

# Research on the Regulation of Emergency Management Functions Within Education in The Post-epidemic Era

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## Abstract

**Based on the background of the post-epidemic era and the construction of emergency rule of law, and inspired by the epidemic incident in Jilin Agricultural Science and Technology College, we start from the connotation and attributes of emergency management functions within education in the post-epidemic era, analyze the shortcomings of the current exercise of functions, and explore regulation under the theoretical guidance of the principle of proportionality, in order to achieve public-private coordination, promote the rule of law in education, and promote the development of emergency rule of law.**

## Keywords

**Emergency management; Principle of proportionality; Right to educational emergency management; Legal regulation.**

## 1. Introduction

With the outbreak of the new epidemic, countries have responded to the epidemic by taking a flexible approach, such as the United States, which has responded to the spontaneity and autonomy of the public, resulting in an accelerated spread of the epidemic. In China, in order to maximize and minimize the damage caused by large-scale outbreaks, a top-down "rigid governance" model was chosen, with hierarchical control and the use of high-intensity "nucleic acid testing, screening, quarantine and confinement" and other coercive means to ensure grassroots Governance[1], and eventually achieved the desired results, becoming the first country to control the epidemic.

In fact, the "flexible governance" of the United States has brought its share of hazards, while the "rigid governance" of coercion as an element of governance effectiveness is bound to cause certain problems as it continues to spread down to the grassroots. 10 March 2022. The incident at Jilin Agricultural Science and Technology College went viral, with students claiming that the isolation conditions at the college were poor, that patients were mixed with normal people, and that hot water was no longer available, and that the gathering epidemic continued to grow, while the school administration, as the administrative body, was "indifferent", so much so that students sought help on Weibo. Such incidents are undoubtedly a wake-up call that the post-epidemic era has seen rigid governance devolved to all levels, naturally giving autonomy that is difficult to regulate, and that schools, as important places to teach and educate people and gather, have a degree of expandable boundaries with their original inherent internal management rights after an emergency. If it is not used appropriately, and if there are no corresponding regulatory measures, then the power will only become a Pandora's Box, endangering the legitimate rights of students and even more people. There is no doubt that

some research is needed into the internal emergency management functions of education, which are highly aggregated and closely linked to social security.

## **2. Analysis of the Connotation and Attributes of Emergency Management Functions Within Education**

### **2.1. Connotations of the emergency management function within education**

The right to education is a component of the state's right to respond to emergencies[2].The author believes that the so-called educational emergency right does not have a clear legal definition for the time being, but it does exist in fact, so it is collectively referred to here as an emergency management function. Moreover, since the exercise of this function by educational management bodies at all levels is often limited to the internal organization and management of schools, and cannot have legal effect on the outside, its specific exercise is an internal administrative act, so it is tentatively referred to as an internal emergency management function of education.

The emergency management function within education is rooted in the right to emergency response. In 2007, China enacted the Emergency Response Law, which states that this law was enacted in order to prevent and reduce the occurrence of emergencies, control, mitigate and eliminate the serious social harm caused by emergencies, regulate emergency response activities, protect people's lives and property, and maintain national security, public safety, environmental safety and social order. From this article, it can be analyzed that the exercise of the right to emergency response requires the premise of being in an emergency situation, and that the power exercised by the emergency management system established by the state is the right to emergency response in order to safeguard the social public good. Thus, the State's emergency powers are decentralized within its system, resulting in administrative emergency powers and the creation of educational emergency management functions.

Therefore, the internal emergency management function of education is aimed at the specific environment of education, and its meaning can be summarized as a series of specific functions that are different from the daily education management, which are exercised by education management bodies at all levels (government, education authorities and schools) in order to protect people's lives and property, maintain educational order and normal educational activities in the face of emergencies.

