

Issues and Tasks Related to the Revised ‘School Violence Prevention and Countermeasures Act’

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ABSTRACT


In South Korea, school violence has been highlighted as a major social problem since the mid-1990s, with the trend of underage, cruelty, and collectivization since school violence became discussed in the media. To respond to the issue of school violence, the School Violence Prevention and Countermeasures Act (SVPCA) was enacted in 2004, and has undergone several revisions since. The current law on prevention of and countermeasures against school violence, which took effect in March 2020, is the latest revision to the law. The SVPCA has been responding to the changing aspects of school violence by introducing supplementary provisions for each revision. However, the law is not a perfect response to the related social problems. From this perspective, this study aims to examine the main contents and limitations of the recently revised March 2020 SVPCA, and to consider the tasks based on this. This study looked at the revisions of the SVPCA through previous studies and literature related to the SVPCA. After that, the contents, issues, limitations, and tasks of the revised SVPCA were reviewed. As such, this study was able to examine the school violence review committee's manpower problem, the school workload, and the retention of school life records in the revised SVPCA. In addition, the need to revise reorganizing the SVPCA from a restorative justice perspective was also highlighted. This study is considered meaningful in that it argues for improvement by examining the necessity, issues, and limitations of the revised SVPCA from a restorative justice perspective.

KEY WORDS

School violence, School Violence Prevention and Countermeasures Act (SVPCA), Revision of SVPCA, Restorative justice

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1 | INTRODUCTION

School violence entered the spotlight as a social issue in Korea with Kim Dae-hyeon's suicide in 1995, and reentered the public consciousness with the Miryang middle school student incident in 2004, and the Daegu middle school student incident in 2011. School violence, characterized by collectivization and brutality, has become a major social problem rather than a simple issue. In addition, school violence does not appear to stem from a single cause, but rather the negative emotions and dysfunction of adolescents. It occurs under the influence of micro- and macro-environments such as family, smartphone addiction, delinquency (Park B.K., 2021), and a competitive social environment. In other words, school violence is a social problem that the state or society should pay attention to. Against this background, the School Violence Prevention Act was enacted in 2004. The School Violence Prevention Act defined the concept of school violence, and stipulated the responsibility of the state and local governments in addressing it (Park H.K., 2020).

Subsequently, the School Violence Prevention Act was revised several times, with the most recent revisions to the School Violence Prevention Act coming into effect in March 2020. A brief history of the revisions made to the School Violence Prevention Act is as follows. The 2008 amendment included sexual violence as a type of school violence, and established a dedicated front-line organization within each school. In the revised law in 2009, new protections for students with disabilities were established, while in 2011 revisions, an autonomous committee composed of parent representatives was formed. The revised law in 2012 included cyber bullying in the definition of school violence, reflecting the context of the information society. In addition, a provision for a victimized student to request a retrial was newly established, stipulating that a request for retrial to the regional committee may be made. In addition, it was stipulated that the aggressor student or guardian who has an objection may ask to make an appeal to the disciplinary committee. The 2017 revised law stipulated the introduction of school police officers. Looking at the revisions of the School Violence Prevention Act, the types of school violence have been expanded according to the times, and the ratio of parents on the autonomous committee has been increased. In addition, due to the right to request an appeal, the number of cases of dissatisfaction by both

perpetrators and victims has been increasing (Busan Metropolitan City Office of Education, 2019).

The revised Act on the Prevention and Countermeasures of School Violence, which came into effect on March 1, 2020, offers significant improvements to the existing School Violence Prevention Act. The main contents of the revised School Violence Prevention Act are as follows. First, the Autonomous Committee for Countermeasures against School Violence, which was operated at the school level, was abolished, and the School Violence Countermeasures Deliberation Committee was established at the Office of Education. In addition, for school violence that is judged to be minor, the school principal can handle the matter on his/her own without the victim student's side of the school violence deliberation committee. It was possible to take lead-type measures with regard to entry in the school life record by reserving entry of the incident in the offender's school life record. Finally, when the victim or the offender want a retrial, a two-part structure, in which the victim is referred to the regional committee and the perpetrator to the disciplinary committee, can be requested through a unified administrative appeal process (Lee J.M., 2020).

