

Legal Commentary

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Record-filing and Review Management of Online Extracurricular Training Institutions Sees Gradual Progress

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On July 15, 2019, the Ministry of Education promulgated the *Implementing Opinions on Regulating Online Extracurricular Training* (Jiao Ji Han [2019] No. 8) (“**Circular 8**”). Circular 8 provides for the record-filing and review management of online extracurricular training activities targeting primary and middle school students which involve use of Internet technology (“**online extracurricular training**”), puts forward requirements for training institutions, training content and teachers of institutions applying for record-filing, and authorizes the provincial governments (autonomous regions, municipalities directly under the central government) to develop specific record-filing rules. In order to implement the requirements of Circular 8, the Ministry of Education promulgated on September 24, 2019 the *Announcement on the Work of Record-filing for Institutions Carrying out Subject-based Online Extracurricular Training through the National Online Extracurricular Training Management and Service Platform*, which requires the online extracurricular training institutions to make record-filings through the National Online Extracurricular Training Management and Service Platform¹ (the “**Management Platform**”), and requires online institutions that have already carried out training activities to register on the Management Platform as soon as possible and to complete and submit the relevant record-filing materials before October 31, 2019.

As of October 9, 2019, Guangdong, Beijing and Sichuan have successively promulgated detailed rules to implement online extracurricular training record-filing. Specifically, on September 25, 2019, the Guangdong Provincial Department of Education issued, for public comment until October 9, 2019, the *Guangdong Province Implementing Rules on Administration of Record-filing of Online Extracurricular Training (Guangdong Province Special Work Plan for Online Extracurricular Training) (Draft for Comment)* (the “**Guangdong Draft**”). On October 8, 2019, the Beijing Municipal Education Commission promulgated the *Beijing Municipal Rules for Implementation of Record-filing of Online Extracurricular Training (for Trial Implementation)* (the “**Beijing Rules**”), which sets forth requirements for the work of online extracurricular training record-filing. The Sichuan Provincial Department of Education and five other departments promulgated on September 30, 2019 the *Sichuan Provincial Plan for Implementing the Regulation of Online Extracurricular Training* and, on October 9, 2019, the *Circular on Fulfilling the Work of Record-filing and Review of Online Extracurricular Training* (the “**Sichuan Notice**”), which stipulates

¹ <http://xspx.eduyun.cn>

clear requirements for the record-filing and review of online extracurricular training and contains a list of materials required for the record-filing and review.

Considering that Circular 8 clearly requires institutions that have started online training activities to submit relevant record-filing materials by October 31, 2019, and requires the competent authorities to complete audits of online extracurricular training and training institutions nationwide by the end of December 2019, we expect that governments of other provinces (autonomous regions and municipalities directly under the Central Government) other than in Beijing, Guangdong and Sichuan will also successively promulgate detailed rules or relevant documents for record-filing and review of online extracurricular training activities. This article will analyze relevant content of the Guangdong Draft, the Beijing Rules and the Sichuan Notice.

Specific record-filing requirements

Record-filing Requirements	Guangdong	Beijing	Sichuan
<p>Applicable Scope</p>	<p>Applies to online extracurricular training institutions domiciled within the jurisdiction of Guangdong Province. The scope of “subject-based” curricula provided by online extracurricular training institutions includes Chinese, mathematics, English, physics, chemistry, politics, history, geography, and biology.</p>	<p>Applies to online extracurricular training institutions whose business license registration address or ICP record-filing is registered in Beijing. “Primary and middle school students” targeted by online extracurricular training institutions refer to students in all types of publicly and privately-run compulsory education schools, regular senior middle schools, and secondary vocational schools (excludes students at the kindergarten, post-secondary vocational, undergraduate levels and above). “Subject-based” curricula provided by online extracurricular training institutions include Chinese, mathematics, English, physics, chemistry, politics, history, geography, biology, etc.</p>	<p>Applies to online extracurricular training institutions whose business license registration address or ICP record-filing is registered in Sichuan. The Sichuan Notice does not define the scope of students or subjects provided by online extracurricular training institutions.</p>
<p>Types of Training Platforms Subject to Record-Filing Management and Persons Responsible for applying for Record-filing</p>	<p>Training platforms subject to record-filing include the following two types:</p> <ul style="list-style-type: none"> ■ Institution self-operated platforms: refer to proprietary online training platforms operated by online extracurricular training institutions. These platforms are either acquired through technical procurement or are independently established. Online extracurricular training institutions shall voluntarily apply for review. ■ Integrated third-party service platforms: The platform host builds the platform and then invites course suppliers to join the platform, the parties will jointly operate the platform. The platform host will apply for review. <p>In addition, the record-filing of online extracurricular training activities carried out by using artificial intelligence shall be conducted by enterprises on voluntary basis, and shall be guided and regulated by the provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i>.</p>	<p>Online extracurricular training institutions subject to record-filing include the following two types:</p> <ol style="list-style-type: none"> 1. Self-operated service platforms that institutions self-build or acquire extracurricular training institutions shall apply for record-filing. Subject to rules substantially the same as those applicable “institution proprietary platforms” in the Guangdong Draft. 2. Integrated third-party service platforms: Platform hosts apply record-filing. Essentially the same rules apply as those for “integrated third-party service platforms” under the Guangdong Draft, except it is emphasized that both the platform host and teaching services providers are responsible for the content and results of their record-filings. 3. Online extracurricular training platforms other than the above two categories: The party which signs service contracts with the trainees applies for record-filing. 	<p>No specific rules.</p>

