
Research on the Existing Problems and Countermeasures of "Student Disciplinary Punishment Regulations" in Colleges and Universities

Mingjie Sun

College of Marxism, Taishan University, Tai'an, China

Email address:

goodnews1998@163.com

To cite this article:

Mingjie Sun. Research on the Existing Problems and Countermeasures of "Student Disciplinary Punishment Regulations" in Colleges and Universities. *Higher Education Research*. Vol. 8, No. 1, 2023, pp. 12-19. doi: 10.11648/j.her.20230801.13

Received: January 31, 2023; **Accepted:** February 28, 2023; **Published:** March 9, 2023

Abstract: Colleges and universities have the right of independent management according to law. In the aspect of student management, formulate "Disciplinary Punishment Regulations for students", according to which students are rewarded and punished. However, the legal rights and interests of some college students have been infringed due to various problems in the formulation basis, the content of regulations and their implementation which are contrary to the constitution and laws. The fundamental reason is that the concept of education is not correct, the legal system of higher education is not perfect, and the judicial review is absent. In particular, the law based on which colleges and universities formulate the "Regulations on the Punishment of students' discipline Violations" does not clearly define the scope of the affairs of the punishment of students' power, which leads to the confusion of the decentralization of power in the student affairs office of colleges and universities. In this regard, the article puts forward the principle of legal reservation, from the absolute legal reservation, relative legal reservation and no legal reservation to clarify the scope of college students' management power of three aspects, supplemented by judicial review limited involvement, adhere to due process, improve the student punishment institutions, improve the supervision system, and construct a scientific "student punishment regulations for disciplinary violations". The article puts forward the opinion on how to protect the legitimate rights and interests of college students with the right to education as the core and has profound enlightenment.

Keywords: "Student Disciplinary Punishment Regulations", Law Retention Principle, University Student Office Decentralization, Judicial Review

1. Introduction

Universities regulate college students' behaviors by formulating "Regulations on Punishment of Students' Disciplinary Violations" according to law. In practice, there are a variety of problems in violation of the Constitution and laws, which not only damages the authority of the Constitution and laws, but also infringes the legitimate rights and interests of college students, mainly the right to education, to varying degrees. It is necessary to construct scientific "Regulations on Disciplinary Punishment of students" in colleges and universities. To solve this problem, scholars at home and abroad have achieved fruitful results through research.

The monographs mainly include: Review of China's Educational Legal System, edited by Lao Kaisheng (2014),

consists of 12 series, with most articles divided into topics of student affairs Office. [1] Zhang Zhenzhi (2018) took the subject rights of college students as the research object, explored the formation process of the subject rights of college students, and put forward the management theory of the generation and realization of the subject rights of college students. [2] Zhang Yufeng (2019) proposed to carry out ideological and political education for college students under the legal awareness training mode. [3] Biedunrong (2021) described the process of establishing the modern university system in China, and revealed the current situation that the management of Chinese universities does not meet the requirements of the development of higher education. [4]. And so on. In these books, the legal relationship between universities and students, the management of university roll and degree, and

the legal remedy of students' rights are discussed in depth.

The main papers include: Liu Yang, Lv Hui and Huang Chuyun (2020) pointed out that the main outstanding manifestations of the infringement of college students' rights are the infringement of the right to education, the infringement of the right to personality, the infringement of property rights, etc. Therefore, it is necessary to protect students' rights and interests through improving the university management system and the relief mechanism of college students' rights. [5] Zou Peng (2022) proposed to build a rights system centered on college students' mental health rights and protect them by formulating laws and regulations and school rules. [6] Liu Chi (2021) proposed that the student appeal system is an important institutional arrangement for safeguarding the legitimate rights and interests of students, pointed out the problems existing in the current student appeal system in China, and put forward suggestions on how to improve the student appeal system to protect students' rights. [7] And so on. These articles mainly explain the relationship between judicial review and university autonomy, and focus on the question of whether students can invoke judicial relief.