As such, the School Violence Prevention Act was enacted in 2004 and has been revised multiple times including the latest revision in 2020. However, with the implementation of the School Violence Prevention Act, various problems in the system were revealed. For example, in the provision for requesting a retrial, which was newly introduced in the revised law in 2012, it was easy for the perpetrator and victim to receive contradictory retrial decisions on the same case due to the dual retrial structure of the disciplinary committee and the regional committee, respectively. In addition, existing public school students could apply the administrative adjudication system, but there was an equity problem in that private school students could not. The problem was solved by revising the school violence prevention law to have a unified appeal structure. However, when laws and systems are applied and operated in the real world, problems are bound to arise, and the need to seek alternatives is inevitable. From this point of view, the purpose of this study is to examine the main contents and issues of the revised School Violence Prevention Act, identify related problems and limitations, and examine future tasks (Sung & Lee, 2019).

2 | CONTENTS AND ISSUES OF THE REVISED SCHOOL VIOLENCE PREVENTION AND COUNTERMEASURES ACT

2.1 | Establishment of the School Violence Countermeasures Review Committee

The revised School Violence Prevention Act established the School Violence Measures Deliberation Committee at the Office of Education Support, and abolished the School Violence Countermeasures Autonomous Committee. The School Violence Countermeasures Deliberation Committee may request the right to investigate and request data based on Article 12 of the Act, and there is a provision allowing the committee to exercise the right of convocation in accordance with Article 13. The composition of the Deliberation Committee is based on the assumption that the level of professionalism and fairness must be higher than that of the previous Autonomous Committee for Countermeasures against School Violence. In this respect, the School Violence Countermeasures Deliberation Committee belongs to the Office of Education Support based on Article 12. According to Article 13, the Deliberation Committee is composed of 10 to 50 members, and at least 1/3 of the members are parents of children under the competent education support office. In terms of the professionalism of the members, in accordance with Article 14 of the Enforcement Decree of the School Violence Prevention Act, the committee is composed of persons who have been engaged in school violence work, who have served as professional education staff, judges, prosecutors or doctors, and persons with specialized knowledge related to school violence issues. In addition, the School Violence Countermeasures Committee has a subcommittee so that the effectiveness of its work can be anticipated (Jeon, 2018).

The School Violence Countermeasures Deliberation Committee decides on the actions of the aggressor and victim students based on Articles 16 and 17 of the School Violence Prevention and Countermeasures Act. In accordance with Article 17 of the School Violence Prevention Act, perpetrators may be required to make a written apology or perform service at school, suspended from school, required to have psychological treatment, required to transfer, or expelled. However,

expulsion does not apply when the perpetrator is in a compulsory education course. Victims, on the other hand, receive protective measures as per Article 16 of the School Violence Prevention Act. In particular, since the revised view on school violence shows a shift from a punitive to a restorative point of view, it can be seen that the protection of victims is more important than the actions of the perpetrators (Lee J.M., 2020). Included in protection measures for victims are psychological counseling, temporary advice, medical treatment, class change, and other necessary measures. The related cost issues and compensation period are specified in Article 16 of the School Violence Prevention Act and the School Safety Act (Lee J.M., 2020).

The significance of the establishment of the School Violence Countermeasures Deliberation Committee is that it promises to enhance professionalism and fairness in the deliberative process and the decision-making process. In fact, in terms of the composition of the autonomous committee in 2017, before the revision to the law, the participation rate of experts was 14%, and it is known that the participation rate was quite low at 62% compared to 76% for parents and 95% for teachers (Sung & Lee, 2019). This was related to the professionalism problem of the Deliberation Committee, and it is thought that it was largely resolved with the establishment of the School Violence Countermeasures Deliberation Committee in the revised law. In addition, before the revision of the law, the deliberation committee mainly consisted of parents and teachers who were inside the school, which significantly damaged the neutrality of the deliberation process and results (Sung & Lee, 2019).

