

# The Problem of Choosing the Form of Getting Education in Russia: Rights and Duties of Parents

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**Abstract:** As part of a monitoring study of public requests based on citizens' appeals, a research group of the Institute of Educational Management of the Russian Academy of Education revealed that the issue of legal regulation of general education in the Russian Federation, in terms of choosing the form of education, is one of the acute problems for the parent community. This article analyzes the legal aspects of the parents' (legal representatives) rights and duties in matters of children receiving general education.

## 1. Introduction

The relevance of issues of legal regulation of education in Russia comes to the fore in connection with the problems of the applying legislation in practice, as a rule. In accordance with the legislation of the Russian Federation, citizens have the right to appeal to state bodies, local self-government bodies and their officials, state and municipal institutions, and other organizations entrusted with publicly important functions, including their officials.

## 2. Materials and Methods

In the course of implementing the theme of the state assignment No. 27.12919.2018 / 12.1 "Conducting a Monitoring Study of Public Requests (Based on Citizens' Appeals) on Improving the General Education System", an analysis of citizens' appeals was carried out and topics were identified that required the closest attention in terms of interests of all participants of educational legal relations. So, in the framework of this study, it was revealed that the issue of legal regulation of general education in the Russian Federation, in terms of choosing the form of education, is one of the most acute topics for the parent community.

## 3. Results

The results of the monitoring study are reflected in several scientific publications of Russian authors (Arinushkina, A. A., Bakhtin, M. B., Dovbysh, S. E. [1]; Mukhacheva, L.V. and Molchanova, V. S. [2]; Neustroev, S. S. and Shikhnabiyev, T. Sh., [3]). A number of well-known Russian and foreign authors consider the realization of the right to family education (Koshchienko, I. V., and Pokrovskaya, L. I. [4]; Oorzhak, A., [5]; Kaufman, M. J. [6]; Archer, D. N. and Marsico, R. D. [7]; Osler, A. [8]; Hornby, G. [9]) and notes the increasing trend of teaching children in this form, it is also supported by the development of distance education around the world. However, the legal aspect of this right to education is very poorly disclosed in Russia and requires additional attention. The review of judicial practice, which reveals the legal aspects of the realization of rights, as well as the responsibilities of parents in the education of children, is presented in this article.

The working concept of educational law is a set of normative legal acts in the field of education, including laws and other subordinate normative legal acts (Decrees and Orders of the President of the Russian Federation, Resolutions and Orders of the Government of the Russian Federation, etc.).

According to Article 5 of the Constitution of the Russian Federation, the Russian Federation consists of republics, territories, regions, cities of federal significance, autonomous regions – equal subjects of the Russian

Federation [10]. A republic (state) has its own constitution and legislation. Each region, territory, city of federal significance, autonomous region have their own charter and legislation. In this regard, the educational system is regulated not only by legislative acts at the federal level, but by other regulatory legal acts of the constituent entities of the Russian Federation.

*At the federal level*, legislation in the field of education is regulated by: the Constitution of the Russian Federation; Convention on the Rights of the Child; Family Code of the Russian Federation; Federal Law “On Education in the Russian Federation”; as well as certain regulatory legal acts in the field of education (Decrees and Orders of the President of the Russian Federation, Decisions and Orders of the Government of the Russian Federation, etc.). *The regional level* of normative legal acts in the field of education is also regulated by numerous laws adopted by the subjects of the Russian Federation.

In accordance with Article 38 of the Constitution of the Russian Federation, motherhood, childhood, and the family are under state protection. Caring for children, their education is the responsibility of parents. Accessibility and free pre-school, basic general and secondary vocational education in state or municipal educational institutions and enterprises is guaranteed. Basic general education is compulsory. Parents or persons replacing them ensure that children receive basic general education. The Russian Federation establishes federal state educational standards, supports various forms of education, and self-education. As for the forms of education, according to Article 17 of the Federal Law “On Education in the Russian Federation” of December 29, 2012 No. 273-FZ, education can be obtained [11]: in organizations engaged in educational activities [12]; outside educational organizations (in the form of family education and self-education [13]).

