

# THE IMPROVEMENT AND APPLICATION OF NON-LITIGATION DISPUTE RESOLUTION IN CHINESE HIGHER INSTITUTIONS MANAGEMENT

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**Abstract:** recently, students have sued universities for judicial disputes. The resolution of internal educational disputes in universities and how to construct an effective dispute resolution mechanism are currently urgent issues. Non-litigation settlement does not take the form of court appeals, but is a dispute resolution method that is negotiated by both parties or mediated by a third party. It is favored by teachers and students for its diversity and simplicity. However, in the process of implementing non-litigation channels, there are problems such as lack of specific and standardized system guarantees, inadequate internal appeal mechanisms in colleges, and weak students' legal consciousness. By ending, the authors' suggestions include; the first is to standardize the complaint handling procedures to ensure the interests of fairness of both parties; the second is to establish and improve the internal appeal system of universities and expand the scope of acceptance; the third is to improve the university management system and establish a pre-emptive mechanism for disputes; to ensure that the third party mediation is fair and just; the fifth is to promote multiple non-litigation settlement channels such as negotiation and mediation to achieve the maximum balance between the interests of colleges and students.

**Keywords:** non-litigation; university management; right dispute; parties.

## 1. Introduction

With the gradual progress of China's education principle of law and the increasing of law awareness of social issues, the demand of college students for their own interests is rising too. As Michael L. Moffitt and Robert C. describe, mindfulness is a paramount key and effective intervention as it can allow us in shifting emotions, beliefs, and identities in ourselves and others, which definitely leads to perfect conflicts solving. they add that it may enhance our awareness of nonverbal expression of emotions in ourselves, as It also helps us notice emotional shifts in others. <sup>[1]</sup>

Since the "Tian Yong Su University of Science and Technology of Beijing" became the first case of college students suing alma mater in 1998, colleges and universities have conflicts and disputes arising from the exercise of administrative power in education management, such as admission, management, degree certificates, and alike those problems are raised one after another. In addition, lawsuits have been triggered

between universities and students' rights, with high litigation costs and complicated procedures; coupled with the "the alma mater complexity" of college students, they have to go to the public hall with their alma mater. Following up questions, there is dissatisfaction. This makes litigation settlement to a large extent, not suitable for college education dispute settlement, prompting people to consider seeking a non-litigation settlement channel to resolve conflicts and disputes.

In recent years, research on non-litigation methods to resolve university education management disputes has been in the ascendant. Wang Qiu Rong (2011) believes that in order to alleviate disputes in universities, an efficient and reasonable third-part mediation mechanism should be established.<sup>[2]</sup> Zhou Hu Yong (2016) also advocates to improve the internal management system of universities by use of university autonomy to alleviate the conflicts in education management.<sup>[3]</sup> Shen Su Ping (2017) advocates the adoption of an internal education appeal system in universities to achieve a balanced interest.<sup>[4]</sup> Although China has a long tradition of negotiating and mediation of social disputes, it has not explicitly provided for the internal management system of colleges and universities, thus which is making the current conflicts in college management more dependent on litigation. The author analyzes the connotation, characteristics and construction path of the non-litigation settlement mechanism, attempts to use the unique advantage of the non-litigation settlement mechanism to examine the dispute relationship in the education management of colleges and universities, and tries to use the non-litigation settlement mechanism to promote the maximum balance between the interests of both parties to achieve the transition from "prosecution" to "no prosecution" in university management.

## **2. Non-litigation dispute resolution mechanism and its necessity**

Although China has a long tradition of consultation and mediation to resolve social disputes, it has not evolved into a non-litigation settlement mechanism in the present sense. Non-litigation resolution mechanism, as a dispute resolution method outside the litigation system, first originated in the United States, also known as alternative dispute resolution mechanism; the ADR (Alternative Dispute Resolution). It mainly refers to the multiple alternative dispute resolution methods gradually developed in the 20th century, and has been extended as a general term for non-litigation dispute resolution methods or mechanisms outside the litigation system.<sup>[5]</sup> Litigation cases of higher education students management have flowed, relying on a single channel of litigation to resolve so many disadvantages and limitations caused by the incident, making both teachers and students dissatisfied with the results. The non-litigation settlement mechanism, with its characteristics of equality, pluralism, non judiciality, mutual benefit, and simplicity, has made domestic and abroad universities get favored in dealing with internal education disputes.