In addition, many dissertations also discuss the decentralization of university student affairs office. Zhang Xiaofan (2018) elaborated that there are many problems in hearing system, protection of students' rights, perfection of punishment procedure, publicity of appeal system, privacy protection, follow-up education and other aspects when colleges and universities exercise students' punishment right. This paper puts forward the following three aspects: scientific legislation, strict law enforcement and law-abiding by the whole people, to construct the rules and regulations of students' disciplinary action in line with the principle of rule of law, and to improve the protection measures of students' legitimate rights and interests. [8] Yang Hongyan (2022) believes that the expression of college students' rights and interests is an effective and reasonable way for students to participate in the internal governance of the university and realize and maintain their legitimate rights and interests, and it is also a problem that must be faced in the process of promoting the modernization of university governance in China. Around the protection of the legitimate rights and interests of college students, four countermeasures are put forward. [9] Tian Qixiang (2022) studied the rights and obligations of college students as a whole, and proposed to optimize the structure of college students' rights and obligations, so as to better play the functions of college students' rights and obligations system. [10]

American scholars James J. Fishman and Stephen Schwarz (1995), when elaborating on the impact of school punishments on students, pointed out that punishments given by schools will affect students' life. [11] American scholar Berger CJ and Berger V (1999) pointed out that 80% of college students in the United States participate in the formulation and implementation of school rules. [12] American scholar Ernest L. Boyer (2002) proposed that universities should allow students to participate in university decision-making or build platforms for students to participate, including the formulation

of rules and regulations, punishment decisions, etc. [13]

In short, scholars at home and abroad focused on the protection of the legitimate rights and interests of college students on the legal status of colleges and universities, decentralization of student offices in colleges and universities, the limited involvement of judicial review, the legal relationship between colleges and students, the construction of scientific college and university student management mechanism and other issues. These results provide a good reference for the research of this subject. However, as far as the current information is concerned, there are few achievements in the separate study of "Regulations on Disciplinary Punishment of students" in universities. From the perspective of legislation, the principle of legal reservation has not been invoked to determine the university student management affairs from the legal source. Based on the relevant research results of domestic and foreign scholars, this paper tries to propose that the legal reservation principle should be invoked to clarify the attributes of the "Regulations on Disciplinary Punishment of students" in colleges and universities, so as to build a scientific college student management mechanism.

2. Overview of "Regulations on Disciplinary Punishment of Students" in Colleges and Universities

2.1. The Meaning and Characteristics of "Regulations on Disciplinary Punishment of Students"

2.1.1. Meaning of "Regulations on Disciplinary Punishment of Students"

"Regulations on Disciplinary Punishment of University Students" is an important part of many school rules and disciplines in Chinese colleges and universities, and is an important basis for colleges and universities to exercise the right to punish. At present, China's education laws, regulations, departmental rules and local rules do not have a unified definition of "Regulations on the Punishment of university students' disciplinary violations". All institutions of higher learning have formulated self-management provisions in accordance with the Regulations on Student Administration of Ordinary Institutions of Higher Learning and relevant rules and regulations, with the basis, purpose, value orientation, time effect, scope of application and other aspects basically consistent.

In summary, "Regulations on Disciplinary Punishment of University Students" can be defined as: In order to strengthen school management, maintain good teaching order, and safeguard the legitimate rights and interests of students, colleges and universities, in accordance with the "Higher Education Law of the People's Republic of China", "Regulations on the Administration of Students in ordinary institutions of Higher Learning", "Code of Conduct for Students in Institutions of Higher Learning" and the spirit of relevant laws, regulations and rules, have formulated binding norms to unilaterally impose punishments on students who have violated laws and regulations.

