

China's New Laws and Policies on Nongovernmental Education: Background, Characteristics, and Impact Analysis

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Abstract

Purpose: China has a long history of private school education. Since the founding of the People's Republic of China, nongovernmental education (private school education) once disappeared from Chinese society until its revival following the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China. With its development of more than four decades, nongovernmental education has become an important part of China's educational system and is vigorously promoting the modernization progress of Chinese education.

Design/Approach/Methods: Being different from the overseas private school education, which is mostly funded by donations, China's nongovernmental education sector has operated on the basis of private capital investments and contributions, with the organizers (contributors) typically expecting economic returns. Marked by the introduction of regulations and policies for nongovernmental education around the year of 2016, China's nongovernmental education sector officially entered a new era of *registration, support, and regulation by category*.

Findings: The macroscopic policies of China's nongovernmental education in new era present the following new characters: (I) Emphasizing education provision as a public interest and comprehensively strengthening private school leadership; (II) managing negative lists and broadening the means by which social forces participate in operating schools; (III) implementing preferential

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policies for private schools through categories based on the principle of being fair but different; (IV) supporting the development of private schools with the goal of improving education quality; (V) standardizing private schools' operating practices in order to promote healthy and orderly development.

Originality/Value: The implementing of the new policies on nongovernmental education shall have significant impact on the development and reform of China's nongovernmental education in the future: (1) The rapid development of nonprofit private schools due to government support; (2) for-profit private schools may face polarization in a fiercely competitive market environment; (3) heavy burden of categorizing and transferring existing stock of schools due to various historical and realistic constraints.

Keywords

China's nongovernmental education, development history, policy trend, system change

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China has a long history of private school education. Incorporated into the state-owned or publicly run education system after the founding of the People's Republic of China (PRC), nongovernmental education disappeared from Chinese society until its revival following the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) in 1978. Nongovernmental education has since undergone vigorous development facilitated by market promotion and policies. As of 2018, China had around 183,500 private schools of various types and levels—a figure accounting for approximately 35.35% of the total number of schools. Private schools had a total enrollment of 53.7821 million students in 2018, comprising 19.51% of the national total (Ministry of Education of PRC, 2019). In addition to increasing the supply of and options for education, the rise and development of nongovernmental education in China has promoted education reform, stimulated the sector's vitality, and made a significant contribution to popularizing basic and higher education in China.

The evolution of China's policies on nongovernmental education

The proliferation of nongovernmental education in China is the results of socioeconomic development and systemic reform. As early as 1982, the *Constitution of the PRC* clearly stated that “the state encourages collective economic organizations, state enterprises and institutions, and other social forces to organize various educational undertakings in accordance with the law.” When the Central Committee of the CPC issued *Guidelines for Reform and Development of Education in China* in 1993, it reiterated that the government should not be responsible for operating all schools

in the country. Accordingly, the CPC announced its goal to gradually establish an education system in which government-run schools would remain the mainstay but with all sectors of society cooperating to run schools. These regulations served as the basis for the laws and policies that facilitated the rise of nongovernmental education in China. Unlike other countries—where such education is predominantly funded and organized by public welfare funds or social forces—China’s nongovernmental education sector has operated on the basis of private capital investments and contributions, with the organizers (contributors) typically expecting economic returns. This situation has contributed to the particularity and complexity of designing and reforming China’s nongovernmental education system.

In the mid- to late-1990s, the Chinese government actively encouraged and vigorously advocated that all sectors of society make donations toward the operating of schools. This was intended to effectively alleviate the discord between the supply of and demand for degree holders as a result of the state’s insufficient investment in education. The state also made reference to and learned from the field of economics. More specifically, the CPC explored means of introducing a corresponding market mechanism for developing nongovernmental education based on the premises that the nonprofit legal status of private schools would remain unchanged, and that education provision as a public interest would not be compromised in any way. In doing so, the state sought to mobilize social forces to become more proactive in the operating of schools.