It is believed that fairness is guaranteed under the amended Act, as the Deliberation Committee is now composed of personnel independent from the stakeholders. In addition, a deliberation committee was established in the Office of Education outside the school, reducing the burden on individual schools. When the autonomous School Violence Committee was established within each school, the school had to take charge of appeals and litigation by the victims of school violence, resulting in an explosion in the amount of work. Under the revised law, an independent deliberation committee was established outside the school, which freed them from substantial work related to school violence. However, for the School Violence Measures Deliberation Committee to actually secure professionalism,

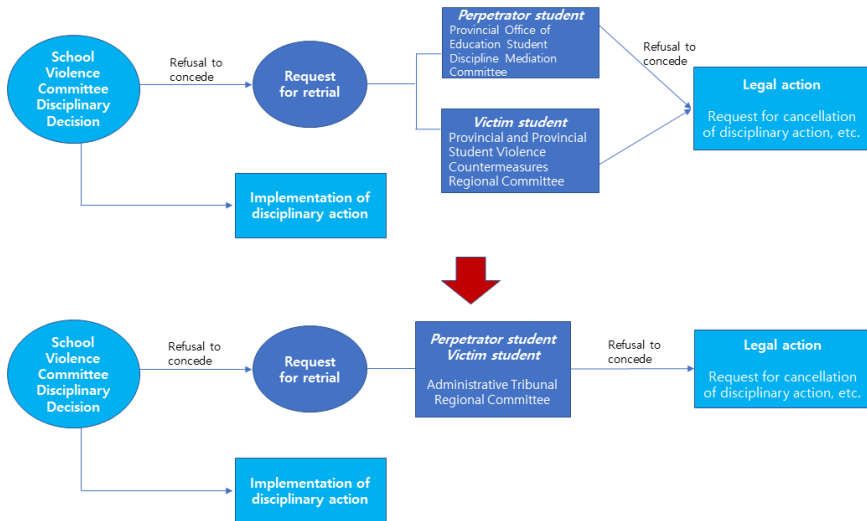
it requires not only the independence of its members but also a sufficient pool of manpower to handle the work. This has been pointed out as a limitation of the revised law (Lee J.M., 2020).

2.2 | Unification of Administrative Adjudication of Reexamination

The revised School Violence Prevention and Countermeasures Act unifies the complex administrative adjudication and litigation structure of the previous School Violence Prevention Act. In the previous School Violence Prevention Act, the victim and the perpetrator would handle their appeals through different retrial and administrative adjudication agencies. Specifically, when the victim did not agree with the decision of the autonomous committee, he or she would appeal to the regional committee; if the victim was dissatisfied with the decision, he or she could file an administrative appeal with the central administrative adjudication committee. On the other hand, when a student found to be abusive before the amended Act was dissatisfied with a decision of the School Violence Autonomy Committee, he or she would file an objection with the student disciplinary committee of the city/province. Regarding the final administrative judgment, the offender could file an objection to the Administrative Judgment Committee of the Office of Education (Kim J.Y., 2017).

Notably, there were many conflicts between the decisions of retrials and administrative trials under the previous dual structure, which added to the confusion (Yoo, 2014). The revised School Violence Prevention Act has largely resolved these difficulties by unifying the administrative adjudication structure. In fact, when the aggressor or victim student is dissatisfied with the decision of the School Violence Countermeasures Review Committee, they can apply to the Administrative Adjudication Committee of each Office of Education (Busan Metropolitan City Office of Education, 2019).

The retrial structure specified in the School Violence Prevention Act before and after the amendment to the above section is shown in FIGURE 1.



