

A Study on Implementing “Due Process” in University Student Management

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Abstract

As the concept of the “rule of law” progressively transitions from an idea to a tangible reality, the importance of understanding rules and emphasizing the supremacy of rights has grown. These have evolved into key value concepts advocated by modern societies where the rule of law prevails. This development is especially critical in the context of higher education. As the concept of administering schools according to law becomes more ingrained, and students’ awareness of their rights continues to amplify, a troubling trend is emerging. Neglect of due process and an indifference towards students’ procedural rights in university management have become increasingly evident. This disregard has led to a steady flow of legal disputes in the education sector. Hence, safeguarding students’ procedural rights becomes a critically important matter. In education management, adhering to the principle of “due process” and upholding the concept of “natural justice” involves providing students with the rights for prior participation, informed and defensive measures throughout the process, and post-procedure remedies. This is done not merely to safeguard their constitutional right to education, but also to unequivocally respect student’s human rights. Moreover, it paves the essential path for promoting the modern rule of law within the field of education.

Keywords

Due Process, Natural Justice, Student Management

1. Introduction

The Haidian District People’s Court in Beijing has issued a preliminary judgment. *Junbo Feng: Researcher, Secretary of the Party Committee of School of Foreign Languages, Central University of Finance and Economics, Ph.D. student of Law School, Central University of Finance and Economics, 2016. His research interests include university legal affairs and higher education management.

ment on a case involving Dr. Yu Yanru's lawsuit against Peking University for the revocation of her doctoral degree. This verdict underscores the issue of applying the principle of "due process" and has garnered substantial attention from both the legal community and those in practice. In this instance, the plaintiff, Yu Yanru, alleged that Peking University did not promptly disclose the facts and justifications underpinning the process and procedures of the investigation, and the decision to revoke her doctoral degree. She further claimed that the university continuously denied her the opportunity to review, copy, and procure relevant evidence during the decision-making process. Moreover, she maintained that they declined to disclose meeting minutes, thereby violating her right to be informed. Peking University infringed upon her right to defense by denying her the opportunity to present a statement prior to rendering their decision. Furthermore, they violated her right to redress by failing to inform her about the available remedies and their respective deadlines. Before delivering their decision to the person involved, Peking University publicly announced the case's outcome through the news media. This action constitutes a severe breach of procedure. Following a delayed trial, the Haidian District People's Court stated, "Rescinding a doctoral degree profoundly affects the person in question. It negates the corresponding academic achievement obtained via the doctoral degree and significantly impacts their legitimate rights and interests". Thus, prior to instituting the contested "revocation decision", Peking University ought to uphold the principle of due process, conduct a comprehensive investigation of the facts, comprehensively consider Yu Yanru's statements and defenses, and guarantee that Yu Yanru is afforded her appropriate rights. However, Peking University made the "Revocation Decision" without fully considering Yu Yanru's testimony and defense, breaching standard procedural principles. The ruling thus overturns Peking University's "Decision on Revoking Yu Yanru's Doctoral Degree" (*Civil Judgment of Haidian District People's Court of Beijing, 2016*).

Following Tian Yong's lawsuit against the Beijing University of Science and Technology, the case has notably underscored the apparent deficiency of "due process" in university student management, sparking significant societal reaction. In considering these two cases, it's clear that as the primary strategy of governing the country according to law is implemented, the focus on the consequences of management in student affairs, while neglecting the "due process" in the management process, is no longer appropriate given the growing awareness of students' rights. The current university landscape necessitates a more balanced approach to student management. The concept of due process has become a significant benchmark in the rule of law concerning university student management. It is imperative that students are granted their procedural rights. These include prior participation privileges, being adequately informed and defended throughout the process, as well as being provided remedies afterward. What is meant by "due process"? What is the role of the principle of due process in the management of university students? How can due process be established in university student management? This paper reaffirms the role of due process by

tracing its roots. It meticulously examines the current absence of due process in university student administration. Anchored on the principles of the rule of law and human rights, it aims to restructure due process within the context of university student management.

2. Theoretical Connotation of “Due Process” from the Perspective of Rule of Law

“Only just procedures possess the capability to yield equitable results”. The constitutional principle of “due process”, a significant component of the Anglo-American legal system, originates from the ancient English *Magna Carta*. It is a byproduct of Western ancient ideologies, namely, the “rule of law” and natural law theory. “Due process”, often translated as “due process of law”, originated from the “natural justice” in the United States and spread around the world. Paying attention to procedural justice has increasingly become the common value orientation of modern countries under the rule of law. The basic connotation of due process is: the value of the legitimacy of procedure is the neutrality, rationality, exclusivity, operability, equal participation, autonomy, timely termination and openness; through due process to achieve the constitution of the faith, supreme, so as to achieve constitutional authority.

