An Optimization Study of Educational Discipline in Colleges and Universities Under Public Health Emergencies

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Abstract. The emergence of public health emergencies in a certain period of time has a greater impact on people's normal life, the colleges and universities in order to effectively deal with the complex situation, often tighten the control policy and strengthen the student discipline. As a direct basis for the right to discipline, many colleges and universities temporary disciplinary measures are not perfect. In the actual operation of the process of "lack of legality", "the application of the standard difference is too large", "the implementation of the procedure is not rigorous" and "relief mechanism effective Insufficient" and other problems, to the normal life of the student learning trouble, but also to the university has a negative impact. In this regard, colleges and universities can improve the three levels of disciplinary formulation, implementation and relief, so that the educational disciplinary system is truly scientific, rationalized and standardized.

Keywords: college education discipline; public health emergencies; developmental procedures; implementation procedures; remedies.

1. Introduction

The right of universities to educate and discipline comes from the autonomous management right given to higher education institutions by the Education Law and the Higher Education Law, and is further regulated in the Provisions on the Administration of Students in Ordinary Colleges and Universities (hereinafter referred to as the Administrative Provisions). The school rules, management regulations and ordinances formulated by universities in the exercise of their autonomy are the direct basis for the right of colleges and universities to impose disciplinary measures. Educational discipline in higher education is an administrative act. The implementation of the right of educational discipline requires, first of all, an educational legal relationship between the parties. The survival of this legal relationship will inevitably create a submissive, dominant influence between the higher education institution and the student, which needs to satisfy the basic theory of administrative law. Then the higher education institutions of education disciplinary power is applicable to students, rather than a wide range of administrative counterparts, so the educational disciplinary action is not an administrative penalty but administrative punishment. But this kind of discipline is also different from the general sense of administrative punishment, because administrative punishment belongs to the category of administrative internal behavior with non-actionable. Although the laws and regulations have not been stipulated in the university education discipline behavior of the actionable, the behavior of the actionable has become a consensus. Therefore, education disciplinary action can be characterized as special administrative punishment.

According to the procedure, colleges and universities can be divided into the right to formulate educational discipline and the right to implement educational discipline. The former is mainly manifested in the universities have the right to independently formulate disciplinary normative documents, such as student management regulations. The latter refers to the universities can be based on the relevant documents on students and other special groups of punishment. From the content point of view, according to Article 51 of the Administrative Provisions, educational discipline in colleges and universities is mainly manifested in disciplinary measures such as warning, serious warning, demerit, probation and expulsion. Most scholars believe that the content of educational discipline includes not only disciplinary discipline, but also academic discipline. For example, Mr.
Li Huizong classifies educational discipline in his book "Essentials of Educational Administrative Law". Professor Zhou Hongyu also believes that educational discipline can be divided into disciplinary discipline and academic discipline, and can also be divided into educational measures and disciplinary measures.

2. Analysis of the Current Situation

2.1 Wide Variations in the Criteria Applied

The right to set educational discipline in colleges and universities is aimed at guiding students to correct their mistakes and develop correct values by means of punishment. In other words, discipline is a means rather than an end, and it should fully reflect the rationality while observing the principle of legality. Discipline of students should be in line with the purpose of education, can not exceed the necessary limits, otherwise it constitutes an abuse of disciplinary power. Therefore, by exercising the right to set discipline to maintain campus order in emergency situations, universities need to take appropriate and reasonable disciplinary measures based on the degree, circumstances and consequences of students' violations.

Although the geographical characteristics of public health events make different colleges and universities of the disciplinary measures show differentiation, this difference is already beyond the reasonable range. For example, in the COVID-19 infection, for the behavior of private over the wall in and out of the campus, universities to take disciplinary measures covering warning, demerit, probation, and some only to give a notice of criticism. Based on the autonomy of colleges and universities, they can certainly manage themselves within their clearly defined responsibilities. The state has no right to intervene except for legislative, administrative and judicial supervision. However, the principle of reasonableness of the right to set disciplinary action requires that the disciplinary action taken by the university for violations of the same nature should be kept within a certain reasonable range. It indicates that some universities have less experience in dealing with the nature of students' different violations and have failed to form a more scientific and comprehensive understanding of the nature of students' different violations.

