

Suggestions Regarding the Prevention of Legal Risks in Schools during the Novel Coronavirus Epidemic

The outbreak of the novel coronavirus (2019-nCoV, hereafter referred to as “coronavirus” or “epidemic”) has substantially affected all walks of life. Schools, kindergartens and training institutions at all levels (collectively, the “schools”) have requested students to delay their return to school, with some even providing online sessions in place of face-to-face courses among other preventive actions taken. To provide schools with advice on types of legal risks present during and after the coronavirus epidemic and how to mitigate them, we have prepared this article. It includes three parts: (i) relevant legislation relating to schools’ measures in response to the epidemic; (ii) an introduction of local policies promulgated to guide schools’ response to the epidemic and their administrative measures; and (iii) advice to schools regarding their epidemic response. Please note that as the full article exceeds the word limit imposed for our WeChat subscription, we have extracted a summary from the full article below. For the full-text, please click “Read More” at the end of this summary.

I. Relevant Legislation Relating to Schools’ Measures in Response to the Epidemic

Relevant Legislation for Schools to Respond to Public Health Emergencies

In accordance with the Emergency Response Law (《中华人民共和国突发事件应对法》), the Law

on Prevention and Treatment of Infectious Diseases (《中华人民共和国传染病防治法》), the Emergency Regulations on Public Health Emergencies (《突发公共卫生事件应急条例》), the Regulations on the Management of the Emergency Response Plan (《突发事件应急预案管理办法》), the Public Health Emergency Response Preplans for the Education Sector (《教育系统公共卫生类突发事件应急预案》), and other laws and regulations pertaining to schools’ response to public health emergencies, schools are obligated to fulfill certain statutory duties. These include preparing public health emergency plans, carrying out information reporting duties and announcements, putting in place infectious disease prevention and forewarning systems, taking emergency responsive actions, taking aftercare and recovery actions, improving emergency support and daily education and training in relation to public health emergencies.

(I) Legal Liability for Schools’ Failure to Respond to Public Health Emergencies

1. Legal Liability for Failure to Perform Information Reporting Duties

✧ In accordance with Article 20 and Article 51 of the *Emergency Regulations on Public Health Emergencies*, if a school fails to perform its duty to report such emergency to the

competent health commission, withholds or delays the above reporting or otherwise delivers a misstated report in respect of such emergency within two hours of the occurrence of that emergency, the responsible person(s) of the school would be subject to administrative penalties or disciplinary sanctions; if a criminal offense is found, such person(s) would be held criminally liable.

2. Legal Liability for Failure to Take Preventive and Control Measures

✧ In accordance with Article 64 of the *Emergency Response Law*, if a school's failure to take preventive actions, to timely eliminate potential dangers which may cause emergencies, or to provide routine maintenance and tests for emergency response equipment and facilities have resulted in any material emergency or has furthered such emergency, or the school's failure to promptly organize or provide rescue upon an emergency has caused a serious consequence, the school would receive orders for the suspension of production and business, suspension or revocation of its permits or business license along with a penalty with a fine.

✧ Pursuant to Article 66 of the *Implementing Regulations for the Law on Prevention and Treatment of Infectious Diseases* (《中华人民共和国传染病防治法实施办法》), if a school, after discovering that there is an infected or allegedly infected person with the coronavirus in the school, fails to take necessary sanitization procedures as required by the competent health and epidemic prevention bureau, or allows or plans for such person to continue to be deployed at a position if such position may advance the spread of the infectious disease, the competent authority should issue an order to the school for a rectification within a specified time period along with a fine. If the case involves serious

circumstances, the competent authority should impose administrative sanctions on the responsible officers and any person directly liable for the wrong. If it causes the spread of a Class A infectious disease or if there is a serious risk of a spread, the relevant person may be prosecuted for the crime of obstructing the prevention of infectious diseases as stipulated under Article 330 of the *Criminal Law*.

✧ Article 4 of the *Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Dealing with Criminal Cases in Relation to the Obstruction of the Prevention and Control of Epidemic Emergency and Other Disasters* (《最高人民法院、最高人民检察院关于办理妨害预防、控制突发传染病疫情等灾害的刑事案件具体应用法律若干问题的解释》) (the "Interpretations on the Application of Law in Criminal Cases") and Article 168 of the *Criminal Law* states that if any staff of a public school is held to have been grossly negligent or have abused his or her power and authority during the prevention and control of an epidemic emergency or any other disaster, and if that had materially damaged the national interest, the staff would either be prosecuted for the crime of negligence by staff of state-owned companies, enterprises and public-sector organizations or the crime of abuse of power and authority by staff of state-owned companies, enterprises and public-sector organizations.