The *Magna Carta*, ratified by the King of England in 1215, incorporated initial stipulations for the concept of due process. The third chapter of the *Statute of Liberty*, enacted by the English Parliament in 1354, declares: “No proprietor of property or residence shall be divested of their land or domicile, arrested or incarcerated, deprived of their inheritance, or denied their right to a livelihood without lawful due process”. This statute was the first to encapsulate the principle of due process in a legal context and broadened its purview. In the United States, the principle of due process has further developed and completely replaced the concept of natural justice in the UK. It is no longer just a procedural rule, but encompasses both substantive and procedural aspects of due process. The Fourteenth Amendment to the United States Constitution, enacted in 1868, asserts, “No person shall be deprived of life, liberty, or property without due process of law”. Therefore, the principle of due process is firmly entrenched as a constitutional mandate within the United States. The enactment of the *Administrative Procedure Act* in 1946 signified the founding of due process principles within the realm of administrative law in the United States. In the United States, due process principles encompass both substantive and procedural due process. In Japan, the importance of administrative procedures truly ignited a debate following the formation of the post-war Japanese Constitution (Zhu, 2004). Article 31 of the Japanese *Constitution* states: “No individual shall be subjected to deprivation of life or liberty, nor shall any form of punishment be inflicted, except in accordance with legally established procedures”. In 1993, Japan enacted the *Administrative Procedure Act of Japan*. This act mandates administrative actions to follow both the substantive and procedural aspects of the law. Along with legal conformity, procedural legitimacy is also necessary.

In modern societies governed by the rule of law, the principle of due process has evolved to become a key indicator of societal advancement and institutional refinement. “The fair rule of law is a fundamental requirement for justice, and the rule of law depends on a certain form of due process, which is mainly reflected through procedures” (Rawls, 1998). Mr. Wang Mingyang has also stated, “From a philosophical standpoint, substantive law is of paramount importance and holds a primary position. Procedural law pertains to execution and is often regarded as having a secondary role. From a practical standpoint, the significance of procedural law far outweighs that of substantive law, emphasizing that the vitality of the law resides in its enforcement. Even if a law is sound, it cannot yield positive results if enforced through arbitrary and despotic methods. A bad law, if enforced through a sound procedure, can limit or weaken the adverse effects of the law”. Thus, no individual can serve as their own arbiter, and conflicts are settled by an unbiased third party. In making decisions impacting the rights and responsibilities of the involved parties, particularly those unfavorable to one side, the viewpoints of the concerned individuals must be considered. They must also be provided with the opportunity to present their arguments, debate, and cross-examine. The dispute resolution process must remain impartial and unbiased. All proceedings must occur in public to guarantee fairness and transparency. In the specialized domain of university student administration, it is mandatory for universities, by virtue of laws and regulations, to adhere to due process and meticulously safeguard students’ procedural rights, particularly regarding disciplinary actions.

3. Analysis of the Reasons for Attaching Importance to “Due Process” in College Student Management

Administrative procedures fulfill the statutory roles of regulating governmental power, protecting citizens’ rights, advancing democratic decision-making, and enhancing efficiency. In a society governed by the rule of law, no one shall deprive others of their rights without proper legal procedures. In university student management, ongoing educational disputes have acted as a cautionary tale for universities who have consistently found themselves on the losing end of legal battles. Due to the dual pressures of advancing the rule of law in school administration and the rising awareness of students’ rights and legal principles, it’s essential that we now incorporate these concepts into student management. The emphasis should be on due process, making this the new standard in managing university students. Developed countries in the West attach great importance to the application of the principle of “due process” in student management. The United Kingdom, revered as the origin of the “natural justice” principle, deeply respects the concept of procedural fairness within its judicial and administrative arenas. Colleges and universities, as organizations authorized by the state, exercise certain public powers. When it comes to managing students, they are bound to be subject to due process. According to Jefferson’s theory, all valid govern-

mental power stems from the consent of those governed. Analogously, in the context of educational institutions, all significant decisions affecting students should solicit their input (Brubacher, 2001). For instance, at the University of Cambridge, the Board of Directors, which is the top decision-making body, comprises 21 members. This group includes 3 student representatives and 4 professors, thereby ensuring student involvement in university affairs. Additionally, the nationwide student satisfaction survey conducted throughout the UK in 2005 serves as a significant avenue for students to fully articulate their preferences and exercise their procedural rights. In the United States, the principle of due process—a crucial component of both the rule of law and the constitution—is universally applied, and schools are no exception. When students face suspension for disciplinary reasons or expulsion for academic infractions, due process must invariably be followed. For instance, in the case of “Dixon v. Alabama State Board of Education”, Alabama State University expelled nine students without giving them prior notice or a hearing. The federal appeals court ruled that the state university, as a taxpayer-funded institution, ought to have abided by due process principles and allowed the students a hearing before enforcing disciplinary actions (Stevens, 1999). Additionally, American universities have explicit guidelines outlining the procedures for addressing student cheating and the mechanisms for student appeals.

