

Theory of Construction of Chinese Administrative Hearing System in Colleges and Universities

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Abstract. With promoting the strategy of ruling by law in an all-round manner, the Chinese college teachers and students' increased awareness of safeguarding their rights, the internal management in the higher learning institutions is receiving more and more attention from internal teachers, students, staff and society. As a manager, higher education institutions' management is not perfect in the part of procedure. In order to make the management more legalization, democratization and institutionalization, it will be necessary to establish the hearing system of Institutions of higher learning.

Introduction

"The just consequence can only obtain its strength through just procedure." [1]As an effective right relief mechanism, hearing's application in management of higher education is right and proper. Next, according to basic principles in modern administrative law related with hearing system, the paper will give some suggestions on setting the hearing system in management of Chinese higher education institutions .

Hearing principles: Open principle

Hearing should be conducted on the basis of open principle and privately as an exception. Exception, is mainly refers to the hearing that matters state secrets or commercial secrets, personal privacy can be conducted privately. [2] According to basic principles in administrative law is protected in accordance with the law, open principle of hearing system in management of Chinese higher education institutions mainly involves the following contents: Firstly, disclose the legal grounds and the school rules and regulations. This is the premise of ensuring the efficient operation of the hearing system in management of higher education institutions . All specifications related with rights and obligations of teachers and students in higher education institutions should be open and known by the teachers and students through a certain way. Secondly, disclosure the intramural public information. All public information materials related with university management should be free and open to teachers and students as much as possible. Teachers and students should be allowed to participate in school management and make effective use of the information. Thirdly, disclosure the process of disciplinary . All of negative acts to teachers and students taken by school authorities should be disclosed in time , including the time , place, reason, contents and related matters of the hearing. University should disclosure items widely and the disclosure is not simply refers to disclosing the results, but disclosing issues, the process. [3]

Debate principle

Another important principle of hearing system is debate principle and its essence is settling disputes and balancing all sorts of conflict of interest through full and free discussion. [4]It is important to ensure that debate and opinion can be expressed freely for insisting on debate principle. Spirit of tolerance should be stressed in free debate. Tolerance includes both individual's tolerance toward others and authority's tolerance toward individuals, and the latter is more important. American scholar Van Loon holds the view that tolerance refers to the symmetry of official

intolerance of, not the symmetry a personal intolerance. [5] Debate should stick the creed which said by Voltaire: "I disapprove of what you say, but I will defend to the death your right to say it." [6] With such a tolerant mind, the free debate can occupy an important position in the enactment of College student management rules.

Files Exclusiveness Principle

Files exclusiveness principle refers that the decision made by administrative organs through formal hearing procedure is based on the case file and facts outside the books, not known or proofed by party involved shouldn't be basis. [7]

Application of files exclusiveness principle will help protect the lawful rights and interests of administrative counterpart, and enhance the supervision and restriction to administrative organ. This principle aims at ensuring the time-effectiveness of hearing procedure and avoiding the hearing procedure become a mere formality. Similarly, the time-effectiveness of hearing procedure in university administrative activities should be ensured by files exclusiveness principle. Both hearing procedure in the enactment of university administrative rules and in the specific handling decision should be based on the principle of files exclusiveness principle. The principle not only contains the basic requirements that the administrative organ should follow the "verdict after obtainin evidence," and administrative organ cannot accept evidence outside hearing. It shall bear legal liability in accordance with law for violating a principle.

Convenient Principle for the Public and Efficiency Principle

The setting of hearing procedure should be convenient for teachers and students. Meanwhile, being effective, which means producing hedge-fund-like returns at lower cost, is necessary. According to the efficiency principle, hearing should start, carry out and finish within the stipulated time and delay is not legal. Hearing procedure meeting with proper procedure demand should be efficient. On these premises in which fairness, impartiality, publicity, democracy, and probity can be ensured, minimize procedure and reduce economic cost, time cost, and manpower and material resources. Thus, administrative parties involved could participate hearing conveniently and the speed of the hearing will be improved. Convenient principle for the public and efficiency principle reflects the interests of the applicant and the quality and efficiency of the hearing .and it also saves the time of both parties and it's a win-win situation.