### **2.2. Analysis of the attributes of the emergency management function within education**

#### **2.2.1. Special types under the right of administrative emergency**

As can be seen from the above, education emergency management is essentially a part of the emergency management system established by the state in the event of an emergency, so the internal emergency management function of education naturally belongs to the administrative emergency power, but with its own special characteristics. First of all, from the perspective of the main part, the internal emergency management function of education is mainly exercised by the education authorities at all levels, but in essence, it forms a result of the unification of multiple subjects. On the one hand, governments at all levels and education authorities are able to exercise emergency management power in education in accordance with the Emergency Response Law and other laws and regulations, and the education authorities should be the main subjects exercising this power; on the other hand, governments at all levels cannot effectively exercise emergency management power at every level of the emergency management system in the face of emergencies, and can only play a mainly unifying and leading role, so the organizations that are deeply involved in education The organizations involved in the management of education perform this function within education[3].Secondly, in terms of

object, the emergency management function within education is more focused on the specific management of internal educational activities and educational order, while governments and educational authorities at all levels focus more on the macro-level regulation, leadership and supervision outside the specific teaching area. Finally, in terms of the scope of their functions, governments and education authorities at all levels have a greater scope to manage emergency situations in the education system within an area, while schools at all levels exercise this function mainly within the teaching area of each school, and their target audience is mainly students and teachers.

### **2.2.2. A mishmash with educational autonomy**

As mentioned in the previous section, internal emergency management in education focuses on the specific management of internal educational activities and the educational order, so its function has two levels of interest: on the one hand, it is to respond to the emergencies that occur in the education system in order to guarantee the safety of people's personal property and the stability of the educational order, reflecting the exercise of administrative emergency power in the special environment of education; on the other hand, it is managed in the implementation process according to different situations, and There exists a certain degree of autonomy, reflecting the characteristics of the autonomy of education.

Specifically, the autonomy of education is fused with the right to emergency management under extraordinary or emergency conditions. For example, under normal conditions, schools can establish their own rules and regulations and carry out their daily educational activities in accordance with the relevant laws and regulations, and their management has a certain degree of autonomy; while under extraordinary conditions, schools can also exercise a certain degree of autonomy in their internal specific management, such as staggered classes and online classes, but not in contradiction with the main management measures that must be exercised in order to respond to emergencies and safeguard the social good. The school may also exercise a certain degree of autonomy in its internal management, such as staggered classes, online classes, etc., but this must not be at odds with the main management measures necessary to respond to emergencies and safeguard the social good.

## **3. Dilemmas in the Exercise of Emergency Management Functions Within Education**

### **3.1. Disadvantages of the emergency management concept**

China's educational management, especially schools at all levels, follows a management model of making rules and regulations and requiring teachers and students to comply with them, which is a typical administrative management model[4]. Take the university constitution as an example, the university requires teachers and students to abide by the university rules and regulations, based on which a series of daily educational contents are launched, and in case of violation, the university will impose certain punishments to ensure the stability and effectiveness of order management. It is clear that this model is based on a highly centralized and planned management, with the aim of maintaining a stable educational order, and reflects a management philosophy that places control in the forefront, which is consistent with the "rigid governance" mentioned in the introduction. Under such a high degree of control, the rational judgement and independent participation of teachers and students are inevitably suppressed, which on the surface can maintain a good educational order, but in fact is a negative infringement on the spiritual freedom and reasonable rights claims of the governed.

In the post-epidemic era, education management has undergone a transformation into a non-conventional model, in which the traditional 'controlling' administrative model is reinforced, with a certain degree of autonomy that, if not exercised properly, can result in a change from

the original or potential negative infringement of the rights of the governed to the actual infringement of the reasonable rights of the governed. Therefore, such a concept of emergency management derived from traditional management has its drawbacks and is clearly not in line with the rule of law, which makes it prone to such vicious incidents as the Jilin Agricultural Science and Technology College mentioned in the introduction.

### **3.2. Unclear competence of multiple subjects**

As mentioned above, emergency management in education involves a number of subjects in a coupled combination. The government at all levels plays an overarching role, the education authority is the main subject, and schools at all levels carry out functions at a specific level. However, this is an idealized view of the situation. In fact, without clear legal regulation, it is difficult to distinguish between the competences of multiple subjects, and the exercise of power at each level lacks a definite standard of measurement, which inevitably leads to abuse of power or difficulty in exercising functions in place. In practice, for example, the education authorities have issued a corresponding emergency prevention and control plan, which some schools have copied and vigorously implemented without taking into account the reality of the situation, and the effect of such governance can be imagined. In the case of the Jilin Agricultural Science and Technology College, the school was already unable to ensure the safety of its students and contain the spread of the epidemic, but was able to abuse its management powers by failing to report and monitor the situation, resulting in a more serious epidemic in the school.