3. Legal Liability for Spreading Rumors or Delivery of Misstated Reports Regarding the Epidemic

✧ Pursuant to Article 52 of the *Emergency Regulations on Public Health Emergencies*, Article 25 of the *Law of the People's Republic of China on Penalties for Public Security Administration* (《中华人民共和国治安管理处罚法》), Article 10 of the

Interpretations on the Application of Law in Criminal Cases, and paragraph 1 of Article 291, Article 103 and Article 105 of the *Criminal Law*, a person that has spread rumors or delivered a misstated report in respect of an epidemic would be detained for five to ten days and fined with a penalty of no more than RMB 500. In cases where such rumors or misstatements only result in minor consequences, such a person would either be detained for less than five days or fined with a penalty of no more than RMB 500. However, if a person fabricated information relating to any epidemic emergency or other disaster or willfully disseminated such information while knowing that it is fabricated, and such fabrication or willful dissemination materially disturbed social order, then such person would be charged for the crime of fabrication of information and willful dissemination of fabricated information. Moreover, where a person, by fabricating and/or disseminating rumors in connection with an epidemic emergency, instigates a secession to undermine the unity of China or a subversion to overturn the socialist system in China, he/she will be prosecuted for the crime of instigation of secession or the crime of instigation of subversion.

4. Legal Liability in Connection with School Bus Management

✧ Article 14 of the *Regulations on Domestic Transportation Health Quarantine* (《国内交通卫生检疫条例》) and Article 48 of the *Implementing Plan for the Regulations on Domestic Transportation Health Quarantine* (《国内交通卫生检疫条例实施方案》) state that if a patient of an infectious disease that can be quarantined, a pathogen carrier or a suspected patient of an infectious disease that can be quarantined is found on an operating school bus in any infected area other than an already quarantined infected, and the person responsible for the bus fails to take action in

accordance with these regulations and this implementing plan, he or she would receive a warning, be ordered to rectify such an error within a specified time period, and be fined with a penalty.

5. Legal Liability for Obstructing the Exercise of Official Functions

✧ In accordance with Article 50 of the *Law on Penalties for Public Security Administration* and Article 70 of the *Implementing Regulations for the Law on Prevention and Treatment of Infectious Diseases*, if a school or any person impairs the implementation of, or refuses to implement emergency measures required by the government, or otherwise unreasonably obstructs and intercepts any vehicle or person responsible for dealing with an epidemic, the school would receive a warning and the responsible officers, as well as any person directly liable for the school, legal would be subject to an administrative sanction. In cases that result in serious circumstances, the relevant persons would be detained and fined with a penalty.

II. Relevant Policies of Major Provinces on Epidemic Prevention and Control on Campus

In order to effectively prevent, control and eliminate the coronavirus, and protect the health and safety of teachers and students, the education authorities of provinces, autonomous regions, and cities under the direct control of the central government have recently promulgated policies on the prevention and control of epidemics on campuses in accordance with the latest requirements of the Ministry of Education. As there are similarities across those policies, we have summarized relevant local policies as of February 2, 2020 of 21 provinces, autonomous regions and cities under the direct control of the central government for your

reference. We have also noted that relatively special measures of prevention and control have been taken by Beijing, Guangdong, Henan, Shanxi and some other provinces and cities. However, we have chosen not elaborate on them here in detail due to word limit constraints. Please click “Read More” at the end of this summary for the full article.