2.2 Insufficiently Rigorous Procedures for the Implementation

The urgency of public health incidents makes it necessary for colleges and universities to determine the type of student discipline within a short period of time, and the development of disciplinary procedures is often overlooked. Generally speaking, there are two modes of implementation of the right to discipline in education. One is the special chapter mode, that is, in the temporary disciplinary regulations set up a separate chapter of "disciplinary implementation procedures", which provides for the implementation of the right to discipline the process. The second is the decentralized mode, which is not a separate chapter to make special provisions but dispersed in a variety of disciplinary provisions in colleges and universities. Colleges and universities mostly adopt this model. For example, Overseas Chinese University and University of Science and Technology of Beijing's interim measures to deal with the COVID-19 infection are representative. In view of the special and general relationship between these provisional provisions and the disciplinary measures of universities, the procedural provisions, whether in the mode of special chapters or in the mode of decentralization, are all guiding provisions, which means they do not provide detailed information. Of course, in practice, there is also the phenomenon that some universities do not provide for implementation procedures at all, so that students have no way of knowing whether or not the procedures for the formation of the disciplinary action against them are in compliance with the law, and it is difficult for them to seek relief from the relevant authorities.

According to statistics, there were 16 court rulings against colleges and universities for violating statutory procedures, accounting for 48% of all college and university disciplinary lawsuits that occurred between 1999 and 2016. The reasons for losing the lawsuits can be categorized as "Failure
to inform students of their right to apply for a hearing","Failure to hear the statement and defense of the disciplined students","Failure to inform students of the possibility of appealing and the time limit for filing an appeal"and"Failure to submit the disciplinary decision to the court".In order to achieve the purpose of punishing irregularities, in the absence of procedural provisions, the higher education institutions are more likely to carry out irregularities such as compressing the time for appeals and not informing students of their rights.Therefore,in the interim documents in a reasonable set of implementation procedures, is effective to avoid the higher education institutions in response to public health emergencies in the application of the right to education and discipline too broadly inevitable.

2.3 Ineffective Remedies

The constituent elements of temporary educational disciplinary regulations in the context of public health emergencies are often relatively simple, covering mainly the three aspects of disciplinary targets, disciplinary content and disciplinary procedures. Students are disciplined after the complaint and other remedial mechanisms are rarely mentioned, the vast majority of documents only in the bylaws or the end of the text with a hybrid specification to make guidance. For example, a university in Tianjin stipulates in the provisional document that disciplinary procedures and student appeals are carried out in accordance with the university's "Measures for Handling Student Appeals". For example, a university in Sichuan has formulated only four articles to deal with the COVID-19 infection. It is undeniable that all universities have constructed a mechanism for handling student complaints. However, the mechanism is difficult to directly known to the students to play an effective, well-designed remedial system or reduced to a pose. After being disciplined students are often subjected to a greater psychological burden and public opinion pressure, some of which have reasonable reasons to cancel, change the disciplinary action of the students because they can not seek redress, in all kinds of factors are very easy to produce serious mental health problems. From this incident, it can be found that the imbalance between the number of disciplinary norms and remedial norms in the relevant documents urgently needs to be corrected.

