



Persons with HIV/AIDS Rights Advocacy Association of Taiwan

Press Release

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What Is Discrimination If Not This?

Re. National Defence University (NDU) vs. Ministry of Health and Welfare (MOHW) - Civil Society demanding greater attention on HIV-related discrimination.

1. The Student's HIV-positive status was discovered

In early 2012, during a school physical examination, Student A was discovered to be HIV-positive.

The Student's case was reported to the National Defence University (NDU) by the Armed Forces General Hospital (AFGH) without the consent of the Student.

Upon learning of the Student's HIV status, NDU commenced a series of actions aiming to force the Student into withdrawing from the institution. These actions included weekly meetings with the Student, under the pretence of 'care', but intending to persuade the Student into a voluntary withdrawal from NDU; offers of accompanying the Student in informing his parents; requests for separate washing of his food trays and clothing; a ban on the use of the university swimming pool; a request to the Hospital for an official certificate of HIV diagnosis without the consent of the Student, among other acts. The NDU's actions harassed and marginalised the Student, disrupting the Student's study and detrimental to the Student's sense of self worth.

2. The Student was expelled

The Persons with HIV/AIDS Rights Advocacy Association of Taiwan (PRAATW) became involved in providing assistance to the Student as the situation developed.

In addition to providing support to the student in coping with the intense pressure from the University, in March 2012, PRAATW also informed NDU about the illegality of demanding that the Student withdraw from his study on the basis of his HIV status. However, NDU's conduct toward the Student remained unchanged.

In September 2012, a petition was submitted to Centre for Disease Control (CDC) by PRAATW. In the same month, based on a "reporting", the University searched and seized an unauthorised laptop from the Student. The Student was then charged and penalised with student misconduct. The alleged student misconducts included breaking the information security rules, exhibiting insolent attitude and behaviour toward his teachers and seniors, and failing to serve as a role model in his role as a cadre. NDU determined that as a consequence, School Points should be deducted. The approach to deducting student points is highly problematic, as it led directly to the Student's expulsion. NDU adapted a method of calculating the student's semester grade by combining performance scores from previous semesters into one and then disproportionately modify them with added weight values to his deducted points.

The Student was ultimately expelled from the University on the ground of failure to meet the University's merit score standard.

3. Internal and external aid

The documented events indicated that NDU used information security and related issues as a way to justify the expulsion of the Student, who NDU in fact wanted to leave the institution for a very different reason: the Student's HIV status.

Given the failure of its 'soft persuasion' for a voluntary withdrawal, the severity of the information security offence was then magnified and used to establish a case for expulsion.

As internal aid channels were being sought by the case, the University rejected discussions about HIV, arguing protection of Student's privacy, instead, centred the case on information security and other related incidents.

With regard to external aid support, in 2013, PRAATW assisted the Student in filing for an appeal citing the HIV Regulations of Taiwan. However, after some deliberations, the local Ministry of Health decided that an appeal could not be established. In May of 2014, Ministry Of Health and Welfare's (MOHW) Appeals Reviewing Council concluded that an appeal could be established.

In July 2014, MOHW demanded that NDU reinstate the admission status of the plaintiff or proceed toward a settlement with the plaintiff as a step towards improving the condition on its campus within three months of receiving the official notification. The University rejected the MOHW's demand and filed an appeal with the Executive Yuan's Appeals Council. The University's appeal was turned down, citing "excessive manipulation in achieving its goal of evicting those living with HIV [from the University] and hence does not comply with the principle of proportionality." MOHW citing the

decision of the Executive Yuan's Appeal Council, demanded that the University improve its condition. The University responded that it would pursue their case through the court system.

In March 2016, Taipei High Administrative Court handed down its judgement against MOHW on the basis that the expulsion took place before the appeal at the MOHW was established. As such, according to the court, to demand the University improve or reinstate the admission status of the Student does not meet the standard of law.

4. The decision of the Taipei High Administrative Court

In deciding this case, the Taipei High Administrative Court drew its conclusion based solely on whether or not the norms and regulations complied with administrative procedures. It sidestepped the issue of "HIV discrimination", which formed the core of this case altogether and ignored the actual damage and negative impact to the Student. It exemplifies a legal system that is riddled with disease of hollowness, and worst of all, it has descended into the realm of being a shelter for discrimination.

We believe that as one of the mechanisms for providing legal redress in the country, the Administrative Court's evasive attitude, using procedural standings to diminish the essence of the case, risks setting precedent for how future cases, similar to the one on hand, will be decided. We do not believe that the Administrative Court was founded based on such guiding principles and call for closer examination and discussions.

