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LEGAL PROBLEMS OF DISTANCE EDUCATION: RUSSIAN AND
FOREIGN VIEWS

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Abstract

Even the most conservative teachers and educational institutions were forced to accept the harsh reality and begin distance learning using modern technologies. Training takes place not only in electronic form, but also in real time (online). The Russian legislation, despite the fact that it has long provided for the use of remote technologies and e-learning, does not provide a clear understanding of the difference in these concepts. The article analyzes the concepts of distance, electronic and online education, proposes definitions and their relationship. Distance education (education) should be understood as the way of obtaining education, in which there are no training sessions conducted by direct interaction of the teacher with the student in the audience. Electronic education (learning) refers to the method of obtaining education through electronic means: computer technology, networks, software, etc. Online education (learning) is a way of obtaining education by interacting a teacher with a student in real time using electronic means. The main problem of distance learning in all its manifestations remains the irrelevance of the student. Teachers should be able to record an online exam, seminar or any other stage of training without obtaining the consent of the student, so that in case of controversial situations they can again evaluate the answer and check for signs of non-independent response. Distance education is a promising area in subsequent years, and the spread of coronavirus infection prompted it to develop rapidly. For e-education to become truly high-quality, adequate state support is needed, including at the legislative level.

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1. Introduction

The idea of e-learning is far from new, but special attention was paid to it with the spread of coronavirus COVID-2019. Lockdowns in all states of the world have led to the need to continue the work of educational institutions in a new format for many - online (remotely). The confusion and lack of readiness of both technical and psychological teachers, teachers and educational institutions for the new conditions has slowly changed to more or less tuned online work in pandemic conditions. It is difficult to say how long students and students will have to be without lively communication with the teaching staff, but it is already clear that to some extent online learning will continue to function after the pandemic. And if earlier they talked about online education most often with a commercial bias and considered it as business projects, now it has become a banal necessity for most educational organizations around the world. Online and distance education (training) with the development of Internet technologies are not synonymous, and each of them represents an independent form of training. These concepts can be intertwined and used to a greater or lesser extent by an educational organization, but each has its own essential characteristics. Currently, there is no concept of online education in the legislation of the Russian Federation, but the definition of e-learning and distance education technologies is given in Art. 16 of the Federal Law of 29.12.2012 No. 273- FZ "On education in the Russian Federation" (hereinafter referred to as FZ-273). Meanwhile, the relationship of the above concepts, as well as the possibility and scope of applying electronic and distance learning methods to different forms of training, is not fully clear.

2. Problem Statement

To formulate the issues of online education, you need to refer to the historical background and give a brief description of the most significant events in the light of the development of distance learning in the world. Secondly, it is necessary to analyze the current legislation of the Russian Federation with regard to the concepts of forms and methods of training. Such an analysis would not be complete without the experience of foreign countries. Having identified the range of online learning problems, it is possible to propose ways to solve them. Thirdly, key concepts of e-education need to be formulated. This will make it possible to define clear boundaries for education. Solving these problems will allow to achieve the goal of the study.

3. Research Questions

What significant events have occurred in the world and are associated with education remotely or electronically? What form of education was offered online (distance)? What problems are more common with online training? How can they be addressed? What characteristics can be identified in the order of education to attribute it to one form or another? Should online education be referred to as a form or method of education? How is it necessary to change the legislation of the Russian Federation to reflect the real situation in education? Is the teacher entitled to make an online recording of the training process?

4. Purpose of the Study

The purpose of this study is to conclude that it is necessary to change the current legislation of the Russian Federation on education in connection with the pandemic. Despite promising research and development of coronavirus vaccines, it will still take a long time to normalize life. This justifies the need to bring domestic legislation into line with real conditions. The main problem of distance learning in all its manifestations remains the irrelevance of the student. Mechanisms such as reading auxiliary material from the computer screen or from a second technical tool are available to the trainee. When developing changes to regulatory legal acts, it is necessary to take into account the experience of foreign countries in which there are already legal developments in the field of online training.

