

Study on Administrative Regulations Governing the Disciplinary Authority of Teachers

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Abstract. The disciplinary authority of teachers, as a form of power, often leads to instances of abuse. Such situations have adverse effects on the physical and psychological well-being of students, especially at various educational stages, including kindergarten and compulsory education. While Chinese civil and criminal laws provide some regulation in this regard, there still exists a grey area that is difficult to address. Administrative law, due to its inherent characteristics, is suitable for regulating this grey area. However, in the current regulatory landscape, there are significant issues concerning rules, supervision, remedies, and penalties. There is a need to further refine the rules governing disciplinary management, improve monitoring methods and mechanisms, enhance the avenues for redress for students subjected to discipline, clarify the methods and severity of penalties, in order to ensure that the relevant regulations and regulatory systems effectively safeguard students' right to education.

1. Introduction

According to relevant surveys and research, it has been found that in China, teachers at the kindergarten and compulsory education levels commonly resort to physical punishment and verbal abuse towards students due to emotional and vested interests. There are also instances of implicit physical punishments in other educational stages, and over time, the methods have diversified while the severity of harm has increased [1]. This reflects a lack of control over the disciplinary authority of teachers. As a long-standing power that has been influenced by traditional culture and possesses vague characteristics, there are significant loopholes and deficiencies in both rules and regulations.

Clarifying the nature of disciplinary authority and its related regulations is beneficial not only for helping teachers exercise restraint when disciplining students but also for promoting the healthy development of students at all educational stages. In recent years, there has been a growing body of research on teacher disciplinary authority, primarily focusing on theoretical aspects [2][3], principles, and methods of exercising disciplinary authority [4][5]. Some articles have also examined international experiences and legislative studies related to disciplinary authority in education [6][7][8][9]. However, there are few articles that integrate administrative law characteristics and principles to comprehensively analyze the regulatory framework of teacher disciplinary authority, especially at the kindergarten and compulsory education levels.

This paper begins by discussing the necessity of administrative law's involvement in regulating teacher disciplinary authority, analyzes the current regulatory

issues, and provides practical suggestions for rules and mechanisms to promote the legitimate and reasonable exercise of teacher disciplinary authority.

2. Analysis of the Nature of Discipline and Teacher Disciplinary Authority

2.1. Discipline

The term "discipline" encompasses two main aspects: "punishment" and "restraint." "Punishment" involves penalizing the wrongdoing, while "restraint" aims to prevent the recurrence of the offense. Therefore, in a general sense, discipline refers to "issuing warnings through punishment" [10]. The following aspects are typically included in the concept of discipline: first, discipline presupposes that a wrongdoing has occurred. Second, there must be a punitive action involved in the discipline. Third, the punishment must be directed at the specific wrongdoing. In the legal context, discipline must also meet these three criteria and can be described as follows: the authority to subject individuals who violate laws and regulations to punishment to prevent them from violating these laws and regulations again. Discipline exists in various legal domains, such as prosecutorial discipline and joint disciplinary actions for dishonesty. In the context of education law, teacher discipline of students involves teachers punishing or handling students who violate school rules and regulations to prevent the recurrence of such behavior and promote lawful conduct.

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2.2. Teacher Disciplinary Authority

2.2.1 Debates on the Nature of Teacher Disciplinary Authority

Some scholars argue that teacher disciplinary authority is a right [11]. They hold the view that rights are entitlements enjoyed by citizens and often emerge or cease to exist due to individual identities and specific actions. Teachers, as a profession with a strong educational and public nature, have the inherent responsibility to educate and guide students. This professional duty necessarily confers upon teachers the right to ensure the effectiveness of education and student guidance. This right is unified with their responsibility and exists to serve the dual legal relationship.

On the other hand, some scholars hold a different opinion, asserting that teacher disciplinary authority is a power [12]. They argue that power typically refers to the coercive force exercised by the state, state organs, and their personnel to compel specific entities to obey. The power aspect of teacher disciplinary authority is an extension of state authority, granted through the "People's Republic of China Teacher's Law." In practice, disciplinary authority also possesses a certain coercive nature, capable of compelling students to comply with its requirements, displaying characteristics of power.

In this regard, the author tends to align more with the second viewpoint. Firstly, the essence of rights lies in the exchange of values. In the context of student discipline, there is no value movement between the teacher and student groups. Instead, it involves an unequal relationship where one party exercises dominance over the other, with the aim of establishing a certain form of control. Secondly, power can coexist with responsibilities and does not preclude teachers from having the duty to educate and guide. Therefore, when subsequently regulating teacher disciplinary authority, one can analyze it using the theory of special relationships and draw from relevant rules and regulatory mechanisms that constrain public power.