Article 44 of the Federal Law “On Education in the Russian Federation” establishes that parents (legal representatives) of underage students have the right to choose the forms of education, as well as to provide their children with pre-school, primary general, basic general, secondary education in the family. Parents (legal representatives) have the right to choose the form of education until the child completes the basic general education, taking into account the child’s opinion, as well as the recommendations of the Psychological, Medical, and Pedagogical Commission (if available).

The disposition of Article 63 of the Family Code of the Russian Federation establishes the obligation of parents to ensure that their children receive general education; it also gives them the right to choose an educational organization, the form of education for children, taking into account the views of children before they receive basic general education [14].

*The need for special protection of the child is also provided for by international legal acts, in particular:* “The Declaration of the Rights of the Child” (1924); “Declaration of the Rights of the Child” (1959) [15]; “Universal Declaration of Human Rights” (1948), “International Covenant on Civil and Political Rights” (in particular, in Articles 23 and 24) [16]; “Convention on the Rights of the Child” (1989) [17]; “International Covenant on Economic, Social and Cultural Rights” (1966) (in particular, in Article 10) [18], as well as in the statutes and relevant documents of specialized agencies and international organizations dealing with the welfare of children.

*The Convention on the Rights of the Child* was approved by the UN General Assembly on November 20, 1989. It was signed on behalf of the USSR on January 26, 1990, ratified by the Supreme Soviet of the USSR on June 13, 1990, and entered into force for the USSR on September 15, 1990. It is an international legal act regulating and guaranteeing the rights of children in member states, which is binding throughout the entire territory of the Russian Federation. In this convention, as in other international instruments, the rights of children to special protection and assistance are enshrined. Family rights to protection, as the basic unit of society are guaranteed.

The United Nations Charter states [19] that member states must: take all necessary measures (a) to ensure the protection of a child from all forms of discrimination or punishment based on the status, activities, expressed opinions or beliefs of the child, parents of the child, legal guardians or other family members (Article 2, “Convention on the Rights of the Child”); (b) to guarantee the right of the child to free and compulsory primary education; (c) to encourage the development of various forms of secondary education, both general and vocational; (d) to make it accessible to all children and take such necessary measures as the introduction of free education; (e) to provide, if necessary, financial assistance; (f) to ensure the availability of information and materials in the field of education and training for all children; (g) to encourage and develop international

cooperation in matters relating to education, in particular, with the aim of contributing to the elimination of ignorance and illiteracy worldwide and facilitating access to scientific and technical knowledge and modern teaching methods. In this connection, special attention should be paid to the needs of developing countries (Article 28 “Convention on the Rights of the Child”).

*In the next section of the paper, we would like to draw attention to the problems that arise in practice when applying the Federal Law “On Education in the Russian Federation,” in terms of family education, after analyzing the judicial practice.*

In the previous edition of the law (Article 10 of the Law of the Russian Federation of 07.10.1992 N 3266-1 “On Education”) on education, family education was provided as a form of general education without specifying [20]. The new version of the law specifies in more detail the family education, stating that it can be obtained outside educational organizations (article 17 of the new Law of the Russian Federation dated December 29, 2012 No. 273-FZ “On Education”). However, despite the changes made, the stages in the implementation of family education in the conditions of modern reality are not sufficiently developed.

In judicial practice, cases have arisen when, in connection with the transfer of children to family education, they tried to bring parents to administrative responsibility under Article 5.35 of the Code on Administrative Offenses of the Russian Federation (non-fulfillment or inadequate fulfillment by parents or other legal representatives of minors of the duties of maintaining, educating, and protecting the rights and interests of minors [21]), for the fact that they are not engaged in teaching their children, which is absurd, since a direct reference to the family form of education exists in law.

Parents who decide to transfer their children to the family form of education require educational institutions to exclude their children from school, which is illegal, as the school must enroll the child for intermediate and state certification. Many schools refuse parents to enroll a child, citing the school’s charter, which does not provide for this form of education. In this regard, parents again face problems that force them to go to court.

