

# Give Full Play to the Role of People's Mediation System in Campus Sports Injury Disputes

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**Abstract:** *Due to the drawbacks of the traditional dispute resolution methods and the difficulties faced by the campus sports injury arbitration system, people's mediation has its unique advantages in the campus sports injury disputes and has the necessity to expand its application in the campus sports injury disputes. People's mediation should pay attention to the combination of autonomy, the rule of law and the rule of virtue, and attach great importance to the private rights relief of both parties, so as to achieve the fundamental settlement of disputes. In the construction of the procedural approach of campus sports injury disputes, we should deeply consider the three aspects of mediation mode, mediators and identification procedures. Through empirical research methods, the above questions are answered one by one in the paper.*

**Keywords:** *Campus Sports Injury; Disputes; Procedural Law; People's Mediation*

## 1. Introduction

As for the research on the substantive law of campus sports injury disputes, the theorists and practitioners of non-management have achieved fruitful results compared with the procedural law. However, little attention has been paid to the dispute resolution mechanism, a procedural law issue. Substantive law and procedural law are like two wheels of a car and two wings of a bird. Therefore, the re-examination of campus sports injury disputes at the level of procedural law is conducive to more comprehensive protection of the rights and interests of the parties and the realization of the rights and remedies of the parties.

## 2. The Necessity of the Application of People's Mediation in Campus Sports Injury Disputes

### 2.1 *There are Certain Drawbacks in the Traditional Dispute Resolution Mechanism*

In China, campus sports injury disputes have always been resolved in accordance with the provisions of the Measures for the Treatment of Student Injury Accidents, which is stipulated in Article 18 of the Measures for the Treatment of Student Injury Accidents. It can be seen from this provision that when a student injury accident occurs in practice, in addition to the mutual settlement through negotiation, the two parties mainly adopt the mediation of the education administrative department and the court proceedings to resolve the dispute.

Although these two dispute resolution methods are widely applied in practice, they are not the dispute resolution mechanism that the parties are satisfied with, and their own disadvantages are particularly obvious in practice. During the mediation, the neutrality of the education administrative department was questioned. The school and the education administrative department belong to the education system and are subordinate to each other. There is naturally a close interest relationship between the two. Therefore, the mediation presided over by the education administrative department is difficult to convince, and the effectiveness of mediation is also very small. However, litigation is generally inefficient and time-consuming, which is more likely to aggravate the conflict between schools and students, thus affecting the education environment of students at school and causing an irreversible situation. Therefore, in practice, if not forced, neither party is willing to open the lawsuit easily. The parties to the dispute are more inclined to choose the mediation method, and there are fewer cases to choose the lawsuit.<sup>[1]</sup> Moreover, there are certain problems in the judicial practice of campus sports injury disputes.

First, the fair responsibility is abused. Due to the inherent risks of sports, even if the school has fulfilled its due security obligations, students are still likely to be injured due to participating in sports.

At this time, in terms of responsibility determination, it should be determined that neither the student nor the school has any fault, so the school should not be responsible for the damage of students. However, in practice, the judge will generally make a decision according to Article 24 of the Tort Liability Law, "If the victim and the perpetrator are not at fault for the occurrence of the damage, they can share the loss by both parties according to the actual situation." This is mainly due to the fact that students generally do not buy insurance, and it is cruel and inhumane for them to bear the loss alone. Therefore, from the perspective of protecting the interests of the weak, the judge decides that the school should share the loss.<sup>[2]</sup> Many scholars believe that this is an abuse of the fair liability in the Tort Liability Law. For sports injuries that occur in the course of normal teaching activities without the fault of the school, Article 24 of the Tort Liability Law cannot be invoked, and the school should be judged not to be responsible by legal interpretation.<sup>[3]</sup> The fund of the school comes from the financial allocation. If the school shares the losses without fault, it is unfair for the taxpayers to let all taxpayers pay for the losses of the injured students.<sup>[4]</sup>

Second, the school security obligation has been expanded. Some courts do not want to be blamed for the abuse of the principle of fairness, but at the same time they are worried that students will bear too much responsibility, so they have a new way, that is, to expand the scope of school security obligations, so as to facilitate the fault identification of the school. There are two reasons why the judge made such a decision: on the one hand, because China's law has a vague definition of the rights and responsibilities of sports injury accidents, and there is no specific and detailed legal provisions on the reduction and exemption of responsibilities of schools and the performance of corresponding obligations of schools, so the judge has a wide range of discretion in the determination of the scope of school safety and security obligations.<sup>[5]</sup> On the other hand, the judge usually believes that the school, as a powerful party, has a better understanding of the characteristics of sports and the actual situation of sports facilities, and has a stronger strength and professional ability to prevent students from sports injuries. Therefore, it is easy for the school to bear greater responsibilities in judicial practice.<sup>[6]</sup> The school will share the responsibility for the accidents that were originally at the risk of students, which undoubtedly damages the legal rights and interests of the school to a large extent, and seriously hinders the development of campus sports activities.