2.2.2 Legitimacy Basis of Teacher Disciplinary Authority

In the context of teacher disciplinary authority, the subject of discipline is a qualified teacher, the object is a student who violates school rules and regulations, and the target behavior is the student's non-compliant conduct. It can be observed that the ultimate purpose of discipline is to curb student misconduct, aligning with the "deterrence theory" regarding the correctness of discipline. Deterrence theory asserts that punishing individuals who violate rules aims to make them adhere to these rules. Fundamentally, the goal of discipline is societal protection, similar to the societal protective aspect of criminal penalties [13]. Additionally, based on the theory of special rights, students being educated in schools are considered the managed subjects of the school. In more specific terms, they are the managed subjects of the classroom. As managed subjects, students

need to relinquish certain rights, such as freedom, to ensure the normal operation and management of the classroom and school [14]. Based on the above theories and the analysis of the object of teacher disciplinary authority, we can confine the exercise of disciplinary authority to behavior that violates school rules and regulations and disrupts the school's management order. Any exercise of disciplinary authority beyond this scope can be considered an abuse of disciplinary authority.

3. The Necessity of Administrative Regulation and Its Value Assessment

3.1. The Necessity of Administrative Regulation

Criminal law is generally reserved in regulating societal behavior and only imposes criminal penalties for actions that seriously harm national, public, or individual interests. In the context of teacher discipline, the criminal law's jurisdiction only applies when there is physical harm to students above a certain threshold, significant psychological harm to students, or severe infringement of students' freedom or property, among other serious offenses [15]. Civil law is primarily used to regulate inappropriate behavior by teachers through the framework of tort liability. For instance, when a teacher infringes upon a student's person, property, or causes mental harm, the teacher is held accountable for civil responsibilities such as apologies or compensation for losses. However, neither criminal law nor civil law directly constrains disciplinary authority. They often exclude areas where disciplinary authority cannot be applied negatively, rather than providing proactive regulations regarding the principles, methods, and limits of disciplinary authority. This results in a significant regulatory vacuum in the discipline of teacher authority, which not only places minimal protection on students but also allows for a lack of guidance in the exercise of disciplinary authority by teachers, leading to extreme abuse and loss of disciplinary authority.

In this regard, administrative law's characteristics and features can effectively fill this regulatory vacuum. Firstly, administrative law, as a branch of public law that regulates public administrative relationships, governs administrative organizations, actions, and administrative supervision and remedies. It inherently possesses a managerial nature, making it possible to actively manage disciplinary authority. This contrasts with the negative regulation imposed by civil and criminal law and completely changes the landscape of disciplinary authority regulation. Secondly, as mentioned earlier, teacher disciplinary authority, as a form of coercive power with inherent characteristics, is more suitable for regulation by administrative law, which exercises regulatory power, and administrative law's principles, theories, and methods can provide a methodological guide for regulating teacher disciplinary authority effectively. Thirdly, administrative law's legislative models are flexible and support detailed rules. Disciplinary authority concerning student safety and health should be specific rather than vague, with clearly

defined boundaries and enumeration of methods to prevent ambiguous areas. Additionally, administrative rules can be updated in a timely manner with the development of practice, which is challenging for traditional laws like civil and criminal law. Lastly, adopting administrative law regulation would ensure effective monitoring of disciplinary authority. Administrative rules generally have clear implementing, monitoring, and reporting agencies. By using administrative law for regulation, the monitoring and remedies related to disciplinary authority would fall within the purview of relevant departments such as the Ministry of Education, which is more conducive to supervision and restraint compared to the self-help-initiated regulatory methods used in civil law.

3.2. Value Assessment of Administrative Regulation

Conflicts between values and interests exist in various domains, including the discipline of students by teachers. On one hand, students need discipline, as excessive tolerance is not conducive to the growth of young individuals and can disrupt the educational management order, negatively affecting other students' learning environments. On the other hand, excessive and harsh discipline can cause significant physical and psychological harm to students, impacting their personal development and having adverse societal effects. The purpose of the law is to balance these conflicting interests, and administrative law, when regulating teacher disciplinary authority, continually weighs the effectiveness of management and order against the health and development of students.

In this context, it is necessary to establish certain judgment criteria and boundary ranges for the value assessment of disciplinary authority regulation. Based on the power nature of teacher disciplinary authority, the principle of proportionality in administrative law can be applied to analyze this issue. According to the "four-tier" structural theory of proportionality [16], the following aspects should be considered:

Firstly, in assessing the value of disciplinary authority, it is necessary to adhere to the principle of legitimacy of purpose. Teacher disciplinary authority serves a different purpose and function compared to criminal penalties. It is more aligned with utilitarianism, which aims to maximize social interests, rather than retributivism. For students in the process of growth and development, the fundamental purpose of teacher disciplinary authority is to correct improper behavior, not to inflict suffering on students. Therefore, only disciplinary authority with a legitimate purpose for correcting student misconduct should be allowed, and all other forms of disciplinary authority should be restricted by administrative law.

