

The Principle of Legal Reservation and the Protection of College Students' Rights in Ideological Education of College Students

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Abstract: Colleges and universities have formulated their own "Regulations on Punishment of Students Violation of Discipline" in accordance with the Education Law, the Higher Education Law, the Regulations on the Management of Students in Ordinary Colleges and Universities and other laws and regulations, forming the right of punishment of students in colleges and universities. The power of university student management has legal basis. However, due to various problems in the basis, procedure, content and implementation of the "Regulations on Punishment of Students for Violation of Discipline", it has had a negative impact on the legitimate rights and interests of college students, especially the right to education. At the same time, when the same behavior is both illegal and disciplinary, colleges and universities often punish students according to the university's student management regulations, ignoring the law and reducing the dignity of the law. The article quotes the principle of legal reservation, distinguishes the management of college students from the three dimensions of the principle of absolute legal reservation, the principle of relative legal reservation and the principle of no legal reservation, and clarifies the context of college students' punishment right from the system and mechanism of disciplinary punishment of college students, which is of great significance to maintain the dignity of law, respect students' right to know and privacy, and protect students' right to education.

Keywords: The Principle of Legal Reservation, The Right of Disposition of College Students, Chinese Universities

1. Introduction

"Regulations on Disciplinary Punishments of Students in colleges and universities" is an important part of many school rules and discipline in Chinese colleges and universities. It is also an important basis for students' office at colleges and universities to share power. According to the practice of student management in colleges and universities, "Regulations on Disciplinary Punishment of College Students" can be summarized 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. The establishment, content and implementation of the decentralization of power in the student affairs office of colleges and universities have some problems, such as too much discretionary power and conflicting laws, which result in the adverse effects of legal dignity, students' right to education and other legitimate rights and interests. So, how to exercise the disciplinary punishment right of college students is scientific? Scholars have studied and explored it from different angles. For example, Zhang Xu pointed out that students' substantive rights or procedural rights were infringed in the student management work in colleges and universities, and proposed that colleges and universities should improve the disciplinary violation handling system, strict punishment procedures, innovative student rights and interests relief mechanism and other ways to promote the legal construction of decentralization of student offices in colleges and universities. [1] Xing Jiani, from the perspective of the

backward legalization of student punishment system, pointed out the existence of non-standard punishment procedures for university students, which not only damages the legitimate rights and interests of students, but also doubts the legitimacy of decentralization behavior of student affairs offices in universities. Therefore, from the Angle of law, we should standardize the punishment behavior, safeguard the legitimate rights and interests of college students, and promote the process of governing the university according to law. [2] Hao Wenjin proposed the balance between decentralization and the right to education in university student offices. In order to avoid the infringement of students' right to education, judicial review should be introduced and judicial relief should be implemented. [3] Mei Han pointed out that universities should strengthen the supervision of discretion, establish a sound relief mechanism for students, and formulate reasonable punishment procedures so that discretion can be exercised reasonably and fairly. [4] Liu Xibin expounds the importance of scientific application of due process in the process of disciplining students. [5] Chen Xiaojin pointed out that the punishment methods of American college students are worth learning from, especially the humanistic concept reflected in the punishment of students centering on the protection of students' right to education. [6]

Scholars have made abundant achievements in studying the disciplinary punishment right of Chinese university students from the legal perspective, but they have not put forward the idea of clarifying the decentralization of university student affairs office by using the principle of legal reservation. The principle of legal reservation is not only an important system of administrative law, but also an important content of administration by law. Referring to the relevant studies of scholars, this paper puts forward the idea of standardizing the decentralization of university student offices by invoking the principle of legal reservation, exploring and solving the normative issues of decentralization and legal supervision of university student offices, and expects to make further exploration in this research field.