The provisions for such explorations were made through two sets of laws and regulations. The first, *Regulations on Schools Operated by Social Forces*, was issued by the State Council in 1997.¹ These administrative regulations clarified the state’s basic policies toward schools being operated by social forces, namely, “active encouragement, strong support, correct guidance, and strengthening of management.” The regulations further stipulated that upon the liquidation of educational institutions, the remaining assets could be used to reimburse the organizer(s) for their investments, either in part or in full. The second regulation, the *Law of the PRC to Promote Non-Governmental Education*, was promulgated by the Standing Committee of the National People’s Congress (NPC) in 2002. This law formally established the equal legal status of private and government-run schools. It also stipulated that funders could obtain reasonable returns from the operating surpluses of private schools after deducting operating costs, reserving funds for development, and covering any other necessary expenses in accordance with the relevant state regulations. Containing distinctive Chinese characteristics, this top-level policy was designed to adapt to the state’s specific conditions at that time. The law was able to mobilize people’s enthusiasm for running schools and effectively promoted the growth of nongovernmental education.

However, there were inconsistencies in the provisions of the various laws and regulations under the old institutional framework. Consequently, when private schools tried to register themselves as legal entities with the Ministry of Civil Affairs, the vast majority were required to do so in

accordance with the administrative regulations promulgated by the State Council in 1998, namely, the *Provisional Regulations on the Registration and Management of Private Non-Enterprise Units*. As their status was that of a “private non-enterprise unit (legal entity),”² which belonged to the nonprofit category, the distribution of surpluses from school operations was not permitted. This situation is clearly inconsistent with the actual development of nongovernmental education in China, which was characterized by the investment in the operating of schools for returns. In practice, this inconsistency significantly hampered the healthy development of nongovernmental education. As the attributes of a legal entity were unclear, actual nonprofit private schools (NPPS) could not benefit from the legal preferential policies, while for-profit private schools (FPPS) were unable to operate autonomously based on the market mechanism. This also caused the property rights system and reward mechanism to be incomplete or inadequate, thereby restricting the conversion of social resources into educational resources (Dong, 2019).

To address these bottlenecks and restrictions, in December 2015, the Standing Committee of the NPC reviewed and approved amendments to the *Law of the PRC on Education* and *Law of the PRC on Higher Education*, effectively removing all prohibitive provisions imposed on the operation of FPPS. In November 2016, the Standing Committee of the NPC passed the *Decision to Revise the Law of the PRC on the Promotion of Non-Governmental Education* (hereinafter the *New Law on Non-Governmental Education*). This further clarified the standards for categorizing NPPS and FPPS, as well as the policy system applicable to each category.

The State Council later issued *Opinions on Encouraging Social Forces to Set Up Schools and Promoting the Healthy Development of Non-Governmental Education* (hereinafter the *State Council's 30 Articles*) to further promote the reform of managing private schools by category. The Ministry of Education and other relevant departments also jointly promulgated *Regulations on the Registration of Private Schools by Categories and Regulations on the Supervision and Management of FPPS* (hereinafter the *Two State Regulations*). Subsequently, the various provincial people's governments successively introduced local support systems in accordance with the state's authorization and requirements. This facilitated the implementation of upper-level regulations, refinement of related policies, as well as further promotion of reform and development in nongovernmental education at the regional level.

The main characteristics of China's new policies on nongovernmental education

With the introduction and implementation of the aforementioned laws and policies on nongovernmental education, the macroscopic governance system of China's nongovernmental education sector officially entered a new era of registration, support, and regulation by category. China's

current macroscopic policies on nongovernmental education present new departures and characteristics.

Emphasizing education provision as a public interest and comprehensively strengthening private school leadership

From the relevant laws and policies—including the *New Law on Non-Governmental Education*, *State Council's 30 Articles*, and *Two State Regulations*—to various provincial supporting documents, the state has consistently emphasized that nongovernmental education is a socialist undertaking with Chinese characteristics in service of the public interest. Regardless of whether it is provided by the state, education must serve to educate and cultivate the population, with social benefits the primary consideration. Educational institutions must fully implement the CPC's educational policies and adhere to socialist approaches to their operation. They must also accept moral education and the cultivation of people as their fundamental task and be committed to grooming the builders and successors of socialism through their all-round development in morality, intelligence, physique, aesthetics, and labor skills.