Secondly, when assessing the value of disciplinary authority, the principle of appropriateness should be followed. This means that disciplinary authority, in addition to its subjective purpose, should also be

effective in objectively correcting student misconduct, serving as a targeted deterrent.

Thirdly, when assessing the value of disciplinary authority, the principle of necessity should be observed. Discipline should only be applied when absolutely necessary and should minimize harm to students' physical and mental well-being, freedom, and property.

Lastly, when assessing the value of disciplinary authority, the principle of balance should be maintained. The positive effects that discipline can achieve should be proportionate to the harm it causes to students.

4. Current Issues in Rules and Supervision

4.1. Unclear Definition of Key Aspects of Teacher Disciplinary Authority

Regarding teacher disciplinary authority, important aspects include the definition of disciplinary authority itself, conditions for its exercise, scope, and degree, among others. However, current laws, including the "Teacher Law," do not provide a clear definition of disciplinary authority or specify the degree of discipline. This ambiguity has allowed cases of student abuse and mistreatment to persist. Although the "Rules for the Implementation of Educational Discipline by Elementary and Middle School Teachers (Trial)" (referred to as the "Disciplinary Rules") define disciplinary authority as "educational discipline" and enumerate the disciplinary actions teachers can take, several issues remain. Firstly, the listed disciplinary methods may not necessarily align with disciplinary principles. For example, it is questionable whether disciplinary actions like having students face the wall in class or suspending their practical activities are effective in correcting student misconduct and whether they infringe upon students' right to education in other areas, which goes against the principle of appropriateness. Additionally, the rationality of disciplinary measures like "isolation" has been questioned, as it has led to cases where adolescents have attempted suicide during isolation periods. Secondly, there is uncertainty in the Disciplinary Rules regarding measures such as "appropriately increasing physical activity requirements," "undertaking school-based public service tasks," and "isolation for reflection." Questions remain about when and where physical activities or public service tasks should take place, the duration of these activities, and whether they should consider students' health. Similarly, there is uncertainty surrounding the timing, location, and conditions of isolation for reflection. These ambiguities in the disciplinary measures listed in the Disciplinary Rules grant teachers excessive discretion and may lead to improper and excessive disciplinary actions that harm students' physical and psychological well-being. Thirdly, the Disciplinary Rules include a catch-all provision under "other" disciplinary measures, which raises concerns about how to prevent this provision from becoming an open door for abuse of disciplinary authority and requires clearer regulations.

4.2. Weaknesses in the Teacher Disciplinary Authority Oversight System

The lack of oversight over teacher disciplinary authority is evident in both related oversight rules and technical regulations. In terms of oversight rules, existing laws and regulations do not provide clear, specific provisions for monitoring and supervising teacher disciplinary authority. They merely suggest that schools "may" establish committees for oversight, which lacks enforceability and practicality, rendering oversight of teacher disciplinary authority nearly nonexistent. In terms of technical regulations, issues related to surveillance coverage and maintenance pose significant challenges. While efforts have been made to promote full surveillance coverage in urban primary and secondary schools by the Ministry of Education and the Ministry of Public Security, kindergartens and rural primary and secondary schools remain excluded. Furthermore, it remains unclear whether this surveillance extends to inside classrooms. Maintenance and accessibility of surveillance systems are also problematic. There are no policies or regulations addressing issues such as whether surveillance is continuously operational, how problems with surveillance are handled, or what happens when monitoring is turned off or evaded.

4.3. Incomplete Remedial System After Disciplinary Actions

When unjust disciplinary actions occur, students and their parents need legal avenues for redress. However, within traditional administrative law rules, there are no clearly defined legal paths for students and parents to seek remedies. The Disciplinary Rules propose remedies such as internal appeals and reviews within schools, which is a significant improvement. However, these remedies are primarily confined to the school environment and may lead to cover-ups or rushed resolutions. Compared to developed countries' remedial systems, there is still room for improvement.

4.4. Challenges in Implementing Teacher Disciplinary Punishment Rules

Rules without effective enforcement mechanisms often prove to be ineffective. Although the "Teacher Law" includes penalties and dismissal for teachers who repeatedly use corporal punishment on students or insult students, its vagueness can make it challenging to implement these penalties effectively. The Disciplinary Rules are more detailed, but they only specify punishments for teachers in cases of several severe "prohibited circumstances" and limit these punishments to criticism, disciplinary action, and compensation for significant harm. They do not address other violations of disciplinary rules. In cases of disciplinary actions that violate students' physical and psychological health, the law should adopt a zero-tolerance approach, but in practice, teachers who commit such violations often do not face substantive punishments. This has led to a

proliferation of excessive disciplinary actions, such as covert corporal punishment and psychological oppression.