2. Meaning and Applicable Standards of the Principle of Legal Reservation

2.1. Brief Explanation of Meaning

The principle of legal reservation was initiated by Otto Mayer, the founder of German administrative law at the end of the 19th century. The principle of legal reservation is not only an important system in administrative law, but also an important content of administration according to law. The principle of legal reservation means that important matters affecting people's freedom and rights must be uniformly stipulated by law. Without the explicit authorization of law, no administrative organ can make administrative acts. It can be understood that the principle of legal reservation is to reserve space for legal provisions in a certain field to ensure the legitimacy of the field. Its core is to protect the basic rights and freedoms of citizens. Therefore, the principle of legal

reservation plays an important role in regulating the exercise of administrative power, ensuring the legitimacy and legitimacy of administrative acts, protecting the basic rights of citizens, and realizing the socialist rule of law. [7] In colleges and universities, its purpose is to protect the legitimate rights and interests of college students from infringement. It must be clear here that the 'law' in the sense of legal reservation refers to the laws formulated by the national legislature, and does not include various regulatory documents formulated by the administrative organs.

2.2. Criteria for Applying the Principle of Legal Reservation

According to the current situation of the application of school rules and disciplines in China's colleges and universities, colleges and universities, as the administrative subject of managing students, follow the principle of legal reservation when formulating internal rules and regulations, which is not only the connotation of the administration of colleges and universities according to law, but also the need to effectively limit the use of college students' disciplinary power, with the purpose of better safeguarding the legitimate rights of students.

As a place of education for students, as an academic research institution and as the main force of scientific research, colleges and universities must have corresponding independent management rights. Therefore, the principle of legal reservation may not be applicable to all affairs of colleges and universities. The application of the principle of legal reservation must follow a certain standard, which is called the "importance" standard, that is, all matters that have a significant impact on social public interests and civil rights must be subject to legal reservation. The higher the degree of importance, the higher the degree of adjustment of legal reservation. It is for this reason that the principle of legal reservation extends from the initial intervention administration to the payment administration and internal administration. What is important? Taiwan scholar Chen Qingxiu took student management affairs as an example, In the school education relationship, important matters refer to those that are of great significance to the realization of students' basic human rights, such as education content, learning objectives, subject scope, basic organizational structure of the school, and legal status of students (such as admission, expulsion, examination, promotion, etc.) As well as disciplinary measures, they are all important matters. Regardless of their role in intervention or payment, they must be based on legal provisions." [8]

Taiwan, China scholars cited the views of German scholars, thinking that all 'important matters' related to the freedom of study of college students, such as the content of education, the purpose of study, the list of courses, the status of students, should be explicitly restricted by law or explicitly authorized by law. In particular, the grounds, scope and effectiveness of the withdrawal or expulsion of students who are sufficient to deprive the freedom of study of college students should be clearly defined by law, and should not be deprived by administrative orders or the rules of each school alone. This is the basic principle of legal reservation.

The introduction of the importance theory has greatly expanded the scope of legal reservation, and has provided new protection for the rights of college students.

3. Problems in the Basis and Implementation of College Students' Punishment Right

3.1. The Meaning of University Students' Management Power

China's relevant education laws and regulations have authorized the administrative functions that colleges and universities can perform: For example, Article 28 of the Education Law stipulates that schools and other educational institutions exercise the following rights: (1) to manage independently according to the articles of association; (4) To administer the student status of the educated, and implement rewards or sanctions; (9) Other rights stipulated by laws and regulations. The State protects the lawful rights and interests of schools and other institutions of education from infringement. This provision indicates that colleges and universities can enjoy the privilege of independently carrying out education and teaching work and student management as stipulated by law in the process 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 Management of Students in Ordinary Colleges and Universities stipulates that "colleges and universities should formulate or modify the regulations on student management in accordance with the regulations and report to the competent education administrative department for the record." In order to ensure the exercise and implementation of the above powers, the national education administrative organ authorizes colleges and universities to formulate specific rules and procedures to regulate them. Accordingly, colleges and universities have formulated their own Regulations on Punishment of Students for Violation of Discipline to form the right of punishment of students in colleges and universities. The power of university student management has legal basis.

3.2. Problems in the Basis for the Generation of University Student Management Power

The "Regulations on Punishment of College Students for Violation of Discipline" is the direct basis for the management of college students, and the yardstick for colleges and universities to maintain normal education and teaching order, campus management order, and cultivate students' sound personality. Therefore, it should conform to the laws of education, reflect the spirit and values of the times of college students, and comply with the corresponding provisions of laws and regulations. It should be normative, stable and scientific. However, the formulation of the current

"Regulations on Disciplinary Punishment of College Students" has problems such as imperfect basis, nonstandard procedure and lack of long-term planning.