In order to ensure that nongovernmental education continues to cater to public interests and that the approach to school operations is correct, the relevant documents emphasize that party building should be a major focus of private schools. Party leadership must be upheld and strengthened to ensure that private schools operate and educate people according to the party's requirements, and that the core values of socialism are practiced throughout the entire school education process. This was determined by the fundamental characteristics of a socialist system with Chinese characteristics. It is also a concrete manifestation of the political superiority of socialism with Chinese characteristics in regard to the control of nongovernmental education.

Managing negative lists and broadening the means by which social forces participate in operating schools

The state introduced several policies and directives to encourage the participation of social forces in the operation of schools. First, the *New Law on Non-Governmental Education* forbid the setting up of FPPS for the provision of compulsory education. Additionally, schools and other educational institutions established with financial funding and donated assets (including if these resources were involved in the setting up process) cannot be registered as for-profit organizations. However, organizers can independently decide whether their private schools are NPPS or FPPS. Second, the *State Council's 30 Articles* relaxed the criteria for the operation of schools by social forces, who were encouraged to enter the educational field to operate schools or invest in related construction projects through donations, capital contributions, investments, cooperation, and other methods. Third, financial institutions were encouraged to provide diversified financial services and

pledge loans for the establishment of private schools. Fourth, the public–private partnership model was promoted to encourage the directing of social capital toward the construction, operation, and management of educational infrastructure, as well as the provision of professional services. Finally, government-run and private schools were encouraged to purchase services from one another and even explore establishing vocational colleges and schools with mixed ownership (Dong, 2017).

Implementing preferential policies for private schools through categories based on the principle of being fair but different

The new laws and policies provided better policy support for NPPS in a number of aspects, including tax collection, use of campus land, and financial assistance. Meanwhile, many of the policies and regulations applicable to FPPS meet market characteristics (Dong, 2018a). These were manifested in the following ways:

- i. Corresponding tax deductions were given for charitable donations to education by corporations and individuals, while enterprises operating NPPS were exempted from income tax according to the regulations. Additionally, government-run and private schools were charged similar rates for electricity, water, gas, and heating.
- ii. Land for the setting up NPPS and FPPS was supplied by means of allocation and according to the corresponding state policies, respectively.
- iii. FPPS were exempted from fee control by the state, while NPPS could gradually implement market-adjusted fees through pilot points for market-oriented reform.
- iv. Governments at all levels were instructed to support the development of private schools by adopting various measures, including the purchasing of services, provision of student loans and scholarships, as well as the leasing or transfer of unused state-owned assets. They were also directed to support NPPS by providing government subsidies and incentives for raising funds and donations.

Supporting the development of private schools with the goal of improving education quality

The state also introduced policy measures intended to guide and support the development of private schools and their essential properties as part of a broader objective of improving education quality. These policy measures included the following three aspects.

First, guidance was provided so that all types of private schools could position themselves correctly. Schools were encouraged to run inclusive private kindergartens, as well as support the high-quality development and operation of elementary and middle schools based on their

respective characteristics. Vocational colleges were directed to promote further integration between production and teaching, as well as cooperation between schools and enterprises. The state also emphasized the need for private sector support for training and education in order to play an active role in the building of a learning society.

Second, private schools were urged to strengthen their teaching teams. This task was incorporated into the overall plan to establish the faculty of private schools, which were encouraged to set up supplementary endowment insurance for working faculty and staff, as well as improve the treatment of retired faculty and staff. Private schools were also allowed to independently recruit and hire teachers and other staff, as well as assess their teachers' professional and technical duties.

Third, private schools were given the authority to operate independently. Private colleges and vocational schools could establish their own specializations and courses, and select teaching materials. Private high schools and schools under the compulsory education program could also set up special courses and implement innovation in education and teaching. Finally, private schools could independently determine the scope, standards, and methods of enrollment providing they were within the schools' approved scale of operations.

Standardizing private schools' operating practices in order to promote healthy and orderly development

The state has also sought to standardize the operating practices of private schools in an effort to promote stable development. The *New Law on Non-Governmental Education* and related new policies have imposed strict regulations on the operating practices of private schools. First, the state sought to improve the corporate governance system of private schools with a focus on perfecting the charter. In addition to improving the decision-making mechanisms, the state encouraged the development of supervision mechanisms to ensure that school principals could independently exercise the right to manage their schools in accordance with the law. However, the law stipulates that family members and relatives of a school principal cannot be appointed to the school's key management positions.