## ***2.2 Advantages of the People's Mediation System in Campus Sports Injury Disputes***

A good dispute resolution mechanism is not only reflected in the legitimacy of the application of the law, but also reflected in the reconciliation of the conflict of interests between the parties. The high-level nature of the law determines that the parties seek relief in an irreconcilable state, which must cause some damage to the interpersonal relationship between the parties. People's mediation has made up for this shortcoming. On June 25, 2019, the Ministry of Education, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly issued the Opinions on Improving the Handling Mechanism of Safety Accidents and Maintaining the Order of School Education and Teaching, proposing that the education department should work with the judicial administrative organ to promote the construction of the mediation organization for school safety accident disputes, and that the people's mediation committee for school safety accidents could be set up in the municipal and county administrative regions as needed, It is difficult for the school to negotiate on its own or fail to negotiate on the safety accident disputes to achieve full adjustment. It can be seen that we have also gradually realized the positive role of people's mediation in campus sports injury disputes in practice. Compared with administrative mediation, people's mediation has the greatest advantage of neutrality. Therefore, people's mediation is easier to convince the parties and has more credibility.

First, according to the current level of China's economic development and insurance development, fully acting in accordance with the law will cause relatively large damage to one party and is not the best way to resolve disputes. Therefore, in the process of people's mediation, "finding out the facts and applying the law" is not the main task of the mediator. If the mediator finds that acting in accordance with the law will seriously damage the rights and interests of one party and cause serious consequences during the mediation process, the mediator should try to use reason to persuade both parties while acting in accordance with the law and try to use reason to persuade both parties to achieve win-win results.

Secondly, in dealing with cases with mixed legal principles, disputes should be effectively resolved through the combination of autonomy, rule of law and rule of virtue. Autonomy means that people's mediation is completed by the public itself and is not interfered by public power; The rule of law means that people's mediation should abide by the bottom line of the law, and mediation should not violate the law; The rule of virtue means that people's mediation carries out communication and coordination from the perspective of ethics and morality, and educates and influences both parties to the conflict with

morality to make up for the defects and deficiencies of the rule of law.<sup>[7]</sup> If in a case where the victim is willing to take the risk and the victim is responsible for it, the strict application of the law will cause damage to the rights and interests of the school, then the people's mediators will share the losses of the school to a large extent if they resolve the dispute through mediation and persuade the parties with reason. Mediation is carried out in the way of combining autonomy, rule of virtue and rule of law, then the result of this mediation must be both reasonable and legal.

Third, pay attention to the relief of the private rights of the parties. While adhering to the principle of combining autonomy, rule of virtue and the rule of law, we must also recognize that although the people's mediation based on morality is not wrong in itself, its influence on both parties is limited. Some scholars believe that in a society ruled by law increasingly based on the system of rights and obligations, self-reflection and introverted moral restraint may increasingly become an individual accomplishment, and the effective carrier of illegal power relations. Therefore, the construction of modern mediation system should be restored to the original value orientation of case-based private rights relief.<sup>[8]</sup>

In people's mediation, it is impossible to achieve full relief of private rights only through simple moral influence. People's mediators need to make the parties fully aware of the risks and benefits of mediation. In people's inherent concept, judicial mediation and administrative mediation are the most effective mediation procedures for resolving disputes. The people's mediator should make a rational risk and benefit assessment, make use of the advantages of the people's mediation itself, and make strategic arrangements in favor of both parties according to this assessment. At the same time, the procedural flexibility of people's mediation is unmatched by judicial mediation and administrative mediation. This flexibility makes people's mediation more effective for the private rights relief of the parties.

### **3. Current Situation and Improvement of People's Mediation in Campus Sports Injury Disputes**

#### ***3.1 Mediation Mode in Practice***

The People's Mediation Committee has become the main force of grass-roots social governance. However, when using the people's mediation mechanism to solve the campus sports injury disputes, it cannot simply refer the disputes to the people's mediation committee; Instead, we should clearly distinguish campus sports injury disputes from other disputes and set up corresponding mediation procedures according to the particularity of the dispute. Mediation mode is the premise and basis for building mediation procedures. The following three mediation modes can be used to deal with campus injury sports disputes.

First, people's mediation mode. On the basis of the existing people's mediation organizations, build a highly professional, high-quality and professional people's mediation team, add a campus sports expert database and improve the campus sports injury mediation procedures, and enhance the adaptability of people's mediation to campus sports injury disputes.