Source: JoongAng Ilbo (July 16, 2019)

FIGURE 1. Changes in the Structure of the Review of School Violence

Under the revised School Violence Prevention Act, to request an administrative appeal, a party must file a request within 90 days from the date of becoming aware that a disposition has been taken based on Article 27 of the Administrative Appeals Act.

The unified system of administrative adjudication has considerable implications. As mentioned above, unnecessary repetition of reexamination between the parties can be reduced, and in particular, the inequality in opportunities between victims and perpetrators, public school students and private school students can be corrected. In the past, public school students could apply to the administrative appeal system, but private school students could not apply to the administrative appeal system. This was an unfair treatment that was biased towards formal logic based on the form of establishment of the school (Kim & Park, 2019). With the unified administrative adjudication system established by the revised School Violence Prevention Act, this unfairness in the opportunity for administrative adjudication between public and private students was corrected.

2.3 | Principal's Handling of Minor School Violence and Conditional Reservation of School Life Record

The amended School Violence Prevention Act stipulates that the school principal can act independently to resolve minor incidents of school violence if the victim student does not want to hold the School Violence Countermeasure Deliberation Committee as per Article 13-2 of the Act. The overview is as follows. When physical and mental damage is minor, there is no damage to property, and the school violence is a one-time incident, it is a matter to be resolved by the principal. In this case, the principal must confirm the intention of the victim and receive the deliberation and confirmation of the body in charge regarding the severity of the school violence. After that, when the principal resolves minor school violence on his own, he must report it to the Deliberation Committee (Sung & Lee, 2019). Subsequent to this, the principal may operate a program for stakeholders in school violence in accordance with Article 14-3 of the Enforcement Decree of the School Violence Prevention Act to prevent the recurrence of school violence (Ministry of Education, 2020).

An issue that was sensitive for the perpetrators of school violence was the issue of the student record. The listing of the perpetrators as perpetrators of school violence in the student record created a kind of stigma. Therefore, the perpetrators did not show any remorse for the school violence, and were consistent in their attitude to avoid punishment. The revised School Violence Prevention Act tried to solve these problems through the provision of reservations in the student record for minor cases.

According to the amended law, when the aggressor is required to make a written apology or is subject to prohibition of retaliation or a disposition for school service by the School Violence Countermeasures Deliberation Committee, the incident is subject to conditional reservation. However, if the perpetrator is subject to measures related to school violence for another incident, the case that was previously reserved in the student record is also listed. In addition, if the assailant does not comply with the measures within the period, the measures shall be recorded in the student record (Ministry of Education, 2020). In this case, the enforcement effect is given to the case where the measures are not implemented.

Among the provisions of the revised School Violence Prevention Act, giving the principal the autonomy to resolve the situation has the following implications. In the previous School Violence Prevention Act, regardless of the severity of school violence, unconditionally related issues were subject to deliberation by the autonomous School Violence Committee. In other words, the standard was not focused on the recovery of the parties from a welfare point of view, but took a punitive point of view based on the zero tolerance principle. It can be said that the revised School Violence Prevention Act shows a change from the zero tolerance principle to the perspective of recovery of the victim (Lee J.M., 2020).

On the other hand, the provision to reserve making an entry in the school life record provides an opportunity for the offender to reflect and has the advantage of alleviating related legal disputes. However, according to a survey conducted by the Ministry of Education before the revision of the School Violence Prevention Act (Ministry of Education, 2019), 75.4% of the students who were surveyed regarding recording the incident of violence in the perpetrator's school life record were against it. From the theoretical point of view that the consent of the members is necessary to secure the legitimacy of the law (Habermas, 2006), it is thus considered problematic.

