

On Guaranteeing the Right to Higher Education of Persons with Disabilities in China

Bai Rongmei

I . The significance of higher education to persons with disabilities

Education is indispensable to human beings. By receiving education, people can inherit and develop the experience accumulated in the long history of struggling with nature. Their ability to cognize, identify and judge can be improved in the process so that they can transform themselves and be more adaptable to the outside world. Apart from that, education, as an important way to cultivate people, is closely related to the development of politics, economy, and culture in any society. To persons with disabilities, education is of great significance because both the persons with disabilities and their family members would benefit a lot from it. Higher education is an important link in the circle of education of persons with disabilities. Its development can indicate the level of the education for persons with disabilities in a nation. To persons with disabilities, the realization of their right to higher education is a premise for them to bring their potential into full play and to take full participation in social life. With the development of society in China, more and more people have been deeply concerned about guaranteeing the right to higher education of persons with disabilities. However, huge disparities in guaranteeing the right to higher education of persons with disabilities still remain depending on the region.

II . The laws and policies on guaranteeing the right to higher education of person with disabilities in China

(I) The development of legislative system for guaranteeing the right to higher education of persons with disabilities in China

At present, there are more than 83 million persons with disabilities in China⁽¹⁾. As same as the other aspects of education for persons with disabilities, the guaranteeing of their right to higher education has been gradually advanced

during the past decades. In 1985, the Ministry of Education, the Planning Committee, the Ministry of Labor and Personnel, and the Ministry of Civil Affairs jointly issued *The Notice on the Enrollment and Distribution of the Young Persons with Disabilities in the Institutions of Higher Education*. In this document, it is prescribed that “All universities and colleges should not reject the students with disabilities at the excuse of disability”. In 1990, the *Law of the People's Republic of China on the Protection of Persons with Disabilities* was adopted at the Seventeenth Meeting of the Standing Committee of the Seventh National People's Congress. In Article 22 of this law, it is prescribed that “Education for persons with disabilities shall be developed in terms of both the expansion of access and upgrading of the levels, with more emphasis on the former. Priority shall be given to guaranteeing compulsory education and developing vocational and technical education while efforts shall be made to carry out preschool education and gradually develop education at and above the senior high school level”. On August 23, 1994, *the Regulations on the Education of Persons with Disabilities* entered into force in China. It was the first administrative regulation on the education of persons with disabilities, which was issued by the State Council. In Article 29 of the regulation, it is prescribed that “Ordinary senior middle schools, institutions of tertiary education and institutions of adult education must enroll students with disabilities who meet the State's admission requirements and shall not deny enrolling them on account of their disabilities.” In Section 3 of Article 10 of the *Education Law of the People's Republic of China*, it is prescribed that “The State supports and develops educational undertakings for the disabled”. In Article 38 of the law, it is prescribed that “The State, society, and other institutions of education shall carry out education for the disabled in light of their physical and mental conditions and needs and provide them with assistance and convenience”. In Article 7 of the *Vocational Education Law of the People's Republic of China* which entered into force in 1996, it is prescribed that “The State adopts measures to enable women to receive vocational education, organize the unemployed to receive different forms of vocational education, and support the development of vocational education for

(1) Liu Xiaojing, *On the Improvement of the Right to Higher Education of Persons with Disabilities*, Gold Card Project-Economy and Law, (2009) Vol.1, P118.

the disabled”. In Article 15, it is prescribed that “Vocational training for the disabled shall be provided by institutions of education for the disabled, in addition, vocational schools and vocational training institutions of various types and at different levels and other types of institutions of education shall accept disabled students in accordance with the relevant regulations of the State”. In Article 32, it is prescribed that “Vocational schools and vocational training institutions may charge their students receiving secondary or tertiary education or training an appropriate sum of tuition, but they should, at their discretion, reduce the tuition of the students who have financial difficulties or who are disabled or exempt them from tuition”. In Section 3 of Article 9 of the *Higher Education Law of the People's Republic of China* which went into effect in 1999, it is prescribed that “Higher education institutions shall enroll disabled students who are up to the admission qualifications prescribed by the State. They may not refuse to enroll them on account of their disability”.