### ***2.1 Modest restraint of implementing non-litigation settlement channels in college disputes***

#### ***2.1.1 Higher institution litigation resolves many subsequent legal issues***

For the former disputes between universities and students' rights, the traditional channels of judicial administrative litigation are adopted, and the final results may cause dissatisfaction between the two sides, and the two sides still have great differences on the distribution of rights. There are a series of re litigation

cases represented by the law case of Gan Lu, the law case of Bai Yan and the case of Guo Jin Rong. This has also prompted people to wake up in consciousness, and began to actively seek diversified dispute resolution, which also provide a broad prospect for non-litigation legal dispute resolution. But the main reason is that there are some disadvantages and limitations in the litigation settlement mechanism itself. Among them, the litigation procedure is complex, the litigation case processing time is long, and the consequences brought by the high litigation cost make college students hard to bear. At the same time, various uncontrollable factors in the litigation process may lead to the success or failure of the final appeal.

### **2.1.2 Non-litigation resolution gives multiple options of problem solving**

The diversity of settlement methods allows people to have more choices in handling disputes, which also promotes dispute resolution in a more fair and just direction. Diversity creates the possibility of multiple choices for people, and each party is free to make its own judgment based on factors such as the characteristics of the dispute, cost, and reason.<sup>[6]</sup> In education management system of colleges and universities, there are many influencing factors that cause disputes between universities and students to become right and interesting, and they will all become the final choice of rights subjects under the last resort. On the other hand, non-litigation settlement channels have their own characteristics of informality and diversification, including negotiation, mediation, arbitration, and appeals, which make the right subjects have more diverse choices when resolving disputes. Interestingness of parties can find the best way to facilitate dispute resolution based on the actual situation of the dispute between the two parties and the existing conditions in various aspects.

### **2.1.3 Non-litigation settlement is easier and more convenient than litigation settlement**

The traditional method of litigation is nothing more than the contradiction of the parties through the implementation of formal legal proceedings against the court, rather than the advantages of litigation settlement which is more informal and pluralistic mediation. In resolving rights disputes between colleges and students, traditional practices have achieved fairness in accordance with judicial procedures. However, due to the complexity of judicial proceedings, the high cost of litigation, and the long duration of the litigation process, considering the existing economic conditions and academic burdens of students, etc., the litigation approach may not be the best choice for students to defend their rights. The last choice, the forms of non-litigation settlement channels are mainly mediation, negotiation and other methods. Comparing with judicial litigation, they appear to be non-procedural, with no dissent, and low cost and short time consumption (Table 1). It puts more emphasis on the self-negotiation of the parties to the contradiction or the use of a third-party mediation mechanism to achieve a balanced interest and achieve the purpose of ultimate dispute resolution. Among them, there is no need to perform judicial procedures, hire lawyers, judicial trials, etc., eliminating a lot of unnecessary links, which also greatly reduces the cost of litigation, shortens the litigation time, and improves the efficiency of dispute resolution. It is undoubtedly the best choice for processing a dispute over university education management.

**Table 1 Comparison of dispute resolution methods between universities and students dispute**

<i>Dispute resolution</i>	<i>Conflicts degree of two parties</i>	<i>Existence or inexistence of the third part</i>	<i>Effectiveness</i>	<i>Dispute result</i>	<i>Application area</i>
Mediation	Existence of difference in conflicts	Existence	Low cost, short time, high efficiency	Mediation and resolution	Existence of difference in contradiction
Litigation	Contradictory and acute	Existence	High cost and cumbersome procedures	Mandatory legal settlement	Big conflicts and disputes
Consultation	Less conflicts	Inexistence	Low cost, convenient and quick	adopt by consensus	Less dispute, less conflict