3 | LIMITATIONS AND TASKS OF THE REVISED SCHOOL VIOLENCE PREVENTION AND COUNTERMEASURES ACT

3.1 | School Violence Countermeasures Deliberation Committee Needs to Expand Professional Manpower and Supplement System

Under the revised School Violence Prevention Act, the autonomous School Violence Committee, which was previously established as a front-line school unit, was converted into the School Violence Review Committee of the relevant Office of Education. As described above, the advantages of this are clear, as are the limitations. First of all, since the deliberation committee of the competent education support office has integrated the issues of school violence in individual units, it

is necessary to secure professional manpower to carry out the work. However, in reality, each Office of Education seems to be insufficiently prepared for this. This is because the Ministry of Education announced that it plans to assign one superintendent in charge of the deliberation committee in the future, but as a front-line officer points out, it is not enough for one superintendent to perform the task. In general, the deliberation committee of the Office of Education Support conducts about ten deliberations per week, and an average of two deliberation cases must be processed per day. It is not enough for one scholar to handle this. In addition, the pool of members of the deliberation committee is approximately 50, and it is questionable whether the members can attend at least once a week (Lee J.M., 2020).

In addition, actual fairness is not guaranteed as it is not determined through which procedure and guidance the parent representatives of the deliberation committee members are selected (Lee K.C., 2019). For similar reasons, the need for professionalism is not necessarily fulfilled by having lawyers and doctors act as judges for school violence countermeasures. This is because professionalism is related to the accumulation of experience in related matters.

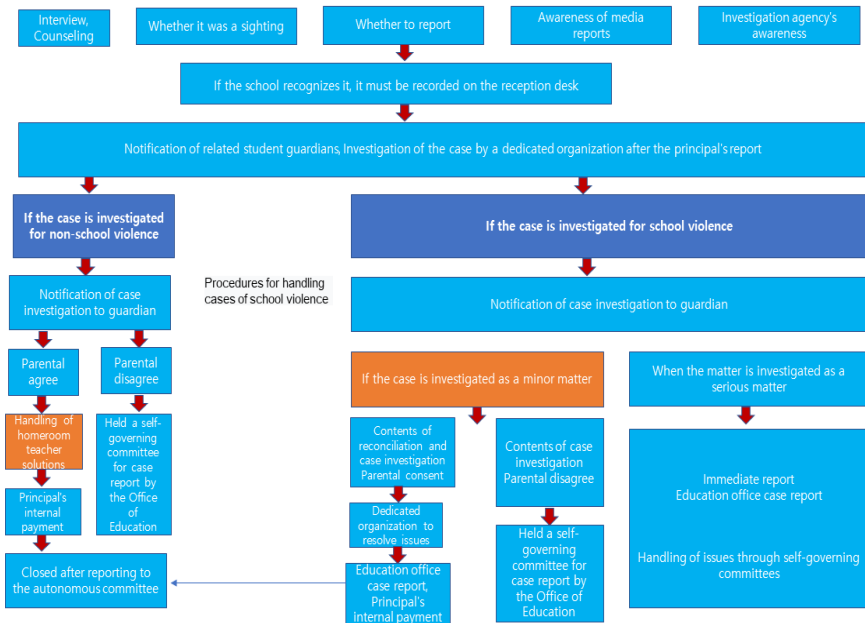
On the other hand, when students who perpetrate school violence and students who are victims of school violence attend the School Violence Countermeasures Deliberation Committee of the Office of Education, their attendance at school is recognized, but they cannot receive classes. In other words, students' right to class is violated. Ultimately, in relation to the operation of the School Violence Deliberation Committee, the issue of expanding the manpower pool, the professionalism of the deliberation members, and the problem of students' right to study remain to be resolved.

3.2 | The Necessity of Reducing the Actual Work of the School and the Issue of Reserving Entry of Incidents in the School Life Record

Since the revised School Violence Prevention Act imposed a new regulation on the School Violence Review Committee to deal with school violence in the competent Office of Education, it can be considered that from the perspective of each school unit, the related work has been reduced. However, the work related

to school violence in school settings is still burdensome. The reason for this is as follows.