### **3.3. Vulnerability to excessive infringement of individual rights**

The "controlled management" and "unclear powers" of the education system show a lack of rule of law in the exercise of emergency management, which is also not in line with the trend and requirements of the rule of law in education. At the same time, this function is mandatory, prioritized and somewhat autonomous in the post-epidemic era, and in this case, the exercise of public power to restrict the rights of individuals is likely to result in excessive infringement, with even worse negative consequences. A typical example is the infringement of legitimate rights and interests in the name of "public authority". For example, in the case of 'school closures', schools in some areas were at that stage low-risk or even risk-free areas, but in order to ensure stability, they were forcibly closed, which not only caused certain infringements on personal freedom, but also hindered the normal development of the regional economy. In some cases, when the situation was serious, public power was abused for the sake of their own "performance", resulting in the expansion of the epidemic and ultimately endangering the lives of the general student and teacher population.

## **4. Exploration of the Regulation of The Exercise of Its Functions from The Perspective of The Principle of Proportionality**

### **4.1. Introduction of the principle of proportionality**

The principle of proportionality refers to the principle that administrative organs should balance the achievement of administrative objectives and the protection of human rights in the process of implementing administrative acts. To protect the rights and interests of administrative counterparts and to maintain a certain balance, so that administrative powers are assigned and deployed both for the absolute purpose of achieving the administrative objectives and for the purpose of achieving the administrative objectives. Necessarily, yet with the smallest possible impact on the rights and interests of the administrative counterpart.

There are three sub-principles of appropriateness, necessity and narrow proportionality. The principle of appropriateness emphasizes that administrative acts should be consistent with the objectives of administrative functions; the principle of necessity requires that administrative acts should choose the way that interferes least with the rights of citizens among the many ways

that can achieve the objectives of administrative functions; and the principle of narrow proportionality requires that administrative acts should not interfere with or harm the rights of citizens to an extent that exceeds the public interest protected by the administrative act[5].

In order to protect the legitimate rights and interests of citizens, the principle of proportionality should be used as a regulatory direction to promote the rule of law in emergency management.

## **4.2. Regulatory exploration**

### **4.2.1. Improved enforcement**

The 'rigid governance' of emergency situations, which has a priority on order and stability, with control as the main means of enforcement, should introduce a certain principle of proportionality, which should be incorporated into the spirit of preventive and control measures and enforcement methods.

Placed within education, it is a balance between public and private rights that the subjects concerned need to seek when drawing up documents and making specific management. There are certain rational steps that should be followed before the exercise of the function: firstly, whether the situation has reached the point where coercive measures are necessary and whether the positive effects of taking coercive measures are much greater than those of not taking them; secondly, which method should be chosen to achieve the effect of least damage to the legitimate rights and interests of the citizens; thirdly, the reality of the situation and the reasonable demands of the governed should be taken into account in the enforcement of the law. Thirdly, the realities of the situation and the legitimate aspirations of the governed should be taken into account in the enforcement of the law, so as to avoid the blind use of power that is detached from the actual situation and the needs of the people.

### **4.2.2. Strengthening internal discipline and supervision**

The internal emergency management of education involves multiple subjects and the hierarchical authority is not clearly regulated, so it is necessary to apply the principle of proportionality to strengthen the restraint and supervision of the exercise of its internal functions. On the one hand, in addition to specific management, the powers and responsibilities of governments at all levels, education authorities, schools and public security and health departments should be well connected, not only at different levels of authority and responsibility, but also at different stages of emergency management and in different types of affairs, so as to achieve upward and downward supervision and avoid the shifting of responsibilities to each other. On the other hand, in the specific management of schools, effective internal control and supervision should be strengthened, for example, by setting up appropriate prevention and control teams, investigating the demands of school personnel in advance and inviting experts to assess and improve specific management.

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