

On the Necessity and Feasibility of Hearings in Management System of Chinese Colleges and Universities

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Keywords: Colleges and universities' management, Hearing system, Practical feasibility, Necessity.

Abstract. With the college teachers and students' enhancement of their rights awareness and under the trend of managing colleges and universities by laws and rules, the management of colleges and universities draws more and more attention to the society, teachers and students. In reality, the management still has some shortness in colleges and universities. On the one hand, it is lack of some management procedures, and on the other hand, it is lack of some laws and regulations on the management hearing system. Given national united hearing procedure rules have not been constructed, so it is necessary to establish the management hearing system in colleges and universities in order to manage college and universities toward laws, regulations and democracy.

Introduction

Colleges and universities hold few hearings on different suggestions putting forward on the management issues especially the incentives of teachers and students. In present, it draws more and more attention to study the management hearing system in colleges and universities. As a manager, colleges and universities need to protect the fundamental interests for teachers and students, then in the daily management, it had better combine with the institution present and hold hearings on the matters related to the staff's important interests and some matters related to the direct impacts of the institutions' future development. Therefore taking advantage of hearing system provides for the direction of better implementation in colleges and universities' management area. At present, the colleges and universities have no united management hearing system. Thus this paper strongly states the necessity and feasibility of establishing management hearing system in colleges and universities, then put forward some suggestions on establishing the united hearing system in order to add new connotations for colleges and universities' management development under laws and regulations, in a democratic and systematic way [1].

The present of the management hearing in colleges and universities

South China Normal University once held a hearing given a student cheating in an exam leading to expelling from the school in June, 2006, which was the first hearing conducted by colleges and universities for a student's complaint in Guangdong Province. At the same time, Zhejiang University applied hearing system to the matters of teachers' complaint and formulation some regulatory documents in 2007. In recent years, colleges and universities successfully put hearing system into use in the administrative management which greatly promotes the colleges and universities' management under the rules of law and in a democratic approach, further it ensures teachers and students' right to express and their right to participate even to protect their legitimate interests. However in practice hearing still needs to be improved.

So few hearings matters holding in colleges and universities

Colleges and universities' hearings hold mainly concentrated on the students' management matters, some school internal administrative matters and some decision directly affecting teachers and students' great interests, while for the matters related to the teachers' punishment and the

appointment of administrative persons are conducted few hearings. Current student management matters only focus on students “afterwards” punishment who do not obey discipline, for example, colleges and universities’ hearings regulated in punishment rules system for students breaching for the school discipline, it writes that the party can apply for a hearing according to the relevant provisions if someone has different opinions toward the school decision which is made directly related to someone’s great interests. Under this circumstance, from the aspect for protection someone’s rights, in another way, matters decisions which are directly related to the party’s great interest, colleges and universities shall hold a hearing in order to protect the party’s right [2].

Lack of laws to regulate management hearing system in colleges and universities

Recently students’ management hearing system draws public attention gradually, whereas existing laws and legal regulations are the early provisions. In such case, it is lack of certain regulations for management hearings system and lack of effective remedy mechanism. In practice, by studying the punishment provisions for students in Qsinghua University and Peking University and so on, we can conclude that it is very specifically regulated for the manager colleges and universities’ rights, as for the regulations for students breaching for disciplines, while it is so lack even blank to regulate the rights for students’ remedy, or just tell the students that they have right to inform the relevant school department if they refuse the punishment. In this way they cannot take action to implement their right of relief at all, let alone use hearing relief to ensure their rights.

Lack of specific regulations for hearing procedure

It is lack of relevant provisions for significant matters’ rights relief procedure in current management in colleges and universities. As colleges and universities have some regulations related to hearings such as how to hear, and how to hold hearings, there are no writing regulations and even united regulations. For example, notice on enforcement work of punishment student in Haidian district of Beijing, although it is detailed regulated the quality requirement of the hearing members and how to state for the parties, there is no specific regulations for how to operate, such as how to determine the candidate, and the candidate’s proportion, etc. Finally it leads to lack of practice and feasibility for the regulations [3].

The necessity of establishing management hearing system in colleges and universities

“It is a rule for ages that all who own power tend to abuse of power.” [4]. In order to protect the fundamental interests of teachers and students and ensure equality, justice and fairness of colleges and universities’ internal management, it is necessary to enclose power into the cage, and then operate according to relevant procedures. So we shall establish hearing system to restrict power.