(II) The policies on promoting the realization of the right to higher education of persons with disabilities in China

Apart from the laws, there are a series of policies carried out by the government which are beneficial to guaranteeing the right to higher education of persons with disabilities. In 2009, the Ministry of Education of China issued the *Notice on Further Promoting the Development of Special Education*. It is emphasized that the development of higher education of persons with disabilities should be further promoted and the policies of the State on enrolling students with disabilities should be improved, too. In addition, all the higher education institutions should enroll the candidates with disabilities who are qualified in conformity with the laws and policies concerned. The scale of enrollment of candidates with disabilities should be enlarged and more specialties for them should be set up in the higher education institutions all over the country. Finally, the agencies concerned should provide more convenience for persons with disabilities to receive higher education in various forms.

Ⅲ. The present situation on guaranteeing the right to higher education of persons with disabilities

(I) The increase of the higher education institutions for persons with disabilities

With the implementation of the laws and the policies mentioned above, the right to higher education of persons with disabilities has been guaranteed gradually in China. The number of higher education institutions, which enroll students with disabilities, has been increasing rapidly. At present, there are eleven higher education institutions that can enroll students with disabilities all over the country⁽²⁾. Approximately 3,000 students with disabilities are receiving high education in these institutions. In addition, there are more than twenty universities and colleges setting up special colleges or specialties for students with disabilities. For instance, Binzhou Medical School of Shandong Province set up the first specialty for students with disabilities in 1985. The candidates with disabilities are required to pass the nationwide unitary college entrance examination. Those who are qualified can be enrolled and continue their study in this specialty for five years. In 1987, the College of Special Education was set up in Changchun University. It is composed of the specialties of artistic design, acupuncture, accounting, arts and music. The candidates, who are blind, deaf or have other physical impairments, are enrolled after they pass the nationwide unitary college entrance examination. On graduation, they are awarded with Bachelor degree.

(II) The increase of the specialties set up for students with disabilities

In recent years, the Ministry of Education has approved that the universities which set up special specialty for students with disabilities can organize their own entrance examination every year and set up their own standards for enrolling candidates according to the characteristics of specialty. At present, some universities organize their own examinations for selecting qualified candidates prior to the nationwide unitary college entrance examination, which is held in June every year. In this way, the candidates with disabilities who are skilled at certain aspects are more likely to be enrolled by these universities.

(III) The assistance for persons with disabilities to receive higher education by

(2) [http:// www.rucdpls.com / ArticleView.aspx?id=951](http://www.rucdpls.com/ArticleView.aspx?id=951) 2010/03/06

means of modern media

In some developed areas of China, the local government allocates the fund for providing various forms of special education for persons with disabilities. For instance, the remote educational network for persons with disabilities has been developed quickly in Shenzhen City and other places of Guangdong Province. By means of modern media, more and more persons with disabilities are able to receive higher education conveniently at home. Therefore, as far as the resources and forms are concerned, the conditions for persons with disabilities to receive higher education have been improved gradually in recent years in China.

(IV) The increasing enrolment of students with disabilities by higher education institutions

During the past decades, the admission of students with disabilities by higher education institutions has been increased gradually as it is indicated in the following chart. As a result, the quality and capacity of persons with disabilities to participate equally in social life has been improved. In 2008, a total of 6,273 and 1,032 students were enrolled respectively by ordinary and special institutions of higher education⁽³⁾. In addition, there were 1,757 special vocational training institutions at provincial, city and county levels. Some 1,974 ordinary institutions received trainees with disabilities as well. A total of 774,000 persons with disabilities were trained for vocational skills and 107,000 of them got professional qualification certificates⁽⁴⁾.

Admission of Disabled Students of Higher Education Institutions from 2001 to 2009 in China

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of students*	2466	2820	3517	4418	4721	4371	5620	6482	6835
Number of enrolment	2166	2547	3072	4104	4335	4148	5234	6273	6586
Rate of enrolment (%)	87.83	90.32	87.35	92.89	91.82	94.90	93.20	96.78	96.36

(Number of students* in this chart refers to the students who have passed the nationwide unitary college entrance examination)

(3) http://www.cdpf.org.cn/sytj/content/2009-04/23/content_30243391_2.htm, 2010/03/06.

(4) http://www.cdpf.org.cn/sytj/content/2009-04/23/content_30243391_2.htm, 2010/03/06.