III. Our Suggestions on Schools’ Responses to Public Health Emergencies

(I) Before Resuming School Term

1. Establishing Public Health Emergency Response Committees

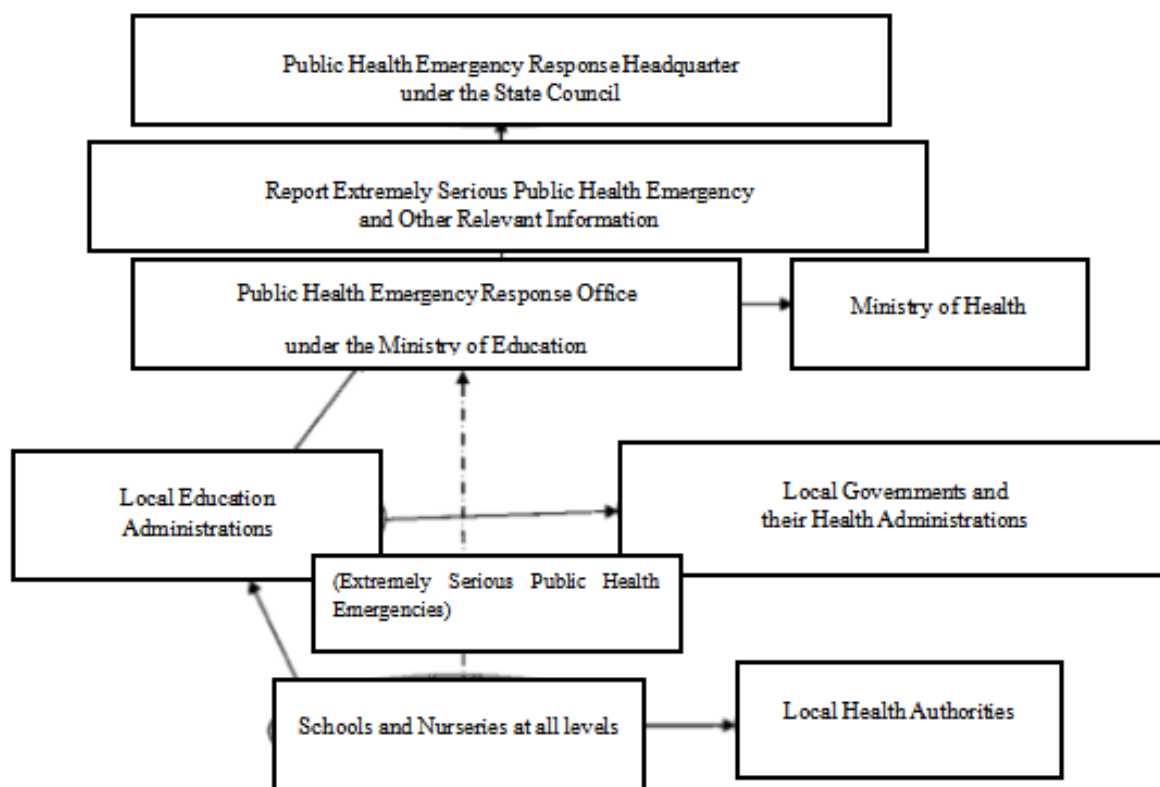
Prior to students return to school, we suggest that schools establish public health emergency response committees composed of officials who would be responsible for the implementation of emergency responses in the case of any public health incidents. Their main duties and responsibilities include formulating the school’s public health emergency response plans in accordance with the law, establishing and improving the school systems to assign responsibility for public health emergencies. Under this system, chief officials would be responsible for the overall control of the incident while respective schoolmasters would be responsible for specific duties depending on which assigned to specific departments and individuals, designating information reporters of public health incidents, implementing specific duties of response to and dealing with public health incidents, cooperating with the health administrations in identifying causes of such incidents; and promptly reporting the latest development and dealing with public health emergency to the competent education and health administrations and other relevant authorities.

2. Improving Information Reporting Systems

Schools should build sound information communication channels and a strict information reporting mechanism, as well as improve the emergency information systems with the following features: (i) fast reporting, meaning that schools should report emergencies to local health and other administrations without any delay (i.e. within two hours); (ii) accuracy, meaning that information should be reported accurately and precisely, with no subjective assumptions and no omitted, hidden or misstated facts; (ii) direct reporting, meaning that any Grade I (extremely serious) incidents should be reported directly to the Ministry of Education; and (iv) any subsequent change in such emergencies should be reported promptly.

3. Getting Familiar with the Information Disclosure Procedures

In accordance with the *Emergency Regulations to Public Health Emergencies*, the information of a national public health emergency should be disclosed to the public by the health administrative department under the State Council; and the information of a local public health emergency should be disclosed to the public by the health administrative department under the provincial government, autonomous region or city under direct control of the central government that has competent jurisdiction over the locality as authorized by the health administrative department under the State Council. The education authorities should not disclose any information about a public health emergency to the public. Information on public health emergencies should be reported according to the following flowchart:



4. Establishing Prevention and Early Warning Mechanisms

Schools should establish and improve the accountability system for health and epidemic prevention and food safety, with each of the specific duties assigned to specific departments and individuals. Schools should also provide regular training for teachers and students about health and epidemic prevention and food safety, as well as public health emergency prevention and response procedures so that teachers and students would have a better understanding of the procedures involved and be better able to protect themselves in those situations. Schools should also establish and improve the communications systems between their departments and personnel, between schools and parents, and among schools, local medical institutions or education administrations, in order to effectively collect, report and communicate information. Moreover, schools

should establish a system to interact with the health administrative departments in order to promptly collect information about public health emergencies occurring within the locality and to then analyze and alert the school on any circumstances that may trigger a school public health emergency (infectious disease).