First, the school is responsible for investigating each incident of school violence. The process of investigating cases of school violence is fairly complex. When a teacher recognizes an incident of school violence, the person in charge records it at the reception desk, reports it to the principal, and then informs the teacher in charge. After that, the relevant student guardians should be informed and a report made to the Office of Education within 48 hours. In addition, the relevant procedures are divided according to whether the incident of school violence is minor or not (Ministry of Education, 2020). It is a complex and difficult task for schools to handle case investigations on school violence. An example of the workflow of such investigation is shown in FIGURE 2 below.



Source: Jeollabuk-do Office of Education (2018), p. 31

FIGURE 2. Jeollabuk-do Office of Education's School Issues Handling Procedure Map

Second, a dedicated school organization still exists, and the process of investigating cases of school violence is quite difficult. When the investigation into school violence is complete, the dedicated body will deliberate on whether the issue is to be resolved by the principal in accordance with Article 14 of the School Violence Prevention Act. The composition and operation of this dedicated organization is tailored to the number of parent members according to the ratio of the number of dedicated organizations. It is not easy to organize and operate such a dedicated body. In addition, in the course of investigating a case of school violence, if a school administrator violates the Student Human Rights Ordinance due to insufficiency in procedures, coercive investigation methods, or other matters, he/she may be subject to litigation or audit disposition (Wang et al., 2019). In reality, teachers in charge of school violence play the roles of homeroom teachers, subject advisors, and counselors at the same time. This situation makes it easy for such teachers to burn out, which negatively affects the school community (Lee J.M., 2020).

Meanwhile, the revised Act on the Prevention and Countermeasures of School Violence introduced a provision to reserve entry in the school life record for minor incidents of school violence in order to provide an opportunity for reflection rather than punishment. When the assailant is required to make a written apology, prohibited from retaliating, and is subject to school service measures, he/she is given a conditional record. Because it is conditional, the reservation of entry is not applied if the aggressor does not comply with the conditions, or is involved in other cases of school violence. However, many students do not trust the effectiveness of this provision, and the reason is that the effectiveness of preventing school violence and preventing recurrence is reduced (Ministry of Education, 2019). Legal provisions that are not accepted by the majority of students who are members are not effective, so it is necessary to reconsider them.

As mentioned above, it is thought that a specific manual is necessary to achieve the practical reduction of school violence work on the school side, and practical handling and institutional improvement of the dedicated organization and teachers in charge of school violence are required. In addition, it is considered that the provision of retention of records of school life for the perpetrator needs to be revised after further consideration of the opinions of the students who are members.

3.3 | Overcoming the Problem of School Violence from a Restorative Justice Perspective

The policy direction of the previous approach to school violence was centered on punishment based on the zero tolerance principle. As a result, the perpetrators were focused on avoiding punishment, rather than reflecting and taking responsibility. From this perspective, the perpetrators denied wrongdoing about school violence and dismissed it as a simple joke. A shift from a punitive point of view on school violence to a different point of view was necessary. Among other perspectives, the restorative justice perspective focuses on problem-solving based on reconciliation, and can be described as victim-centered (Zehr, 2014). The revised Act on the Prevention of and Countermeasures to School Violence introduces some new provisions from the perspective of restorative justice. This restorative justice perspective makes the perpetrators realize that they are responsible for school violence and have an obligation to compensate the victims. In this respect, it is considered that some of the perspective shifts in the revised School Violence Prevention Act are welcome. In addition, in Article 1 of the School Violence Prevention Act, it is stipulated that the human rights of students are protected by the protection of the victimized student and the mediation of disputes between the victimized student and the aggressor student (Lee J.M., 2020). This article explicitly shows that school violence must be addressed from a restorative justice perspective.

In the future, it is also worth considering that the School Violence Prevention Act allows the school social worker to take responsibility for school violence from the existing school violence teacher. This is because, for restorative justice to be achieved, neutral experts in charge of school violence in school practice are needed. The existing teachers in charge of school violence are too overloaded because they must simultaneously work as homeroom teachers, subject teachers, counselors, and administrative task handlers in addition to handling school violence. On the other hand, school social workers are experts who can easily access various ecological systems, are assigned to more than one school, and are in charge of student welfare. From this perspective, Hong & Nam (2016) studied the work of school social workers in the application of restorative justice practice model for preventing school

violence.