3.2.1. The Basis of the Regulations on Disciplinary Punishment of College Students Is Not Sound

Before the release of the Decision of the Central Committee of the Communist Party of China on the Reform of the Educational System in 1985, the legal system construction of higher education in China was mainly managed by the 60 Principles of Higher Education. There is basically no foundation for the legal construction of higher education. Until the promulgation of the "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, the basic framework for the management order of higher education in the new era was constructed, which provided the basic basis for the comprehensive implementation of governing higher education according to law. However, the current construction of higher education laws and regulations is relatively lagging behind, and can not meet the needs of running the school according to law.

There are many defects in the existing norms due to the lack of legislation matching the legal system of higher education. For example, the second paragraph of Article 54 of the Higher Education Law stipulates: "Students with financial difficulties in their families can apply for subsidies or tuition reduction." How to apply? Reduce or exempt? To what extent? There is no corresponding explanation or regulation, etc. Article 66 of Chapter 8 of the Law stipulates: "Those who violate the provisions of the Education Law in higher education activities shall be punished in accordance with the relevant provisions of the Education Law." Article 11 of Chapter 9 of the Education Law of the People's Republic of China on legal liability is also a principle provision. There are no clear provisions on how to determine the responsibility and the extent of the responsibility, and there are no supporting legal provisions. In this case, colleges and universities can only formulate student management regulations with different contents according to their own understanding when formulating corresponding student punishment regulations.

3.2.2. The Formulation Procedure of the "Regulations on Disciplinary Punishment of College Students" Is Not Standardized

First, the "Regulations on Disciplinary Punishment of College Students" is relatively arbitrary. It is difficult to guarantee the legality of the regulations on disciplinary punishment in colleges and universities due to the nonstandard procedures. The lack of overall planning and review process often leads to the formulation of punishment regulations to solve a certain problem, which leads to the phenomenon of taking a partial approach to the whole. The whole process lacks the link of investigation, argumentation and solicitation of opinions, especially the lack of solicitation of students' opinions, which makes the formation of rules and regulations

in a relatively disordered state. For example, the formulation of disciplinary punishment regulations of some colleges and universities (especially the three types of undergraduate colleges and universities newly established at the beginning of this century) is made by the relevant functional departments of the school, which have moved the disciplinary punishment regulations of the first and second colleges and universities, copied, pasted, and transformed. The second is that the legal review in the formulation of the "Regulations on Disciplinary Punishment of College Students" is not in place. The drafting of the "Regulations on Disciplinary Punishment of College Students" largely depends on the will of the competent department. Relevant functional departments, according to the needs of their own management, propose and organize personnel to draft, compare and revise the current disciplinary punishment regulations of other colleges and universities, and lack the participation of legal professionals, and basically do not consider the legal problems that may exist in the "disciplinary punishment regulations of college students".

3.2.3. The Contents of the "Regulations on Disciplinary Punishment of University Students" Are Not Standardized

As rules and regulations, they should be prepared but not complicated, with strict logic, clear and specific provisions, accurate and concise wording and operability. If the content is not standardized, serious problems will certainly arise in the implementation process. Although the rules and regulations of colleges and universities are not administrative regulations, they are normative documents, and should also be implemented with reference to the Regulations on the Procedure for Formulating Administrative Regulations. At present, the normative limitations of university rules and regulations are shown in the following aspects:

First, diversity of punishment standards. As for the punishment of students' absenteeism, the regulations of different colleges and universities are different. For example, the regulations of a university in Shandong are as follows: students who have been absent for 60 class hours in total will be expelled; The regulations of a university in Northeast China are as follows: students who have been absent for 50 class hours in total will be expelled; The regulations of a university in Xi'an are as follows: those who are absent from school for more than 50 class hours in total will be given the punishment of staying on probation or above; The regulation of a university in Tianjin is that those who have been absent for more than 80 class hours in total will be given a demerit record, and will be dealt with according to the relevant regulations of student status management.