From the standpoint of protecting rights, prioritizing due process in student administration signifies our respect for students’ constitutional right to education. The norm of rights is the core value of the entire constitutional norm. The right to education is a fundamental entitlement that is recognized and protected by the Constitution of China, and its significance is widely acknowledged in both theoretical and practical domains. However, the mere constitutional prescription of this right does not necessarily translate into its seamless actualization. Regardless of how comprehensive and flawless the constitution’s stipulations on the right to education might be, its practical realization could remain illusory—like a “moon in the water” or a “flower in the mirror”—without an effective implementation mechanism. Consequently, the actualization of this right is of paramount importance. “The potency of constitutional rights hinges not on the constitutional provisions per se, but on their genuine enforcement” (Lin, 2001). In managing students, it is crucial to ensure students are given due process rights and are actively engaged in different management areas. This approach is particularly pertinent in managing their academic status and in implementing rewards or punishments. Such practices can significantly reduce instances that limit or infringe upon their educational rights. Moreover, this can prompt universities as administrators to be more conscious in their role, ultimately ensuring the fundamental safeguarding of students’ right to education. Legislation in China’s education sector also has clear provisions on due process. For example, Article 43 of the *Education Law of the People’s Republic of China* stipulates the right of students to appeal to relevant departments if they disagree with the dis-

ciplinary actions imposed by schools, and the right to file complaints or lawsuits against schools and teachers for infringement of their personal rights, property rights, and other legitimate interests. The *Higher Education Law* also provides for the protection of the legitimate rights and interests of students in higher education institutions and the exercise of disciplinary powers over students must be carried out through collective bodies such as the President's Office. *The Regulations on the Management of Students in General Higher Education Institutions* has clarified the procedural rights of students more explicitly: "When a school initiates disciplinary measures against students, it must ensure fairness in processes, sufficiency in evidence, clarity in the grounds, accuracy in findings, and appropriateness in punishment". Prior to making a disciplinary decision against a student, the school must take into account the student's statements and defenses, or those of their representative. After rendering a disciplinary decision, it should be communicated to the individual in question. Additionally, the student should be informed of their right to file an appeal as well as the respective deadline for doing so. Hence, in the realm of student management, it's essential to underline the importance of due process which aids in adhering to educational laws and regulations, thereby leading to a standardized management of students.

From a governmental regulation standpoint, protecting students' procedural rights ensures that universities exercise their public authority in compliance with the law. A government governed by the rule of law exercises authority, and its fundamental attribute is that public power is under the jurisdiction of the law. Modern law exercises control over public power in two primary ways: through a procedural system and an accountability system. At the heart of the procedural system lie fairness, openness, justice, and public participation. Universities, as organizations authorized by the state, play the role of administrative entities when it comes to managing students in order to ensure the realization of public educational functions. This is particularly evident in actions related to student enrollment management, as well as the implementation of rewards or disciplinary measures, and the granting or revocation of degrees, which directly impact students' right to education. To effectively strike a balance between governmental power and individual rights, it is essential to bolster the oversight of public power exerted by universities in student management through procedural systems.

From the standpoint of higher education administration, prioritizing due process in student management can bolster the governance capabilities of universities, and foster the application of the rule of law in university administration. The rule of law in schools is a manifestation and execution of the principle of law in education. It is also one of the significant challenges universities confront. University governance is a multifaceted system of engineering that encompasses various aspects of academic management. Student administration in higher education institutions is a crucial component of this total management system. The

application of law in school governance mandates the appropriate legislation of student administration in higher educational institutions. The key to implementing the rule of law in student management lies in adhering to due process. “In a sense, the rule of law is the governance of procedures, and acting in accordance with the law means acting in accordance with procedures. Establishing an approach centered on the rule of law necessitates adherence to due process” (Zhang, 2014). Hence, schools must uphold the procedural rights of students when making decisions that directly influence their immediate interests, such as recognizing their accomplishments or implementing disciplinary actions. In managing students, due process should be prioritized. Schools ought to not only enhance the procedures and systems involved in managing university students, but also uphold the effectiveness and value of these systems during their implementation. This will bolster the organization’s governance capability and underscore the procedure-oriented, legal, and scientific dimensions of student management tasks.