IV. The deficiency in guaranteeing the right to higher education of persons with disabilities in practice

(I) The implications of educational equity for persons with disabilities

To persons with disabilities, equity and equality are essential and significant to realizing their right to higher education. Educational equity is held to have the following implications. Firstly, it means the equality for individuals at the beginning of receiving education. Each individual is entitled to the equal opportunity to start education without any discrimination. Secondly, it refers to the equality in the process of receiving education. To be concrete, each individual is entitled to equal treatment in the process of receiving education regardless of race, nationality and social status, etc. Finally, it is the equality of educational result. In other words, it means that each individual is entitled to the same assessment of academic performance and the same opportunity to get a job after graduation. In one word, educational equity should be composed of the equality at the beginning, the equality in the process and the equality of result⁽⁵⁾. In accordance with this doctrine, the right to higher education for persons with disabilities can be summarized as the following system. It is composed of the equal right to get the opportunity to receive higher education in the process of enrollment, the equal right to enjoy higher education in the process of receiving education, and the equal right to be evaluated before and after graduation. The three specific rights are closely linked with each other and constitute the entire system of the right to higher education of persons with disabilities.

(II) The inequality at the beginning of receiving higher education

The equality of educational opportunity is a specific instance of the general principle of educational equality. It serves as a criterion for determining whether the given social arrangements are just or not. For instance, although not every person with disabilities can become a student of higher education institutions, the opportunity for them to study in these institutions should be provided in practice. To be concrete, a great number of higher education

(5) Wu Hongjun and Wu Huixiang, *Reflection on the Legal Guarantee of High Education of Persons with Disabilities Based on the Human Approach*, China Special Education, (2009) Vol. 1, 34.

institutions should be set up and the due procedure for enrollment should be made for qualified candidates to ensure that educational opportunities of persons with disabilities are as far as possible equalized.

As far as the equality of opportunity for receiving higher education is concerned, both the explicit and the implicit discrimination against persons with disabilities have been in existence for a long time in China. More than fifteen centuries ago, an intricate system of examinations was established in China for the government to recruit its officials. The purpose of the examination system was, first, to break up the hereditary aristocracy and, second, to collect talent for the state⁽⁶⁾. Numerous candidates from poverty-stricken families became officials of the state by means of the examinations. However, persons with serious and severe disabilities were not permitted to take part in the examinations⁽⁷⁾. Today, examination is still commonly held as both a fair means for distributing opportunities because it rewards talent rather than birthright, and an efficient means because it puts talent in service to society in China. Every year, a nationwide unitary college entrance examination is held all over the country. All the graduates of high schools take part in the examination in order to continue their study in higher education institutions. Then the minimum scores for enrollment will be decided in accordance with the national plan of enrollment. The examinees who achieve the minimum scores are qualified to fill in the application forms for their favorite universities or colleges. All the universities and colleges will select the candidates by referring to their scores and applications according to their own enrollment plan, which is a portion of the national plan of enrollment. It is well known that the competition for the enrollment of universities and colleges has been fierce in China. In 1977, the State resumed the nationwide unitary college entrance examination after the Cultural Revolution. In that year, more than 5.7 million examinees took part in the examination and only 0.27 million of them were enrolled. The rate of enrollment in 1977 was only 4.7%. With the quick development of higher education, the gross rate of enrollment of universities and colleges has been increased to 23.3% in 2008⁽⁸⁾. Owing to the fluctuation of

(6) Michael Walzer, *Sphere of justice: A defense of pluralism and justice*, New York: Basic Books

(7) Zhang Xiqing, *The System of Examination of China*, Xinhua Publishing House, Beijing, (1993) 25.

population, the gross rate of enrollment in China would be increasing by 10 percent every year in the future.

Although the rate of enrollment has been increasing dramatically, the candidates with disabilities are still inferior to their nondisabled peers in the fierce competition. In the enrollment, they are more likely to be denied as a result of implicit discrimination, which is quite different from the explicit discrimination in ancient times. For instance, a candidate with disabilities and a nondisabled candidate get the same scores and they apply for the same specialty of a university. The latter one would have the opportunity to be enrolled while the former one would be denied on the excuse of lack of abilities necessary to study and life on campus. A lot of candidates have been denied without any explanation at all though they have the scores as same as, or even higher than that of their nondisabled peers.