5. Research Methods

When writing the present study, a set of methods was used. The methods of research were analysis of theoretical sources and regulatory sources, comparison, synthesis, analysis of documents, modeling. Using the historical and legal method, the appearance and development of online education in Russia and abroad was analyzed. The formal legal method was used to analyze legal concepts, identify their features, classify, interpret the content of legal requirements. Using the comparative legal method, one-order legal concepts, phenomena, processes were compared and similarities and differences were clarified between them. Linguistic methods were used to analyze literature in foreign languages. In preparing this study, both the legislation of the Russian Federation and foreign countries and legal literature on the topic of work were studied.

6. Findings

Article 5 FZ -273 provides that the right of everyone to education is guaranteed in the Russian Federation. From this it follows that after enrolling a student in an educational organization and fulfilling her duties to her, she is obliged to establish an educational process regardless of aggravating circumstances. It is absolutely clear that vacations cannot last forever and it is necessary to find an opportunity to continue training. The ancestor of distance learning is Caleb Philips from Boston, who in the distant 18th century sent students tasks by mail. This, in our opinion, is the essence of distance education (training) - tasks are transferred to students for independent execution and there is no real-time contact with the teacher. It is clear that other communication channels are currently used to transmit tasks, electronic, and much less often tasks are sent by regular mail. In the twentieth century, inventors made repeated attempts to create devices for testing and teaching students, which even had some success, but a real step in distance learning was taken with the advent of computers and networks. In the fifties of the last century, there were popular television and radio training courses. The invention of the World Wide Web, the Internet, was the decisive point for opening a new era in learning and the opportunity to conduct classes in real time. Already in 1994, the first fully accredited online school of CompuHigh was opened, which was criticized at first of its existence. The concept of "electronic education" at the professional level was first proposed in 1999 at the TechLearn conference at Disneyworld and since that year the first online university has appeared

(Gutierrez, 2014). By 2014, a huge number of educational institutions operated on the global education market, offering listeners their services online.

Foreign literature indicates that distance education should be understood as a method of learning when the student and teacher are physically separated. This method uses combinations of technologies including mail, audio, video, computer and Internet (Roffe, 2004). Later, other authors clarified that the modern version of distance learning is online learning using a computer and the Internet (Allen & Seaman, 2011; Kentnor, 2015). Separately, it stands out that at least 80% of the content is transmitted online. The third version of the name of the phenomenon we are studying is also proposed - "e-learning" or "e-learning." For example, the NATO Military Committee and Strategic Commanders presented the «e-Learning Concept» project (NATO Unclassified, 2014), which laid down principles, methodologies and technologies for e-learning in the NATO armed forces.

In domestic literature, many names of the educational process outside the walls of the educational organization are also used. As noted, close to the concepts of "online learning" and "virtual learning" is the concept of "electronic distance learning," which is an interactive, often individualized way of online learning using new technologies (Internet, intranet, extranet, interactive television, CDs, etc.) (Savelyeva et al., 2020).

According to paragraph 2 of Art. 13 FZ-273, various educational technologies are used in the implementation of educational programs, including remote educational technologies, e-learning. It follows that distance and e-learning are modes of learning. Article. 16 of the said law establishes legal definitions of e-learning and remote educational technologies, from which it follows that the only qualitative characteristic of remote technologies is the lack of direct contact of the student with the teacher. E-learning is defined as the organization of educational activities with the use of information contained in databases and used in the implementation of educational programs and providing its processing of information technologies, technical means, as well as information and telecommunication networks that ensure the transmission of said information through communication lines, interaction of students and teachers.

The Ministry of Education and Science in 2017 (Order of the Ministry of Education and Science of Russia of 23.08.2017 No. 816) gave the main instructions to educational organizations regarding the use of distance and electronic education. The key point of the order is the assumption of the absence of training sessions conducted by direct interaction of the teacher with the student in the audience.

Orders of the Ministry of Education of the Russian Federation No. 103 and No. 104 of 17.03.2020, aimed at streamlining work during the spread of coronavirus infection, allow the use of various educational technologies that make it possible to ensure interaction between students and pedagogical workers indirectly (at a distance), including using e-learning and remote educational technologies. From this it follows that electronic and distance learning are synonyms, not a common part in relation to each other. We consider this approach of the legislator incorrect. The absence of a clear distinction between the concepts in question is mentioned in legal science (Sheveleva, 2017).