2.1.2. Characteristics of "Student Disciplinary Punishment Regulations"

First, The subject of formulation is each university, the act of formulating "Regulations on disciplinary punishment of university students" has legitimacy. The Higher Education Law clearly stipulates that colleges and universities have the right to "run schools independently according to law", "manage the enrollment of educatees, reward and punish them". Article 68 of the Regulations on the Administration of Students in Institutions of Higher Learning stipulates that "institutions of higher learning shall formulate or revise the regulations on the administration of students in accordance with these regulations, submit them to the competent administrative department of education for the record, and make them known to students in a timely manner." This is the legal basis for colleges and universities to formulate regulations on disciplinary punishment of students and to give students the right to punishment.

Second, Applicable to students in school. All students who have obtained university enrollment and are officially registered, including junior college students, undergraduate students, graduate students and second bachelor's degree students, are subject to the "Regulations on Disciplinary Punishment of University Students". Applicable places include on-campus and off-campus, that is, places on campus and places where students participate in teaching practice, investigation, social practice, temporary job exercise, work-study and other social activities during holidays, suspension from school.

Third, The "Regulations on Disciplinary Punishment of University Students" is not a law, but an internal management system. "Regulations on Disciplinary Punishment of University Students" are internal rules and regulations formulated by each university according to law, which are binding on members and users within the university. The "Regulations on Punishment of Disciplinary Violations of University Students" is mandatory to some extent, but it does not belong to the scope of law. It can only be used as the rules or regulations for the internal management of the university, and in principle it cannot contradict the Constitution, laws, regulations, rules and other normative documents of the competent authorities of education. Strengthen the legitimacy and scientificity of the rules and regulations of colleges and universities, and ensure that the relevant rules and regulations are within the reasonable control scope of the law. [14]

Fourth, The "Regulations on Disciplinary Punishment of University Students" is unilateral and mandatory. University disciplinary action has the legal characteristics of unilateral and compulsory administrative act in essence. There is little analysis and negotiation on the motivation of students' violation of discipline. [15] Unilateralism is reflected in the fact that the school does not need to obtain the consent or negotiation of the disciplined students to take disciplinary actions against the students, and disciplinary actions are made and implemented unilaterally by the school. The coercive performance is that if the punished students have objections to the punishment, students are allowed to appeal, but the subject

of the punishment and the subject of the appeal are the same subject, it is generally impossible to correct their previous behavior; From the functional point of view, disciplinary action is a specific administrative act of profit and loss in accordance with the authorization of laws, regulations and rules, which is the extension and embodiment of the educational management power of colleges and universities and the disciplinary power of the educated. [16]

2.2. Legal Status of Colleges and Universities

With the socialization of public management, the administrative subject also shows diversification, and public organizations and institutions can also exercise certain administrative power. In the relation of administrative law, the university is the counterpart of administration and has the qualification of administrative subject. As the relationship between colleges and students is between management and being managed, colleges and universities are subject to the restrictions and adjustments of national education laws and regulations when implementing administrative rights such as enrollment rights, degree-granting rights, award or punishment rights, etc. according to the authorization of relevant laws and regulations, and bear legal responsibilities independently. Obviously, although colleges and universities are not state organs, they have the qualification of administrative subjects.

2.3. The Power Source of Colleges and Universities to Formulate "Regulations on Disciplinary Punishment of Students"

China's relevant laws and regulations on education authorize the administrative functions that colleges and universities can perform: as stipulated in the first paragraph of Article 28 of the Education Law, they shall manage themselves in accordance with the articles of association. Paragraph 4 provides that educatees shall be subject to the management of school status and be rewarded or punished. Paragraph 9 provides for other rights prescribed by laws and regulations. The State protects the lawful rights and interests of schools and other institutions of education from infringement. This regulation indicates that colleges and universities may enjoy the legal privileges to independently conduct education, teaching and student management in the course of realizing their educational purposes. Article 41 of the Higher Education Law stipulates that the president of an institution of higher learning is fully responsible for the teaching, scientific research and other administrative work of the institution. Article 68 of the Regulations on the Administration of Students in Institutions of Higher Learning stipulates that colleges and universities shall formulate or revise the regulations on the administration of students in accordance with the regulations and submit them to the competent administrative department of education for the record. In order to ensure the implementation of the above powers, administrative organs authorize colleges and universities to formulate specific rules and procedures.

