

J. Y. Interpretation No.382 (June 23, 1995) *

ISSUE: Under the Constitution, is a discharged student entitled to bring an administrative appeal and later an administrative litigation against his/her respective school to challenge the discharge?

RELEVANT LAWS:

Article 15, 16, 18, 77 and 83 of the Constitution to (憲法第十五條、第十六條、第十八條、第七十七條、第八十三條); J. Y. Interpretations Nos. 187, 201, 243, 266, 295, 298, 312, 323 and 338 (司法院釋字第一八七號、第二〇一號、第二四三號、第二六六號、第二九五號、第二九八號、第三一二號、三二三號、三三八號解釋); Article 1 of the Administrative Appeal Act (訴願法第一條); Article 1 of the Administrative Proceedings Act (行政訴訟法第一條); Precedent P.T. No. 6 (Ad. Ct. 1952) (行政法院四十一年判字第六號判例) .

KEYWORDS:

discharge or similar action (退學或類此之處分行為), student discipline (學生懲處), right to sue (訴訟權), an opportunity for education (受教育機會), administrative appeal (訴願), administrative litigation (行政訴訟) . **

HOLDING: An discharge or similar action taken by a school of any

解釋文：各級學校依有關學籍規則或懲處規定，對學生所為退學或類

* Translated by Dennis T. C. Tang.

** Contents within frame, not part of the original text, are added for reference purpose only.

level against one of its students in accordance with its student codes or disciplinary regulations will change that student's status and hinder his/her opportunity to receive an education. In light of its significant impact on the people's right to education guaranteed by the Constitution, such a disciplinary action shall be classified as an administrative act subject to administrative appeal and administrative litigation. The disciplined student is entitled to bring an administrative appeal and later an administrative litigation when he/she has exhausted all remedies available within his/her school. To the extent that it is contrary to this Interpretation, the ruling announced in Precedent P.T. No. 6 of the Administrative Court in 1952 should no longer be applied, so that the right to education and the right of instituting legal proceedings guaranteed by the Constitution can be secured.

REASONING: The Constitution guarantees the people a right to education. And a person whose right guaranteed by the Constitution is illegally infringed upon is entitled pursuant to Article 16 of the

此之處分行為，足以改變其學生身分並損及其受教育之機會，自屬對人民憲法上受教育之權利有重大影響，此種處分行為應為訴願法及行政訴訟法上之行政處分。受處分之學生於用盡校內申訴途徑，未獲救濟者，自得依法提起訴願及行政訴訟。行政法院四十一年判字第六號判例，與上開意旨不符部分，應不予援用，以符憲法保障人民受教育之權利及訴訟權之意旨。

解釋理由書：人民有受教育之權利，為憲法所保障。而憲法上權利遭受不法侵害者，自得行使憲法第十六條訴願及訴訟之權，於最後請求司法機關救濟，不因其身分而受影響，迭經本院

Constitution to administrative appeal as well as ultimately to sue in a court, regardless of his/her status. Such an opinion has been reiterated repeatedly in Interpretations Nos. 187, 201, 243, 266, 295, 298, 312, 323 and 338 rendered by the Judicial Yuan regarding people possessing the status of civil servants or others yet involved in litigation.

Public schools as institutions established by various levels of governments pursuant to laws and regulations to carry out educational functions possess the status of administrative agencies. Private schools as institutions established pursuant to the Private School Act and approved by the competent educational agency with an authorized official seal have the authority to carry out educational functions, such as selecting, enrolling, and disciplining students as well as issuing degree certificates. Private schools to such an extent are educational institutions authorized by law to exercise public authority within a specified scope and should be regarded as possessing a status equivalent to administrative agencies (See J.Y. Inter-

釋字第一八七、二〇一、二四三、二六六、二九五、二九八、三一二、三二三及三三八號等解釋，就人民因具有公務員或其他身分關係而涉訟之各類事件中，闡釋甚明。

公立學校係各級政府依法令設置實施教育之機構，具有機關之地位，而私立學校係依私立學校法經主管教育行政機關許可設立並製發印信授權使用，在實施教育之範圍內，有錄取學生、確定學籍、獎懲學生、核發畢業或學位證書等權限，係屬由法律在特定範圍內授與行使公權力之教育機構，於處理上述事項時亦具有與機關相當之地位（參照本院釋字第二六九號解釋）。是各級公私立學校依有關學籍規則或懲處規定，對學生所為退學或類此之處分行為，足以改變其學生身分及損害其受教育之機會，此種處分行為應為訴願法及行政訴訟法上之行政處分，並已對人民憲法上受教育之權利有重大影響。人民因學生身分受學校之處分，得否提起行政爭訟，應就其處分內容分別論斷。如學生

pretation No. 269). An discharge or similar action taken by a public or private school of any level against a student in accordance with its student codes or disciplinary regulations will change that student's status and hinder his/her opportunity to receive an education. Such a disciplinary action shall be deemed as an administrative act subject to administrative appeal and administrative litigation in light of its significant impact on the people's right to education guaranteed by the Constitution. Whether a person suffering from such an action because of his/her student status is entitled to administrative appeal and administrative litigation depends upon the contents of the action in dispute. Whenever a disciplinary action, such as recording a demerit or reprimand, is necessary for the maintenance of a school's order or realization of educational purposes and does not infringe upon the student's right to education, the student(s) affected should only be allowed to appeal within the school, and not be allowed to bring administrative appeal and litigation. On the contrary, when a student suffers discharge or similar actions that in

所受處分係為維持學校秩序、實現教育目的所必要，且未侵害其受教育之權利者（例如記過、申誡等處分），除循學校內部申訴途徑謀求救濟外，尚無許其提起行政爭訟之餘地。反之，如學生所受者為退學或類此之處分，則其受教育之權利既已受侵害，自應許其於用盡校內申訴途徑後，依法提起訴願及行政訴訟。行政法院四十一年判字第六號判例：「學校與官署不同，學生與學校之關係，亦與人民與官署之關係有別，學校師長對於違反校規之學生予以轉學處分，如有不當情形，亦祇能向該管監督機關請求糾正，不能按照訴願程序，提起訴願。」與上開意旨不符部分，應不予援用，以符憲法保障人民受教育之權利及訴訟權之意旨。

fact affect his/her right to education, he/she is entitled to administrative appeal and administrative litigation pursuant to the law after having exhausted all remedies available within the school. To the extent that it is contrary to this Interpretation, the ruling of Precedent P.T. No. 6 of the Administrative Court in 1952 stating that, “schools are different from agencies; the relationship between a school and its students is also different from that between the people and an agency; when a transfer decision made by a school against a student is considered inappropriate, the affected student may only request the agency that committed the oversight to correct it, and can not bring administrative appeal pursuant to the Administrative Appeal Act,” should no longer be applied, so that the right to education and the right of instituting legal proceedings guaranteed by the Constitution can be secured.

In addition, an agency or a court reviewing such a discharge or similar action should defer to the decision on judgment of moral character, evaluation of academic performance or choice of discipli-

又受理學生退學或類此處分爭訟事件之機關或法院，對於其中涉及學生之品行考核、學業評量或懲處方式之選擇，應尊重教師及學校本於專業及對事實真象之熟知所為之決定，僅於其判斷

nary measures made by the teacher(s) and school based upon their expertise and familiarity with the facts. Such a decision can be revoked or altered only when the judgment or discretion involved is illegal or obviously inappropriate.

或裁量違法或顯然不當時，得予撤銷或變更，併此指明。