#### **2.1.4 Non-litigation settlement to some extent makes up for the shortcomings of the legal scope**

Non-litigation settlement, as a "no litigation" dispute settlement method, can, to a certain extent, break through a variety of sequelae caused by the fixedness and irreversibility of legal provisions in the past, making dispute resolution between universities and students more flexibility. In the past, compared to non-litigation settlement channels, administrative litigation rulings were largely tried with reference to the execution methods of educational dispute cases of universities in the past. Of course, in the actual process of judicial trials, there are also large differences in the judgments of different receiving institutions on the same type of disputes between universities and students. In this way, there are different trial results of cases of the same nature, which brings many disputes between the follow-up parties, which undoubtedly sets the stage for the subsequent appeal by the main body of rights. The non-litigation settlement mechanism, as a non-procedural, multiple settlement method, enables both parties to conduct effective and benign interactive dialogues on an equal basis and reach consensus on the rights and interests of both parties. This not only promotes the perfect resolution of rights disputes, but also alleviates many pressures on the judicial level to a certain extent and makes up for various shortcomings on the legal level.

#### **2.1.5 The influence of Chinese traditional "Rite"**

As confirmed by Anthony Wanis-St. John stated in Michael L. Moffitt and Robert C. (2005) "Centuries before there was any such a thing as a 'Western perspective on conflict resolution,' conflicts were being resolved peacefully. . . We in the West are only now beginning to formalize an understanding of conflict based on a set of principles that have been known and practiced by people around the world for many years." It is clear that from long ago society by society used to pass through conflicts and solve them basing on own contextual tradition but by the world development and civilization, people are taking every daily life more formal by depending on scientific or standard principles.

China too, by the influenced of thousands years of Confucian traditional "harmony" culture, people use "rituals" to mediate conflicts, by advocating the ideas of "no action", "weariness", and "interest litigation".<sup>[7]</sup> Clearly, it has a directly or indirectly impact to people for the choice of a suitable dispute resolution method makes the non-litigation settlement method more valuable. In order to promote peace of mind and minimize the influence of things, the two sides use emotions and self-coordination or third-party mediation to affect their feelings, and to use rational thoughts to influence them is more in line with people's habitual needs. Similarly, in the disputes between universities and students' rights, the traditional Chinese Confucian culture has always emphasized the concept of "do as a teacher for a day and as a father for lifetime". For thousands of years, the relationship between colleges and students has been treated as a special social relationship, and the two have been restricted and maintained by traditional moral culture.<sup>[8]</sup> Judicial lawsuits serve as the last barrier for students to defend their rights. Once students have hindered their sentiment and their alma mater complex, they choose judicial lawsuits only as a last resort. The non-litigation channel, as a multi-form dispute settlement path, can effectively guarantee the realization of the interests of the parties to the rights of both parties, and can also improve the embarrassing situation of the rigidity between the students and the alma mater, and better inherit and maintain the traditional Chinese concept of "harmony."

Contrary, there is a contradiction raised by different peoples' culture emerging as the world became open and a common home; during conflict management of parties with different culture backgrounds, there is a high possibility to create some misunderstandings or get a high extent. But Anthony Wanis-St. John keeps on advising that cultural concepts still have a crucial role and that it's the opportunity of both sides to learn the others' culture discrepancy then still resolve the dispute peacefully without simply relying on formal principles.

### **3 The implementation dilemma and optimization mechanism of non-litigation disputes in universities**

Currently, the diversity of educational subjects and the types of teaching in education management in colleges and universities has made the legal relationship between students, schools, and teachers increasingly complicated. College lawsuits such as the "Yu Yan Ru case" are one after another, making traditional judicial lawsuits somewhat stretched in handling college management disputes. The non-litigation settlement form, as a diversified path, is favored by universities and students for its diversified resolution advantages. As China is in the period of transformation and development of "double world class/flagship" universities, the degree of higher education facing internationalization and modernization is getting deeper. While marching toward international development, it has promoted diversification of educational subjects, diversified content of rights disputes, and complicated dispute relations. These factors have intertwined together, making non-litigation settlement channels face many challenges in the implementation process.