3. The Existing Problems and Causes of "Student Disciplinary Punishment Regulations"

"Regulations on Disciplinary Punishment of University Students" is the direct basis of university student management, and it is the yardstick for universities to maintain normal education and teaching order, campus management order, and cultivate students' sound personality. Therefore, it should be in line with the law of education, reflect the spirit of The Times and values of college students, in line with the corresponding provisions of laws and regulations, should be normative, stable and scientific. However, there are some problems in the current "Regulations on Disciplinary Punishment of University students", such as unsound formulation basis, non-standard formulation procedure, unscientific content and arbitrary execution.

3.1. Existing Problem

3.1.1. The Formulation Basis and Procedures of the "Regulations on Disciplinary Punishment of University Students" Are Unscientific

The higher education laws and regulations on which "Regulations on Punishment of University Students Violating Discipline" are formulated are not sound. Legal System Construction of Higher Education Before the release of the Decision of the Central Committee of the Communist Party of China on the Reform of the Education System in 1985, Chinese institutions of higher education mainly operated on the basis of the 60 Articles of Higher Education. It was not until the promulgation of Teachers Law of the People's Republic of China passed by the Standing Committee of the National People's Congress in October 1993 and the Education Law of the People's Republic of China passed by the Eighth National People's Congress in 1995 that the legal construction of higher education made some progress and development, and there was no legal basis for colleges to implement higher education management. At present, the construction of higher education laws and regulations is relatively backward, and can not meet the need of governing schools according to law.

The procedures for the formulation of "Regulations on Disciplinary Punishment of University Students" are not standard. First, students are not consulted, so that the formation of rules and regulations in an overnight, relatively disorderly state. Second, the lack of participation of legal professionals, the regulation itself has many legal loopholes. Third, the lack of feasibility assessment, lack of overall planning, audit process.

3.1.2. The Content of "Disciplinary Punishment Regulations for University Students" Is Not Standard

First, there are too many generalities, some rules and regulations are vague and vague, which is not conducive to implementation. Second, some provisions are contrary to relevant laws and regulations. Third, the punishment standard

is diversified, the same kind of disciplinary behavior, different school punishment standard is not the same. According to the non-standard content of the regulations, the result of the treatment is bound to vary.

3.1.3. Problems Existing in the Implementation of "Regulations on Disciplinary Punishment of Students"

First, it violates the principle of precedence of law. A certain disciplinary behavior of students often objectively not only violates the school discipline but also deserves the disciplinary action of the school. At the same time, the behavior also violates the law and should be investigated by the law. That is to say, the phenomenon of disciplinary action and legal sanction co-exist. In such cases, many colleges have resorted to enforcing internal disciplinary actions and ignoring the law, leaving students without recourse to legal action. Second, the principle of due process is ignored. Due process is an important guarantee of rights and a necessary limitation of power. However, the fairness of the entity needs to be guaranteed by the corresponding procedural system. [17] Due process protects and realizes students' legitimate rights and interests by constraining and controlling the power of administrative punishment. The legal significance of due process of disciplinary punishment of students lies in standardizing the administrative punishment power with complete and scientific punishment procedure, which is conducive to protecting the penalized person to use procedural rights against the illegal abuse of administrative punishment power by administrative organs. Disciplinary punishment procedures for college students should be implemented under the organization and leadership of specialized agencies. [18] Universities often ignore students' right to know, right to appeal and right to Sue when applying the regulations on disciplinary punishment of students.