Second, the special mediation committee model. In recent years, China has added more and more specialized mediation committee organizations, such as the People's Mediation Committee for Medical Disputes, the People's Mediation Committee for Intellectual Property Disputes, and the Property Dispute Mediation Committee. For campus sports injury disputes, special mediation committee organizations can also be established and mediation procedures suitable for such disputes can be established. The Opinions on Improving the Handling Mechanism of Safety Accidents and Maintaining the Order of School Education and Teaching clearly stipulates that a special mediation committee model can also be established as required.

Third, the mode of combining people's mediation with sports injury insurance. As campus sports injury disputes often involve insurance companies, insurance companies are also paying more attention to the cases of campus sports injury disputes; Insurance institutions participate in such cases and disputes more frequently, showing a trend of normalization. In order to protect their own rights and interests and resolve the case disputes more flexibly and efficiently, the insurance institutions hope that the mediation procedure can be applied to the campus sports injury dispute cases. In China, the combination of people's mediation and medical liability insurance has become the mainstream and has achieved good practical results. In this model, the work funds of mediation organizations come from a part of the insurance company's medical liability insurance premium income, and the government only gives limited support to alleviate the government's financial burden.<sup>[9]</sup> The campus sports injury disputes can also use this model for reference, and the insurance institutions should build a mediation organization to solve the campus sports disputes in Shanghai.

### **3.2 Empirical Analysis of Problem Solving**

In order to fundamentally solve the above problems, it is difficult to reach an objective conclusion just by giving theoretical analysis. It is necessary to conduct empirical analysis of campus sports injury dispute cases in practice, summarize the common characteristics of such cases, and summarize and sort out the main controversial points of the cases.

#### **3.2.1 Disputes and Distribution of the Case**

The author used the keywords of "physical education" and "tort liability" to search in the Chinese Court Judgment Document Network and the PKU magic weapon database, sorted in chronological order and selected the top 100 cases. After excluding unrelated and repeated cases, the author found that there were 93 valid judgments, including 66 judgments in the first instance, 26 judgments in the second instance, and 1 judgment in the second instance. According to the characteristics and types of the 93 cases and the focus of dispute, we can roughly conclude the focus of controversy in the campus sports injury dispute cases, which are mainly divided into two categories: one is the defendant's responsibility, and the other is the compensation for damage liability.

#### **3.2.2 Participation of Insurance Companies**

After analyzing the sample cases, it is found that the insurance companies' participation in school sports injury litigation is not very high, although the Ministry of Education requires schools to generally cover school liability insurance<sup>[10]</sup>. Of the 93 sample cases, only 36 insurance institutions participated in the litigation because the school had insured the school liability insurance, and only 5 of them showed that students had insured.

In addition, according to the data analysis, the insurance companies bear a high proportion of liabilities. Of the 36 cases in which the school has insured liability insurance, 25 final compensation liabilities belong to the insurance companies, and the remaining 11 cases in which the school has only borne small expenses such as mental damage compensation and appraisal fees. In the campus sports injury dispute cases in which the insurance company participated in the litigation, on the one hand, the insurance company claimed that the school had no fault or little fault, on the other hand, it claimed that the school should bear the compensation for mental damage, funeral expenses and other small expenses.

#### **3.2.3 Actual Application of Appraisal**

According to the above 93 sample cases, the analysis shows that identification is very common in campus sports injury dispute cases, and the number of cases in which the parties carry out relevant identification is as high as 76, and the identification opinions issued in these cases play an important role in determining the focus of the case. Of the 76 cases that have been appraised, 75% of the cases have been independently entrusted by the parties to the appraisal, and 43% of the cases have been independently entrusted by the other courts to the appraisal; In the case that the court independently entrusted the appraisal agency to appraise, neither party raised any objection to the appraisal opinion issued by the court; In the cases where the parties entrust the appraisal agency to carry out the appraisal, only 19% of the other party raised objections to the appraisal opinions issued.

From the above empirical analysis, it can be seen that the expert opinion plays an important role in the settlement of case disputes. However, both parties have basically accepted the expert opinion, whether it is a case of self-identification by the parties, or a case entrusted by the court; It can be seen that under the current appraisal procedure, the parties still have confidence in the appraisal institution or the appraisal opinions.

### **3.3 Conclusion of the problem**

#### **3.3.1 Analysis of the Composition of Mediators**

From the above empirical analysis, it can be seen that the focus of disputes in campus sports injury disputes can be roughly divided into two categories: one is the issue of compensation for damages, and the other is the issue of the defendant's responsibility. For the issue of liability for damages, it is nothing more than the bearing of compensation costs or necessary costs, such as compensation for mental damage, disability compensation, identification fees, litigation costs. In judicial practice, the judge usually determines the liability for damages according to the appraisal opinions and relevant judicial interpretations. It can be seen that the issue of compensation for damage liability is only a process of legal application, and only judicial personnel and relevant professional legal personnel should assume

the mediation responsibility.