Distance education (education) should be understood as the way of obtaining education, in which there are no training sessions conducted by direct interaction of the teacher with the student in the audience. Electronic education (learning) refers to the method of obtaining education through electronic means: computer technology, networks, software, etc. Online education (learning) is a way of obtaining education

by interacting a teacher with a student in real time using electronic means. Based on the proposed definitions, it can be concluded that distance education is a more general concept and includes everything that is carried out outside the audience and direct physical contact with a teacher. Distance education may be provided by electronic education or otherwise. In turn, electronic education can be online, that is, in real time, or out of real time. E-education can also be provided in the audience. For example, the use of an interactive board, portable electronic devices in the audience leads to the fact that the educational process becomes for some part electronic. Online education is necessarily remote and electronic. Without the use of electronic means and means of communication, online training cannot be.

Further, it is necessary to clarify what form of education can be carried out through remote, electronic and online education. As mentioned earlier, the FZ -273 does not disclose the definition of face-to-face, face-to-face and distance learning. According to the Act of the Russian Federation of 19.04.1991 No. 1032-1 "About employment of the population in the Russian Federation", treat busy citizens studying full-time in the organizations which are carrying out educational activity (Article 2). The Definition of the Constitutional Court of the Russian Federation of 29.09.2016 No. 1855-O explained that the peculiarities of the organization of the educational process when mastering the full-time educational program, which implies the obligatory volume of classes of a pedagogical worker with students. The Ministry of Education and Science has revealed the concepts of correspondence and correspondence forms of education, indicating that these forms allow combining education with the professional work of a student (Letter of the Ministry of Education and Science of 20.07.2015 No. 06-846). At the same time, face-to-face form involves students attending classes several times a week and systematic classroom classes. The correspondence form of training combines the features of independent training and full-time training.

Since full-time training requires a mandatory volume of classes with the teacher in real time, online training should be the most popular. The correspondence form can involve training exclusively by distance, that is, without direct contact of the student with the teacher in real time. Online and e-learning can cover all stages of the educational process. In the context of the pandemic, it must be recognized that distance learning takes place exclusively electronically. No other means of transmitting information from the teacher to the student are practically impossible. Online training is carried out using special software. Online or real-time mode can be used, among other things, to test the student's knowledge and certification. The question arises, but whether the teacher has the right to make a video recording, for example, the online exam of the student. In our opinion, and by virtue of Art. 2 of the Federal Law of 27.07.2006 No. 152- FZ "On personal data" recording can be carried out only with the consent of the student. In addition, after online recording, the teacher must store and process the record, as well as perform other actions with it, in full compliance with the legislation on personal data. This is a lack of legislation, since the main problem of distance learning in all its manifestations remains the non-independence of the student or the so-called lack of "academic honesty" in the literature (De Gagne & McGill, 2010). It would seem that an oral exam online can replace the traditional exam in the audience. But unfortunately, mechanisms such as reading auxiliary material from the computer screen or from a second technical means are available to the student. At the same time, the student looks at the camera and catches the movement of its chapters in the process of reading the answer from the screen is quite difficult. Teachers should be able to record an online exam, seminar or any other stage of training without obtaining the consent of the student, so that in case of

controversial situations they can again evaluate the answer and check for signs of non-independent response. According to teachers, after the start of distance learning, the assessments of students have significantly improved, thanks to the ability to use the entire arsenal of technical means. Therefore, a good opportunity to remotely evaluate the knowledge and skills of the student is to compile unconventional tasks, cases, as well as pose express questions during the oral exam.

7. Conclusion

The time has come when educators need to focus on the quality of education both in the audience and on the Internet, and use all available technologies and innovations. It is noted that distance education is a promising area in subsequent years. Its development received a new impetus in connection with the spread of coronavirus infection. For e-education to become truly high-quality, adequate state support is needed, including at the legislative level. The competence of teachers, the level of educational material and the objectivity of the assessment of students should be subject to careful regulation. New technologies in the educational process also create problems in the field of personal data circulation, "pedagogical secrecy." It is this new type of confidential information that is proposed to be subject to legal regulation and to fix its definition at the legislative level.

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