In the punishment of students' violation of discipline due to property infringement, the regulations vary a lot, also vary among universities. Examples are as follows: For example, the "Regulations on Disciplinary Punishment of University Students" of a university in Tianjin stipulates that if the amount involved is more than 300 yuan (inclusive) and less than 600 yuan, serious warning or demerit recording will be given; According to the "Regulations on Disciplinary

Punishment of College Students" of a university in Northeast China, if the case value is less than 1000 yuan (inclusive), a serious warning or demerit recording punishment will be given according to the circumstances; According to the "Regulations on Disciplinary Punishment of College Students" of a university in Shandong Province, if the total value of a crime is less than 500 yuan, a demerit will be recorded; According to the "Regulations on Disciplinary Punishment of College Students" of a university in Tai'an, those who commit crimes with a value of less than 500 yuan (inclusive) will be given a serious warning or demerit recording. According to the "Regulations on Punishment of University Students for Violation of Discipline" of a university in Beijing, those who have been confirmed by the public security department to have stolen property will be punished with demerit recording or above.

Second, it violates the principle of law priority. The meaning of the principle of law priority is that the law is superior to the administrative power. In essence, it means that the administrative power should be bound by the existing law and cannot conflict with the law. Administrative acts that conflict with the law are, in principle, revocable and actionable. Of course, this principle should be unconditionally applied to all aspects of university administrative activities. It is a basic legal principle that laws and regulations or normative documents with lower rank should not conflict with laws and regulations with higher rank. As a school discipline, it also belongs to social norms, and should share the same value orientation with other social norms, that is, to safeguard the legitimate rights and interests of the public. School rules and disciplines should be consistent with the law.

Sometimes a certain disciplinary behavior of college students not only violates the school discipline objectively but also should be subject to disciplinary punishment by the school, and at the same time, the behavior also violates the law and should also be investigated by the law, that is, the phenomenon that disciplinary punishment and legal punishment compete. In this case, many colleges and universities only implement the internal disciplinary actions of the school, and have made significantly lighter sanctions than the law for students' illegal behaviors. When the same case is adjudicated according to the law and the "Regulations on Disciplinary Punishment of University Students", different conclusions will be drawn. Is it to maintain the dignity of the law or to implement the effectiveness of the disciplinary regulations? Obviously, the principle of law priority should be followed. Because the illegal behavior of college students, whether as an ordinary citizen or as a student, is a harm to the social relations protected by law, and should be punished by law and bear legal responsibility. The principle of administrative legality is the principle of protecting law first and people-oriented, which should be the first basic principle of administrative law. [9]

The provisions of disciplinary action are more important than those of laws, regulations and rules. As a social organization, it is very necessary for colleges and universities to run schools according to law. However, the school rules

formulated by colleges and universities must be clear and clear, and must not conflict with laws, regulations and rules, or violate the principles and spirit of laws, regulations and rules. In the management of students in colleges and universities, many of the legitimate rights and interests of students are often mistreated, but the most profound and serious infringement on students is the impact on students' right to education.

3.3. Problems in the Implementation of the "Regulations on Disciplinary Punishment of College Students"

Due process is an important guarantee of rights. The application of disciplinary punishment regulations is the identification process of abstract rules and specific disciplinary violations. The high "unity" of this identification process depends on the guarantee of due process. Due process is a necessary limitation of power. Due process guarantees and realizes the legitimate rights and interests of students by restricting and controlling the school's administrative punishment power. The legal significance of setting up the disciplinary punishment procedure is to standardize the administrative punishment power with complete and scientific punishment procedure norms, which is conducive to protecting the punished person's procedural rights against the illegal administrative punishment power by administrative organs. Universities should pursue the substantive implications of due process principles. [10] At present, Chinese colleges and universities can basically ensure that the evidence is conclusive and the facts are correct when exercising the punishment power according to the disciplinary punishment regulations, but there are the following problems in the application of the "disciplinary punishment regulations for college students", the punishment procedures and the student rights relief:

3.3.1. Problems in the Application of the "Regulations on Disciplinary Punishment of University Students" and the Punishment Procedure