On the issue of the defendant's responsibility, no matter whether it is based on the judgment of the defendant's fault or the principle of responsibility sharing proportion, domestic laws have not clearly stipulated, giving the judge great discretion. However, in the case of campus sports tort liability, we should consider the particularity of the sports specialty. Compared with the legal judgment of the judge, the judgment of the professional skilled person is often more objective, because the professional person can put himself in the defendant's shoes. They can use their professional knowledge in sports to make a more intuitive assessment of sports risks and balance the conflict of interest between security and excessive defense. However, there are also disadvantages in using sports professionals as people's mediators.

First, we pay too much attention to sports rules. In the sports rules, many are set up to ensure the safety of competitive athletes or spectators. For example, in the basketball game, the offensive team members cannot collide with the defender without reason. Violation of sports rules will certainly have a certain impact on the determination of tort liability, but this is not absolute, and the two cannot draw an equal sign. Generally speaking, the duty of care of participants in sports activities is not limited to the provisions of sports rules. In addition to complying with sports rules, they should also perform the duty of care according to the "reasonable person standard", "reckless behavior standard" and other fault standards in common law. However, the scope of the duty of care limited by these standards is generally greater than the provisions of the duty of care in sports rules.<sup>[11]</sup> If sports professionals act as mediators, they will pay too much attention to the violation of sports rules and equate it with the determination of tort liability, that is, the violation of sports rules will inevitably constitute infringement, which will undoubtedly cause some damage to the legitimate rights and interests of the parties.

Second, neutrality. In the campus sports injury disputes, the people's mediators with professional sports knowledge are likely to be the sports teachers at the schools involved in the disputes. The sports major is originally a relatively small number of majors, and the whereabouts of most sports major students after graduation are also basically distributed in schools, professional teams, and college sports teams. This relationship will inevitably affect the impartiality of the people's mediators in sports major. At the same time, the parties may therefore question this mediation mechanism.

Third, time and cost. Most of the personnel with professional knowledge have their own work. If they participate in mediation work, they will inevitably conflict with their own work; Moreover, the remuneration for mediation work is not high, which determines that it is difficult to mobilize the enthusiasm of personnel with professional knowledge to participate in mediation work.

The following principles should be followed in the allocation of mediators: First, legal professionals should be the main force of mediators. Because the legal professionals can deal with both the liability of the defendant and the liability for damages, especially for the latter, which can be effectively solved through legal application; Compared with other mediators, legal professionals have the advantage that they can conduct relatively objective legal evaluation on any issue or dispute, and protect the legitimate rights and interests of the parties to a certain extent, and will not be damaged by the allocation of mediators.

Second, increase the proportion of sports and education professionals in difficult cases. Although legal professionals play the role of the main force in the mediation of campus sports injury disputes, it is necessary for experts to enter the mediation personnel allocation. Although most campus sports injury cases are relatively simple, there are still some cases that need to be evaluated by experts in sports and education. Adding professionals to the allocation of mediation personnel will greatly improve the efficiency of case mediation.

Third, people's mediators handle simple cases. For cases that are simple and have not too many disputes in the application of law, they can be handed over to civilian mediators for corresponding treatment. In such cases, both parties have made a pre-judgment on the outcome of the case, just because of the momentary anger to raise the case to the litigation stage, which greatly wastes judicial resources. Civilian mediators should play the role of "peacemaker" among them, and use reasonable mediation skills to influence both parties, so as to eliminate conflicts between both parties.

### ***3.3.2 Institutional Planning of Appraisal Procedure***

According to the previous empirical analysis, under the construction of the existing appraisal system, the parties have great confidence in the appraisal institution. Whether the parties themselves entrust the appraisal institution or the court entrusts the appraisal institution, both parties often do not raise

objections to the appraisal conclusion given. Therefore, the existing mediation system and its mediation procedure can fully deal with the campus sports injury dispute cases, and there is no need to set up a special appraisal agency in the mediation organization.

#### 4. Conclusion

There are many ways of relief for campus sports injury dispute cases, and people's mediation is undoubtedly the best choice among them. Although there are still many problems in the people's mediation mode under the existing mediation procedures in China, it is sufficient to deal with simple and frequent cases such as campus sports injury disputes. Continuing to improve procedural legitimacy on the basis of pursuing substantive justice will have immediate effects on the protection of the rights and interests of both parties.

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