### **3.1 Non-litigation Implementation difficulties in universities**

#### **3.1.1. Lack of standard and specific relevant system support to ensure the orderly operation of non-litigation solutions**

As a dispute acceptance department, it does not have standardized and institutionalized alternative dispute resolution measures, making it difficult for the unique role of alternative dispute resolution mechanisms to resolve intellectual property disputes. <sup>[9]</sup>

In 2009, the Supreme People's Court issued a notice on "Several Opinions on Establishing and Perfecting Conflict and Dispute Resolution Mechanisms Linking Litigation and Non-litigation", stating that it is necessary to strengthen the mediation mechanism and make good connections between litigation and non-litigation channels.<sup>[10]</sup> However, no clear standardization requirements have been made for the non-litigation dispute resolution process and the basis of the award. This has caused some universities to use the internal education complaint mechanism for exploration and practice. There are also problems such as inadequate rules and regulations and unreasonable docking with the actual situation, which may lead to some internal disputes that could have been resolved through independent negotiation. Some of the disputes that can be negotiated and mediated have turned into out of school appeals and lawsuits due to the passive treatment of colleges and the shallowness of students' awareness of rights protection.

#### **3.1.2. Lack of standardized complaint mechanism within universities**

As a form of internal dispute resolution, there are many advantages to the resolution of various types of disputes within universities within the lowest impact range. At present, there are still many outstanding shortcomings in the existing appeal system in universities. For example, the responsibilities of the institution that accepts appeals are unclear, the staffing is unreasonable, and the channels for appeals are not perfect. Under the current Chinese education legislation system, although some universities have departments such as student affairs centers and appeal management committees, but they lack more orderly rules and regulations and standard operating procedures. There is still generalization of power and responsibility that affect appeal processing. For example, the "Measures for the Management of Student Appeals of Beijing Normal University" and the "Methods for Handling Student Appeals of Tsinghua University" have established student appeal processing committees, but there is no strict selection and assessment of the staffing, in terms of office and appointment in standardization of the mediation committee. Secondly, the establishment of the appeal handling committees of some universities lacks representativeness. The staff of the appeal committees does not involve student and teacher representatives. Only the review team composed of the main leaders of the school and the heads of the student management department; the arbitrariness of the review results may just lead to the result with contradictions and disputes between colleges and students are more acute. In addition, the hollowness and formality of the establishment of the dispute resolution department within the school, have made internal organizations such as the college student autonomy management committee, the student supervision committee, and the student appeals processing committee with poor performance or have not exerted their actual benefits.

### ***3.1.3. Lack of a fair and effective third-party mediation mechanism***

When dealing with university management disputes, a fair and effective third-party mediator or organization has a significant role in dispute resolution. Third-party mediators should have extensive experience in education dispute resolution. At the same time, third-party mediators or mediators must exclude their own interests from school and the students' interests. Moreover, there must not appear any close relationship with any party to the dispute of rights to avoid any kind of bias or discrimination against any party to ensure that the mediator is in an impartial and neutral position. In addition to educational administrative litigation, third-party mediators or mediation agencies in non-litigation relief procedures must also consciously abstain from the principle of avoidance. They must not negotiate or reach an agreement in private before performing the mediation procedure. Prejudgment of thinking or emotional prejudice should adhere to the concept of serving both parties and focus on conflict resolution as the most important task.

### ***3.1.4. Students' lack of awareness of legal rights***

The lack of awareness of rights protection among university students is one of the main reasons for "getting puzzled." For instance, in case of a dispute over rights, they do not know how to file an appeal, nor which department to go to for assist. At the same time, the department of internal appeals of universities is not clear about how to correctly accept the complaints. There is no standard legal document in comparison of the results of the appeals and how to effectively implement them. Furthermore, the scope of appeals for students' internal education complaints is not clear. To appeal, students must comply with the scope of acceptance set by the School Appeals Processing Committee before they can accept it. This is undoubtedly a manifestation of shirk responsibility and a deficiency of the current legal system of college education.