3.2. Cause Analysis

3.2.1. Higher Education Legislation Is Inadequate

Since the reform and opening up, China has promulgated educational laws and regulations, such as the Regulations on Academic Degrees, Teachers Law, Education Law, Higher Education Law, and Regulations on the Management of Students in regular Institutions of Higher Learning. These laws and regulations cannot meet the needs of education development. What's more, the above laws and regulations are only provisions in principle, lacking relevant authoritative judicial interpretation. Instead, the interpretation and understanding of the relevant laws and regulations are left to colleges and universities. Although The State Council, the administrative departments of education, provincial people's congresses and local governments have formulated administrative regulations, rules and local regulations concerning higher education respectively, they are of little significance for guiding the management of colleges and universities due to lack of standardization and scientificity.

3.2.2. Universities Need to Pay More Attention to the People-Oriented Management Concept

Students are independent individuals, and the existence of their subject consciousness needs correct educational ideas. Treating students as independent individuals and respecting their subject consciousness are the basic requirements of educational laws. Since the regulations on Punishment of Discipline Violations are formulated according to national laws and regulations, the spirit of rule of law should be reflected in its application process, and the comprehensive functions of evaluation, guidance, education, prediction and reward of the "Regulations on Punishment of Student Discipline Violations" should be played instead of focusing on punishment and punishment.

3.2.3. "Regulations on Disciplinary Punishment of Students" Lacks Unified Judicial Review

Judicial review is a legal system in which the state examines and supervises the activities of other state organs exercising state power through judicial organs, corrects illegal activities, and remedies the damages caused by them to the legitimate rights and interests of citizens, legal persons and other organizations. Although a university is not a state organ, it is an organization authorized by laws and regulations. When exercising the right to punish students, it is a legal relationship of administrative management, and its disciplinary action against students is an administrative act. This administrative act of colleges and universities should be included in the scope of judicial review. The focus of judicial review should be the basis of punishment, the procedure of punishment and the relief when the legitimate rights and interests of students are infringed.

3.2.4. The Legal System of Higher Education Needs to Be Further Perfected

Educational laws, educational administrative regulations, local educational regulations, departmental educational regulations and local educational regulations are the main contents of the educational legal system. At present, China has not yet formed a legal system of education which is effective in content and unified in form. Therefore, legislative authorities at all levels should introduce new education laws and regulations, and make corresponding judicial interpretations to implement the provisions of relevant education laws and regulations. We should strive to form a standard, unified and scientific system of higher education laws and regulations, so that the student management work in colleges and universities can be truly law-based.

4. Constructing Scientific "Student Disciplinary Punishment Regulations" Path

4.1. To Clarify the Scope of University Student Management Affairs According to the Principle of Legal Reservation

The principle of legal reservation means that important

matters affecting people's freedom and rights must be uniformly stipulated by law, and no administrative organ shall undertake any administrative act without the explicit authorization of law. The principle of legal reservation plays an important role in regulating the exercise of administrative power, ensuring the legitimacy and legitimacy of administrative acts, safeguarding citizens' basic rights and realizing socialist rule of law. So, in view of the problems existing in the "Regulations on disciplinary Punishment of students" in colleges and universities, the decentralization of power should be clarified through the following aspects.

4.1.1. The Principle of Absolute Legal Reservation

Matters concerning students' basic rights or major rights and interests, including the acquisition and loss of students' status and qualifications, such as withdrawal from school, expulsion from school and conferment of academic degrees, should be clarified by the National People's Congress or the Standing Committee of the National People's Congress in the form of legal norms in relevant legislation. It is suggested to amend and improve the Legislation Law, clearly specify the principle of legal reservation in the Legislation Law, and directly incorporate the above-mentioned handling of affairs concerning the right to education into the provisions of laws and regulations, rather than subsume them into the rules of the administrative departments of education, still less the rules and disciplines of schools. Based on the theory of legal reservation principle, "Education Law" and "Higher Education Law" should clearly limit and deprive students of the scope of the right to education, conditions, procedures, remedies, responsibilities, etc. Government regulations and school regulations can only elaborate the issue of the right to education within the scope of legal provisions, clarifying the normative position and function of government regulations and school rules in the whole education legal system. [19] All provisions that create new conditions and types to restrict and deprive students of the right to education should be invalid, and relevant authorities should clear up and abolish these provisions in time.