To the candidates with disabilities who have got high scores, their opportunity to be enrolled and major in their favorite specialty is relatively scarce in comparison with their nondisabled peers. Owing to the insufficient educational resources, there is a limited quota for the enrollment of some popular specialties, such as computer science, automation, finance, etc. It is very common for the personnel who are in charge of enrollment to select qualified candidates from a long list of applicants. The personnel tend to select nondisabled candidates though their scores are lower than that of the candidates with disabilities. As a result, the candidates with disabilities are likely to be adjusted to study in some unpopular specialties even when they are luckily enrolled by the universities.

In each July, all the universities and colleges in China will send their “personnel of enrollment” to four municipalities which are under the direct control of the central government, five autonomous regions, twenty-three provinces, two special administrative regions-----Hong Kong and Macau. These personnel are in charge of selecting qualified local candidates for their own universities and colleges. In the process of selection, the candidates with disabilities are likely to be neglected or denied by the personnel of the universities and colleges located in other places. Only the local universities and

(8) <http://www.moe.gov.cn/edoas/website18/28/info1262244458513828.htm>.
2010/03/16.

colleges will consider the quality of the candidates with disabilities carefully and enroll them by referring to their scores and talents equally. For instance, 19 candidates with disabilities were enrolled by the universities and colleges in Guangxi Autonomous Region in 2009. In Sichuan Province, 254 candidates with disabilities became the freshmen in the local universities and colleges. Although they are qualified and have been strongly recommended to the personnel of the universities and colleges in other places, they are denied mercilessly and have no opportunity to study in their favorite universities in other places. To each local governmental agency in charge of guaranteeing the enrollment and providing services for the personnel from the universities and colleges in other places, it has no power to compel the personnel concerned to enroll the local candidates with disabilities. When the recommendation is in vain, the candidates with disabilities would have to be enrolled by local universities and colleges.

As to the specialties, there are many restrictions to the candidates with disabilities. When they apply for their favorite specialties, it is suggested that they should choose the specialty which has relatively lower requirements and is suitable for their physical conditions. Owing to the limited educational resources, there are many requirements for the candidates in their application. To be concrete, the specialty of medicine, finance and economy, computer science, machine design and manufacture requires that the candidates' arms and hands function well. The specialty of mining, navigation, transportation, and physical education enroll the candidates whose legs are healthy. As to the specialty of foreign trade, custom, and normal education, the candidates should have no facial defects. In practice, it is less likely for the candidates with disabilities to be enrolled and major in these specialties as a result of explicit restrictions and implicit bias. Most of them have to choose the stereotyped specialties set up in the colleges for persons with disabilities, such as acupuncture and massage, music and art. At present, there are a small number of universities and colleges in which the specialties for persons with disabilities are set up. Most of them are located in the developed areas. Binzhou Medical School in Shandong province is the first college which set up the specialty for persons with physical disabilities exclusively in 1985. The students who are enrolled can graduate after five-year's study and then be engaged in the research of medical science concerning disabilities. Changchun University in

Jilin province set up the College of Special Education in 1987. The candidates with disabilities all over the country can apply for study in the specialty of artistic design, acupuncture and massage, accounting, arts and music. In contrast to the huge number of candidates with disabilities, the scarcity of suitable universities and colleges and the specialties in them has made the full implementation of the right to higher education of persons with disabilities impossible.

(Ⅲ) The inequality in the process of receiving higher education

To the students with disabilities who study in the special colleges or the specialty set up exclusively for themselves, study and life are considered convenient and satisfactory. Teachers in these colleges and specialties have received special training on teaching the students with disabilities. They are versed in communicating with the students with disabilities by sign language or in other effective ways. And the students with disabilities themselves can make friends easily. In addition, they can enrich their lives by means of the convenient facilities on the campus.

