

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

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

RELEVANT LAW:

Articles 16 and 22 of the Constitution; Precedent P.T. No. 6 (Ad. Ct. 1952)

KEYWORDS:

discharge or similar action, student discipline, right to education, right to sue, an opportunity for education, an administrative act

HOLDING:

A discharge or similar action taken by a school of any level against one of its students in accordance with its student codes or disciplinary regulations will change that student's status and impair his/her opportunity for education. In light of its significant impact on 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 repugnant 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 to sue 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 Constitution to administrative appeal as well as to sue ultimately in a court, regardless of his/her status. Such an understanding has been reiterated repeatedly in Interpretations No. 187, 201, 243, 266, 295, 298, 312, 323 and 338 rendered by the [Judicial] Yuan regarding people possessing the status of civil

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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 (please refer to J.Y. Interpretation No. 269). A 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 impair his/her opportunity for 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 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 from discharge or similar actions that affect in fact 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 repugnant to this Interpretation, the ruling of Precedent P.T. No. 6 of the Administrative Court in 1952 announcing 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 oversight agency 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 to sue 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 over judgement of moral character, evaluation of

academic performance or choice of disciplinary 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 judgement or discretion involved is illegal or obviously inappropriate.