4.1.2. The Principle of Relative Legal Reservation

Students should enjoy the right to education and other constitutional rights, should be within the scope of absolute legal reservation. For non-constitutional rights but rights related to students' vital interests, The State Council and relevant departments of The State Council should formulate relevant laws and regulations to regulate, but this power still cannot be delegated to colleges and universities. Referring to the content of the current "Regulations on the Management of students in ordinary colleges and universities", it should be clearly stipulated through the principle of relative retention in law in the management of school roll, funding standards, transfer to major, right relief, graduation thesis evaluation and the filing of punishment conclusions and other issues.

4.1.3. The Principle of no Legal Reservation

Matters that only involve students' daily management, including work and rest time, students' clothes, dormitory

rules, the use of books, teaching arrangements, evaluation and reward system, campus order, student associations, awards and loans, safety management, restaurant management, student activities and other matters within the scope of the autonomy of the university that do not involve students' basic rights, need not be included in the scope of legal reservation. Even if there is no legal basis, the school can make its own rules, and the school can make decisions independently according to its own school-running philosophy and school-running characteristics, and formulate internal rules for adjustment.

4.2. Limited Access to Judicial Review

"Judicial review of disciplinary punishments of institutions of higher learning, in short, the people's court can review the decision of disciplinary punishments of institutions of higher learning according to law; From the perspective of students, it means that students of colleges and universities who refuse to accept disciplinary punishments can file administrative lawsuits with the people's court." Judicial review is consistent with the principle of legal reservation and must be limited intervention. As a kind of educational administrative power, the right of disciplinary punishment in colleges and universities must accept judicial review. The scope of the examination includes the legality of the basis and procedure for universities to punish students. The specific matters under examination are: the right of universities to enroll students, the right to manage school records, the right to grant diplomas and degrees, and the school rules and disciplines on which universities make punishment decisions. As for curriculum setting, major planning, examination score evaluation, paper professional level evaluation, educational practice plan, academic exchange activities and personnel training plan, which belong to the academic power of colleges and universities, judicial review is not required. Because teaching and academic issues belong to academic power, which is separate from the disciplinary power of colleges and universities. Academics are the free territory of scholars and the exclusive symbol of colleges and universities. Courts cannot interfere in academic issues involved in school rules and should fully respect them.

4.3. Adhere to the Principle of Due Process

The meaning of due process is to make people realize the justice and dignity of law through various procedures of law enforcement. The disciplinary punishment regulations of colleges and universities have a negative impact on the rights and obligations of college students and are the basis for negative evaluation of students. Therefore, students should be guaranteed the full right to be informed, informed, right to plead and right to appeal through a sound hearing system, appeal system and litigation procedure. It is of great significance to create an education environment reflecting the spirit of rule of law and advocate the spirit of rule of law in colleges and universities to improve students' overall quality.

4.4. Improve Disciplinary Institutions for Students

At present, the disciplinary institutions of students in Chinese universities have not been established or are not perfect. In this respect, foreign developed countries or regions provide us with good reference. When dealing with student behavior, the executive body of the University of Macau is very clear and specific, and the number of disciplinary committee members has also been specified, taking into account both teachers and student representatives. American colleges and universities have established a formal "judicial system" that is solely responsible for discussing and issuing disciplinary decisions against students, correcting appeals against disciplinary actions, and resolving disputes in disciplinary matters. The "judicial system" of student disciplinary matters, in addition to paying more attention to protecting students' legal rights and ensuring fair and equitable handling of issues, also educates all students and serves an educational function of discipline rather than just a disciplinary function. The Alabama Board of Education's Dixon case in 1961, a landmark case in the development of disciplinary action in the United States, highlighted students' right to know, required schools to inform students of disciplinary decisions, and allowed students to request a hearing before being expelled or expelled. The school authorizes legal counsel to participate in the whole process of disciplinary action and solve the relevant legal problems arising in this process.