In the context of judicial relief, it’s vital to underscore the need for due process in student management. This measure protects the validity of the “limited judicial review principle over administrative power” in the educational sector and deters exploitation. The principle of “separation of powers” plays a crucial role in the political system of modern capitalist nations. This principle underscores the mutual autonomy and balance between legislative, executive, and judicial powers. Primarily, administrative litigation serves as the mechanism through which the judicial branch exercises oversight and imposes constraints on the executive power. Since the Tian Yong v. Beijing University of Science and Technology case, there have been an increasing number of disputes in the field of education, especially in student management, seeking judicial remedies for resolution. The court’s review of due process is the fundamental principle in handling such lawsuits. For instance, in the case ruling of Liu Yanwen versus Peking University, it was stated, “The academic degree committee did not grant Liu Yanwen an opportunity to present her defense prior to deciding not to award her a doctoral degree. Furthermore, they failed to formally notify Liu Yanwen of their decision, adversely affecting her capacity to appeal or initiate a lawsuit with the appropriate authorities. Consequently, this decision should be annulled”. The decision of Peking University was revoked for the first time on the grounds of improper procedures. The intervention of judicial review, from the perspective of judicial relief, forces the application of the principle of due process to student management in current universities. Only by ensuring the due process can the exercise of the autonomy of university management be fair and reasonable, and the interference of judicial power in the autonomy of university management be avoided.

4. Current Status of the Absence of “Due Process” in the Management of College Students in China

In the prevailing climate of student management within colleges and universi-

ties, the interaction between institutions and students is frequently characterized by an overemphasis on control dynamics (control and being under control). This overshadows the reality that students are independent legal entities with their own rights. The focus tends to be heavier on the outcomes of such management, instead of highlighting the necessity of adhering to due process during the student management process. Consequently, these procedural flaws have notably impinged on students' legitimate rights. This is mainly manifested in the following aspects:

The principles for establishing the rules and regulations pertaining to student management are not accurately represented, both in terms of their substantive content and the means by which they are formulated. The rules and regulations pertaining to student management are an important part of the university's regulatory system. However, the substantial content of the majority of regulations lacks procedural provisions, excessively emphasizing the outcome of management without specifying the necessary procedures to achieve management objectives. Many universities purport to fully safeguard the right to education for students, yet seldom address how this is ensured. In the process of formulating rules and regulations, the principle of "due process" is not fully reflected. Often, the main departments or leaders discuss and implement them without providing opportunities for relevant stakeholders to participate in discussions or express their opinions. Although some opinions are widely solicited, they often become mere formalities, resulting in a significant compromise in the scientific and legal validity of student management rules and regulations.

The procedures outlined in the rules and regulations are overly ambiguous and lack functionality. Although the "*Education Law of the People's Republic of China*" stipulates that learners have the right to appeal, there is no specific provision on how to exercise this right. The *Regulations on the Management of Students in General Higher Education Institutions* lack specific execution details and have not been effective in providing suitable guidance. This has led to universities only vaguely defining the procedural rights of students when designing student management systems, resulting in a lack of practicality. For instance, while rules often permit students to request a hearing when faced with the threat of expulsion, crucial details of these hearings may remain obscure. The composition of the hearing committee, the exact procedures to be followed, defined timeframes, and the rights and duties of all participants involved are often left unclear, thereby rendering the student's right to a hearing virtually nonexistent. Similarly, while students can appeal against a disciplinary ruling to the school's appeals committee, many institutions lack detailed guidelines concerning this appeals process. Consequently, this ambiguity leaves both disciplinary students and administrative personnel uncertain about the appropriate course of action.

The implementation of regulations, particularly when enforcing disciplinary actions on students, often overlooks procedural requirements. In student management, placing excessive emphasis on tangible aspects, emphasizing the man-

agement of students, neglecting the procedures in the management process, and even considering that for students who violate discipline, as long as punishment is given based on the student management regulations, there is no need to pay attention to whether the punishment decision process is perfect. Through a survey, 83% of people believe that “there is no necessary procedure for informing students in student management”. For instance, in the Tian Yong versus Beijing University of Science and Technology case, Tian Yong received a penalty of expulsion for cheating on exams. Unfortunately, the university failed to afford him the opportunity to present his defense, and they neglected the formalities of notification and summons. Consequently, they bore the legal implications of losing the lawsuit. Some universities also lack necessary procedures, transparency, and persuasive results when making decisions related to students’ vital interests, such as scholarship selection, tuition reduction for impoverished students, and the distribution of subsidies.

5. Charting the Course for “Due Process” in Student Management at Chinese Universities

The institutionalization of legal principles in the management of university students reflects the commitment of administrators to govern in accordance with the law and embodies the practice of a “rights-conscious” approach. A pivotal and fundamental aspect of legalizing the administration of student affairs is the adherence to the principle of due process. To steadfastly uphold the principle of “due process” in Chinese university student management, administrators must undergo a transformation in their managerial philosophy. This transformation involves instilling a strong legal awareness to safeguard students’ procedural rights throughout the formulation and execution of rules and regulations. It necessitates the effective application of legal reasoning and a commitment to employing legal methodologies in the governance of students.