To the students with disabilities who do not study in these colleges and specialties, study and life would be quite different. Although they are enrolled, the insufficient communication with teachers and classmates make them puzzled and disappointed with study and life. Without special training, neither teachers nor nondisabled students are able to effectively communicate with the students with disabilities in or after class. Thus, the students with disabilities have to spend more time in solving the problems in study and life by themselves. They become emotionally isolated from others and troubled with loneliness and depression. As far as the facilities are concerned, the students with disabilities feel inconvenient in their study and life, too. On campus in China, there are not sufficient facilities for persons with disabilities. The wheelchair ramps, touching signals for the blind, hearing aids for the deaf, and necessary rehabilitation devices are hardly seen on campus. The scarcity of necessary facilities makes the access of persons with disabilities impossible. They are confined to a small space instead of going to the library, gymnasium, clubs to absorb knowledge and to enrich their life. In all, the students with disabilities are confronted with a lot of psychological and physical difficulties even after they are enrolled. The insufficiency of effective communication and convenient facilities can not meet the demand of the students with disabilities.

As a result, it is impossible for them to take full participation in the diversified activities on campus and bring their potential into full play.

The lack of financial support has been considered as another hindrance for the students with disabilities, who study in the special universities and colleges or the ordinary ones to realize their equality in receiving education. The students with disabilities usually come from poverty-stricken families. Both the tuition and living cost have become a heavy burden to the students and their families. Although the students with disabilities are provided with certain amount of life stipend in most universities and colleges, they are lack of sufficient financial support and their living conditions are relatively low in comparison with their nondisabled peers. They have to be worried about the necessary expenditure so much that they can not concentrate on their study. In short, their right to get material assistance has not been guaranteed effectively in the process of receiving higher education in China.

(IV) The inequality in assessment after graduation

As a disadvantaged group in the society, equal opportunities for employment are of great significance to the students with disabilities after they graduate from universities. To be employed equally means that they can participate into social life fully and become independent economically. The economic independence enables them to support themselves and their family members. It should have been deeply concerned about in the society. However, the right to employment of the students with disabilities has not been protected effectively in practice. China has been changing dramatically during the past thirty years. Its economy is transforming from planning economy to marketing economy. In the fierce competition, the rule of “the survival of the fittest” is working everywhere. The nondisabled graduates from higher education institutions are more likely to find suitable jobs in all walks of the society. In contrast to them, the graduates with disabilities are quite vulnerable in employment. It is not uncommon for them to be denied by the enterprises. In 2004, a survey for the situation of employment for the graduates with disabilities in Hubei province indicated that: among the fifteen graduates with disabilities, two graduates chose to continue their study as postgraduates; four of them found jobs while the rest nine graduates could not find jobs at all. Even for the four lucky graduates who found jobs, three of them made complaints that the jobs were unsuitable and quite different from their ideal ones⁽⁹⁾.

The difficulties in employment for the graduates with disabilities to be faced with are caused by many reasons. Firstly, the laws and regulations concerning the protection of the right to employment of persons with disabilities are not specific enough. As a result, the function of these laws and regulations is greatly weakened in guaranteeing the right to employment in practice. For instance, it is prescribed in Article 33 of the *Law of the People's Republic of China on the Protection of Persons with Disabilities* that: “The State shall adopt the pro rata employment arrangement system for persons with disabilities. A State organ, social group, enterprise, public institution or private non-enterprise entity shall arrange employment of persons with disabilities in a prescribed proportion, and choose proper types of work and posts for them. If the prescribed proportion is not reached, it shall perform the obligation to ensure the employment of persons with disabilities under the relevant provisions of the State. The State shall encourage the entity employers to arrange employment of persons with disabilities in excess of the prescribed proportion”. Later the specific proportion is defined in Article 8 of the *Regulation on the Employment of Persons with Disabilities*. It is prescribed that : “The proportion for an employer to hire persons with disabilities shall not be lower than 1.5% of the total number of its staff. The specific proportion shall be prescribed by the people's government of the province, autonomous region, or municipality directly under the Central Government”. The defined proportion in the law and regulation is relatively low. In addition, it varies from place to place and can not effectively guarantee the potential opportunities for persons with disabilities in employment. Owing to the lack of effective supervision, a lot of enterprises are reluctant to employ the graduates with disabilities. Secondly, there are not sufficient jobs in the society because of the huge amount of surplus productivity in China. Nowadays, employment has become a serious social problem in China. A great number of graduates turn to be unemployed as soon as they step out of their universities. Even the graduates of prestigious universities have difficulties in finding suitable jobs to make a living. Being confronted with the current situation, the graduates with disabilities are obviously vulnerable. Finally, some enterprises tend to deny the

(9) Wu Hongjun and Wu Huixiang, *Reflection on the Legal Guarantee of High Education of Persons with Disabilities Based on the Human Approach*, China Special Education, (2009) Vol. 1, 36.

graduates with disabilities in hiring. Due to the historical bias, the graduates with disabilities are usually considered to be less productive and can not be adaptable to the working environment quickly. Some employers even hold that the employment of the graduates with disabilities would affect the enterprises' competitive ability in the market.