It is necessary to note the problematics of the interpretation of Article 35 of the new edition of the law on education, which states that students receive *textbooks and teaching aids, as well as teaching materials* (for use at the time of their education), which means that training and education are for free. Thus, they master the main educational programs at the expense of the budget allocations of the federal, regional, and local budgets. The provision of textbooks and teaching aids, as well as teaching materials, means of training and education of organizations is carried out at the expense of the budget allocations. Also, these organizations carry out educational activities on basic educational programs, within federal state educational standards, educational standards. The use of textbooks and teaching aids by students mastering school subjects, courses, disciplines (modules) outside the federal state educational standards, educational standards and (or) receiving paid educational services is carried out in the manner established by the organization carrying out educational activities.

Proper application of this article to the family form of education also requires clarification. This article also applies to family education, as final certification is held in educational institutions for free, i.e. at the expense of budget funds. Consequently, educational institutions are obliged to provide all children, regardless of the chosen form of education, with textbooks and teaching materials (analogy of the law).

Further, *the issues of payment of compensation* in family education are covered and on the basis of decisions of the courts of Moscow: Appeal Definition of the Moscow City Court of November 18, 2015 in case No. 33-42966 / 2015 [22]; Appeal Determination of the Moscow City Court of January 22, 2016 in case No. 33-1821 [23]; Appeal Determination of the Moscow City Court of March 16, 2017 in case No. 33-9561 [24]; Appeal Determination of the Moscow City Court of April 14, 2016 in case No. 33-13260 / 2016 [25]. The result of all these decisions is that the parents appealed to the courts of Moscow with a lawsuit against the school and the Moscow Department of Education to declare their actions (inaction) illegal and to recover amounts of payments to parents who teach children in the family. In all cases, the courts renounced a claim for satisfaction and came to the conclusion that Clause 3.1 of Article 6 of the Law of the City of Moscow “On the Development of Education in the City of Moscow” is not applicable.

It turns out that since the amendments to the Federal Law of December 29, 2012 N 273-FZ “On Education in the Russian Federation” had entered into force (September 1, 2013), persons mastering general education

programs in the form of family education were not included to the contingent of educational institutions and, accordingly, could not be entitled to receive monetary compensation for the children's education.

Similar decisions were made not only in Moscow, but also in other regions.

Analyzing the analysis of judicial practice [26], we draw attention to the constitutional guarantees in the field of motherhood, childhood, and family from the state (Article 38 of the Constitution of the Russian Federation). This should be reflected at all levels of federal, regional, and municipal authorities in the form of providing material support to parents practicing the legal form of family education.

#### **4. Conclusion**

Summing up the research on a number of positive and negative aspects in the new wording of the Law on Education (in the field of family education), the conclusion about the defectiveness of the federal law can be made. This form (family education) is provided for by federal law, but it should be recognized that it is poorly regulated, with gaps and shortcomings. The details of these or other forms of education and the stages of their implementation have not been identified. The problems that existed in the field of education, in particular family, continue to exist up to this day. The inconsistency of educational law and legal acts at the federal, regional, and municipal level is the main cause of legal disputes. It is necessary to analyze the regulatory legal acts in the field of education, identify contradictions and eliminate conflicts, apply international experience of the educational system to improve the quality of the educational system in the Russian Federation.