5. Completing Safeguards for Emergency Responses

Schools should prepare and procure information communications, sufficient supplies, and resources (especially for primary or secondary boarding schools where equipment and facilities for response to public health emergency, such as quarantine sites, UV lights, etc. should be built), sterilizers and drugs in order to properly respond to and handle public health emergencies. Due to a serious lack of masks, sterilizers and other supplies nationwide, boarding schools are under greater pressure to prepare for emergency responses required by

law. This is what boarding schools should focus on while preparing for their students' return to school.

6. Adjusting Teachers' Working and Teaching Conduct

Schools that postpone their school term due to an epidemic outbreak should carry out the required epidemic control preparations before resuming its term. To cope with labor shortages, schools should try to persuade their staff to handle school-related affairs before the school term from home. Teachers can also consider online teaching which would not only enable teachers to make full use of their time at home but also allow the teaching schedule to continue without delays. However, it should be noted that online teaching services should comply with relevant laws and regulations. Therefore, schools should pay attention to employment issues of their teachers and relevant laws and regulations promulgated by the education authorities with respect to online teaching.

7. Negotiating for Reduction or Exemption of Rental Fees for Leased Premises

Schools operating in leased premises are expressly ordered by local governments to postpone their school term. Regarding this, the law does not explicitly state whether schools can ask from their landlords for a reduction or exemption of rental fees for the period in which such leased premises are not used due to the coronavirus outbreak on the grounds of force majeure, and there have been disagreements about this in the judiciary. However, by reference to similar judicial cases that occurred during the SARS outbreak, most of the courts held that rental fees should be reduced or exempted during such period with the amount to be reduced or exempted to be determined on a case by case basis. We think that requests for a

reduction or exemption of rental fees on the grounds of force majeure should at least rely on the satisfaction of the following conditions: (i) the parties to the lease were unable to or could not foresee the seriousness of the epidemic when they entered into the lease; (ii) the postponement of the school term is pursuant to administrative measures issued by government and is thus unavoidable; (iii) the reduction or exemption of rental fees requested by schools should only be attributable to the period in which they failed to use the leased premises due to the epidemic. If all the above conditions are satisfied, we then suggest schools to review the relevant force majeure provisions in their lease contracts to identify the contractual basis for their requests for reduction or exemption of rental fees. After that, schools should proactively and promptly consult with their landlords for the reduction, exemption or adjustment of rental fees for the period during which the leased premises cannot be used due to the epidemic. If both parties cannot reach an agreement, schools are advised to pay for the full agreed amount of rental fees and keep the relevant payment vouchers as evidence for future claims. Schools should also closely follow the promulgation of relevant policies at the state and local levels.

(II) During the School Resumption and Orientation Period

1. Strengthening Public Security Management

During the orientation period, schools should not only maintain crowd order but also strengthen the health protection in schools during the epidemic in accordance with local policies. In order to prevent major security incidents caused by the spread of the infectious disease during the orientation period, schools may consider requiring all persons entering their campus to wear masks. The school should also set up prominent and clear notices to remind

people to wear masks at the campus entrances, discourage anyone entering the campus without wearing a mask or even provide those people with masks. Without affecting the crowd order, schools may also consider taking a temperature check of those entering into their campus. Persons identified with a fever should be advised to go to a hospital for examination and treatment. In addition, ventilation should be maintained in crowded places, cleaning and disinfection of school buildings and equipment should be strengthened.

2. Crowd Control and Maintain Flow of Students during Orientation

To reduce the risk of spread of the coronavirus during orientation, facilitate school management and control order on-site, we recommend that schools consider assigning different orientation periods to different classes. This would allow for good crowd control and maintain the flow of students during orientation.

(III) After Resumption of the School Term

1. Taking Emergency Response Measures (for Infectious Diseases)

✧ Frequently open windows in classrooms, dormitories, and other places where there is a high concentration of people to ensure effective indoor ventilation (mainly for respiratory infectious diseases);

✧ Suspend the organization of large group events in indoor areas (mainly for respiratory infections);

✧ Establish morning and afternoon inspections daily, register teachers and students who are absent, ascertain reasons for their absence, and advise teachers and students with infectious disease to ensure they timely seek medical treatment, stay home for medical observation and take leave. Schools should

also record and track teachers and students who are sick to understand the outcome of the diseases;

✧ Pay close attention to the development of the infectious diseases outbreak. If necessary, after the local health administrative department organizes experts to carry out an epidemic risk assessment, a school may report to the local education administrative department and, with approval of the people's government, take special measures such as temporary suspensions of the school;