Record-filing Requirements	Guangdong	Beijing	Sichuan
		In addition, new types of platforms and new forms of teaching that use artificial intelligence, teaching aids, tools, etc. may apply for record-filing on a voluntary basis.	
Conditions for Record-filing	<p>Aside from reaffirming requirements found in Circular 8, such as healthy content, appropriate time length, qualified teachers, information security, and standardized business operations, the Guangdong Draft further provides the following:</p> <ul style="list-style-type: none"> ■ Artificial intelligence: Online extracurricular training involving the use of artificial intelligence is subject to basic business operating principles in accordance with relevant rules and regulations; business shall be conducted in a manner that complies with laws and regulations, benefits society, promotes fairness, improves quality, protects privacy and avoids discrimination. Trainings are subject to comprehensive monitoring and the influence of artificial intelligence on students and their learning activities will be evaluated. ■ Teacher qualifications: Each online extracurricular training institution shall have no less than five full-time teachers. Subjects taught by full-time teachers at the institution shall be consistent with those specified in their teacher qualification certificates. Teachers required to teach subjects other than those specified in their teacher certificates shall hold qualifications for and be capable of teaching multiple subjects. The number of full-time teachers that teach subjects outside their teacher qualifications shall not exceed 15% of total number of teachers holding teacher qualifications. ■ Foreign teachers: (1) A foreign teacher who teaches online extracurricular language lessons in China shall, in principle, teach his or her native language, hold a bachelor's degree or above and have more than two years of language teaching experience (however, those 	No specific rules are provided.	No specific rules are provided.

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>who have obtained a bachelor's degree or above in education, language or from a teaching training school, or have obtained a teacher's qualification certificate from his or her own country or have obtained an international language teaching certificate may be exempt from the teaching experience requirement; (2) A foreign teacher who gives language lessons remotely to students located within mainland China from his or her country of residence (a foreign country) shall obtain a teacher qualification certificate issued by his or her home country or obtain an international language teaching certificate (TESOL/TEFL, etc.); (3) A foreign teacher who teaches Chinese or history shall provide a full description of his or her life experiences in China and guarantee or promise compliance with and recognition of the principles established by the Constitution of China.</p> <ul style="list-style-type: none"> ■ Use of personal information: No training platform may obtain privacy system privileges that are unrelated to study, nor collect or use personal information of students and parents that is not related to the functions of the training platform; the training platform host shall keep confidential user accounts, passwords, registered mobile phone numbers, etc. Platforms shall stop the collection and use of a user's personal information and shall assist the user in canceling his or her account after the user terminates use of the platform's services. ■ Internal control systems: Online extracurricular training institutions shall establish systems including a sound internal audit system, financial risk control system, user complaint handling system, etc., and have human resources sufficient to implement internal audit and management requirements, and implement strict internal 		