The first is to violate discipline, but not punish. One is that the behavior is a violation of discipline but not punished. At present, colleges and universities are under pressure because of the higher education administrative departments' more evaluation of colleges and universities. One of the regular indicators of the evaluation is the construction of the style of study and school spirit. If there are students' violations of discipline, especially serious violations of discipline or violations of the law, the so-called expert evaluation team will deduct the score of the school being evaluated. Therefore, in order to ensure that the evaluation can achieve "excellent" results, the school can only "no" disciplinary violations. On the other hand, if a student is punished with "demerit recording" or more for violating discipline, the undergraduate will not be awarded a bachelor's degree upon graduation. Therefore, students who do not have a bachelor's degree at the time of graduation will first "plead" with the secondary college repeatedly, which will bring a lot of trouble to the work of their department. More students with poor psychological quality will seek shortsightedness, which will

bring great pressure to student work. Therefore, in order to reduce the trouble and pressure, students who have been punished with demerit recording or less than severe warning would rather not be punished or be punished with severe warning (the punishment below warning can not be put in the file, and can be awarded graduation certificates and degree certificates normally).

The second is the same violation of discipline and different punishment results. When dealing with disciplinary violations, because the school has no unified student disciplinary punishment review organization, the school's disciplinary punishment authority was transferred to each secondary college, and the leader in charge of student work was responsible for it. Each secondary college also has no corresponding handling organization. When a student violates discipline, the leader in charge of student work of the secondary college often puts forward the handling opinions according to the disciplinary punishment regulations, and after informing the leaders of other colleges, the school will issue the punishment decision in the form of documents. Due to the lack of a unified review body for disciplinary actions against students, all secondary colleges have a strong sense of arbitrariness in dealing with disciplinary actions. It is often the student cadres who violate the discipline and get light punishment; Ordinary students who violate discipline will be punished severely. The punishment is extremely severe and not equal in the face of discipline.

Third, the students who should be punished were not informed of their rights. Before taking disciplinary action against students, students should be informed of the fact, reason and basis of the action, so that they can defend the reason and basis of the action. The handler should carefully listen to and examine the student's statement and defense. If the reason is valid, it should be used as an important basis for correcting the punishment decision. However, in reality, if a student violates the rules and regulations, the school will directly punish the student in violation of discipline according to the "Regulations on Disciplinary Punishment of College Students" on the basis of verification, without listening to the student's statement and defense. Even if the punishment made by the school does not conform to the facts, the punishment is also a matter of certainty, and students can only accept it. Only when the school issues a notice of the punishment results can the students know what punishment they will be subjected to, and their right to make statements and defend are deprived.

3.3.2. Problems in Student Rights Relief

Because of its simple and easy characteristics compared with other ways of right relief, appeal is often an effective means of self-help when the legitimate rights and interests of disadvantaged students are violated. The educated has the right to appeal to the relevant department if he or she is not satisfied with the punishment given by the school, and to file a complaint or bring a lawsuit according to law against the school or teacher for violating his or her legal rights and interests such as personal rights and property rights. The school shall set up a student appeal handling committee to

accept students' complaints about the cancellation of admission qualifications, the withdrawal of students, or the punishment of violation of regulations and disciplines ". According to this provision, the legitimate rights and interests of students can be infringed through appeal or litigation. Respecting students' right of appeal and litigation is an important way to remedy the rights of students in a vulnerable position. This is not only the requirement of the people-oriented education concept, but also the embodiment of the values of fairness and justice. Colleges and universities should reflect the rights conferred by the Constitution in the process of management and education of students, so as to protect the legitimate rights and interests of students. But in reality, there are the following problems:

The first is about students' complaints. Many colleges and universities have established student appeal committees in accordance with the requirements of the Regulations on the Management of Students in Ordinary Colleges and Universities. However, there are many problems in its specific functional operation:

The procedure for selecting the members of the appeal committee is unreasonable. The committee members are appointed by the leaders in charge of the school, and the student work department is the main body. The student representatives are limited to the members of the student union. The staff of the non-student work function department among the members are too busy with their own work, so they still "do not care about themselves and hang high" for matters outside their scope of responsibility. Such a complaint handling committee can hardly make scientific and reasonable handling opinions.

The appeal committee is virtually non-existent. Although colleges and universities have established appeal committees in accordance with laws and regulations, the work responsibilities of the appeal committee are not clear, and even the establishment of this institution is not publicly disclosed in the university, and students are not aware of the existence of this institution. So when the students want to appeal, they are at a loss.

There is no corresponding responsibility requirement. The responsibilities of the appeal committee are not clear. Without the restriction of responsibilities, it is difficult for such a appeal committee to truly safeguard the legitimate rights and interests of students through fair procedures.

