

State Support for Private Schools: Money in Exchange for Commitments

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Abstract

This article examines the evolution of public funding of private education, as well as regulation of the issue in a new Federal Law “On Education in the Russian Federation”.

Keywords: privat schools, Federal Law “On Education in the Russian Federation”, public funding

The Constitution of the Russian Federation proclaims that every citizen has the right to an education and guarantees access to public education at state and municipal institutions and enterprises (article 43). This article also states that basic and general education is compulsory. However, the Constitution does not mandate that education be received exclusively at public or municipal educational institutions and does not prohibit the existence or state funding of private educational institutions. Although not explicitly stated, paragraph 5 of article 43 declares that the Russian Federation shall support various forms of education and self-education.

Article 55 of the Constitution contains an important caveat that the listing of the basic rights and liberties in the Constitution of the Russian Federation shall not be interpreted as the denial or belittlement of the other commonly recognized human and civil rights and liberties. Access to an education at a private educational institution can certainly be included in this list

Thus, the adoption of the Constitution of the Russian Federation 20 years ago set the stage for government-sanctioned education at private educational institutions.

In the “Law on Education” of 1992, a non-government institution is understood to be an educational institution created by an owner (citizen) and (or) legal entity (entities), with the exception of the Russian Federation, subject of the Russian Federation and municipal educational institutions (article 12, point 3).

We must note that the terms “private educational organization” and “non-government educational organization” have particular features according to Russian law.

Article 12 point 3 of the “Law on Education” states that non-government educational organizations can be “private or public institutions and religious organizations (associations)”. The term “private” is used when referring to legal entities (in particular, institutions as defined in article 120 of the Civil Code of the Russian Federation) founded by citizens or legal entities. Because social and religious organizations (associations) are considered legal entities when founding educational organizations, the educational institutions they establish are also considered private according to the Civil Code. Thus, the term “non-government” in the “Law on Education” is de facto synonymous with “private”, which is not entirely correct. According to article 12 of the Constitution, local self-governing bodies are not part

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of the system of government, and in this sense, municipal educational institutions established by local self-governing bodies are non-government institutions, but in no way can they be considered private.

This inaccuracy is resolved in the definition contained in paragraph 7 of article 22 of the new Federal Law “On Education in the Russian Federation”, which states that private educational organizations are educational organizations established in accordance with the legislation of the Russian Federation by an individual or individuals and (or) a legal entity, legal entities, or associations, with the exception of foreign religious organizations.

In this article, the term “non-government educational organization” is used only when referring to sources. This term will in fact imply that it is a private educational organization.

Thus, the only criterion for classifying an educational organization as private in Russia was and is the type of property, and this approach differs somewhat from global practice. As M.V. Smirnova rightly notes: “The source of financing and the type of property (individual ownership) are not the only indicators of whether an educational institution is designated public or private. In contrast to the Russian practice, public schools in foreign countries can be any form of property and even fully financed by the government or via grants and subsidies. The only difference between public and private schools is how they are managed”¹.

In the original version of the 1992 “Law on Education”, the government guaranteed reimbursement of costs for education at private, pay educational institutions with government accreditation that implement general and vocational education programs at a level defined by government regulations for spending on education of this type at state and municipal educational institutions (paragraph 4 of article 5). In other words, the government had to pay the same rate for educational services at private organizations as at state and municipal organizations.

70 In the version of the law amended in 1996, this is only the case for general education, meaning professional education is only available at the government’s expense if it is at public educational institutions.

Despite the legislative guarantee, the possibility to study at private educational institutions at the state’s expense throughout the entire life of this rule was nothing more than a declaration, as funds from the federal budget were not allocated, and there was no mechanism for exercising this right.

Nonetheless, in the period under consideration, funding of private educational institutions was stipulated in the legislation of separate subjects of the federation or municipal education. However, there was no common practice for this type of funding, and each region had its own individual qualities.