Record-filing Requirements	Guangdong	Beijing	Sichuan
	review and management of online extracurricular training activities.		
Record-filing Process	<ol style="list-style-type: none"> Submission of materials: Online extracurricular training institutions shall submit record-filing materials through the Management Platform and via email by October 31, 2019. Government review: The Guangdong Provincial Department of Education, together with other departments, will review and verify submitted materials by December 31, 2019, and complete the record-filing within 60 days if the materials submitted fulfill the requirements. 	<ol style="list-style-type: none"> Submission of materials: The party responsible for the record-filing shall voluntarily submit the record-filing materials by October 31, 2019, with record-filing materials to be submitted through the Management Platform, and supporting materials to be submitted via email. Government review: The Beijing Municipal Education Commission will, together with other departments, complete the review of record-filing materials by December 31, 2019. Applicants shall be required to re-submit record-filing materials if the submitted materials do not meet the requirements or are insufficient. The Beijing Municipal Education Commission shall complete the examination of re-submitted materials within 60 days from the date of receipt. 	<ol style="list-style-type: none"> Submission of materials: Record-filing materials are to be submitted through the Management Platform, and simultaneously submitted through the Sichuan Government Service Network² by October 31, 2019. Government review: The Sichuan Provincial Department of Education will, together with the relevant departments, organize experts to review and verify the submitted record-filing materials, and make record-filings of online extracurricular training institutions that meet the requirements, and make an announcement through media including the Management Platform, the provincial official website, and the WeChat public account.
Supervision and Punishment Measures	<ol style="list-style-type: none"> Online extracurricular training platforms in violation of rules and regulations shall be gray-listed and be ordered to make rectification within specified time limit. Those 	<ol style="list-style-type: none"> Subject-based online training platforms that teach lessons to primary and middle school students without completing record-filing shall be investigated and punished in accordance with law. 	No specific rules are provided.

² www.sczfw.gov.cn

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>platforms which refuse to rectify or fail to rectify within the specified time period shall be blacklisted.</p> <p>2. Training platform hosts which submit with subjective malice false or fraudulent record-filing materials or test samples, or extracurricular training platforms that are gray-listed upon receiving a yellow card warning violate provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i> again shall be blacklisted.</p> <p>3. From July 1, 2020, the government shall investigate and handle online extracurricular training institutions which have not completed rectification within the prescribed time limit or fail to complete rectification as required, and impose penalties based on the circumstances, including orders to suspend or stop business operations of the training platforms, remove training applications, shut down WeChat public accounts (applet) or imposing economic punishment, etc.</p>	<p>2. Platforms subject to the record-filing requirements that fail to complete the record-filing shall assume the following consequences: (1) be unable to be whitelisted on the Management Platform; (2) be investigated and punished by the relevant departments in accordance with laws and regulations.</p>	

Record-filing materials

	Record-filing Materials
<p>National Online Extracurricular Training Management and Service Platform</p>	<p>According to the operating manual and “Q&A” section displayed on the Management Platform, record-filing materials mainly include five aspects: institution information, service information, training personnel, training content and institution commitments.</p> <p>1. Institution information: includes legal person information, the institution’s registered and contact addresses, business license, contact person and contact information, etc.</p> <p>2. Service information: includes basic information, ICP record-filing number and screenshots, telecommunications business license number and screenshots, user complaint report link and screenshots, and user service agreement record-filing. Basic information includes information on Party organization establishment, fund management methods, security conditions, service commitments, training platform technical support, etc.</p> <p>3. Training personnel: includes name, gender, nationality, identification number and other basic information, as well as teacher qualification certificates, etc.</p>