5. Recommendations for Improving Administrative Regulations on Teacher Disciplinary Authority

5.1. Detailed Disciplinary Management Rules

Define disciplinary authority clearly and reasonably and actively communicate it to students, emphasizing that disciplinary actions are only allowed when they aim to correct mistakes and promote student development. Disciplinary actions based on subjective concepts like "damaging the school's reputation" or "harming a student's image" should not be permitted[17].

Reevaluate the legitimacy, effectiveness, and potential risks of disciplinary methods such as facing the wall, suspending practical activities, and isolation for reflection. Consider removing them from the list of permitted disciplinary actions and seek more reasonable disciplinary approaches.

Introduce degree-specific regulations for uncertain disciplinary methods like verbal reprimands, written apologies, and increased physical activities. The degree of disciplinary measures should not exceed what students of the respective age group can bear.

Review catch-all provisions like "other methods" to ensure that the severity of these measures does not exceed the most severe disciplinary actions listed in the rules.

Improve disciplinary procedures, drawing inspiration from the disciplinary procedures in the UK and the US. This may include:

Before disciplining a student, inquire about the student's motives and reasons for their behavior and ensure they understand the impending disciplinary action.

Verify the student's physical and psychological condition before initiating disciplinary actions to prevent adverse consequences on their well-being[18].

5.2. Enhanced Oversight Methods and Mechanisms

Improve monitoring methods by advancing full surveillance coverage in educational areas and designating senior administrative officials responsible for ensuring the proper functioning of surveillance systems.

Emulate the UK's approach to disciplinary management, which involves documenting disciplinary actions taken against students in writing and archiving these records. Since oversight of teacher disciplinary authority often lacks immediacy, these methods can provide concrete evidence for later scrutiny.

Construct a diverse oversight mechanism that encompasses the state, schools, and individuals, aligning with the administrative regulatory model. At the national level, establish clear responsibilities for relevant

administrative departments to review the reasonableness of school and teacher disciplinary actions, possibly introducing legitimacy reviews in specific cases. At the school level, in addition to requiring the establishment of specialized oversight bodies, refine specific rules for executing oversight and hold schools jointly responsible when oversight is neglected. At the individual level, create a clear path for individual appeals within the system, including a multi-tiered appeals process from the school to relevant administrative authorities. These authorities should inform students or parents about the agencies and specific procedures for making complaints and should not obstruct their right to lodge legitimate complaints or engage in other forms of oversight.

5.3. Enhanced Remedial Avenues for Students Subjected to Disciplinary Actions

Consider adopting rules similar to those in the UK and the US, which establish different remedial avenues depending on the severity of disciplinary actions. For minor disciplinary actions, students should have the option to challenge the disciplinary decision and appeal to a specialized school body. For more severe or harmful disciplinary actions, a more comprehensive remedial procedure should be in place. This procedure may include:

Formal notification in writing to the student and their parents before making a disciplinary decision, informing the student of their right to request a fair hearing, the right to present a defense at the hearing, and the right to question facts and judgments.

For serious disciplinary actions or those resulting in significant harm, extend remedial avenues for students and their parents from the school's internal processes to external administrative bodies. In cases of offenses that violate criminal or other legal standards, in addition to appeals, judicial remedies should be sought as per the law.

6. Conclusion

As a means of encouraging student correction and development, disciplinary actions play an essential role in traditional teacher-student relationships. In such relationships, students, as the vulnerable party, often dare not speak out when faced with unfair treatment, resulting in physical and psychological harm. Administrative law should regulate teacher disciplinary authority, which inherently involves the exercise of power. From rules to oversight, a comprehensive teacher disciplinary authority management system should be established. In the social framework, governmental authority should be confined within limits, and within the school framework, teachers' disciplinary authority over still-developing adolescents should also be subject to constraints. The refinement of rules, enhanced oversight, improved remedial options, and clear punitive measures all aim to protect students' legitimate right to education and ultimately fulfill the goals of education. To quote Rabindranath Tagore, "The main purpose of

education is to transmit the breath of life to human beings." Imposing reasonable administrative law restrictions on teacher disciplinary authority is essential for providing proper life education and human care from an early age. This has significant practical implications for fostering harmonious teacher-student relationships, building harmonious school environments, enhancing the overall psychological well-being of society, and promoting the construction of social spiritual civilization.

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