Lowering the Bar? Students with Disabilities in PRC Higher Education

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Abstract

In the People's Republic of China, the 2015 (revised) Higher Education Law provides that citizens enjoy the right to receive higher education. That legal ideal, however, is not easy to implement in practice. One important issue in higher education is the extent to which in law and in practice the educational rights and interests of students with disabilities are realized. In anticipation of difficulties, the same law specifically requires Chinese higher education institutions to enrol disabled students who meet the relevant admission qualifications and it explicitly prohibits rejection on grounds of disability. Admission standards and processes, however, remain a problem, as do social attitudes to disability, and other difficulties persist in securing the rights and interests of disabled persons in higher education. The complications that arise remain significantly under researched and are not explicitly addressed in the Higher Education Law. Proposals for reform are not likely to succeed without substantial changes in societal and governmental attitudes.

Keywords: students with disabilities; social law; right to higher education; social protection; discrimination; inclusive education; China

This paper examines the nature and significance of the difficulties that students with disabilities face in the world of higher education (in particular in universities) in the People's Republic of China (PRC). It addresses this issue primarily on the basis of analysis of the relevant aspects of the legal framework. As a socialist legal system, albeit with Chinese characteristics, issues of equality and equity are (or should be) especially important policy concerns. The treatment of persons with disabilities (*canji ren* 残疾人) is one such concern, especially as persons with disabilities are one of the four main categories of socially disadvantaged persons characterized in China as deserving the special protection of social law (*shehui fa* 社会法),[1] alongside women,[2] children[3] and

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1 Yu 2014. The category of socially vulnerable persons is often referred to officially as *teshu qunti*, or "special groupings." The general category of law into which this protective legislation falls is characterized as *shehuilei falü*, or "social-type law." Some Chinese jurists also render it as "social protection law" (*shehui baozhangfa*). Sometimes, the protective legislation is also specifically referred to in Chinese academic discourse as laws on the protection of "disadvantaged social groups" (*ruoshi qunti baozhang fa*).

2 Palmer 2007b.

3 Palmer 2010.

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the elderly.[4] This essay also draws in part on the author's personal experiences of six years as, first, an associate dean, and then a dean, in a mainland PRC law school. These experiences not only highlighted for the author certain general issues in the administration and development of higher education in the PRC and the legal framework within which the evolving system of higher education operates, but were also very important in pointing to the difficult position of students with disability in the sense that there was a pronounced lack of visibility of students (and, indeed, of teachers) with disabilities on the university campus.[5]

The paper is structured in seven parts. Following this introduction, the nature of the educational culture within which PRC higher educational institutions in practice operate is briefly considered. This context is important in helping to provide a better understanding of the slow rate of progress in the realization of the rights of disabled students in institutions of higher education. In the third section, the essay considers the nature and significance of the 2015 revised Higher Education Law. This is followed by an examination of issues of disability in China. The paper then considers issues relating to teachers and disability before moving on to look at the nature and significance of the State Council's 2017 "Regulations on the education of persons with disabilities." Finally, some reflective thoughts are offered.

A Distinctive Educational Culture

The Chinese party-state has shown a strong willingness to give political and financial support to higher education in the post-Mao era. Like Singapore, Taiwan, South Korea and Hong Kong, strong backing for higher education by the authorities is regarded as highly important for creating the kinds of human and institutional resources desired for successful participation in the globalized economy. In addition to this strongly utilitarian impulse for support, there has also been the significant influence of local cultures in East Asia that have long emphasized the importance of education. Moreover, in education reforms across the region, the Western-style, public, comprehensive university has been an important template for institutional development across a range of these societies. Despite these common features, however, in the PRC the participation in and promotion of higher education has been distinctive in various ways. A political environment dominated by the Chinese Communist Party (CCP) helps to explain a number of these distinctive features, including attitudes to students with disabilities.

During my six-year period of service in the university law school, I came to learn that, operating within a robust spirit of authoritarianism, university leaders were not inclined to discuss some kinds of important issues with those who had

4 Palmer 1999.

5 During my six years in the law school, we were, to the best of my knowledge, able to graduate only one student with a serious disability.