## **3.2. The construction Path of Non-litigation Channels among Universities**

### ***3.2.1. Standardize complaint handling procedures to ensure fair interests of both parties***

The internal appeal committee of a university shall establish and follow a fair and equitable process, with stakeholders participating in the decision-making process, respecting their rights to statements and defense, and proceeding in an orderly manner in accordance with the statutory appeal process. For example, in the law case of Yu Yan Ru, a female doctor from Peking University, sued her alma mater, Peking University, the first Intermediate People's Court of Beijing held that the focus of the dispute in this case was whether Peking University complies with the legal principles when making a decision and whether it has fulfilled formal legal procedures. The final outcome was that Beijing University failed to perform due process in judgement. In the management of university education, more attention should be paid to the orderly management of student in accordance with due process, and appropriate conclusions should be made based on facts. First, at the beginning of the establishment of the Education Appeals Committee, the proportion of relevant personnel should be strictly controlled in accordance with the principle of avoidance, fairness and impartiality. The appeals committee should involve the relevant functional department heads, student representatives, teacher representatives and other necessary personnel. Regarding the standard procedures, relevant persons participating in the appeal committee sign relevant responsibility

responsibilities when necessary to ensure that the accepting relevant persons will not make arbitrary decisions and will not be affected by other external emotions, and truly guarantee fair and just settlement of the accepted cases.

Second, advocating fairness and impartiality, not putting emphasis on the principle of openness, should be based on the personality of college students and the consideration of the basic human rights of teachers and students. If it is not necessary, public cases should not be selected for disputes that damage the reputation of both parties, undoubtedly the two parties; students and teachers will achieve fairness of interests with minimal impact.

### ***3.2.2. Establishment and improvement of the internal appeal system of universities and expansion of the scope of acceptance***

The education appeal system is a kind of appeal system among universities, which is mainly a special department appeal system developed to resolve disputes between rights and interests of university, teachers, and students. <sup>[11]</sup> Earlier, the "Regulations for the Management of Students in General Institutions of Higher Learning" issued by the Ministry of Education made some provisions on student appeal procedures, but it still needs to be further improved in terms of its standardization and scope of appeals. Therefore, expanding the scope of accepting education complaints and establishing a standardized, specific, and effective non-litigation system guarantee are still important tasks facing universities to improve the construction of the rule of law in education. Establishing an education appeal system within universities can effectively solve the disputes over rights among students, teachers, and schools. Although, the education appeal system is nominally an appeal system, it is fundamentally different from a simple administrative appeal system; it is a dispute decision act implemented by a school based on the role of a quasi-judicial arbiter. <sup>[12]</sup> So, we must distinguish the administrative appeal system from the original intention of establishing an internal education appeal system in universities; at the same time, we must get rid of the vassal relationship with the administrative system of the university and truly guarantee the internal education appeal system. The system that has timeliness, fairness and normativeness will probably play a more substantive role in the settlement of disputes over students' rights.

### ***3.2.3. Improvement of the management system of universities, and establishment of a precautionary mechanism for disputes in advance***

The perfect construction of a harmonious society in the new era does not only depend on the sound legal system, but also places higher demands on citizens in the new era. The change in the concept of mutual respect and love among citizens, and coexistence in harmony, will promote a beautiful scene of non-litigation society. First, in the education management of universities, especially among universities, teachers, and students, we must strengthen benign relationships and interactions. Colleges and universities create good communication and school atmosphere for teachers and students. Teachers must resolutely uphold the basic rights of students and reflect human feelings. Students must also fully respect the dignity of the teachers. Both sides strictly adhere to each other's moral and legal bottom lines. Bonds use the most effective means to resolve disputes and resolve conflicts and frictions to the minimum. Both parties should