5.1. Strengthening Rule of Law Thinking: Building a “Procedural Safeguard” Student Management Model

Incorporating the concept of contracts emphasizes the significance of recognizing students as entities with inherent rights. As stated, “The initial delineation of legal rights can impact the efficiency of the economic system, with one arrangement of rights generating more value than others” (Coase, 2014). Within the framework of university student management, adopting a contractual ethos involves viewing students as equals, standing on par with university administrators. This perspective enables a nuanced understanding of the rights and responsibilities forged between students and the educational institution, thereby ensuring the actualization of student rights. Primarily, it is imperative to underscore the service-oriented mindset of administrators, challenging the conventional notion of prioritizing “management over service”. Administrators must actively attend to students’ needs and approach issues empathetically from the students’ standpoint. For instance, universities in the United Kingdom have long

upheld a student-centrism educational philosophy, considering the respect for students' growth and needs as a foundational element in student management. These institutions prioritize grasping the individualized needs of students, tailoring services based on those needs. An illustrative case is the University of Reading in the UK, where the Student Services Centre serves as a pivotal administrative department, offering comprehensive, one-stop services to meet students' academic and managerial requirements.

Moreover, it is imperative to fully leverage the active involvement of students in the dynamics of student management. When formulating regulations that directly impact students' vital interests, incorporating student input ensures their engagement from the outset of rule-making. Throughout the concrete phases of administration, there should be a concerted effort to encourage students to adopt self-regulatory approaches, empowering student organizations such as student councils to play a significant role in governance. The infusion of a contractual management philosophy involves entering into agreements with students, clearly defining the mutual rights and obligations between the institution and its students, thereby authentically embodying a "people-centrism" ethos in the student management process. Taking inspiration from the American higher education model, it is worth highlighting their practice of involving students in board governance, granting them a tangible role in institutional decision-making. By formalizing the mechanisms that allow students to actively participate in school management, American universities optimize the autonomy of their student body, exemplifying a sincere dedication to the "people-centrism" principle within the realm of student administration.

Upholding the principle of "supremacy of rules" to maintain the authority of regulations. According to American scholar Thomas Paine, "For as in absolute governments the King is law, so in free countries the law ought to be King" (Paine, 1985). To realize the legalization of student management, it is necessary to establish the authority of the constitution and laws, and all actions of administrators must strictly adhere to the law, with a conscious use of legal rules and principles to address issues in student management. Adhering to the principle of "supremacy of rules" requires, first and foremost, having "sound laws". Based on national laws and regulations and school regulations, high-quality rules and regulations should be established to ensure the legitimacy, rationality, scientificness, and predictability of the regulatory system, and be promptly made public to the entire school, enabling students to understand and respect the rules and maintain the authority of regulations. Secondly, there should be "good governance". When using the law to resolve student issues, it is important to ensure strict adherence to the regulations, carry out a fair process, and avoid interference from arbitrariness and human factors, basing everything on facts and regulations.

Adhering to the principle of "priority to procedures" is crucial to safeguard students' procedural rights. "Only a fair procedure has the ability to produce a fair result". Prioritizing procedures is not only a vital legal guarantee of students' rights, but also a necessary requirement for the legal management of students.

Procedures have inherent value independent of the entity, demonstrating “the minimum of fairness”. The verdict of the case of Liu Yanwen v. Peking University has also brought widespread social attention to the proper procedures in student management. Adhering to the priority of procedures necessitates that the decisions of university student management not only comply with procedural due process, but also meet the requirements of substantive due process. When making decisions affecting the major interests of students, it must ensure that the procedures are objective, neutral, complete, and transparent, among other qualities. It should inform in advance, involve the process, and provide remedies after the event, for instance, the student appeal system in the Taiwan region, which began with the promulgation of the *University Law* in 1994 and the *Principles for Handling Appeals by University and College Students* in 1996. These explicitly require that student appeal review committees be established at all levels of schools to handle student appeal cases, and detail the rights and guarantees enjoyed by students when filing appeals against the school’s decisions.

5.2. Improving the Formulation Process of Regulations to Ensure Their Legitimacy

Aristotle once stated, “Universal obedience is bestowed upon well-made laws”. This quote emphasizes the significance of well-crafted rules that are universally adhered to. In the realm of student management, universities must establish rules as a prerequisite for maintaining order, and the legitimacy of these rules plays a crucial role. Higher education institutions, as the providers and organizers of national education, possess legal authorization to govern students in accordance with national laws and regulations, as well as the rules they themselves formulate. “Only with a fair procedure can justice be achieved” (Shen, 2004). American universities prioritize the systematization and practicality of student management laws and regulations. This involves not only establishing a comprehensive framework for basic education laws but also adopting specialized laws, specific work norms, and rules relating to student affairs. Examples of such regulations include the *Management of Student Affairs in Higher Education Institutions* and the *Handbook of Student Affairs*. These university-specific rules address various aspects of student affairs, including provisions for prohibitions and punishments. For instance, San Francisco State University has outlined 12 rules specifying conditions for expulsion, suspension, and probation. Clearly defined procedures facilitate the execution of these rules, enabling a smooth implementation process.