A qualitative research method was used to explore the recovery application cases of school social workers for four months. Based on this, it was possible to see positive changes in students' cognition, thinking, and behavior. I think that the number of such studies will gradually increase, and the school violence prevention method needs to be gradually reconstructed from the perspective of restorative justice.

4 | CONCLUSION

This study examines the main contents and issues of the revised School Violence Prevention and Countermeasures Act and future tasks. Specifically, the contents of the School Violence Prevention Act before the revision were reviewed. After that, the contents and practical issues with the revised School Violence Prevention Act were analyzed, and the limitations and future tasks were considered. Notably, we affirmed that the revised law reflects the reality to a large extent and broke away from the previous punitive stance by adopting a restorative justice framework. However, we argued that the School Violence Prevention Act needs to be reorganized to be centered on school social workers, for example, in order to practically realize a restorative view of justice. Nevertheless, the revised School Violence Prevention Act also shows clear limitations. Through the analysis of this study, it was found that there is a need to expand the professional manpower of the School Violence Review Committee, and there is an urgent need to reduce the amount of school violence work. In addition, we pointed out that the provision of reserving entry in the school life record may be inconsistent with the position of the students. Based on the awareness of this problem, it is considered that there is a need to improve the school violence prevention methods in the future.

This study has implications and meaning in that the positives and limitations of the revised Law on Prevention and Countermeasures against School Violence were examined, directions for improvement suggested, and the role of school social workers was considered from the perspective of restorative justice. However, from an empirical point of view, it is necessary to study various variables related to

the person in charge of the School Violence Prevention Act, the perpetrator, the victim, and the guardian. As a follow-up study, it is also important to conduct studies using the above-mentioned variables.

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국문초록

개정 학교폭력예방 및 대책에 관한 법률의 쟁점 및 과제

원선화

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박범기

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우리나라는 1990년대 중반 이후 학교폭력이 미디어에 알려진 이래 저연령화, 잔인화, 집단화의 경향을 띄고 있고, 현재는 주요 사회문제로 자리 잡았다. 이런 학교폭력에 대응하기 위해 2004년 <학교폭력예방 및 대책에 관한 법률>(학교폭력예방법)이 제정되어 몇 차례의 개정을 거쳤다. 현재 <학교폭력예방법>은 2020년 3월 개정 시행되고 있다. <학교폭력예방법>은 개정 때마다 보완 조항들이 신설되는 등 학교폭력의 변화 양상에 대응해 오고 있다. 하지만 법은 관련 사회문제에 완벽하게 대응할 수는 없는 게 주지의 사실이다. 이런 관점에서 본 연구는 2020년 3월 개정된 <학교폭력예방법>의 주요 내용 및 한계들을 살펴보고, 이를 바탕으로 <학교폭력예방법>의 과제를 고민해 보고자 한다. 구체적으로, 본 연구는 <학교폭력예방법>과 관련된 선행연구 및 문헌들을 검토하여 <학교폭력예방법>의 개정 내용들을 살펴보았다. 그 후 개정 <학교폭력예방법>의 내용과 쟁점, 한계, 과제들을 훑어보았다. 본 연구의 논의 결과, 개정 <학교폭력예방법>은 학교폭력심의위원회 인력 문제, 학교 업무량 문제, 학교생활기록 기재유보 문제 등을 가진 것으로 분석되었다. 또한 회복적 정의의 관점에서 향후 <학교폭력예방법>이 재편될 필요가 있음을 알 수 있었다. 본 연구는 개정 <학교폭력예방법>을 회복적 정의의 관점에서 쟁점화하고 그 한계를 지적했다는 점에서 의의가 있다고 사료된다.

주제어: 학교폭력, 학교폭력 예방 및 대책에 관한 법률, 학교폭력예방법 개정, 회복적 정의

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