4.5. Establish and Improve the Legal Supervision System

4.5.1. Set up the Supervisory Body

In the vision of law, supervision is linked with the determined subject and authority. If there is no defined subject and authority, there will be no supervision, or the situation that there is supervision in name but no supervision in essence. Only when the subject of supervision is determined, its supervision function can be clarified.

4.5.2. Throughout the Monitoring Process

Supervision includes not only the review of the system itself, but also the supervision of the implementation, especially the implementation procedure. In reality, some colleges and universities only focus on the institutional entity, believing that as long as there is a good system, there will be no problem in implementation. On the contrary, supervision of implementation is the focus of supervision. The implementation of the system should be monitored from start to finish, not just the formulation of the system.

4.5.3. Implement Monitoring Procedures

Students are naturally the main body of supervision for the application and supervision of the system related to students' vital interests. However, there is no provision for students or teachers to supervise the implementation of the "Regulations on Disciplinary Punishment of Students" in universities, let alone specific supervision procedures. This is the lack of decentralization in the student affairs office set up by colleges and universities. In practical work, the supervision subject

composed of teachers and students should be clearly stipulated in the procedural links such as the proposal of specific motions, the deliberation of departments and the feedback of deliberation results.

5. Conclusion

5.1. *The Regulations on Disciplinary Punishment of Students Will Be Brought Under the Supervision of the Constitution and Laws*

Receiving higher education is an important sign that a person enjoys the right to education. The administrative right of students, especially the exercise of the right of punishment, should be divided reasonably among the legislature, the administrative organs authorized by the legislature and colleges and universities according to the principle of legal reservation, so as to clarify their respective scope of management. To change the current relevant laws according to the principle of legal reservation does not divide the authority of administrative organs and universities in the creation of rules, and take back the disposition qualification of citizens' right to receive education declared by the Constitution from the hands of department rules and universities. It restrains the capriciousness of "student disciplinary punishment regulations" of universities with the compulsion of the Constitution and laws, forcing it to be consistent with the Constitution and laws.

5.2. *Professional Legal Personnel are Effectively Involved in the Management of College Students*

There are legal loopholes and dead corners in the formulation and implementation of rules, regulations and procedures. Legal advisers can help schools clarify the legal content of the system and avoid legal disputes between schools and students to the greatest extent. The active and effective intervention of legal counsel in the formulation of school rules and regulations in higher education institutions is a key legal preventive measure to prevent conflicts and resolve disputes. Many American legal advisers are legal professionals proficient in university student management and other university affairs. They have good professional ethics and firstly respect the authority of law rather than the will of school administration. They can not only provide consulting services for student affairs administrators and solve practical problems, but also supervise the legality of school decisions. Promote the standardization of school daily affairs management.

5.3. *Improve College Students' Awareness of Protecting Their Rights*

The behavior of colleges and universities exercising these right of disposition has obvious unilateral, compulsory, deterministic, binding and executing force. Although college students are a huge group, compared with the powerful punishment power of colleges and universities, they are in an obviously unequal disadvantaged position,

and the consciousness of safeguarding their legitimate rights and interests is very indifferent. This is a serious matter of concern. China began to implement the "Law Popularization Plan" in 1986, and has started its eighth plan so far. The purpose of law popularization is to improve citizens' legal consciousness and build a socialist country ruled by law. Using the law to safeguard their legitimate rights and interests should be the basic quality. Unfortunately, when the legitimate rights and interests of college students are infringed, most of them choose to "accept" and remain silent. It is a long and arduous task to cultivate the consciousness of safeguarding the rights of college students, which is also an important content of college education.

6. Recommendations

From the promulgation of the 60 Articles of Higher Education in 1961 to the promulgation of the newly revised Regulations on Student Management in Colleges and Universities in 2017, China's legislation on students' rights and obligations has gone through nearly 60 years of history, and great achievements have been made in the construction of the rule of law in student management in colleges and universities. But the most basic questions about the rights and obligations of students, about their legal status, have not been fully clarified. It is still necessary to further establish the humanistic care that is people-oriented and treats students as independent individuals.