Next is the lawsuit about students. When students take colleges and universities to court for disobedience to disciplinary action, colleges and universities argue that: colleges and universities are not qualified defendants in administrative litigation, first, colleges and universities are not administrative organs; The second is that the punishment of students by colleges and universities is the embodiment of the school's independent management power, which belongs to the school's internal management behavior, not the specific administrative behavior examined by the administrative litigation. To shirk responsibility. However, colleges and universities are the administrative subjects authorized by education laws and regulations (this issue has been discussed

in Chapter 2 of this article), and their disciplinary actions against students are the administrative actions authorized by laws and regulations such as the Education Law, and the specific administrative actions prescribed by the Administrative Procedure Law. Especially when the students' right to education is violated, they should receive judicial relief.

4. The Scope of Application of the Principle of Legal Reservation in University Management

4.1. Absolute Legal Reservation Scope

Starting from the theory of the importance of legal reservation, all matters involving the basic rights or major interests of students, including the acquisition and loss of student status qualifications, such as withdrawal from school, expulsion from school, degree awarding, etc., 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, and it is suggested to amend and improve the Legislative Law, and clearly stipulate the principle of legal reservation in the Legislative Law. The right to education should be clearly included in the scope reserved by law instead of the regulations of the education administrative department, let alone in the school rules and disciplines. Based on the theory of the principle of legal reservation, the Education Law and the Higher Education Law should clearly stipulate the scope, conditions, procedures, remedies, responsibilities and other important matters of restricting and depriving students of their right to education. Government regulations and school rules can only refine the issue of the right to education within the scope prescribed by law. All provisions that create new conditions and categories to restrict and deprive students of the right to education should be null and void. The relevant authorities should promptly clear up and abolish these provisions. We should improve the legislation of the Administrative Procedure Law and clearly classify the cases of school infringing on students' right to education, which is also the requirement of the principle of absolute legal reservation. The right to education is a basic right that citizens enjoy under the Chinese Constitution. The supremacy of constitutional norms derives from the fundamental law status of the Constitution. Therefore, citizens' basic rights must be protected. This requires the legislature to design a protection mechanism for basic rights when formulating laws, and requires the court to provide legal remedies for basic rights. Schools must exercise self-management on the basis of strictly following the rule of law. [11] According to scholar Ma Huaide, "The school's disciplinary action, decision to drop out of school or decision not to issue a diploma or degree certificate are all actions that have the effect of administrative action. If you are not satisfied with these decisions, you can solve them through administrative reconsideration, administrative litigation and

other ways, rather than pushing them into the scope of civil litigation or ignoring them." [12] According to scholar Shen Suping: "If a student is subject to a decision that is sufficient to affect his or her acquisition or loss of the specific status of a student as a member of the school, such as not being admitted, staying in the school for examination, or being expelled from the school, because it will change the substantive status of the student, which is of a serious nature and has a significant impact on the student's right to education, he or she should be able to file an administrative lawsuit." [13]

4.2. Relative Legal Reservation Scope

The constitutional rights that students should enjoy (such as the right to education) should be reserved by absolute law. Non-constitutional rights, but rights related to the vital interests of students, should be regulated by the State Council and the relevant departments of the State Council to formulate relevant laws, regulations and rules, and still cannot be delegated to colleges and universities. Referring to the contents of the current Regulations on the Management of Students in Ordinary Colleges and Universities, the author believes that the principle of relative legal reservation should be applied to the following issues. For example, the problems involved in the management of student status: the review criteria for new students after the entrance should be formulated by the State Council, and the State Council should formulate relevant rules for the punishment of those who commit fraud and serious cases, rather than "ask relevant departments to investigate"; For students with financial difficulties who cannot afford tuition fees, the State Council shall formulate unified subsidy standards; The Code of Conduct for Students in Colleges and Universities, which involves the assessment of students' ideological and moral character, should be operable, and the grades and standards should be formulated; The conditions for major transfer and school transfer should better reflect students' wishes and conform to students' knowledge interests; The State Council shall formulate corresponding procedures for complaints and lawsuits brought by students due to disciplinary actions.

