

# On the Hearing and Remedy Approaches of China's University Management

Hui-Hua Zhang

College of Law, South China University of Technology, Higher Education Mega Center, Guangzhou City, Guangdong Province, P.R.China, 510006

hhzhang1@scut.edu.cn, 553662117@qq.com

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**Abstract.** As the internal management reforms of Chinese universities are increasingly deepened, the hearing system of Chinese university management will be surely strengthened and perfected. Meanwhile, through the unobstructed remedy approach, the hearing system of teacher and student management will play a more positive and active role in reinforcing university's democratic management and system construction. In this way, the legitimate rights and interests of teachers and students will be protected to ensure the impartiality, democracy and scientificity of university's internal management.

## Introduction

Remedy precedes rights. [1]"Where there is a right, there will be remedy". [2]A right without remedy is not right. "Student right remedy system shall become one of the important parts of student management system in law-governed society. The aim of right remedy is to draw a clear distinction between power and rights in the light of the established operating procedures so as to make compensation for the impaired rights and ensure that actual right approaches or becomes the legal right as much as possible." [3]Though university management hearing system has endowed the party involved with the right of defense and reduced the possibilities of arbitrariness to make a decision as fairly as possible. After all, however, hearing procedure is the intermediate remedy link of administrative procedure, as a result of which the administered teachers and students will be still likely to have their right infringed despite the implementation of this procedure. Therefore, remedy procedure shall be established for hearing procedure as the remedial measure for the right protection of teachers and students.

## Appeal

Universities are supposed to establish appeal acceptance departments. Currently, the organs that address student complaints in universities mainly consist of several forms, including Student's Affairs Office or Teacher Affairs Office, Party Committee Office or University Office, Discipline Inspection Committee, and Student Appeal Committee. From the perspective of impartiality, it is more reasonable to build Student Appeal Committee. In order to complete daily work, Student Appeal Committee in universities shall construct an office responsible for appeal acceptance and investigation, evidence collection, declaration of complaint settlement decision or for reporting the original inconsistent complaint settlement decisions to president office conference for reconsideration. Review conference which shall be held in a public way shall notify the complainant and original settlement unit of attending the conference to make an explanation. Nevertheless, if the parties involved require the review conference to be held in a private way, their opinions shall be respected. The specific deliberation shall comply with the principle of lawfulness and reasonableness. Meanwhile, full consideration shall be given to the matching degree between educational purpose and management means on the basis of justice and equity. Apart from these, focus should be placed on protecting the legitimate rights and interests of the educatees, without imposing heavy punishments because of small mistakes, or disproportioning or unbalancing the

punishments and mistakes. In the deliberation, the decision shall not be passed without the consent of 2/3 of the participating committees or 1/2 of all committees. [4]

### **Mediation**

Mediation is an approach to settling disputes, and a settlement agreement shall be reached through equal consideration on a voluntary basis. Mediation, which performs a unique role, can reduce lawsuits, save costs and contribute to stability and solidarity. In view of this, universities can establish a mediation committee to resolve the civil disputes between universities and teachers as well as between universities and students. In case the disputes over management decisions cannot be resolved by way of mediation, the parties involved may resort to appeal, arbitration or lawsuit. [5]

### **Reconsideration**

Besides the establishment of judicial remedy procedure, the supporting administrative remedy procedure shall be also improved. In case where the teachers, students or administrative personnel refuse to accept university's settlement decision on the specific matters that can enter the administrative reconsideration procedure in university management as specified by law (such as the behavior that authorizes universities to grant degree certificate and graduation certificate), an application for administrative reconsideration may be filed. Surely, the "administrative reconsideration regulation on teacher and student management in universities" may be also enacted independently. The "regulation" shall clearly define the scope of acceptance and prescribe that when counterpart refuses to accept the decisions made after university management hearing procedure, they may file an application for administrative reconsideration to specific administrative organs or lodge an administrative lawsuit under any condition when they do not accept the decision of reconsideration. As a post-remedy approach, administrative reconsideration is superior to administrative procedure in various aspects. Firstly, administrative reconsideration checks not only the lawfulness but also the appropriateness of specific administrative behaviors. Secondly, administrative reconsideration is free of charge. Thirdly, administrative reconsideration tends to makes use of the superior-subordinate relationships in administration; thus, the subordinate do not resist against error correction behaviors, which can contribute to implementing the decisions. If teachers and students still insist that the decisions made by hearing procedure injure their legitimate rights and interests, they may file an application for administrative reconsideration to educational administrative organ. Due to the above-mentioned advantages of administrative reconsideration, the avoidance of administrative procedure by the settlement of right remedy issues in reconsideration procedure can not only reduce the litigation exhaustion of all parties involved, but also guarantee the continuity and stability of university student management order. Additionally, educational administrative reconsideration organ shall transform their working views for the purpose of bringing educational administrative reconsideration into full play. [6]

### **Educational Arbitration**

Both hearing system and administrative reconsideration in university management are the internal administrative remedy approaches, which go against the justice principle of "no one can be the judge in his own case" and thus cannot completely ensure the impartiality and reasonableness of remedy procedure. As a result of this, it is necessary to establish an educational arbitration committee independent of administrative department, and the committee may be established under educational administrative department by government. However, its arbitration procedure shall exercise the arbitration right independently, free from the intervention of educational administrative department. In this way, a remedy mechanism independent of administrative self-remedy mechanism can be established to ensure the neutrality and impartiality of remedy procedure and then to provide a more creditable and impartial right remedy mechanism for the parties involved.