The hearing range

Hearing range refers to the scope that hearing sets in university management domain. Hearing range may become a concentrated expression and the primary sign of democratic level to a certain extent. The setting and scope of application of hearing procedure are restricted by various factors, such as universities management concept, democratization degree, participation degree of university management system and so on. At the present stage, the broad hearing range of university is:

1. The abstract behavior of university management. The abstract behavior of university management, mainly refers to general rules made by university management team, such as the classroom rules, the student behavior rules, etc. These abstract behaviors have prevalent sanction to teachers and students and will affect their rights and interests. Therefore, it is necessary to set up hearing procedure in the process of making rules. It is an important pattern of democratic management to allow the college teachers and students to express their interests through hearing procedure and absorb their opinions as much as possible.

2. The concrete behavior of the university management. Concrete behavior of the university management refers to processing behavior aiming at management objects and management issue made by university management team. And the concrete behavior may have adverse impact or beneficial impact on teachers and students, such as appraising, record of demerit and dismiss. To avoid injustice and arbitrary behavior and provide the ways for the teachers and students to relief their rights and reduce internal disputes, university management team should give the counterpart a chance to defend for themselves.

3. The other major matters in university management. For issues covering a wide range of aspects in university management, university management team should hear the views of all sides through the hearing procedure before the decision made. On the one hand, it reflects the democratic management in universities; On the other hand, it is also conducive to the new measures because new measures could obtain approval from teachers and students and are implemented. New measures include decisions related with teachers and students' interests, such as, the construction of office building, dormitory, and teachers housing and publishing regulations involved teachers and students' rewards and punishments.

Main Body of Administrative Hearing

Subjects of hearing refer to all parties involved in university management and they enjoy their own rights and assume their obligations in hearing procedure. Subjects of hearing mainly include the applicant, the decider, the host, the third man, the hearer and other participants.

The Applicant

The applicant of hearing refers to a person who has the right to requests for a hearing or a person who makes an application that starts the hearing procedure or person involved in the hearing procedure. Generally, they can be classified into two types: the first type is the person involved in specific behavior. When the specific behavior is related with the applicants' rights and obligations which belong to the scope of hearing and have the right to apply for a hearing, the applicant can entrust others to attend the hearing. The second type is the applicant in the procedure of making abstract behavior and related person who makes an application. After the related announcement of hearing, the relevant people of certain areas can apply for a hearing.

The Decider

Generally, the decider refers to related management team of university. They should participate in hearing procedure and listen to the applicants' expression and query before making regulations, significant decisions or specific management actions. The decider and the applicant are two parties in hearing procedure and they are the most important participants.

The Hearing Director

The hearing director is a person who is responsible for the adjustment and control of the hearing and making the hearing activity finished according to legal procedure. The hearing director listens to opinions from two parties and controls the progress of the hearing and preserve order of the hearing. Normally, the hearing director should be familiar with the law, relatively independent, disinterested with the case, high prestige, good professional ethics and moral cultivation. In university management, the hearing director usually is taken by principal of special committee in a neutral position or a professor majoring in related specialties. The decider and the hearing director shouldn't be the very same person.

The third man and the hearer

The third man refers to the person who has a legal interest relationship and participates in the hearing after the hearing starts. University administrative authority should told the third man that he has the right of participating the hearing before decision related with them made. If there are multiple counterparts, the person who hasn't applied for a hearing in time and is invited to participate in the hearing procedure by the host is the third man. Because the third man has a legal interest relationship with the concrete behavior of the hearing, he has similar status with the applicant of the hearing.

The rights of the hearer are present at a hearing as an observer, and shouldn't participate in the specific program hearing. In addition personal privacy, commercial secrets, school things, the hearing should be open and allow the news media interview and the public audit. The hearer should observe discipline, speaking loud and disturbing the order of the hearing are not allowed.