3. Summarizing the Reasons for the Imbalance

3.1 Failure to Develop an Accurate Understanding of the Specificity of the Exercise of Disciplinary Powers

Public health emergencies are extensive and influential, bringing resistance to normal teaching and learning in universities. For example, the COVID-19 infection not only affected student management centered on teaching, employment, examination and financial aid, but also sounded the alarm for campus security, hygiene and other aspects of campus management. The introduction of a series of campus control requirements has also brought about the emergence of new forms of student violations. Previously, the disciplinary norms formulated by some colleges and universities did not address the situation of students violating the school's measures to prevent and control infectious diseases, and the provisions that did address the situation were often "those who violate/refuse to carry out the school's preventive and control measures will be given xxx disciplinary measures", which could not effectively deal with a wide range of violation patterns. Therefore, the establishment of specialized, targeted disciplinary provisions has a strong practical significance. However, according to the author's research, in response to the COVID-19 infection, colleges and universities have not established specialized regulations situation is more common. Take 52 undergraduate colleges and universities in Hunan Province as an example, 69% of them have not issued separate disciplinary regulations, and 10% of them have formulated relevant documents in the form of reference to the application or self-determination of the faculty (Figure 1), which reveals that colleges and universities have no right to educate and discipline under public health emergencies. This reveals that universities are not fully aware of the special nature of the
exercise of the right to discipline under public health emergencies and pay less attention to it, which directly affects the formulation of relevant norms and the implementation of measures.

Fig. 1 Statistics of undergraduate institutions in Hunan Province in response to the COVID-19 infection in 2020-2022 to formulate specialized regulations on student disciplinary treatment.

3.2 Lack of Professionalism in the Subjects and Procedures of Disciplinary Norm-setting

Disciplinary norms are directly related to the punishment of students' corresponding rights and interests. To ensure that their contents implement the requirements of legality and rationality, it undoubtedly puts forward certain requirements for their formulation subject and formulation procedure. At present, colleges and universities have great deficiencies in these two aspects.

For one thing, the college disciplinary norms exist in the development of the main body is not the same, the lack of professionalism. The main body of the current disciplinary norms mainly includes the student work management department, prevention and control office and other public health emergencies, such as the main organization responsible for the main body, or by the aforementioned departments jointly developed. Among the above subjects, the first category of subjects occupies the majority, and the second and third categories of subjects are relatively few. Generally speaking, the main responsibilities of university academic work office (committee) include student ideological and political education, and behavior management and services for students' growth and success, etc. They can better grasp the basic situation of students and have certain experience in formulating rules and regulations. However, due to the complexity of the work, the development of disciplinary norms alone by the disciplinary norms, easy to lead to sanctions and violations of the inequality, norms to adjust the scope of the problem of omissions and so on. The university public health emergency leading group and other responsible organizations as the main leader of the emergency work, coordinator, major situation disposer, as the control body, based on the purpose of strengthening the maintenance of the management order, inevitably tends to take more severe disciplinary means of student violations. In contrast, the joint formulation of complementary advantages, the two sides jointly undertake the task of formulating norms for the scientific nature of disciplinary norms, rationality provides a "subject" guarantee. However, for the norms legitimacy issues, involving the overall grasp of the rule system and the interpretation of specific legal provisions and more complex, relying only on the combination of the two subjects can not be properly resolved. It is indispensable to ensure that an appropriate number of specialists in the field of jurisprudence are included in the main body of the formulation.

Furthermore, the disciplinary norms under public health emergencies have rough procedures and lack of effective participation and supervision by students, which impede the realization of scientific, rational and legal disciplinary norms. For example, during the epidemic, most of the disciplinary norms for students, generally formulated by the school work department (committee), the school epidemic prevention and control leading group and other subjects in its own name
directly issued, rather than by the school party committee, the president of the meeting of the department or a special meeting to consider the adoption of the name of the school level issued. Most of the norms do not reflect the specific procedures for the development of the norms and the approval of the main body, and the school is very likely to go through the motions, only a formal review without careful scrutiny of the substantive content. On the one hand, this makes the formulation of disciplinary norms lack of supervision at the school level, and to a certain extent, it has become the main body of the formulation of the one's own words. This lowers the standard of rigor in the formulation of norms, and may also miss an important opportunity to identify and correct the corresponding errors in the norms in a timely manner. On the other hand, it also leads to the lack of student participation in the development of disciplinary norms, supervision is low. Students' participation in the process of educational discipline is not only a basic need for democratic governance in colleges and universities, but also an important way to realize procedural justice and safeguard students' rights and interests. Fully guaranteeing students' participation in disciplinary norms can effectively realize the balance between safeguarding students' rights and interests and maintaining the normal order of prevention and control, so as to ensure the reasonableness and prudence of discipline.