In Tver Region, for example, guidelines were approved that calculate financing for public educational institutions per student². The Saint Petersburg city budget allocates funds to pay monthly compensation to parents (legal representatives) of those who study at private general educational and special (correctional) institutions in the amount that it costs to educate a child at a corresponding level of education at a public educational institution³. In Ryazan, one private educational institution is partly financed from the city budget⁴. In Krasnodar, private general educational institutions are financed in part from budgeted payments for salaries to employees of general education institutions, as well as

- 1 Smirnova M.V. Legal regulation of private education in foreign legislation: private schools – *libera, non privata?* <<http://lexed.ru/pravo/theory/ezegod6/?14.html>> (link to the journal) // Russian educational legislation yearbook. – 2011. – V. 6. pp. 245-264.
- 2 Tver City Duma decision of 21.12.1999 # 186 “On the approval of financing norms for private general education institutions per student in 4Q09” // Vysa Tver – # 55 (December 24). – 1999.
- 3 Saint Petersburg Law of 05.10.1998 # 212-42 “On compensation for students at the private educational institutions of Saint Petersburg” // Legislative Assembly of Saint Petersburg Bulletin – # 12 of 16.12.98.
- 4 Resolution of the Administration of the city of Ryazan of 13.11.2000 #5800 “On the partial financing of private educational institution “School of Intensive Training and Development” // The document was not published. It was accessed via “Konsultant Plyus. Region”.

expenses for textbooks and teaching materials, technical training materials, supplies and household needs (excluding the cost of building maintenance and utilities, taken from local budgets)⁵.

In 2004, the part of the “Law on Education” about reimbursing citizens for the expense of studying at private educational institutions lapsed. Nevertheless, in Moscow, for example, a city government decree (16.08.2005 #619-PP) “On the approval of financial regulation of maintenance spending per student in general educational institutions in the Moscow Education System in 2006”⁶ provided financial norms for spending per student for private educational institutions that use government-accredited curriculum.

In 2011, access for private educational organizations to federal government financing was reopened. Provisions were added to the Law of Russian Federation “On Education” for admission quotas for citizens to study in professional education programs financed by the corresponding budgets of the Russian Federation’s budget system, with students being chosen on a competitive basis (article 42, point 2). This included public (municipal) and private educational organizations. Moreover, the recipient of public funds changed. While previously citizens received funds directly, as the government guaranteed compensation for the cost of education, private educational institutions now receive funds for fulfilling a state (municipal) task.

However, private educational organizations currently operating in the absence of government support function on the principles of self-sufficiency and only meet the demand of the share of the population that is willing to pay for education without state financial aid.

This is evident in the available statistical data. For example, based on data from the Russian State Statistics Service, the total number of private general educational institutions as of end 2011 was 687, while the total number of public and municipal general educational institutions was 46,459⁷.

At the beginning of 2012, there were 260 private secondary professional educational institutions, versus 2,665 public and municipal institutions⁸.

However, among institutions of higher learning, private institutions account for 41% of the total number (as of the beginning of 2012, there were 446 private and 634 public and municipal universities)⁹.

The biggest rush for state financing is in the area of professional education. From the moment that the admission quotas for institutions of higher learning and organizations that implement secondary professional education were set by the Education and Science Ministry of the Russian Federation on a competitive basis for private educational organizations, the latter began to actively take part.

In 2012, “after evaluating and comparing bids for participation in the competition, admissions quotas were set for 313 public universities and 54 private universities”. It turned out that it was more profitable for private educational institutions to receive state financing than it was to offer paid education.

5 Resolution of the administration of Moscow Region, city of Krasnodar of 17.12.2009 # 4855 “On the approval of subsidies from the local budget (municipal education budget of the city of Krasnodar) to private general educational organizations, boarding schools, pre-schools and nursery schools (when basic curriculum is implemented) that have state accreditation, from the local budget (municipal education budget of the city of Krasnodar) at the expense of the regional budget subsidies for guaranteeing basic education programs in terms of funding employee salaries and the cost of textbooks, teaching materials, supplies and household needs (excluding the cost of building maintenance and utilities)” // *Krasnoyarskiye Izvestiya*. – # 227 of 24.12.2009.

6 Resolution of the government of Moscow of 18.09.2005 #619-PP) “On the approval of financial regulation of maintenance spending per student in general educational institutions in the Moscow Education System in 2006” // *Moscow Mayor and Government Bulletin*. – #50 of 07.09.2012.