V. The proposals on improving the existing system for guaranteeing the right to higher education of persons with disabilities in China

During the past twenty years, only 30,000 students with disabilities have been enrolled by universities and colleges in China. The number of persons with disabilities who have access to higher education is much lower than that of developed countries. China has been engaged in building a harmonious society to ensure the full and equal enjoyment of all human rights and fundamental freedoms by all people, including persons with disabilities, in the past decades. With respect to persons with disabilities, the guarantee of their right to higher education is indispensable. They are entitled to the right as the nondisabled social members. With the effective guarantee of the right to higher education, persons with disabilities can contribute to the society with the knowledge and skills which they have gained in the higher education institutions. So it is feasible and reasonable to set up the principle of “concentrating on justice and providing compensation” for guaranteeing the right to higher education of persons with disabilities. Taking the current situation in China into consideration, the following aspects are necessary to guaranteeing the right to higher education of persons with disabilities.

1. To improve the legislation on the special education for persons with disabilities by learning from the developed countries.

Owing to the historical reasons, special education, the higher education of persons with disabilities in particular, was started very late and was at a very low level. It has been far behind that of the developed countries. Taking the experience in the developed countries into consideration, such as the United States of America and Japan, it would be reasonable and effective to promote the development of the higher education of persons with disabilities by means of legislation. At present, a complete legislative system concerning special education has not been established in China. The contents concerning special

or teenagers with disabilities who are able to adapt themselves to the life and study there. Ordinary senior middle schools, secondary occupational schools and higher education institutions must admit students with disabilities who meet the admission requirements of the State, and shall not refuse to admit them for their abilities. In case of refusal, the student with disabilities or his relative or guardian may require the relevant authority to deal with it, and the relevant authority shall order the school to admit the student”. In these provisions, the terms, such as “to encourage”, “to deal with” and “the relevant authority” are not definite enough. The ambiguity of these provisions makes it difficult to implement and supervise the laws and regulations concerned. Therefore, the legislation in the future should avoid the ambiguous terminology and make explicit provisions on the agencies to implement the laws concerned, the agencies to supervise the implementation of the laws concerned, the agencies to allocate fund to special education, the proportion of allocating fund, and the training of qualified teachers, etc. Meanwhile, the legislation should formulate specific regulations on the agencies and punitive measures to punish the entities or individuals that do not fulfill their obligation pursuant to the laws. Only in this way would the legislation on guaranteeing the right to higher education of persons with disabilities be feasible and effective in practice.

3. To provide effective legal remedy for persons with disabilities when their right to higher education is infringed upon.

Apart from the improved legislative system, it is of great significance to provide legal remedy for persons with disabilities when their right to higher education is infringed upon. Without it, the full implementation of the right is bound to be implausible. In accordance with the laws in force, the parents or guardians of persons with disabilities are entitled to file an action and appeal when the right to higher education of persons with disabilities is infringed upon. Owing to the physical or psychological impairments, it is inconvenient for persons with disabilities to file an action and appeal in person. Their parents or guardians should act as the defenders of their rights and should be permitted to exercise the right to file an action and appeal in place of persons with disabilities when their lawful rights are infringed upon. It is the first measure for guaranteeing the right to higher education of persons with disabilities. Secondly, the federations of persons with disabilities at all levels and the administrative agencies that are in charge of education should fulfill their

education are scattered in several laws and regulations. The legislative agency should formulate a unitary law on special education to regulate the activities of special education as soon as possible. In the future, the legislation on special education for persons with disabilities should encompass *the Law of Education* which is the basic law and *the Law on Special Education* which is more specific, and other laws and regulations as well. Being vertically considered, the legislation is composed of *the Law of Education*, *the Law on Special Education* and *the Regulation on Education of Persons with Disabilities* and all the local administrative rules. Being horizontally considered, the legislation is made up of *the Law on Compulsory Education*, *the Law on Teachers*, *the Law on Vocational Education* and *the Law on Higher Education* which focus on specific aspects and are related to each other on guaranteeing the right to higher education of persons with disabilities.