Reshaping the due process requires implementing crucial measures to ensure the formulation of rules. These measures can be summarized as follows: Firstly, rules must be developed in consonance with existing laws. It is imperative that schools adhere to higher-level laws and regulations concerning education, thus avoiding any conflict with the national laws and regulations on education. Additionally, schools should exercise rulemaking authority in a manner that adheres to the legislation granted to them. Secondly, the process of rulemaking should

comply with legal procedures, encompassing the initiation of events, development and review of drafts, approval of the final draft, and publication of the finalized rules. Furthermore, in formulating rules that pertain to students' fundamental rights and interests, a wide spectrum of student opinions should be diligently collected through various channels. Active student participation should be encouraged to ensure that all relevant stakeholders can fully exercise their procedural rights. Lastly, rules should contain clear procedural content, outlining a coherent and executable set of procedures. This is essential to prevent the due process from becoming a mere proverbial concept without actual implementation. To exemplify, processes such as scholarship and grant applications for students should be explicit and well-defined. In order to establish a legal foundation for student management, it is imperative to formulate rules and procedures that are both rational and scientifically supported. Emphasizing both the legitimacy of outcomes and the legitimacy of the process is crucial to upholding the principles of due process.

5.3. Strict Adherence to the Procedures Defined by Regulations in the Process of Specific Student Management Actions, Ensuring the Principle of "Due Process" Throughout the Management Process

The vitality of the law lies in its implementation. Universities formulate rules and regulations in accordance with statutory procedures, which include explicit procedural content. This serves as a prerequisite for upholding the "due process" principle in student management within higher education institutions. The key to truly embodying "procedural justice" lies in effectively executing a series of procedures as prescribed by the rules and regulations in the concrete management of student behavior. For instance, in the United States, when imposing adverse disciplinary measures, especially deprivation of educational rights, a highly intricate procedure is established. This includes:

- 1) Advance notice, informing students of their right to request a school-organized hearing;
- 2) If a hearing is requested, students must be allowed and given adequate preparation time, with the right to appoint legal counsel during the hearing, and the proceedings must be documented;
- 3) The student has the right to understand the facts and reasons underlying the disciplinary action;
- 4) The student can challenge the evidence or facts supporting the disciplinary action in a confrontation with the school;
- 5) The school's disciplinary decision must be based on a written record of the facts. Drawing from the experience of student management in developed Western education systems and considering the practical context in China, the following procedures should be followed in the specific management of student behavior.

5.3.1. Investigation

When imposing disciplinary measures for student misconduct, it is crucial to

first establish the facts and understand the context of the matter. This involves investigating not only the facts described by the school's direct authorities but also the evidence provided by the students themselves. The determination of whether a student should face management or disciplinary action hinges on this critical phase. For example, in the case of Yu Yanru's dispute with Peking University, Peking University should have initially investigated whether the accusation of plagiarism in Yu Yanru's thesis was indeed valid. The investigation should have included an examination of the announcement published in the August 17, 2014 edition of the *Chinese Journal of Journalism & Communication* regarding Yu Yanru's alleged plagiarism and an inquiry into the claims made by Yu Yanru herself. Yu Yanru argued, "Peking University did not timely disclose information during the investigation and handling process, nor did it allow me to review or copy relevant materials. Meanwhile, before delivering the decision to Yu Yanru, Peking University reported the results through the media, which constitutes a serious violation of the law". It is evident that Peking University revoked Yu Yanru's doctoral degree without requesting evidence or informing her about the investigation details, leading to legal consequences in the lawsuit.

5.3.2. Notification and Explanation of Reasons

"When an individual is subject to specific decisions closely related to their rights and freedoms by public authority, they have the right to be informed of the legal basis and reasons, have the opportunity to assert themselves (the right to be informed, the right to a hearing), and, when they believe their rights and freedoms have been infringed upon by others (whether by public authority or private individuals), have the right, through a fair and independent court, to obtain timely remedies through the correct interpretation and application of the law" (Zhu, 1997). When implementing management actions, especially when making unfavorable disciplinary decisions for students, the school should inform students of the factual reasons and legal basis, as well as the relevant factors considered when making such decisions. Article 25 of the *Punishment Measures for Violations of Regulations in State Education Examinations* stipulates, "Before an educational examination institution makes a decision on handling individuals or entities involved in examination violations, it should review the facts and evidence related to the violation, inform the person or entity being handled of the reasons and basis for the decision, and provide an opportunity for the person or entity being handled to state their objections and defend themselves if they disagree with the identified violation". Notification and explanation of reasons are crucial in clarifying to students that disciplinary decisions are not based on subjective speculation but rather on a consideration of various factors under clear, well-documented, and accurate circumstances. This not only reflects respect for students' rights but also provides a targeted focus for the student's subsequent defense or hearing.