7 Russian Statistical Yearbook. 2012. P. 223 <http://www.gks.ru/wps/wcm/connect/rosstat/rosstatsite/main/publishing/catalog/statisticCollections/doc_1135087342078>

8 Ibid pp. 236-237.

9 Ibid. p. 247.

For example, the Law Institute of MskUniversity at the moment of this article's publication offered admission to the daytime higher education program at a cost of R3,300 per month¹⁰. The regulated cost of implementing an educational program in the law department was set by the Education and Science Ministry of the Russian Federation at R60,200 per year for a bachelor's degree and R70,600 per year for a master's degree in the 2012-2013 academic year¹¹. The government obviously pays educational organizations much more per student.

Comparing the cost of education at private universities and government-regulated financing, along with the number of universities that have received admissions quotas illustrates these private institutions' competitiveness on the one hand, and their interest in receiving state financing on the other.

Students are also interested in studying at private institutions of higher learning, as their legal status does not depend on the form of ownership of the school, whether it received an admissions quota, or where they study (public/municipal or private). For example, based on the new Federal Law "On education in Russian Federation", the organizations providing education services that are budget-financed provide students with stipends, housing in dormitories and internet and take other measures of support (paragraph 8 of article 34).

Another reason for state funding of private education is the fact that the existing network of public and municipal institutions is not always able to ensure the right to education to the full extent and in the format desired by the consumer.

This is especially true of pre-schools. Despite the fact that pre-school education is not required in Russia, nursery school services are in relatively strong demand. State Statistics Service data show that there were 2,247,900,000 children in need of pre-school educational institutions in the beginning of 2012¹².

72 Construction of new nursery schools requires significant investments from the government, which is not always possible to receive quickly.

In the new Federal Law "On Education in the Russian Federation" (point 6, paragraph 1, article 8) states that financial support received by pre-school and general education at private educational organizations is relegated to the competence of the government authorities of subjects of the Russian Federation in the sphere of education. The conditions of access to state financing set out in this article include the implementation of educational activities in existing state-accredited basic curriculum, with the exception of pre-school education, as pre-school education programs are not accredited. Financing activities are carried out via subsidies to reimburse costs, including expenses for labor, textbooks and teaching materials, learning tools, games, toys (excluding expenses on building maintenance and utilities payments), in accordance with the standards established for public and municipal institutions.

It is worth noting that costs for building maintenance and communal services at municipal institutions are also relegated to the full power of government authorities of subjects of the Russian Federation, and are covered by the owner, i.e. the relevant municipal educational institution.

Also, according to this article, bodies of state power of the subjects of the Russian Federation have the right to additional financial support for events for arranging the feeding of students at municipal educational institutions and those at private general educational organizations based on the above conditions.

10 Law Institute < <http://1994.ru/ui/dnev>>

11 "Regulatory costs of implementing basic professional education programs of higher learning (bachelor's, specialist training, master's) in majors per unit of government service for enrollment in the 2012/2013 academic year" (approved by the Education and Science Ministry of the Russian Federation on 29.03.2012 # IB-50/02vn) // The document was not published. It was accessed via "Konsultant Plyus".

12 Russian Statistical Yearbook. 2012. p. 219 < http://www.gks.ru/wps/wcm/connect/rosstat/rosstatsite/main/publishing/catalog/statisticCollections/doc_1135087342078>

The actual return to the norms of 20 years ago can be seen in paragraph five of article 99 of the Federal Law “On Education in the Russian Federation”, which provide the ability to allocate subsidies and reimbursement of expenses of private organizations that provide educational services in professional education programs financed by the federal budget, budget of subjects of the Russian Federation and local budgets. Similarly to general educational, these subsidies are calculated taking into account regulated expenses for providing the appropriate public or municipal services in the sphere of education.

Thus, the new legislation on education gives private educational organizations the right to be reimbursed for the cost of providing educational services from the relevant budget.

In the sphere of professional education, the initiative for obtaining these funds lies entirely with private educational institutions that decide to take part in the competition for admissions quotas.

The circumstances are different in the sphere of general education. The Federal Law “On Education in the Russian Federation” does not stipulate a method for distributing funds from the relevant budget to cover the expenses of private educational organizations in the sphere of general education, or the adoption of this method at the federal level. This question is now decided at the level of the relevant budget holder (subject of the Russian Federation or municipal education). As such, there is no such practice.