✧ If one is identified with the infectious disease in a school, he or she should be timely quarantined and sent to the hospital for treatment. The school should assist the health department to thoroughly disinfect the place where the patient was located; follow up with the persons including classmates and teachers who were contacted by the patient, and cooperate with the local government or health administrative department to take necessary quarantine and observation measures;

✧ Contact parents and relatives of the sick students (especially primary and secondary school students or those with severe diseases), report their situation, ease their anxiety and relieve their stress;

✧ Seriously implement other emergency measures as required by the health administrative department of the local government;

✧ Report problems that cannot be solved by the school in a timely manner, and seek for the support and assistance of the competent education department, local government and health administrative department;

✧ Report public health incidents and the measures taken to an appropriate group of staff in the school, relieve the stress of teachers and

students, as well as carry out corresponding health programs and training among teachers and students to improve their awareness of prevention and self-protection methods.

2. Aftercare and Recovery

After the public health emergency response is completed, the focus of schools should be immediately turned to aftercare and recovery activities to resume the normal operation of the school as soon as possible. In cases where there was a suspension of school due to the outbreak, classes, reading rooms, canteens, toilets and other places must be thoroughly cleaned and disinfected before resuming use. Students who are temporarily suspended from school due to the infectious disease should not return the school unless they have been cured, have been determined by the competent health department to be no longer contagious and can produce a valid hospital discharge certificate. Relevant issues reflected by the public health emergency, potential health problems, and problems suggested by competent departments should be rectified.

3. Correctly Handling Employment Relations

If any of the school's staff is unable to come to work due to medical treatment, observation, the implementation of quarantine measures or other emergency measures taken by the government, the school should pay such employees remuneration during such periods without terminating their labor contracts with such employees pursuant to the *Labor Contract Law*. If the school's labor contract with such employees expires during such a period, its term should be extended to resume at the end of the employee's medical period, medical observation period, quarantine period, or when the emergency measures taken by the government have been completed, as the case may be.

For related policies and FAQs about school labor relations during the coronavirus prevention and control period, please refer to the "Novel Coronavirus Special Issue (I)" (https://mp.weixin.qq.com/s/mYQuNjf_WTnxsMjL6HFxLA) and the "Novel Coronavirus Special Issue (II)" (<https://mp.weixin.qq.com/s/BMiw98z91FDCsYxdzpUbUg>) on JUNHE Legal Updates.

4. Strengthening School Bus Management

Schools that provide school bus service should establish a school bus management system during the epidemic prevention and control period as well as provide training to drivers and teachers on school buses. If anyone is found with any infectious disease during the operation of the school buses, drivers and teachers should promptly: (1) notify the people at the next stop and report the incident to the competent department or entity in charge of the vehicle's operation; (2) quarantine the patient with the infectious disease and his or her closely contacted persons; (3) block the areas that have been contaminated or are likely to be contaminated; (4) stop the bus at a designated location; (5) at the designated location, deliver a list of names including the patient with the infectious disease, his or her close contacted persons and other passengers requiring follow-up observation to the designated medical institution; and (6) disinfect the school bus.

5. Strengthening Dormitory Management

In order to ensure public health safety, we recommend that schools should decide whether to provide dormitory services in view of the local policies during the epidemic prevention and control period. If the school provides dormitory services, it should establish a dormitory management system during the epidemic prevention and control period. Each class

should arrange one or more responsible persons of inspection to track and inspect the health of the persons in the dormitories daily. If any person is suspected to be infected with an infectious disease, the responsible person should timely report the incident to the school and the local health administrative department, quarantine the patient and the closely contacted persons, and maintain the on-site order to avoid panic or major security incidents.

Last but not the least, we would remind schools that records should be kept for all measures they have taken for epidemic prevention and control, including written materials, electronic data and audiovisual materials. According to the “Several Provisions of the Supreme People’s Court on Evidence in Civil Proceedings (2019 Amendment)” (《最高人民法院关于民事诉讼证据的若干规定（2019 修正）》) (Legal Interpretation [2019] No. 19, effective on May 1, 2020), electronic data includes information released on the school’s official website, WeChat subscriptions and other

online platforms, as well as information communicated on network application services such as SMS, email, WeChat group, QQ group, etc.; audiovisual materials include recordings, videos, etc. It should also be noted that original copies should be kept for written materials, and original carriers should be kept for electronic data and audiovisual materials.

“How shall it be said that you have no clothes?”

I will share my long robe with you.

The king is raising troops.

I will prepare my lance and spear.”

During the outbreak of an epidemic, we will always stand together with you and your schools to overcome the difficulties in a spirit of unity. We wish you all peace and health.

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