5.3.3. Statement and Defense

Statement and defense are crucial steps in administrative law procedures. They

represent the full respect for the rights of the parties involved and also serve as a manifestation of the principle of procedural justice. According to Article 55 of the *Regulations on the Administration of Students in Regular Higher Education Institutions*, it specifies that “prior to imposing disciplinary actions or other adverse decisions on students, educational institutions must inform students about the facts, reasons, and grounds for the decision, as well as notify them of their right to make statements and defenses, while also listening to their statements and defenses”. It is imperative for schools to provide students with the opportunity to express their perspectives, allowing them to make statements and present defenses before reaching disciplinary decisions. This process enables students to demonstrate their arguments based on objective facts or the interpretation of rules and regulations. Through thorough defense, students gain a deeper understanding of the nature of their conduct and can potentially come to an agreement with disciplinary outcomes.

5.3.4. Hearing

The concept of the hearing procedure can be traced back to the ancient “principle of natural justice” in England. Over time, it has evolved from being solely used in judicial trials to being a crucial component of administrative procedural law. This procedure entails the administrative authority informing the affected party of the reasons behind a decision and granting them the right to a hearing. The affected party then has the opportunity to express their opinions and present evidence, and the administrative authority is obligated to listen to these opinions and consider the evidence. This process establishes a legal framework that ensures administrative entities make decisions that uphold the legal rights and interests of all parties involved (Jiang, 1999).

“The hearing system in administrative actions not only serves the statutory function of safeguarding rights and proving the legitimacy of punitive actions, but also extends its purpose to include the practical and objective resolution of disputes”. In China, the hearing system is widely employed in the areas of administrative penalties and permits, but is less frequently utilized in educational management. Introducing the hearing procedure in university student management can empower students, protect their rights, and promote the principles of the rule of law and democracy in student affairs.

For instance, in the United States, both public and private universities, despite their differing natures, “have the responsibility to treat accused students in a fair and honest manner. If a private university voluntarily commits to adhering to the principles of due legal process in its student handbook, the students of that university also have the right to a hearing and other necessary procedures. In the case of *Corso v. Creighton University* in 1984, the court viewed it as an error for the university to expel a student without providing them with an opportunity for a hearing” (Tian, 2009).

In China, since the student cafeteria pricing hearing held by Sun Yat-sen University in 2003, the hearing system has gradually been implemented in the

practical realm of university student management.

Considering the financial implications of conducting a hearing, it is not necessary for every disciplinary decision to be subjected to a hearing. Rather, hearings should be reserved for disciplinary actions that entail significant measures, such as the deprivation of students' right to education or decisions that profoundly impact the school's development. When carrying out hearings, the following aspects deserve attention: 1) The scientific and democratic selection of participants, adhering strictly to the principle of avoiding conflicts of interest. Students should be given the autonomy to independently choose participants for the hearing. The school should endeavor to select individuals with professional backgrounds, esteemed reputations, and relative independence when it comes to matters concerning the hearing, particularly when selecting the hearing preside; 2) Scrupulous adherence to every stage of the hearing process, encompassing the preparation of hearing materials, timely and explicit communication of the hearing's schedule and venue, exchange of statements and defenses from both parties during the hearing, and meticulous record-keeping; 3) Unless students' personal privacy is implicated, hearings should be conducted in an open manner. This ensures a comprehensive understanding of the appeals and justifications put forth by all parties involved in the hearing process, thus guaranteeing the openness and transparency of the hearing system.

5.3.5. Delivery

Delivery is an essential requirement for the implementation of decisions. In the context of issuing disciplinary decisions to students, it is crucial that the disciplinary decision letter is directly delivered to the individual concerned. According to Article 58 of the *Regulations on the Management of Students in Ordinary Higher Education Institutions*, it is stated that "When disciplinary actions are imposed on students, the school must issue a disciplinary decision letter and ensure its delivery to the respective individual". Failure to inform and deliver the disciplinary decision letter to Tian Yong personally led to his claim of being unaware of the deprivation of his right to education. Consequently, the court ruled in favor of Tian Yong against Beijing University of Science and Technology in the case of Tian Yong v. Beijing University of Science and Technology. This highlights the significance of adhering to a clear notification and delivery procedure, as exemplified by U.S. law, which stipulates that "after taking action against students, the school must inform parents within 24 hours and, within 72 hours of a student leaving the school, conduct a hearing attended by the student personally (accompanied by relatives or lawyers). Failure to do so would be considered a procedural violation" (Fu, 2015). In practical circumstances, various factors, such as the refusal of the concerned party to accept delivery or the inability to personally deliver the decision, may hinder the delivery process. Nonetheless, in the specific context of managing students, delivery remains an indispensable procedure.