Establishing hearing in accordance with legal attribute in colleges and universities

At present our colleges and universities’ management system is responsible by the headmaster of the school. Colleges and universities are the educative administrative subject also called institution legal person. Based on education law and education law in colleges and universities, school operates the work of student status management, recruitment, granting degrees and formulating internal rules. Under this circumstance, the relationship between colleges and the manager is educative administrative legal nature. In the term of management and punishment teachers and students, colleges and universities are based on the school’s regulations. As we are all known, undoubtedly hearing is one of the methods to supervise power. Although we have no united management hearing system for colleges and universities, introducing hearing system to the colleges and universities’ internal management is a useful measure for the aim to ensure the scientific and reasonable internal management operation itself in colleges and universities [5].

Ensuring scientific nature, reasonability and legality of the rules and regulations in colleges and universities, combing with the provisions for management system regulated by relevant laws and regulations, and according to the education law and educational law for colleges and universities,

colleges and universities has the right to operate the school, recruit students and formulate regulations for the internal management. Undoubtedly, school rules are made by the school itself and it is required students to obey strictly. Rules are the convention that everyone requires to obey, which is said that it owns advancement and mandatory. However, it has not all the characteristics of law, thus it does not belong to law. In the case that there is no law and regulation, school rules can supplement the regulations which colleges and universities depend on to carry out their power. From the above, it is necessary to establish the management system for colleges and universities.

Establishing hearing to protect the rights for colleges' teachers and students

Viewed the current developed countries in the world, it is apparently found that ancient nature justice principle is presented in students management procedure in Britain, at the same time, colleges and universities establish fair hearing procedures based on that principle. For example, in some cases, courts demand that academic institutions obey the requirement of natural justice principle, like institutions provide a hearing for students who are punished. While courts can not intervene into the solid content of academic judgment, the necessary procedures at least can not be abolished. In many cases, because the inspectors who are in the charge of colleges and universities abuse of power in violation of natural and justice principle, the decision is revoked by courts. Students due to failing in the exam or other action breaking the school rules are expelled from school by colleges and universities, and they have right to be respected and to be treated as the same as other students, even they can appeal to hold a hearing. In the United State, procedures provisions which ensure students' rights in the management of colleges and universities have a rich source of case law that presents the requirement of procedure justice [6]. As the British jurist William Wade said that law writes that in the United States "before students are expelled from school because of their misconduct, colleges and universities shall inform and give them the chance of hearing..." [7]. As for the matters of the procedural protections for students' education rights and other legal rights in the regulations and rules formulated by colleges and universities, they are specifically regulated. Such as University of California makes fifty-two provisions on students management, among procedural provisions, and there are injustice complaint procedure, illegal disciplinary procedure, students appealing to hearing procedure, and handling students cheating in the exam procedure, etc. It is seen that once the management decision is directly related to the students great interest, it is demanded to hold hearing and inform the party in advance. Of course, hearing has flexible forms, like verbal notification, informal hearing without lawyers and judges participating in and formal hearing with serious accuse and strict procedure [8]. It is sure that there are exceptions in emergent conditions. If a student's behavior endangers the safety of teachers and students, or seriously endangers the school's property, the institutions have the right to ask the student to leave the school right away without hearing. Then after that the school can hold a hearing which is joined by the student himself.

East China University of Political Science and Law once held a hearing before it made a decision for a graduate to repeat a year again, which is a first hearing held in internal administrative management in colleges and universities. Then Sun yat-sen University first held a hearing on the food price in 2003. Educational department modified the "common colleges and universities' student management provisions" in 2005, and there are some new regulations that students have appealing right who breaking school rules, colleges and universities have their own dealing methods to handle the appeal, and regulations on how to deal with the repeat appeal process and institutions can take action to hearing. Therefore, colleges and universities need to hold hearings before they formulate important normative documents and make a decision that is not good for teachers and students. Besides in order to maintain the democratic management and system establishment and protect the interests of teachers and students, it is necessary to establish hearing system.

Establish hearing system to contribute to better practice of the human-oriented concept

Human-oriented, standard management and management school by laws need to establish hearing system. Tian Yong hao from Beijing University of Science and Technology and Doctor Liu Yanwen from Peking University initiate a lawsuit of their school because the school refuse to hand

out their degree certificate. It is obvious that many lawsuits and disputes are caused by colleges and universities which do not listen to other people's views and do not held hearing before they make a punishment decision. As we are known that hearing presents the concept of human-oriented and justice. Establishing hearing procedures reflects colleges and universities to keep pace with the age, presents colleges and universities managing the school under the laws and regulations, and embodies colleges and universities maintaining internal management order in a scientific, democratic and fair way. At the same time, school as the manager, it can play an important role to manage the daily work in an effective and scientific way, and it can manage the institutions in a harmonious way according to regulations and procedures.