There are many problems in the "Regulations on Disciplinary Punishment of Students" formulated by colleges and universities according to the "Regulations on Student Management of Ordinary Colleges and Universities" and other higher education laws and regulations, which often infringe on students' legitimate rights and interests, but the legislature turns a blind eye to this situation, which must be changed.

The sense of responsibility for the future of the country has prompted many insightful scholars to begin the exploration of legislating the "Student Law" or "School Law" in China. This is a good idea, but before the "Student Law" or "School Law" comes into being, the elaboration of this paper can be regarded as an ideal model.

References

- [1] Lao Kaisheng (2014). Review of China's Education Legal System. Series 1-12. Beijing: Education Science Press.
- [2] Zhang Zhenzhi (2018). Research on the subject rights of college students. Beijing: Social Science Literature Press.
- [3] Zhang Yufeng (2019). Research on innovation of ideological and political education model for college students in the new era. Beijing: Jiuzhou Press.
- [4] Bie Dunrong (2021). University Management and Governance. Qingdao: China Ocean University Press.

- [5] Liu Yang, Lu Hui, Huang Chuyun (2020). On the Legal Protection of the Rights of College Students, *Course Education Research*, (03): 22-23.
- [6] Zou Peng (2022). Legal Protection of the Emerging Rights of College Students, *Journal of Yangzhou University (Higher Education Research Edition)*, (03): 45-54. DOI: 10.19411/j.cnki.1007-8606.2022.03.006.
- [7] Liu Chi (2021). The historical evolution, operational difficulties and improvement path of the college student appeal system, *Higher Education Exploration*, (03): 18-22.
- [8] Zhang Xiaofan. Research on the disciplinary action system of university students from the perspective of rule of law - taking universities in Qingdao as an example, master's thesis, Qingdao University of Science and Technology, Qingdao, 2018.
- [9] Yang Hongyan. The dilemma and adjustment strategy of the expression of the rights and interests of local college students, master's thesis, Shenyang Normal University, Shenyang, 2022. DOI: 10.27328/d.cnki.ghsc.2022.000222.
- [10] Tian Qixiang. Research on the Optimization of the Structure of the Rights and Obligations of College Students, Doctoral Dissertation, Harbin Normal University, Harbin, 2022. DOI: 10.27064/d.cnki.ghasu.2022.000020.
- [11] James J. Fishman, Stephen Schwarz. (1995). *Noprofit Organization*, Westbury, New Yourk, Tth Foundation Press.
- [12] Berger CJ, Berger V.(1999). *Academic Discipline: A Guide to Fair Process for the University Student*. Columbia Law Review (2): 299-310.
- [13] Ernest L. Boyer (2002). *About American education reform*. Tu Yanguo, Fang Tong Tran., Beijing: Education Science Press.
- [14] Chen Jin (2021). The legal perspective and solution of the conflict of university students' management rights in the perspective of managing the university according to law, *Legal Expo*, (3): 155-156.
- [15] Pan Yuju, Ma Ruiling (2021). Educational Value Review and Rational Realization of Disciplinary Action for College Students, *Educational Theory and Practice*, (33): 40-46.
- [16] Deng Chuanfang, Zhang Xun (2021). Competition and convergence of disciplinary and criminal punishment for college students, *Journal of Hubei Normal University (Philosophy and Social Sciences Edition)*, (5): 56-61.
- [17] Li Yan, Yang Yang (2021). Research on the legal regulation of university autonomy, *Heilongjiang Higher Education Research*, (4): 55-60.
- [18] Chen Xiaoyu (2021). Research on the construction of the appeal procedure in colleges and universities, *higher education exploration*, (1): 20-28.
- [19] Li Shuai, Huang Ying (2020). The Decline and Reconstruction of Teacher Authority: From the Perspective of Teacher's Disciplinary Power into Law, *Research on Teacher Education*, (1): 27-32.