3.3 Remedy Mechanisms Are not yet Robust

The Education Law stipulates that a disciplined person who is dissatisfied with the sanctions imposed by a school may file a complaint with the relevant authorities. If a school or teacher violates his or her legal rights and interests, such as personal rights and property rights, he or she may file a complaint or bring a lawsuit in accordance with the law. Chapter 6 of the Administrative Provisions specifies the authorities to receive appeals. Therefore, when a student is improperly disciplined, the disciplinary rights remedy system, including the appeal system and the litigation system, becomes the last barrier to safeguard his or her rights and interests.

However, from the cases, the effectiveness of the two remedial systems is clearly insufficient. For example, in the case of Tian Yong v. University of Science and Technology of Beijing, Administrative Litigation for Refusal to Issue Graduation and Degree Certificates, and the case of Ganlu against the Decision of Expulsion from Jinan University, the disciplined person lodged a complaint with the provincial education department or even the former State Education Commission, and the organ accepting the complaint requested the university to conduct a review in the form of a recommendation or an order, but the university continued to maintain the original outcome. The organ receiving the complaint requested the university to conduct a review in the form of a recommendation or an order, but the university continued to maintain the original outcome of the case. The disciplined person could only seek help through administrative litigation, and the court eventually supported some of the reasonable claims. It is important to note that litigation is not a panacea. Only when the laws and regulations give the university administrative subject qualification, the behavior carried out can be brought to administrative litigation. If it is other reasons, students against the school's administrative litigation is often dismissed by the court or inadmissible treatment. In order to seek relief, the aggrieved students have to adopt "roundabout" tactics, seeking protection of the right to education in the name of civil rights protection. In the context of public health emergencies, the problems of unreasonable content, different application standards, and lax implementation procedures of disciplinary actions in higher education need to be resolved, and the lack of a sound remedial mechanism has undoubtedly accelerated the formation of the dilemma and hindered the protection of individuals' rights and interests.
4. Optimization Path of Educational Discipline

4.1 Guaranteeing the Professionalism of the Subject of Formulation

The author believes that the main body of the development of disciplinary norms in colleges and universities, should have "theory + experience + practice" composite elements, including the following three aspects. First, familiar with the relevant national laws and regulations, with a certain foundation of jurisprudence theory, and understand the scope of the exercise of the right of disciplinary action in colleges and universities. Second, have a certain amount of experience in the development of regulations and methods. Third, have a more comprehensive and in-depth understanding of the development of public health events in colleges and universities, and know the main violations of student behavior and the corresponding degree of harm. The realization of the construction of the main body of the development, need to participate in a number of parties. Student management departments such as academic and labor offices and members of the leading group of emergency management based on their own functions, can better meet the experience and practice of the two elements. They should assume the main norms of content formulation of the task. The participation of legal professionals to ensure the legitimacy of emergency disciplinary norms play an indispensable role, universities and colleges organization to formulate disciplinary norms should be absorbed 1-2 people involved in the formulation, and the legality of the norms of the task of review and guidance. For higher education institutions, they can be selected by means of enrollment screening or introduce relevant experts from outside the university.

4.2 Establishment of Scientifically Sound Disciplinary Procedures

The fact that universities are replacing them with simple "guideline clauses" is in essence an objective manifestation of the imbalance between procedure and substance. Public health emergencies often lead to extremely unusual behaviors that need to be regulated, and the disciplinary procedures will change accordingly. Different situations of service and defense procedures from the formal requirements to the specific content of the ordinary period with subtle differences, it is impossible to refer to the application. More importantly, the omission of procedural norms on the surface of the document to reduce the cost of the development of the hidden dangers brought about in practice, and even become a further advancement of the disciplinary work of the stumbling block. In order to prevent this phenomenon, the higher education institutions can optimize the formulation and implementation of disciplinary norms.