2. To make the legislation on guaranteeing the right to higher education of persons with disabilities feasible and effective in practice.

In China, the existing legislation on the right to higher education of persons with disabilities revolves around the principles instead of making specific provisions. A lot of provisions in the laws and regulations are “to encourage” or “to advocate” the agencies to be engaged in certain activities for guaranteeing the right to higher education of persons with disabilities. Furthermore, the contents of these provisions are not compulsory and lack of corresponding legal liabilities and punitive measures for violating the laws and regulations concerned. In implementation, these laws and regulations are often considered as “soft laws” and “materials for propaganda” to make people aware of the need and importance of guaranteeing the right to higher education. For instance, it is prescribed in Article 9 of *the Regulation on Education of Persons with Disabilities* that: “Various circles of the society should be concerned about and support the career of education for persons with disabilities”. In Article 24 of *the Law of the People's Republic of China on the Protection of Persons with Disabilities*, it is prescribed that: “The people's governments at and above the county level shall, on the basis of the number, distribution, disability categories and other factors of persons with disabilities, reasonably set up educational institutions for persons with disabilities, and encourage the social forces to run schools and donate funds to schools”. In Article 25 of this law, it is prescribed that: “Ordinary primary schools and junior middle schools must admit children

obligations and prevent various illegal behaviors for infringing upon the right to higher education of persons with disabilities. To the infringement upon the right, they should provide timely assistance for persons with disabilities in claiming for remedy. Finally, the People's Congress at all levels should enhance the supervision of enforcement of the legislation concerned. With the effective and ongoing supervision, the agencies and individuals that are reluctant to implement the law and regulations on the right to higher education would fulfill their obligations.

4. To improve the system for guaranteeing the right to higher education of persons with disabilities by means of adjudication.

The adjudicative procedure is the final stage for providing remedy when certain right is infringed upon. In China, the adjudicative system for guaranteeing the right is at very low level.

In order to improve the adjudicative system, the measures as follows are proposed. Firstly, the system for educational arbitration should be set up. Educational arbitration means the activities that the arbitral committee deals with the disputes over the right to higher education of persons with disabilities and makes binding arbitration in accordance with law. The arbitral committee should be professional, authoritative, convenient and economical. As the disadvantaged members of society, persons with disabilities can get timely, economical and professional remedy by means of arbitration when their right to higher education is infringed upon by higher education institutions.

Secondly, it is proper to bring the function of administrative action and civil action into full play. In Article 42 of *the Law of Education of the People's Republic of China*, it is prescribed that : “Students shall enjoy the right to lodge a complaint with the competent department if he or she refuses to accept punishment imposed by the school, and to lodge a complaint or bring a lawsuit in accordance with law against an infringement upon his or her right of personality or property or other lawful rights and interests by the school authorities or teachers”. In Article 67 of *the Law of the People's Republic of China on the Protection of Persons with Disabilities*, it is prescribed that “When anyone, in violation of this law, infringes upon any of the lawful rights and interests of persons with disabilities, the law or regulation provides for any administrative punishment,9apply. If any property loss or other damage is caused, the violator shall bear the civil liability. If a crime is constituted, the

violator shall be subject to the criminal liability”. These provisions are justifications for persons with disabilities to resort to administrative or civil action when their right to higher education is infringed upon by administrative agencies or higher education institutions.

Thirdly, the system of judicial review should be set up in China. In the present legal system, the right to higher education of persons with disabilities is unable to be guaranteed by means of constitutional lawsuit. Without the legal remedy by means of constitutional lawsuit, any right would be meaningless. With the gradual improvement of the constitutional governmental system in China, the constitutional lawsuit would become the most powerful and effective remedy for the right to higher education of persons with disabilities.

With the improvement of the legal system by means of legislation, enforcement and supervision on enforcing law, the right to higher education of persons with disabilities would be guaranteed. By receiving higher education, the barriers for them to participate as equal members of society could be eliminated. Thus, more and more persons with disabilities would be able to bring their potentials into full play and make contributions to the overall well-being and diversity of the society.