Any significant matters in connection with the rights of teachers and students shall be subject to laws and the consideration of educational arbitration committee. Teachers and students who refuse to accept the educational arbitration verdict may also file a lawsuit.

### **Administrative Proceedings**

Administrative proceedings are legal behaviors or systems based on which people's court gives a judicial review of whether the specific administrative behaviors are performed legally and then reaches a verdict after administrative counterparts lodge a lawsuit to the court when they consider the specific administrative behaviors of administrative subjects have infringed upon their legitimate rights and interests.

"Administrative proceedings constitute a judicial review system as well as an administrative legal remedy system. Administrative counterparts are obliged to obey national laws and regulations, as well as the legal management of administrative organs. Nevertheless, designers of legal system always follow such principle: obligations should appear simultaneously with rights and rights should be accompanied by remedy. Administrative proceedings are aimed at protecting the legitimate rights and interests of counterparts while supervising the law-abiding administration of administrative organs, and providing a timely and effective remedy for counterparts when their legitimate rights and interests are or may be infringed by specific administrative behaviors." [7]

In a law-governed society, judicial remedy is the ultimate means of right remedy. As for the remedy in university management hearing system, administrative proceedings are a traditional and the ultimate remedy approach with striking advantages. To have administrative proceedings play an effective role in remedying existing administrative behaviors of university management in China, attention must be paid to following aspects:

Firstly, only when the administrative behaviors of university management influence the changes in major rights and interests, basic rights and identities of teachers and students, can they be subsumed into the acceptance scope of administrative proceedings. Ordinary administrative behaviors in connection with professional knowledge and fields cannot be included into the scope of judicial review, however. There are some limitations on court's acceptance scope due to the particularity and professionalism of universities, the relationship between universities and teachers and students, and the bearing capacity of court. Facing such limitations, inspirations can be drawn from the legal precedents of Taiwan courts: "when acts of disposition like expelling given by universities as stipulated by the schooling rules or punishment rules are sufficient to change students' identity or deprive themselves of their educational opportunities, their rights of being educated as required by constitution will be influenced substantially. Such acts of disposition are the administrative sanctions under the category of administrative procedural law. The students who still cannot get remedy despite using all appeal ways in universities may lodge a lawsuit or resort to administrative proceedings in compliance with laws." [8]

Whether the administrative behaviors shall be subsumed into the standards of judicial review shall be decided according to their influence on the rights and interests of teachers and students, and the disposition of these behaviors shall be subject to their category. The behaviors that exercise a significant influence on legitimate rights and interests shall be reviewed strictly in accordance with judicial remedy procedure.

Secondly, it is best to insist on pre-reconsideration principle. Teachers and students who refuse to accept the decisions made in hearing procedure shall file an application for administrative reconsideration to educational administrative departments in universities, and only those who are still unsatisfied with the decision of administrative reconsideration may apply for an administrative lawsuit to people's court.

Thirdly, in the duration of litigation, the accused behaviors are stopped temporally. The administrative procedure law has prescribed that the reconsideration and litigation shall not be stopped in order to ensure administrative continuity. However, to protect the rights and interests of the counterparties and prevent the unrecoverable damage, Administrative Reconsideration Law and Administrative Procedure Law have specified the exceptional circumstances of not stopping

implementation. Particularly, the acts of disposition such as expelling teachers and students will cause irrevocable losses to teachers and students once being conducted. Therefore, such acts shall be taken into serious consideration, and the interests of teachers and students shall be guaranteed based on the principle of "the accused behaviors are stopped in the duration of litigation."

Fourthly, judicial review relies on formal review rather than substantive review. Judicial review is of high necessity, because judges are not the experts of education field though with abundant knowledge of law. Therefore, while conducting judicial review, judge usually focuses attention on procedure, such as whether the university has held a hearing in accordance with the application of stakeholders before making a decision, whether it listens to the statement and cross-examination of the parties involved, whether it reaches a verdict in the light of hearing's written contents, whether it follows due process principle, and whether the decision has infringed upon the legitimate rights and interests of teachers and students. [9]

## **Conclusion**

As the democratic and legalized construction in China develops, and the internal management reforms of Chinese universities are increasingly deepened, the hearing system of university management will be surely strengthened and perfected. Through the unobstructed remedy approach, the hearing system of university management will play a more positive and active role in reinforcing university's democratic management and system construction. In this way, the legitimate rights and interests of teachers and students will be protected to ensure the impartiality, democracy and scientificity of university's internal management.

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