5.4. Granting Students Sufficient Remedial Rights and Establishing a Legal System for Remedies That Align with the Characteristics of Higher Education Student Management

Indeed, one universal truth underscores that without redress, there are no rights. “No matter how comprehensive and detailed are the laws stipulating citizens’ rights and freedoms, if citizens cannot obtain effective legal remedies after these rights and freedoms are violated, then these legal rights and freedoms will become nothing more than empty words on paper” (Chen, 2001). Article 43 of the *Education Law of the People’s Republic of China* dictates, “Should a learner contest the sanctions imposed by their educational institution, they may petition the relevant authorities. If the school or an individual teacher violates their personal or property rights, or infringes upon other official rights and interests, they retain the right to lodge an official complaint or instigate a lawsuit in accordance with the Law”. From a legal standpoint, students are assured the right to seek redress. Furthermore, the *Regulations on the Management of Students in Ordinary Higher Education Institutions* explicitly establishes a “two-tier appeal” infrastructure. Under this system, students can contest disciplinary measures by submitting their case to the school’s appeal committee. Should they remain dissatisfied with the committee’s decision, they are entitled to appeal to the provincial education administrative department within the bounds of the school district. To enhance student’s rights to remediation, it proves necessary to amalgamate student management experiences from various international perspectives with concrete student management practices within our country. This facilitates the enhancement of students’ remedial rights, which consists primarily of the following aspects.

5.4.1. Establishment of a Well-Defined and Operational Appeals System

While legal frameworks such as the *Education Law* stipulate students’ “right to appeal” as a remedial entitlement, the absence of explicit provisions regarding appeal scope, committee composition, and procedural details hampers practical implementation. The recently revised *Regulations on the Management of Students in Regular Higher Education Institutions*, however, dedicates Chapter Six to delineate “student appeals”, providing a legal basis for instituting a university student appeals system. Universities must align appeal procedures, steps, and the responsible organization’s authority with legal mandates and the school’s context. For instance, in the United States, virtually every university incorporates student appeal procedures into regulations, reflecting legal relief principles. Institutions like the University of San Francisco maintain dedicated offices for student appeals, while entities like the Student Court at the University of Wisconsin-Milwaukee handle cases from student associations, addressing issues such as transportation and accommodation, thereby exercising judgment rights granted by the school.

5.4.2. Introduction of Mediation Mechanisms for Dispute Resolution in University Student Management

Mediation, employing a third party to facilitate, guide, and provide educational persuasion for dispute resolution, encourages negotiation and communication between conflicting parties regarding substantive rights and obligations. The goal is to identify common ground, foster voluntary agreements, and eradicate disputes. Mediation for disputes in university student management can be conducted through non-governmental organizations, such as educational intermediary bodies and educational social groups, or through administrative bodies, specifically by the relevant educational administrative authorities of the university. Universities can engage in this process by establishing a Student Affairs Arbitration Committee, comprising internal legal experts, student union officials, and others. Such organizations play a pivotal role in student management, safeguarding students' legitimate rights. For instance, at Yale University, the University Court, constituted by an individual appointed by the Dean of Academic Affairs in consultation with residential and specialized deans, aids the university's administrative body in addressing disciplinary issues among students from various colleges.

5.4.3. Improvement of the Administrative Litigation Mechanism for Legal Disputes in Higher Education Institutions

Judicial remedy serves as the final recourse for the protection of rights. Universities, tasked with providing educational services and managing students, are essentially agents of public power and thus fall under supervision and restraint of judicial review. Within the specific parameters of administrative litigation regarding student management measures¹, several strategies must be implemented. First, it is imperative to widen the scope of administrative litigation to encompass actions executed by institutions, including changes or annulments to student status, decisions on granting degrees, and admissions protocols, all subject to judicial examination. Secondly, the litigation process should be simplified to facilitate students' access to legal proceedings and clearly define the obligations of educational institutions acting as defendants. Lastly, a clear balance between institutional autonomy and the extent of judicial intervention must be defined. Such intervention should focus primarily on scrutinizing the legality of student management actions from a procedural standpoint, without impeding the academic freedoms and institutional autonomy of schools. The cases of Liu Yanwen's lawsuit against Peking University over the denial of a doctoral degree, and Gan Lu's appeal against expulsion from Jinan University, exemplify the principle of restrained judicial intervention in education. This principle emphasizes the examination of the legality of procedures without encroaching upon the managerial autonomy of universities.

Safeguarding students' procedural rights in all stages of student management,

¹"Student management" is a relatively complex concept. Respecting judicial review of administrative power, the student management actions referred to in administrative lawsuits only pertain to the behaviors of universities as authorized administrative entities using public power to manage students. This primarily includes actions such as managing student statuses and implementing rewards or punishments, granting or revoking degrees, etc.

providing them with the right to participate in advance, to be informed and defend during the process, and to have post-event remedies, and regulating the university's public power through the principle of due process not only ensures the right to education granted by the constitution and fully respects students' human rights, but is also an imperative path to promote the rule of law in the field of education and the pursuit of modern legal governance.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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