achieve the stable development of preschool education and ensure its general accessibility by prioritizing investment in public preschool services. For instance, as stated by Article 213 of Section 8 of the Constitution of Brazil, public schools, including public preschool institutions, should be financed by public funds, and the government is obligated to prioritize investment in the development of the local public education system. In addition, the Constitution of Brazil also sets a minimum level of budget for public education, including public preschool education. In the 2000's "National Child Education Programs," the Brazilian government reiterated its commitment to ensuring the investment of national resources in the development of federal public education, including public preschool education (UNESCO, 2006a). "Regulations on Preschool Education Institutions" issued by the Government of the Russian Federation hold the state responsible for the financing and equipment of public kindergartens but not for those of private kindergartens (UNESCO, 2006b), thus providing legal underpinnings for giving priority to developing public kindergartens.

Article 3 of the Preschool Education Law (Draft) provides that preschool education is an essential cause of public welfare (Ministry of Education of China, 2023), proclaiming that preschool education is not a commercial sector but instead a public good that requires backing from governmental authorities. Article 6 further elaborates that preschool education development should adhere to the principle that the state is the primary provider of pre-primary service, while non-state organizations should also be encouraged to engage in developing generally affordable preschool education in an orderly manner. Articles 54, 56, 57, and 62 specify that county-level governments or above must fulfill their responsibilities in resource allocation, funding, budget management, and auditing/supervision for pre-primary education. Provincial-level governments are held responsible for the overall planning of preschool education funding and formulation of standards of

kindergarten fees. Additionally, it is prohibited for any organization or individual to embezzle preschool education funds or illicitly collect money from kindergartens (Ministry of Education of China, 2023). Provisions like these accord local governments with more authority in distributing funds among preschool institutions and enable them to adjust the budgets of preschool education in accordance with the actual local circumstances in the context of China's top-down financial allocation mechanism. This facilitates accelerating a balanced development of preschool education and achieving the goal of generally accessible preschool education.

Maintaining state kindergartens' public ownership is a central pathway to a sufficient supply of generally affordable preschool services. Regarding how to successfully preserve existing public preschool institutions, Article 26 of the Preschool Education Law provides that public kindergartens are prohibited from being converted into private ones and shall not institute or participate in instituting for-profit private institutions. Furthermore, public kindergartens are prohibited from being directly or indirectly listed as commercial assets (Ministry of Education of China, 2023).

While encouraging the increase of public preschool services, the Preschool Education Law (Draft) also has provisions for supporting and regulating price-friendly private kindergartens. For instance, Article 64 specifies that local governments shall support developing generally affordable private kindergartens through various means such as financial subsidies, governmental purchases of services, rent reduction, the designation of public preschool teachers as private school teachers, staff training, and guidance on teaching research. At the same time, the Preschool Education Law imposes strict restrictions on the establishment of for-profit private kindergartens. Article 27 clearly states that non-state capital is not allowed to control public kindergartens or non-profit private kindergartens through means such as merger and acquisition, entrusted operation, franchise chain, or variable interest entity, and that these kindergartens shall not be directly or indirectly listed as commercial assets (Ministry of Education of China, 2023). Inhibiting the profit-seeking tendency of capital in the preschool education sector through legislation is a precondition for the supply of generally accessible pre-primary education as a public good.

Strengthening Governmental Supervision of the Quality of Preschool Education

Stringent governmental regulation of preschool institutions guarantees that public investments can effectively improve the quality of pre-primary education. Countries with a mature preschool system, such as Germany, France, and Sweden, have all endeavored to establish efficient regulation mecha-

nisms for early childhood education. In response to current issues with Chinese preschool education, the Preschool Education Law (Draft) underscores the importance of improving the regulation mechanism and specifies governmental responsibilities in this regard.

Division of Responsibility among Different Levels of Government

The regulatory framework of preschool education shall be determined by the central government; the municipal and county-level governments are responsible for its implementation; and the provincial government administers supervision over the execution of central regulations by municipal and county-level authorities. Article 53 of the Preschool Education Law (Draft) specifies that provincial-level governments as well as metropolises and autonomous prefectures are responsible for the overall planning of preschool education and the formulation of relevant policies. The county-level government is primarily responsible for the development of local preschool education and the supervision and regulation of preschool education institutions. The village-level government and urban street offices shall support the development of preschool education within their jurisdiction (Ministry of Education of China, 2023).

Division of Responsibility among Various Departments

Article 54 of Preschool Education Law (Draft) specifies that the education department at the county level or above is responsible for the management and professional guidance of preschool education by establishing management agencies, hiring administrative and research personnel, and administering quality supervision to pre-primary institutions; that the health department at the county level or above is responsible for the supervision, inspection, and professional guidance of health care in kindergartens; and that other administrative departments including the development and reform, finance, human resources and social security, natural resources, urban-rural housing, civil affairs, market supervision departments shall implement supervision on preschool education in areas falling within the scope of their respective mandates, such as the institution of kindergartens, teacher staffing, fee standards, safety and security, fund use, financial management (Ministry of Education of China, 2023). The explicit division of responsibility helps avoid the overlap of regulation and supervision of preschool institutions between governmental departments.

Supervision, Accountability, and Monitoring of Preschool Education Quality

Article 59 of the Preschool Education Law (Draft) states that the education supervision agency at the county level or above shall supervise the regulation and performance of relevant administrative departments at the county level as well as the lower-level governments and is responsible for overseeing the operation of kindergartens within their jurisdiction. The education supervision agency at the county level or above shall regularly disclose the supervision reports to the public. Article 60 stipulates that the State Council's Ministry of Education shall provide guidelines for evaluating the quality of care and education of kindergartens and that the provincial-level education department shall improve in practice the quality evaluation criteria and the monitoring system for kindergarten quality evaluation and include all types of kindergartens in the quality evaluation system with the evaluation results being released to the public (Ministry of Education of China, 2023). The purpose of these provisions is to progressively enhance the quality of Chinese preschool education.

Conclusion

Legislation on education is the most effective means for actualizing the functions of education because it establishes mandatory regulations to adjust relationships between all stakeholders and circumvent arbitrary interference from various parties, thus contributing to a stable environment for educational implementation. China's legislation on preschool education promises a healthier development of early childhood education. The implementation of the law has the potential to advance the universalization of preschool education in China and guarantee the right of preschool-age children to education.

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