First of all, the higher education institutions should elevate the formulation of disciplinary norms for student violations to the global level, and establish scientific and perfect formulation procedures that cannot be ignored. Some colleges and universities have already issued regulatory documents management approach to make detailed provisions for the development, revision and abolition of procedures in the campus-wide implementation of all regulatory documents, which are very significant. It may be worthwhile to use this as the basis for the targeted setting of disciplinary procedures. In the process of project creation and drafting, universities will carry out overall planning, and after determining the basic content of the disciplinary norms and the cycle of their development, they are specifically drafted by the main body of their development, which is established in advance. In the review and validation link, the drafting department will submit the preliminary formulated norms to the president's office or the review department of the same level functional departments for the review of norms rationality, legality and system structure. The review department will make a written opinion on the main problems found, and submit it to the main body for modification. After the final draft is formed, it will be submitted to the president's office for deliberation, and the meeting will make a decision of agreement or disagreement according to different situations. In the issuance and publication of the link, the disciplinary norms
after deliberation and adoption by the president of the issuance, and published in the name of the university. The publication should pay attention to the formulation of the main body and the process of deliberation and other information.

Secondly, attention should also be paid to the standardization of the implementation mechanism for disciplinary action in higher education. Disciplinary activities should strictly implement the principle of procedural due process. That is, the operation of power must meet the minimum standards of procedural fairness, and fully implement the three specific requirements of avoiding bias, administrative participation and administrative openness. In the context of the comprehensive rule of law, the new era of education legislation on procedural justice rational call for a positive response, constructed an operable, logically rigorous system of disciplinary procedures norms for the autonomy of colleges and universities to point out the direction. Therefore, the emergency state of student disciplinary provisions should be strictly in accordance with the supreme law. They should consider the disciplinary procedure as an important element of the document, on a par with the disciplinary object and disciplinary action. In this regard, the author suggests that the important procedures in the implementation process should be listed one by one in a specialized mode.

4.3 Tapping the Deeper Value of the School-based Relief System

The relief system is a strong backing for all normative documents to punish evil and promote good, and is an important way for disciplined persons to safeguard their legitimate rights and interests. In view of the problems existing in the disciplinary relief system of colleges and universities under public health emergencies, the author believes that on the basis of amending the relevant documents, the role of the internal complaint and arbitration system should be further utilized.

The advantage of internal appeals is that they can quickly and effectively resolve disputes between students and schools. At the same time, appeals are not affected by the boundaries of the exercise of power, and are accepted in a wider range of cases, with greater intensity of scrutiny. Article 59 of the Administrative Provisions states, "Schools shall set up a student appeals handling committee, which is responsible for accepting appeals filed by students who are dissatisfied with the treatment or disciplinary decisions. The Student Appeal Handling Committee shall be composed of the relevant person in charge of the school, the person in charge of the functional departments, representatives of the teachers, representatives of the students, and the person in charge of the relevant organizations in charge of legal affairs, etc., and may employ the participation of experts from outside the school in the fields of law and education, etc." However, the Administrative Provisions do not limit the form of complaint review, and there are currently two modes, written review and review meeting. The author suggests that the principle of holding a review meeting and the exception of written review should be adopted to streamline the procedure. The review meeting is led by the Student Appeals Committee, with the participation of the disciplined person and the administration, which is a litigation mode. Both parties, especially the disciplined person, are able to present their views and explanations on detailed issues, which facilitates the leader to form an objective and comprehensive opinion on the review of major disciplinary incidents. Emergency response always emphasizes time and efficiency, so for simple complaints with clear facts, sufficient evidence and little controversy, the committee can review them in writing. For prevention and control purposes, universities can make full use of online platforms such as Tencent Meeting and Nail to conduct meetings and transfer relevant documents in a time-saving and efficient manner.

In the long term, it is quite feasible for colleges and universities to set up educational arbitration organizations. According to the provisions of relevant education laws and regulations, students can submit to the educational arbitration committee of colleges and universities. The Arbitration Commission mediates and adjudicates on issues and disputes between the parties in accordance with the law. Establish and improve this system as soon as possible to form a multi-dimensional
relief system to provide students with multiple layers of protection when responding to unexpected emergencies again in the future and to reduce unnecessary disputes between colleges and students.

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