Second, the state has encouraged the refinement of asset management and financial accounting systems. Legal property rights were granted to private schools in accordance with the law. The state has also directed that school fees are to be primarily used for education and teaching activities, improving the school's operating conditions, as well as ensuring the proper treatment of faculty and staff. Moreover, school operating funds cannot be transferred to other fund accounts except for those belonging to the school.

Third, the state has sought to improve the risk warning and intervention mechanism. This includes the establishment of a system for the public display of information and documenting cases involving a breach of faith so that illegally operated schools, their organizers, and the

individuals responsible can be duly blacklisted. Additionally, a comprehensive supervision mechanism linking multiple departments is being developed to enhance the ability to investigate and take action against illegally operated schools.

In addition to the aforementioned legal and policy provisions, the General Office of the State Council of the PRC printed and distributed *Opinions on Regulating the Development of After-school Training Organizations* in August 2018. In doing so, the state sought to reiterate that the defining attribute of education is that it serves the public interest, as well as enhance the stability of school operations. Related proposals include promoting a long-term mechanism for developing social training institutions catering to elementary and middle schools, exploring the establishment of negative lists and a joint supervision mechanism, and effectively addressing the issues posed by extracurricular burdens on elementary and middle school students.

In November 2018, the State Council of the PRC and the Central Committee of the CPC jointly issue *Several Opinions on Further Reforming the Development of Regulations for Preschool Education*. This document reflects several concerns, including the need to implement the management of private preschools by category within a stipulated deadline, curb excessive profit-seeking behaviors, manage preschools operating without license by category, and regulate the development of private preschools.

Moreover, *Regulations on Implementing the Law to Promote Non-Governmental Education*—which is currently being revised—was intended to introduce new provisions to specifically deal with several emergent issues. These include the control of domestic compulsory education by foreign capital under disguise, public schools participating in the operation of private schools, the implementation of enterprise-based school operations by multiple agents, as well as related transactional behaviors by various parties.

Predicting the impact of the new nongovernmental education policies on the development of industries

Looking ahead to 2035 or even 2050, several actions must be taken to ensure the successful realization of the ambitious goals envisioned in the policy document, *Chinese Education Modernization 2035*. These include increasing investments in fiscal education, accelerating the popularization of quality education at all levels and in all types, furthering the comprehensive reform of the school system, as well as encouraging and attracting more social forces to participate in operating schools (Dong, 2018b). The introduction and implementation of new laws and policies on nongovernmental education is predicted to have an extensive and far-reaching impact on the future development of such education in China. This section discusses these potential outcomes in greater detail.

The rapid development of NPPS due to government support

Various analyses have shown that further reform in the management of NPPS and FPPS by category can facilitate their development, particularly under the policy guidance of prioritizing the development of NPPS. Even faster development will be achieved once the various preferential policies—including government subsidies, purchasing of services by government, student loans, and incentives for raising funds and donations—are fully implemented. With the strong promotion of the new policies, all types of NPPS will be better equipped to realize their respective positioning and complementary developments.

In reality, a batch of private colleges—including West Lake University, Jilin International Studies University, Shanghai Sanda University, and Zhejiang Shuren University—have rapidly risen to prominence as a result of the support of their respective local governments. Founded through society's donations or contributors that did not seek returns, these colleges are the examples and benchmarks leading the development of China's nonprofit private colleges into the new era. With the continuous improvement of the legal system and regulations for nongovernmental education, any attempt to profit under the guise of being nonprofit will be subject to increasingly stringent regulations and face greater legal risks.

FPPS may face polarization in a fiercely competitive market environment

According to the relevant revised education laws, there is no longer any legal barrier to the provision of for-profit education in China beyond the compulsory education stage. Theoretically, and based on the premise of upholding the attribute of education provision as in the public's interest, FPPS can levy their own fees according to the law, have greater operational autonomy, and be able to operate flexibly and independently in order to achieve diversified investments and development with their own characteristics. However, given the fact that NPPS have received significantly more policy support, the government clearly has not prioritized the development of FPPS.