Other Hearing Participants

The hearing participants include witnesses, identification and translation, etc... They are collectively called "witness". They have no interested with the case and they participate in the hearing to help find out the truth. Rights they enjoy include: the right of the person shall not be violated, testifying according to the facts, providing an evaluation conclusion and translation; being compensated for missing working time; review the hearing record; for errors, omissions, putting forward opinions like modifying, adding, deleting. The obligations he should fulfill include: showing up on time for the hearing at named place; complying with the order and following directions from the hearing director; testifying according to the facts truthfully and avoiding false statements; keeping secrets.

Hearing procedure: Formal Hearing Procedure

A formal hearing procedure has distinctive features of judicial proceedings. The hearing director's status is similar to a judge of high-level supervision and the applicant and the decider are similar to prosecutor and defendant. A formal hearing procedure in university usually refers to a formal hearing which was held before some disciplinary verdicts are made, such as decapitation, school expulsion which would have an important influence on teachers and students. During the formal hearing procedure, the decision made based on hearing record which includes involved party submitting evidence, cross-examination, inquiring of a witness, and dispute each other has the nature of quasi-judicial.

The Hearing Information

Hearing information is the beginning of the hearing procedure. Institution which will make a decision should make a hearing notification before they make a final handling decision related with involved teachers and students and told involved students and teachers that they have the right of applying for a hearing. The hearing notification should be served to the parties concerned and submitted to hearing committee. If necessary, hearing notification could be posted publicly. If there is no hearing notification served to the parties concerned, the decision will be invalid.

Applying for a Hearing

Teachers or students involved could apply for a hearing and submit "hearing notification" to hearing committee after they receive the "hearing notification" within the time limit. If, without any justified reason, the applicant fails to meet the time limit for requesting the application, shall be deemed as renunciation. If, teachers or students involved submit "hearing notification" within the time limit, the hearing committee shall accept and hold a hearing.

Hearing Accept ion and Information

After accepting the hearing, hearing presiding organization shall inform involved parties time, place which related with hearing within the time limit. Hearing presiding organization shall make a hearing notification attached with a member list of hearing committee. The hearing notification and the member list shall be submitted to involved parties and investigator within the time limit. Meanwhile, involved parties and investigator shall be told that there will be a negotiation in which the time of electing the hearing director will be fixed. It's the right of the involved parties to got the information within the time limit and the request of the procedural justice. Generally, information is made in writing and announcement will be made if it is necessary. All in all, it shall be known by the applicant. In addition to the time and place of the hearing, question involved, the decision being made and the procedural right of the applicant shall be included in the information. [8]

Hearing

Hearing refers to that the parties involved and the case investigators may make statements and defend themselves and make cross-examinations on the administrative penalty under the hearing organization in a named place. [9] The investigator shall, when the hearing is conducted, put forward the facts about the violations of law committed by the party, the evidence and recommendation for administrative penalty; the party may raise an objection to the statements by

case investigators and produce relevant evidence to prove it. The parties give their closing arguments after the hearing director declaring the closing of the hearing. Before the closing of the hearing, the parties involved may make a final statement. At last, the director declares the closing of the hearing and tells hearing participants review the hearing record and sign and stamp.

End of the Hearing

At the end of the hearing, the university's executives will have a discussion on hearing record and make decisions according to different cases and inform the parties involved the decisions. The hearing director shall make hearing record which includes hearing reason and hearing process; claims and reasons of the party; evidence put forward by the director, the applicant and the third man. The hearing record shall be signed and stamped by hearing director and hearing clerks and be served to the parties involved. [10] The institution which would make a decision would make the final decision according to the hearing record and the facts and the law supporting according to which the university made the decision shall not be beyond the scope of hearing record.

Conclusion

This article has presented the construction of the hearing system of university management which aims at promoting the law construction of university management and safeguarding the lawful rights and interests of the teachers, students, staff members and workers. We expect the ministries of education to make an unified hearing system of university management with Chinese characteristics which conforms to china and has a universal guidance.

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