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the knowledge relevant to those issues.[6] They eschewed a collaborative negotiating approach, involving relevant colleagues in regularly scheduled meetings, for many significant matters. The reluctance to engage in academic committee decision-making processes was (and still is) in part defended by pointing to a wider problem of commands unexpectedly imposed on them by still more senior figures, including in particular officials in the provincial bureau of education (*jiaoyu ting* 教育厅). The culture of imposed ad-hoc decision making also made it difficult to argue effectively within the university for the adoption of new ideas such as "sustainable educational development."[7] As a result, innovative ideas often seemed to have little or no chance to become part of the university's governance policies. Sustainability seemed at best only a mirage. There was always a sense that areas of law which might be seen as sensitive were to be avoided. The educational culture of the institution was heavily politicized – political in both the macro (the CCP) and micro (*lingdao* 领导 and *guanxi* 关系) senses. The spirit of Deng Xiaoping's 邓小平 reputed advice to Jiang Zemin 江泽民 on effective governance in China seemed to be everywhere: "signal left and turn right," or "say one thing and do another."[8] I found myself administering success indicator criteria in schemes such as international student exchanges and staff appraisal where both macro and micro political considerations seem to dominate the decision-making process and outcomes.

The deanship also gave me opportunities to look at what was happening in other universities, especially when invited to serve as an external assessor. There seemed to me to be important contradictions between values of equity and equality that are meant to inform the socialist system on the one hand and the obvious inequalities in university resourcing and differentials in student access to higher education on the other. The Higher Education Law (as revised 2015)[9] at Article 9 states:

> Citizens shall, in accordance with law, enjoy the right to receive higher education.
>
> The State takes measures to enable students who come from among ethnic groups and students who have financial difficulties to receive higher education.
>
> Higher education institutions shall enrol disabled students who are up to the admission qualifications prescribed by the State, they may not refuse to enrol them on account of their disability.[10]

6 I was appointed as an associate dean (2009–2011) and then dean (2011–2015) of the law school of an "internationalizing" university in southern mainland China. Sometimes characterized as "private" because some of its financial support is private, the university was and is firmly part of the state system.

7 By sustainable educational development, I mean incrementally and methodically building up the strength of an educational institution and its component parts.

8 I am unable to trace the exact source of this account, which may well be apocryphal. For general observations, see Huang, Haifeng 2013.

9 See also Art. 9 of the 1999 Law of the PRC on Higher Education, which has the same provisions.

10 Moreover, the more recent "Regulations on the education of the disabled" (2017), issued by the State Council, stipulate at Art. 2 that "the state guarantees the right of the disabled to equal access to education and prohibits educational discrimination based on disability." However, this provision continues with a policy-like statement that is perhaps less reassuring: "the education of the disabled shall adhere to the state's educational policies, and comprehensively improve the quality of the disabled based on

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The generalized right to higher education referred to in the first paragraph of Article 9 fits uncomfortably with the growing problem of China's regional inequalities in educational provision, an issue exacerbated by a general policy of devolving much authority in higher education matters to provincial governments. The affluence of wealthy municipalities and prosperous provinces along the littoral enables local governments to invest in their universities in a manner with which less wealthy areas simple cannot compete. Elsewhere in this collection of essays, Qiang Zha's essay addresses regional disparities in its exploration of issues of equality and equity in Chinese higher education in the post-massification era. The issues surrounding ethnic identity and higher education are dealt with in the contribution authored by Miaoyan Yang and James Leibold.

My personal experience as a dean leads me directly to the third issue identified in Article 9, namely the position in the higher education system of students with disabilities, a problem that has been given relatively limited academic attention to date. My service in the mainland law school was at a fairly isolated campus university, and the isolation served to highlight certain matters. Perhaps one of the most striking of these was the absence on campus of students with disability. Subsequently, however, I noticed very clearly the same lack of visibility when wandering around the campuses of other mainland Chinese universities and, of course, in the cities and towns that I also visited.[11] That was one of the deepest impressions in my six-year period of service, and one that continues to worry me today. For, of course, this invisibility is not a matter of chance but, rather, reflects the university culture described above. There is a policy and practice reluctance on the part of universities and other higher education institutions to embrace fully affirmative action aims. Also, government practical reasoning sees persons with disability as best segregated from, rather than incorporated into, mainstream university education. It also reflects the realities of general campus construction practices at Chinese universities, the nature of employment markets for college graduates, the general lack of awareness of international thinking on policies and good practice relating to persons with disability, and China's level of socio-economic development.[12] This is not to say that students and staff in universities ignore the needs of students with disability, and in the law school in which I served, one young female student who had been paralysed from the waist down did graduate, receiving a good deal of kindness and support from many

footnote continued

their physical and mental characteristics (*texing*) and needs, so as to create conditions for equal participation in social life."