For another example, at present, colleges and universities have carried out original examination on students' graduation papers, and each university has formulated its own evaluation criteria for plagiarism. For example, the standard of a university in Liaoning is: the similarity rate is more than 33%, and it is not allowed to participate in the thesis defense, and the graduation is postponed for half a year; Between 25% and 33%, the thesis must be significantly revised before it can be defended; Less than 25% need to be adjusted, and less than 15% can pass the customs. [14] This evaluation standard will affect students' right to obtain degrees. The State Council shall formulate the evaluation standard and implementation rules.

For example, Article 66 of Chapter 5 of the Regulations on the Management of Students in Ordinary Colleges and Universities stipulates that "the school shall truthfully and completely include the reward and punishment materials for students in the school's document files and personal files". In theory, we allow students to make mistakes, but in practice,

we prohibit students from making mistakes, even unforgivable. All universities in the country, in accordance with the provisions of Article 66 of Chapter 5 of the Regulations on the Administration of Students in Ordinary Institutions of Higher Learning, have classified disciplinary actions into student files. A university in Beijing also emphasized that if a person is punished by demerit recording or above, his/her college (department, institute, center) shall promptly deposit his/her punishment decision and relevant materials in the document file, and deposit the punishment decision in the student's personnel file; If a student receives punishment lower than the demerit level, his/her college (department, institute, center) shall promptly deposit his/her punishment decision and relevant materials in the file.

According to the regulations on disciplinary punishment formulated by colleges and universities in accordance with the provisions of Article 66 of Chapter V of the Regulations on the Administration of Students in Ordinary Colleges and Universities, the "disciplinary punishment" of students will be put into the students' files, which means that the "stain" of life will be with him for a lifetime. After graduation, the employer will check their own files, and the employer will resolutely terminate the employment relationship and become the real "unemployment after graduation". At this time, the students will have strong anti-social psychology and revenge, and the consequences can be imagined. Such important issues should be clearly defined by the principle of relative reservation in law.

4.3. No Legal Reservation Scope

All matters that only involve the daily management of students, including work and rest time, student clothing, dormitory rules, book use, teaching arrangement, evaluation and reward system, campus order, student associations, awards, loans and grants, safety management, restaurant management, student activities and other matters that do not involve the basic rights of students, belong to the scope of independent management of the school, and need not be included in the scope of legal reservation. The school can also make its own rules even if there is no legal basis. The school can make its own decisions and make internal rules for adjustment according to its own school philosophy and characteristics.

5. Conclusion

Applying the principle of legal reservation to standardize the management right of college students can produce the following positive effects.

5.1. Respect Students' Right to Know in the Process of Formulating School Rules and Disciplines

To let college students participate in the formulation of school rules and disciplines is not only the respect for students' personality, but also the procedural requirements for the formulation of codes of conduct and rules and regulations, and

the respect for students' right to know. The practice of American colleges and universities in formulating school rules and disciplines is worthy of our reference. American colleges and universities generally go through three procedures: first, the student work supervisor forms the first draft of school rules and disciplines on the basis of widely soliciting the opinions of students, student staff, teachers and relevant student work institutions. In this process, we also pay special attention to the role of lawyers to ensure that the school rules and disciplines formulated are free from defects and technical problems from the perspective of law. Secondly, the student work supervisor will submit the completed draft of school rules and disciplines to the headmaster, who will submit it to the school council for discussion and approval. Finally, the person in charge of the Student Affairs Office will officially publicize the school rules and disciplines adopted by the Council in the school and distribute them to students, so that students can understand their rights and obligations. The whole process from formulation to publication has played the role of education, guidance and warning of school rules and disciplines, and also established the authority of school rules and disciplines.