This lack of prioritization is compounded by the fact that FPPS are required to pay taxes in accordance with regulations and encounter fierce market competition. In the course of development, FPPS are likely to face further unfavorable circumstances, including higher operating costs, lower public recognition, and greater operational risks. Both theory and practice show that only those FPPS with strong characteristics, comparative advantages, and the ability to accurately meet the needs of the market (customers) will survive and develop. Meanwhile, homogenized for-profit educational institutions that are of low quality with high operating costs will eventually be eliminated from the market. In the short term, no breakthrough is expected for the development of FPPS in China due to various degrees of conceptual discrimination and institutional exclusion.

Heavy burden of categorizing and transferring existing stock of schools due to various historical and realistic constraints

Under the new laws and policies, each private school is granted a transition period (usually 3 to 5 years) by the local government, after which they must decide whether to categorize themselves as FPPS or NPPS. While the future development of nongovernmental education in China will not and cannot permit a “third path,”³ this state of affairs will prove a very thorny situation for local governments and the organizers of existing schools. First, there are currently more than 180,000 private schools, and implementing management by category will be an extremely huge undertaking. Indeed, this will involve a series of complicated tasks—including financial settlement, confirmation of rights over assets, tax payment, constitutional amendments, and changes of legal entities—which cannot possibly be completed over a short period of time.

To assuage the concerns of private school organizers, local governments must adopt a standardized approach in accordance with the state’s requirements, simplify the categorization and transfer process as much as possible, reduce related regulation fees, and lower various institutional transaction costs. At the same time, policy administration must be done according to the law, with private schools of different legal statuses treated fairly. There must also be full implementation of the various preferential policies under the law, as well as efforts to improve positive expectations for social forces to operate schools. It is only through such measures that the reform of managing private schools by category can be successfully implemented, realizing the sound and rapid development of nongovernmental education in China.

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Notes

1. This administrative regulation was revoked when the *Law of the PRC to Promote Non-Governmental Education* was promulgated on December 28, 2002.
2. According to the *Provisional Regulations on the Registration and Management of Private Non-Enterprise Units* issued by the State Council of the PRC in 1998, “a private non-enterprise unit is organized by an enterprise, institution, social organization, other social forces, or individual citizens using non-state assets and is engaged in non-profit social service activities.”
3. Pan et al. (2012) have proposed a third path for the development of private colleges. The first and second paths refer to those private colleges established through donations and for-profit private colleges,

respectively. The third path refers to private colleges established: (i) through investments, but for which returns are not expected; or (ii) with reasonable returns expected, but which remain non-profit.

References

- Dong, S. (2017, January 25). Learning and using the “new policies” to promote reform and development of nongovernmental education [in Chinese]. *People’s Political Consultative Daily* (10th ed.).
- Dong, S. (2018a). Mission and responsibilities of private schools under the new laws and policies, and the coping strategies [in Chinese]. *Journal of National Academy of Education Administration*, 249(9), 36–42.
- Dong, S. (2018b). Promising future for nongovernmental education with the modernization of education [in Chinese]. *China Education Daily*, 2018b-4-2, 12.
- Dong, S. (2019). Encouraging and supporting the development of for-profit private schools according to the law [in Chinese]. *Exploring Education Development*, 39(9), 3.
- Ministry of Education of the People’s Republic of China. (2019). *Understanding the State’s basic situation in education development in 2018 through numbers* [in Chinese]. http://www.moe.gov.cn/fbh/live/2019/50340/mtbd/201902/t20190227_371426.html
- NPC Homepage. (2002). *Law of the PRC to promote nongovernmental education* (passed at the 31st Meeting of the Standing Committee of the 9th NPC on December 28) [in Chinese]. http://www.npc.gov.cn/wxzl/wxzl/2002-12/30/content_304804.htm
- Pan, M., Wu, D., & Bie, D. (2012). A third path for developing private higher education in China [in Chinese]. *Journal of Higher Education*, 33(4), 1–8.
- State Council of the PRC. (1997). *Regulations on schools operated by social forces* (Order No. 226 dated July 31) [in Chinese]. <http://www.people.com.cn/zgrdxw/faguiku/jy/F44-1010.html>