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#### **References**

- [1] Arinushkina, A. A., Bakhtin, M. B. & Dovbysh, S. E. (2018). Monitoring the demands of society (the educational aspect) as a mechanism for setting management tasks in the general education system. *Modern Education*, 4, 1-7
- [2] Mukhacheva, L. V., Bakhtin M. B., Dovbysh, S. E. & Molchanova, V. S. (2018). Appeals of citizens as a mechanism for improving the system of general education. *Man and Education*, 3(56), 49-55.
- [3] Neustroev, S. S., Arinushkina, A. A., Bakhtin, M. B., Dovbysh, S. E., Molchanova, V. S., & Shikhnabieva, T. S. (2018). Legal regulation of health restrictions and current law enforcement practices in the organization of training. *Journal of History Culture and Art Research*, 7(2), 58-71.
- [4] Koshchlenko, I. V., & Pokrovskaya, L. I. (2016). Family education as a variable form of education. *Knowledge. Understanding. Skill*, 4.
- [5] Oorzhak, A. O. (2016). The constitutional right of a citizen of the Russian Federation to education. *Scientific and Methodical Electronic Journal "Concept"*, 6, 68-73.
- [6] Kaufman, M. J., & Kaufman, S. R. (2017). *Education law, policy, and practice: Cases and materials*. Alphen aan den Rijn, Netherlands: Wolters Kluwer.
- [7] Archer, D. N., & Marsico, R. D. (2016). *Special education law and practice: cases materials*. Durham, NC: Carolina Academic Press
- [8] Osler, A., & Starkey, H. (2017). *Teacher education and human rights*. London, UK: Routledge.
- [9] Hornby, G. (2015). Inclusive special education: development of a new theory for the education of children with special educational needs and disabilities. *British Journal of Special Education*, 42(3), 234-256.
- [10] *The Constitution of the Russian Federation*. (adopted December 12, 1993).

- [11] Collected Legislation of the Russian Federation. (2012). *Federal Law “On education in the Russian Federation”* (December 29, No. 273-FZ, as amended on December 25, 2018). Moscow, Russia.
- [12] Monakhova, L. Yu. (2017). Management models of educational organization as a reflection of pedagogical paradigms. *Education Management: Theory and Practice*, 3(27).
- [13] Dovbysh, S. E. (2017). Event approach in the teacher’s work: open educational technology “Event-Resource Mapping”. *Education Management: Theory and Practice*, 4(28).
- [14] Collected Legislation of the Russian Federation. (1995). *Family Code of the Russian Federation* (December 29, 1995 No. 223-FZ, as amended and added, entered into force on January 1, 2019). Moscow, Russia.
- [15] UN General Assembly. (1959). *Declaration of the Rights of the Child* (adopted on 11/20/1959). Paris, France.
- [16] UN General Assembly. (1948). *Universal Declaration of Human Rights* (adopted on 12/10/1948). Paris, France.
- [17] UN General Assembly. (1989). *Convention on the Rights of the Child* (approved on November 20, 1989) (entered into force for the USSR on September 15, 1990). New York, NY.
- [18] UN General Assembly. (1966). *International Covenant on Economic, Social and Cultural Rights* (Adopted on December 16, 1966). New York, NY.
- [19] UN. (1945). *Charter of the United Nations* (Adopted on June 26, 1945). San Francisco, CA.
- [20] Collected Legislation of the Russian Federation. (1992). *Federal Law “On Education”* (October 7, No. 3266-1, as amended on November 12, 2012) (The document became invalid as of September 1, 2013 due to the adoption of the Federal Law of December 29, 2012 No. 273-FZ).
- [21] Collected Legislation of the Russian Federation. (2001). *Code of the Russian Federation on Administrative Offenses* (of December 30, 2001 N 195-FZ, as amended and added, entered into force on January 16, 2019). Moscow, Russia: Rossiyskaya Gazeta.
- [22] Moscow City Court. (2016). *The appeal determination of November 18, 2015* (case No. 33-42966). Moscow, Russia.
- [23] Moscow City Court. (2016). *The appeal determination of January 22, 2016* (case No. 33-1821). Moscow, Russia.
- [24] Moscow City Court. (2017). *The appeal determination of March 16, 2017* (case No. 33-9561). Moscow, Russia.
- [25] Moscow City Court. (2016). *The appeal determination of April 14, 2016* (case No. 33-13260). Moscow, Russia.
- [26] Seliverstova, O. I. (2017). *Review of judicial practice on family education for the period from November 2015 to April 2017*. Moscow, Russia: Federal Center for Educational Law.