	<p>4. Raining content: includes basic information such as course titles, subjects, course content, teaching methods, tutors, class schedules, class lengths and other relevant information, as well as relevant certification materials (including whether foreign courses have been undertaken, screenshots of public information of teachers, screenshots of fee-based programs, fee standards and refund methods, screenshots and links of course user complaints, etc.)</p> <p>5. Institution commitments: includes the institution's commitment to compliance with relevant laws and regulations; automatically generated by the Management Platform.</p>
Guangdong	<p>In addition to the requirements of the Management Platform, the Guangdong Draft stipulates the following detailed requirements for the record-filing materials to be submitted by extracurricular training institutions in Guangdong province:</p> <ol style="list-style-type: none"> 1. As for two different types of platforms, i.e. training websites/online schools and training apps, requiring them to fill out two different application forms. 2. As for basic information of online extracurricular training institutions, requiring to further disclose the basic information of online extracurricular training institutions, including information of decision-making institutions and training services (including purposes of training courses, business scope, basic personnel information and management systems, decision-making mechanisms, fee agreements, security conditions and service commitments, etc. If foreign courses are introduced, relevant certificates or commitments shall be provided in accordance with relevant regulations, such as a commitment to comply with relevant Chinese laws and regulations and ideological management requirements), technical protection instructions for training platforms (including business system data interaction and processing capability certification, personal information protection system, network security management system, security protection technology measures, etc.) 3. Extracurricular training institutions are required to submit a Standardized Business Operation Commitment, to commit that the institutions have credibility or ability to provide long-term services for schools, teachers and students, and are in compliance with other conditions specified in relevant laws and regulations and other documents promulgated by State Council, the Ministry of Education, and the Guangdong Provincial Department of Education. 4. Institutions are required to submit a specialized system for "Institutions (Enterprises) Implementing the Guangdong Province Special Work Plan for Online Extracurricular Training", which describes the institution's emphasis on internal reviews, review processes, reviewers and internal review statements of the contents released on online extracurricular training platforms.
Beijing	<p>Compared to the Guangdong Draft, the Beijing Rules only require online extracurricular training institutions to submit basic record-filing materials through the Management Platform, and recommend the institutions to submit other certifying materials to prove the platform's risk prevention and teaching capabilities, including award certificates, information on social welfare activities, etc.</p>
Sichuan	<p>Consistent with the Management Platform, the Sichuan Notice requires institutions to submit basic information about training institutions, teachers and training content.</p>

Our observations

I. Issues ambiguous under Circular 8 await clarification in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*

Circular 8 and the corresponding local supervision rules reflect the regulatory trends of the education administration at all levels toward regulation of online extracurricular training activities, but skip certain issues including the boundary between subject-based trainings and quality-based trainings and whether online extracurricular training institutions are required to obtain a school-running license. Those issues remain to be clarified in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*.

II. Record-filing and review practices to differ among provinces

The Guangdong Draft, which has completed its public comment period but has not yet been officially promulgated, puts forward more detailed and stringent requirements for record-filing of online extracurricular training institutions compared to the Beijing Rules and the Sichuan Notice, based on certain basic requirements shared by all three documents. With respect to the record-filing application materials, the Guangdong Draft puts forward more detailed requirements for materials and certification documents to be submitted for record-filing. In light of the review requirements, the Guangdong Draft stipulates more stringent requirements for the qualifications of full-time teachers (including the number of full-time teachers, requirements for cross-subjects teaching, etc.), the qualifications of foreign teachers, the protection and use of personal information, the construction of internal management systems for online extracurricular training institutions. Going forward, we expect to see differences in record-filing practices among provinces following their promulgation of detailed implementation rules.

III. Online extracurricular training conducted with use of artificial intelligence enters the view of regulators, but record-filing thereof is still not a compulsory requirement

Online extracurricular training conducted with the use of artificial intelligence, although untouched in Circular 8, are referenced in both the Guangdong Draft and the Beijing Rules. Under these two departmental rules, record-filing of artificial intelligence-based online training activities is not compulsory, and is only to be conducted voluntarily or at the institutions own initiative. The qualifications of teachers remain the regulatory focus of the Circular 8, the Guangdong Draft and the Beijing Rules, considering teachers currently carry out most online extracurricular training activities. However, it is undeniable that the application of artificial intelligence has become common in the education and training fields, which is a trend that has drawn the attention of education regulators but has yet to become a regulatory focus, as indicated by the relevant requirements of the Guangdong Draft and the Beijing Rules. In the future, we expect relevant normative documents to be formulated by the education administration if the application of artificial intelligence becomes more widespread in the field of education and training.

IV. Local supervision rules emphasize the principle of dynamic supervision, online extracurricular training activities should continuously meet regulatory requirements

Both the Guangdong Draft and the Beijing Rules clearly stipulate that being “whitelisted” following

review and approval merely indicates that an online extracurricular training platform satisfies the relevant filing requirements at the time of record-filing. In fact, in addition to the requirements for record-filing, Circular 8 also puts forward requirements for daily supervision of online extracurricular training institutions in terms of training content, course length, faculty, fees and information security, and requires the establishment of a daily inspection and spot-check system. So, online extracurricular training institutions that have passed the preliminary review and have been whitelisted should remain vigilant. In practice, some whitelisted enterprises can still be gray-listed or even blacklisted by the local regulatory authorities because of failure to meet the relevant regulatory requirements. In daily operations, online extracurricular training institutions still need to continuously track and ensure compliance with the national and local regulatory requirements that may be updated by the education administrations from time to time.

Important Announcement

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