In Moscow, for example, the city government approved the resolution of 18.09.2012 #489-PP “On approval of subsidies from the Moscow city budget for private educational organizations with the goal of reimbursing costs for providing citizens pre-school education”¹³.

The established procedure involves submitting applications to the Department of Education of the City of Moscow, which forms a branch commission to review the applications. The commission decides whether or not to grant subsidies. However, there are no defined criteria on which its decisions are based. This essentially means that the commission makes a decision at its own discretion, which causes some concern.

For both professional and general education, when a private organization receives budget funds, it must follow the rules established for public (municipal) organizations. As noted above, there is no real difference for students between attending a private or public (municipal) educational institution.

Despite the logical coherence and validity of current legislation, problems can often occur in practice.

This most often concerns the principle of free services at private educational organizations where the lion’s share of expenses is compensated by the state for the consumers of these services. The Federal Law “On Education in the Russian Federation” prohibits private educational organizations from accepting money for services that they offer if the cost of these services is reimbursed by the government. In these cases, the funds received by organizations for providing educational activities must return the money to these people (article 101, paragraph 2). However, according to paragraph 3 of this article, private educational organizations have the right to offer additional educational services for pay apart from those being paid for by the state.

As previously mentioned, financial support *de facto* covers all expenses directly related to providing educational services. However, the cost of maintaining the building and utilities payments must fall to the private educational organization itself, which must find a way to pay for them. They do so using the following methods:

13 Resolution of the government of Moscow of 18.09.2012 # 489-PP “On the approval of subsidies from the Moscow city budget for private educational organizations to compensate for the cost of providing pre-school education” // Moscow Mayor and Government Bulletin. – #54 of 29.09.2012.

- Thanks to the more efficient use of budget funds that they receive, which likely has a negative impact on the quality of teaching, as the only areas where they can cut back is on teacher salaries, textbooks and equipment.
- Using their own funds, or those of their founders (sponsors); in other words, not from their consumers.
- By providing additional pay services, or charging fees for other types of “extortion”.

Obviously, the latter method is not covered by budget subsidies and is illegal, but recent court cases show that this is taking place at public and municipal educational institutions.

For example, during an inspection of public secondary educational institution Yuzhnouralsk Energetics Technical School, it was uncovered parents of students had signed contracts that violated consumer rights. It was discovered that, in accordance with point 3.3 of contracts for providing educational services, parents of students whose tuition was paid by the government were required upon their children’s admission to transfer to the school’s account an amount of money set by the School Board for the entire period of enrollment¹⁴.

There was another case at Saint Petersburg University of the Humanities and Social Studies, where contracts for paid educational services required enrollees to subscribe to and study the “Ochen UM” university magazine and to hold a Visa Electron bank card¹⁵.

All of this leads us to several conclusions:

1. In the Russian Federation, the rights of citizens studying at public and municipal, as well as private, educational organizations are protected. Private educational organizations are those that are established in accordance with the law of the Russian Federation by an individual or individuals and (or) a legal entity, entities or associations, with the exception of foreign religious organizations (paragraph 7 of article 22 of the Federal Law “On Education in the Russian Federation”). The choice of private educational organizations to be reimbursed for providing services using budget funds nevertheless rests with the state, not with the consumer. This means that the guarantee to study in a the private education system is not available at any organization, but only those that win a competition (for professional education), or have been chosen by an authorized body.
2. The relationship between students and educational organizations that receive budget funds does not depend on the type of ownership (public/municipal or private), but on the source of funding of educational services. Private organizations providing educational services using budget funds must provide free and universal access to general education, or on a competitive basis for profession education.
3. There is a single legal status for students. From a legal standpoint, there is no difference if a student is enrolled in a private or public (municipal) educational institution.

Thus, the country has the legal conditions to expand citizens’ freedom of choice among educational services paid for from the relevant budget as part of the state’s guarantee of access to free education.

However, there are risks in practice related to the integrity of private educational organizations that make it necessary for the state to exercise some control.

14 Resolution of the Eighteenth Arbitration Court of Appeals of 12.11.2008 #18AP-6701/2007 in the case #A76-9317/2008 // The document has not been published. It was accessed via “Konsultant Plyus”.

15 Resolution of the Thirteenth Arbitration Court of Appeals of 18.09.2009 in the case #A56-26034/2009 // The document was not published. It was accessed via “Konsultant Plyus”.