The feasibility of establishing hearing system in colleges and universities

“Due process of law” and “the principle of natural justice” is not only the legal basis of the institutions management hearing system, but also is the basic theory resource of hearing system.

Absorbing some advanced experience of western countries

Forming a set of scientific and orderly hearing system is an important way to manage school matters for the countries' operation under laws and the colleges and universities' management in a method of hearing. British colleges and universities for students' punishment is subjected to the conditions of hearing, and justice procedure is also applied to judicial behavior, as for the current, administrative bad behavior for the citizen is also restricted by the procedure. Famous British scholar William Wade said that since administrative law is to control and regulate the administrative power and protect administrative relative person's legitimate rights, those public colleges and universities' behavior is restricted to the scope of the administrative law” [9]. Teachers and students' remedy rights is born with their punishment, so they shall be treated justly by hearing.

The American universities punish the misconduct students strictly in accordance with the regulations. First is to inform, that is to say, before make a punishment decision, the school shall inform the student what mistake he or she has made, and what provisions he or she has disobeyed. Then is to hold hearing which gives the student an important chance to state the facts and tell his or her relevant behavior before the institutions' decision comes into effect [10].

The current legal provisions in our country

In our country it is lack of laws related to hearing system provisions, so it is not a day time to perfect the laws and regulations. However educational department attaches more and more attention to the management hearing system in colleges and universities, and education law modification work had pointed out that it had made further clear and would perfect the channels to guarantee teachers and students' rights and to relief their rights in March, 2004. The educational department has issued new “students management regulations in common colleges and universities” and “code of conduct for common colleges and universities” on March 29, 2005. Whereas these two rules had implemented on September 1, 2009, and “students' management regulation in common colleges and universities” added the content of “students' rights and responsibilities” and made clear of school and students' rights and responsibilities for both parties. At the same time, it pointed out it was necessary to hold hearing procedure to make a decision and to be discussed in headmaster's meeting and to listen to other people's opinions when they make a severe punishment such as to drop out a student and expel a student from the school. And it made clear that the party had rights to state, review, defend and make a lawsuit when the student is faced with severe punishment such as to be dropped out of the school and be expelled from the school. Meanwhile colleges and universities shall make clear regulations and procedures to guarantee the party's rights [11]. University of Zhejiang Industry and Commerce once held a hearing on “the management of offices”, which is a first substantive hearing held in hearing hall in terms of the national educational system. From now on, we look forward to establishing management hearing system gradually in our national colleges and universities as early as possible.

Enhancement of teachers and students' legal awareness contributing to establishing hearing system

In the trend of governing the country under the law, people pursuit fairness and justice and have strong protection consciousness for their interests and rights. Especially in colleges and universities, teachers and students widely participate in the process of the institutions' development and promote the general school's matters and affairs to the public. Teachers and students can make full use of hearing because they own well capability of distinguishing right and wrong. Zhejiang University of Industry and Commerce set up the only hearing hall in order to hold hearing and comprehensively implementation controversial matters system in December, 2008. This hearing hall is enough for 500 persons, and it is provided for holding hearing and dealing with dispute. From this aspect, we can see that the guarantee of enough space ensures the implementation of hearing system and great dispute ruling system in colleges and universities [12]. Teachers and students can clarify the facts, and put forward some evidence and debate widely, only in this way can they better protect their rights and interests. Teachers and students in colleges and universities completely own the capability to participate in the hearing which is laid foundation and conditions for establishing management hearing system in colleges and universities.

Conclusion

Hearing system plays an important role to protect citizens to participate in the management social affairs and it is the requirement of governing the institutions under laws and regulations. At the same time, establishing standard procedure and hearing system reflects to enclose power into the cage for the management in colleges and universities. As far as we know that colleges and universities are the same as society and government institutions, once distributing power, it is necessary to preserve the relief rights for the teachers and students to protect themselves. Above all, establishing perfect hearing system demands us to combine our present backgrounds with learning foreigner's advancement experience, in order to protect well the teachers and students' interest, to build good management order and environment for teachers and students' development and to impulse the campus regulated construction.

Managing the campus under laws and regulations requires us to promote transparency of decision-making and policy system in colleges and universities. Let "due process of law" embody in all aspects of campus' management. We are looking forward to establishing the national united management hearing system in colleges and universities as early as possible in order to improve the lever and quality of campus management and build a harmonious campus with order.

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