be committed to creating a harmonious campus culture in the education and teaching of colleges and universities based on the educational concept of mutual learning and teaching. Second, in order to prevent the intensification of disputes in schools at the source and effectively reduce the probability of disputes in education in colleges and universities, based on the current practical experience of some primary and secondary schools, a prevention and treatment concept of "early prevention, clever discovery, and good resolution" was constructed.<sup>[13]</sup> The establishment of a prior prevention mechanism for university student rights disputes should be properly deployed and fully integrated. Establish a college student autonomy management committee, use student autonomy management, implement a transparent and open system of informatization, and regularly open information to students through relevant APPs network channels such as mobile QQ, WeChat group and Weibo (very useful and convenient social networks in China) and implement transparent use and management of them. At the same time, an online and offline student return visit system should be implemented. Regular online visits with student interviews on the Internet platform are relevant suggestions for school management, grasp the hot issues of school management, carefully analyze the factors that cause disputes, and establish a file in a timely manner with a good summary of relevant experience. At the same time, there should be conducts all-round investigations within the colleges and universities to investigate all kinds of internal disputes that may occur, and is justified, timely accountable, and timely handled, and the student management system should be continuously strengthened and improved to ensure that each student's own legality rights and interests can be realized fairly and justly.

### 3.2.4. *The mechanism of clarifying the third-party mediation to ensure that it is fair and just*

The mediation system has its roots in China and has been praised by the world as the "Eastern Experience" and favored by the international legal community. For a long time, due to too much emphasis on practical operation, it has neglected to conduct deeper and broader theoretical research on mediation, and regarded the mediation system as a sign of inadequate legal system construction.<sup>[14]</sup> Greatly weakened the irreplaceable role played by the mediation system in resolving conflicts and disputes. The mediation mechanism is that in the process of conflicts between the two parties, the two parties cannot reach an agreement through consultations, etc., with the help of a neutral third-party mediator or mediation agency, through persuasion and counseling, the parties of the rights of both parties should be allowed to voluntarily resolve the dispute over rights and interests on a free and equal basis in a form of settlement that is agreed upon. The involvement of third-party mediators or organizations should be attributed to the extent to which they ensure the neutrality and impartiality of dispute resolution. This also raises some new requirements on the choice of third-party mediators. First, in the process of selecting a mediator or organization, the neutrality, professionalism and impartiality of a third-party mediator should be guaranteed. Choose a mediation committee with experts who have professional experience in resolving educational disputes and who can respect older generations of educators, or professional professors who are familiar with education laws and policies who are already in service. Second, the establishment and operation of the mediation committee must be within the scope of the law, and there must be no conflicts with the basic education law. In the process of resolving disputes, mediation procedures must be strictly followed, and experts with no relevant interests must be selected to participate in the mediation.

### 3.2.5. Promote diversified non-litigation settlement channels such as negotiation and mediation

As a traditional method of dispute resolution in China, negotiation and mediation methods once played an irreplaceable role. The method of negotiation and mediation makes the dispute procedure of the two parties of the conflict informal, and the result of the dispute can better express the wishes of both parties and reach a consensus of interests. First of all, in resolving rights disputes between higher institutions and students, the key is to establish a mechanism to protect the rights and interests of students, which is also the basic requirement of legal management of colleges and universities. Among them, the construction is mainly based on non-litigation. The multiple dispute resolution mechanism supplemented by litigation settlement methods has important theoretical significance and practical value for the legal system construction of higher education.<sup>[15]</sup> At present, with the popularization of higher education gradually, the internal disputes in colleges and universities are diversified. However, as a microcosm of society, the cause of most disputes is relatively simple. As a high-knowledge social group, the values among college student groups can reach a greater degree of consensus. Compared with administrative litigation channels, the use of multiple settlement methods such as negotiation and mediation can be more handy. By connection with the internal education appeal mechanism of colleges and universities, it can better achieve organic integration and complementary advantages. Therefore, in the disputes of colleges and universities, we should actively pay attention to the multiple settlement channels such as negotiation and mediation. At the same time, we should combine the actual situation of different educational disputes, ask the reasons, and choose the best and most effective mediation method. We must ensure that the interests of both parties are balanced and minimize their negative effects. In addition to that, the multiple channels of settlement such as negotiation and mediation should not be generalized in the management disputes of universities. For instance, disputes involving students' academic ethics and behavioral qualities should not necessarily be suitable for negotiation and mediation.

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