5. Our calls

Civil society groups, on the basis that equal educational opportunities for both HIV-infected and non-infected students, make the following three demands:

- A. MOHW has filed an appeal through the Taiwan Supreme Court, we call upon the Supreme Court to pay great attention and recognise the critical role this case will play in the history of Taiwan judicial system. The Supreme Court must and should provide timely guidance to the Administrative Court and address the various criticisms it faces currently. The Supreme Court must avoid the impression of being a willing accomplice in the cover-up of discrimination under the veil of procedural standings.**

- B. NDU citing the withdrawal as personal decision, sought to recover tuition and fees totalling 800,000 NDU from the Student through a separate civil case. We call upon the Civil Court to consider the discriminatory nature of this case, thoroughly examine the claim and the rationale of withdrawal, and proactively provide the necessary legal protection to the Student.**

- C. We call upon NDU to pay greater attention to the educational rights of HIV-infected students and support the Student in completing his study. Being HIV-infected does not mean the Student lacks the physical and mental capacity to meet the military training requirements or preform assigned duties. HIV cannot be transmitted through group living and any accidents should be responded to with standard emergency procedures. Under the premise of proactively protecting personal privacy, being HIV-infected has no impact on the Student's ability to complete his study.**

Lastly, on behalf of the Student and his family, we send our sincere appreciation to the support we have received thus far from individuals, representatives of various sectors, experts and also those who will be lending their support to our work as we move forward. This is the first legal case of HIV discrimination in education- or simply, an HIV-positive student fighting for his right to education. We need the support of everyone from the society to ensure that Taiwan's progress and success on moving toward the ranks of matured and progressive nations is not built by sacrificing the future of one of its children.

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Attachment: Time table (Chinese)

國防大學學生就學權益申訴案流程紀錄

社團法人中華民國愛滋感染者權益促進會 / 2016 年 4 月製表

時間 (民國)	校內救濟 依就學相關法規申訴	校外救濟 依愛滋條例申訴
102.01	102 年 1 月 25 日國防大學令 (102 年 1 月 18 日 A 生退學令生效)	
102.01	102 年 A 生不服，向國防大學依照校內規定提出申訴。	102 年 1 月 25 日 A 生依照愛滋條例向國防大學提出就學權益申訴。
102.02	<ul style="list-style-type: none"> ▶102 年 2 月該校「學生研究生申訴評議委員會」撤銷退學處分。 ▶國防大學該學院申請再議。 	<ul style="list-style-type: none"> ▶102 年 2 日該校「學生研究生申訴評議委員會」撤銷退學處分。 ▶國防大學該學院申請再議。
102.04	<ul style="list-style-type: none"> ▶102 年 4 月再議申評會決定維持退學處分 ▶該生不服提起向國防部提起訴願。 	▶102 年 4 月再議申評會決定維持退學處分。
102.05		102 年 5 月 28 日收到評議決定，仍予退學。(理由:未說明)
102.08	國防部訴願審議會 102 年 8 月 22 日國訴願會字第 1020000194 號書函附國防部訴願決定書將原處分及申訴再議評議決定均撤銷，另為適當處分。	102 年 8 月 20 日本會受委託向桃園縣政府衛生局提起再申訴。
102.10	102 年 10 月 國防大學再令 A 生退學。	102 年 10 月 國防大學再令 A 生退學。
102.11	<ul style="list-style-type: none"> ▶102 年 11 月 18 日 A 生針對退學處分再提申訴，已逾申訴提起時限(102 年 11 月 14 日) ▶國防大學於 103 年 1 月 15 日以書函通知不予受理。 	102 年 11 月 20 日桃園縣召開之「人類免疫缺乏病毒感染者就學權益保障審議會」。
102.12		102 年 12 月 4 日桃園縣衛生局通知本會申訴決定不成立。 (理由:未說明)

103.01	<p>➢103 年 1 月 2 日本會受委託向衛福部提起再申訴。</p>
103.04	<p>➢衛福部於 103 年 4 月 2 日召開權益保障組會議，邀請桃園縣政府、國防大學及本會列席。</p>
103.05	<p>➢衛福部於 103 年 5 月 6 日召開權益保障組會議，邀請莊萃主任、陳伶雅個管師及臺北市衛生局出席。</p> <p>衛福部 103 年 5 月 6 日權益保障組會議紀錄。會議決議申訴成立，國防大學之退學處分已違反愛滋條例第 4 條，應恢復申訴人就學機會或與申訴人和解以進行改善。</p>
103.07	<p>➢衛生福利部 103 年 7 月 4 日回覆本會經審議決定申訴成立，請國防大學於文到後 3 個月內恢復申訴人就學機會或與申訴人和解以進行改善；另請桃園縣政府督導國防大學進行改善，並於改善期限屆滿後，回復改善結果。</p> <p>衛福部 103 年 7 月 31 日收到國防大學訴願書正本(國防大學 103 年 7 月 25 日訴願書)</p>
103.08	<p>衛福部依法函檢答辯書、國防大學訴願書正本及相關案卷影本予行政院訴願會。</p>
103.12	<p>行政院訴願決定：訴願駁回。</p>
104.01	<p>衛福部函請國防大學於 104 年 2 月 28 日前提供改善情形。</p> <p>國防大學函復衛福部，表示該校將提起行政訴訟。</p>
104.02	<p>臺北高等行政法院函送國防大學起訴狀，並請本部於文到 10 日內提出答辯狀及原處分卷。</p>

104.04		▶於 104 年 4 月 14 日台北高等行政法院第 4 法庭召開準備程序庭。
104.09		▶於 104 年 9 月 8 日台北高等行政法院第 4 法庭開第二次準備程序庭。
104.10		▶於 104 年 10 月 20 日台北高等行政法院第 4 法庭開第三次準備程序庭。
104.12		▶於 104 年 12 月 3 日台北高等行政法院第 4 法庭開第一次言詞辯論庭。
105.02		▶將於 105 年 2 月 25 日台北高等行政法院第 4 法庭開第二次言詞辯論庭
105.03		▶105 年 3 月 24 日台北台北高等行政法院裁判書，衛福部敗訴。