5.2. It Can Protect Students' Privacy After Punishing Students

If the school teachers and staff are allowed by law to access the disciplinary records or files of the students who violate the discipline for the purpose of student management and education, otherwise no one, including the parents of the students who violate the discipline, the employing unit, or even the school has the right to access the disciplinary files of the students who violate the discipline. The seriousness and prudence in managing and punishing archives fully reflect the respect and protection of students' reputation and privacy rights. A nationwide survey in the United States in 1977 showed that 80% of schools kept disciplinary records of students separately from other archival materials. Some universities have greatly improved the confidentiality level of disciplinary records. Without the permission of the students themselves, other institutions and individuals have no right to view relevant materials, and the proportion of informing parents is also gradually decreasing. [15]

5.3. The Core Goal Is to Guarantee Students' Right to Education

The right to education is a relationship of rights and obligations stipulated in the Constitution enjoyed by citizens. The right to education is the right that citizens, as the subject of the right, enjoy in accordance with the law and request the state to provide them with equal opportunities and conditions for education. Under this condition of equal opportunities, citizens learn scientific and cultural knowledge and professional skills through the educational institutions or channels provided by the state, develop citizens' personality, improve citizens' intelligence and physical and mental abilities, and finally realize the basic right to obtain equal opportunities for survival

and development. [16] In order to ensure that the right to education of college students is not infringed, colleges and universities should reflect the rule of law concept of "the right to education is a constitutional right" when setting and implementing the "Regulations on Punishment of Students for Violation of Discipline". The fundamental purpose of upholding the right to education is to develop people's personality, intelligence and physical and mental abilities, and to obtain equal survival and development opportunities.

Article 5 of the General Principles of the Higher Education Law of the People's Republic of China stipulates: "The task of higher education is to cultivate high-level specialized talents with innovative spirit and practical ability, develop science, technology and culture, and promote socialist modernization." Herbert Spencer said: "Education is the preparation for future life." Students attend school not only to learn cultural knowledge, but also to improve their ideological awareness and moral standards, That is to say, they have both political integrity and ability. The function of teachers is to preach, teach and dispel doubts, including moral and talent education for students. Therefore, it is normal for students to make mistakes and violate disciplines, which also reflects the necessity, value and significance of education.

References

- [1] Zhang Xu. (2014). Research on the legalization of students' Rights Relief under decentralization of University Student Offices. *Journal of Jiangsu Institute of Technology*, (05): 136-139.
- [2] Xing Jiani. (2015). Legalization of decentralization of university student Office. *Journal of Theoretical Observation*, (01): 144-145.
- [3] Hao Wenjing. (2017). On the balance between decentralization and right to education in university student offices. *Education and Teaching Forum*, (49): 225-226.
- [4] Mei Han. (2021). An analysis of the discretion of college students under the background of managing the university according to law. *Journal of Liaoning Institute of Education Administration*, (06): 12-17.
- [5] Liu Xibin. (2020). Research on the standardization of university student punishment under the background of ruling the country by law. *Youth and Society*, (27): 79-80.
- [6] Chen Xiaojin. (2020). On the reference significance of student punishment in American universities. *Contemporary Education Practice and Teaching Research*, (10): 220-223.
- [7] Wang W. (2020) Research on the Principle of legal Reservation in Constitution and Administrative Law. *Rule of Law and Society*, (11): 5-6. DOI: 10.19387/j.cnki.1009-0592.2020.11.181.
- [8] Weng Yuesheng (2002). *Administrative Law*. Beijing: China Legal Publishing House.
- [9] Liang Yuan, Yang Que. (2021). Reflection and Reconstruction of Basic Principles of Administrative Law. *Rule of Law and Society*, (15): 174-176. DOI: 10.19387/j.cnki.1009-0592.2021.05.255.

- [10] Yin Jiayi. (2021) The Judicial application of Due Process Principle in degree revocation disputes. *China Financial Law Review*, (13): 198-225.
- [11] Liu Yang, Lv Hui, Huang Chuyun. (2020). On the Legal Protection of College students' Rights. *Curriculum Education Research*, (3): 22-23.
- [12] Luo Haocai (2000). *Administrative Law Series*. Beijing: Law Press.
- [13] Shen Suping (2002). The right to education and its legal protection: analysis and reflection on a hot issue in current education disputes. *China Journal of Education*, (4): 38-40.
- [14] Zhang Yinghao: Shenyang University launched the "original review of papers" - checking the plagiarism of papers with "lie detector" [2009-11-24]. [EB/OL]. http://www.jwb.com.cn/bhzb/html/2009-11/24/content_411357.htm.
- [15] Ma Chao (2009). *Research on American University Student Affairs*. Beijing: Intellectual Property Press.
- [16] Huo Jianping (2015). Research on the legal protection of students' right to education. *Educational Exploration*, (1): 118-120.