11 This is not to say that universities overseas necessarily perform better, but my wide experience did not prepare me for such a situation. In my studies at Cambridge University some forty years earlier, the figure of Stephen Hawking moving about the campus in his wheelchair was a common sight.

12 Implementing sophisticated disability support systems can be expensive and difficult for developing societies such as China, where the authorities feel able to devote only limited resources for such social programmes. For this reason, among others, there is an expectation that those with disabilities will be primarily cared for by their families and friends as well as various kinds of segregated institutions.

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of those in the law school, including the Party secretary, and valiant assistance from her father who assisted her greatly in moving from classroom to classroom.[13]

Even more generally, negative attitudes to disability are also a reflection of general party-state developmental policies in the PRC, which have included a strong commitment to population control. Policies towards persons with disabilities have been shaped by ideas of eugenics that enjoyed support in China long before 1949 and which gained a renewed prominence from the 1980s onwards as China's leaders struggled to deal with what they saw as the negative impact of population – not only in terms of size but also quality – on economic growth. The PRC's first national-level code of population control came in 1994, the Mother and Child Health Care Law, the initial version of which received much disapproval – both domestic and international – from human rights advocates and was replaced with a less robust version, albeit one which still linked together maternal healthcare, reproductive technology and eugenics notions.[14] In addition, the PRC's family size limitation policy also contained less explicit but still important eugenics assumptions. For example, the 2001 (revised 2015) Population and Birth Planning Law at Article 30 specifically provides for the possibility of pre-marital health examinations in the interests of avoiding birth defects and promoting infant health.[15]

The later parts of this paper will return to these issues of disability, placing them more specifically in the context of higher education. Attention now turns to the attempt to address some of the more general problems alluded to above by means of the 2015 revisions to the Higher Education Law.

Revising the Legal Framework: The NPC's 2015 Revised Law on Higher Education

The legal framework for higher education in China was significantly adjusted in several respects in 2015. As noted above, Article 9 of the revised law continues with the legal commitment to afford citizens the right to university education,

13 Other universities, most notably Renmin University and Wuhan University, have specialized research and teaching programmes for disability rights. See, e.g., Renmin University Law School 2015. The programme at Renmin University Law School has been encouraged by support from the Harvard Law School Project on Disability, and I am grateful to Professors Cui Fengming, William P. Alford, Alonzo Emery and their colleagues, as well as Professor Zhang Wanhong at Wuhan University Law School, for encouraging my own concerns with disability in the PRC.

14 See Palmer 2007a.

15 The 2003 "Marriage registration regulations," however, did not contain such a provision, and it is therefore the position generally that such examinations are not compulsory. However, the precise legal position is not clear: the 2001 Marriage Law is a statute superior in status to the 2003 regulations, as is the 1994 Mother and Child Health Care Law, which also requires pre-marital medical examinations. Some commentators take the view that the 2003 regulations therefore do not alter the legal requirement for pre-marital medical examinations. The 2001 (revised 2015) Population and Birth Planning Law at Art. 30 encourages but does not mandate such checks: "the State establishes premarital healthcare and maternal healthcare systems to prevent or reduce the incidence of birth defects and improve the health of new-born children."

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including for students with disabilities. The revised code does not offer any additional provisions specifically dealing with issues relating to, or the rights and interests of, students with disabilities. It does introduce, however, a number of other changes of a general nature, allowing for some decentralization, more varied funding and financial autonomy, and specialist external supervision. Thus, by an amendment to Article 4, the revised law encourages higher education to be "more realistic" in that it should be better integrated with social practice (*shehui shijian* 社会实践). A greater role for the private sector in higher education is encouraged by allowing profit making to be a legitimate institutional goal (amendment to Article 24). There is now a devolution provision allowing provincial-level authorities (rather than the Ministry of Education) to approve the establishment, separation, amalgamation and closing down of institutions of specialist higher learning by amendment to Article 29. However, universities that provide mainstream higher education at and above undergraduate level remain subject to examination and approval by the Ministry of Education within the State Council. Article 29 and Article 44 provide for the involvement of external experts (*zhuanjia* 专家) and third-party professional agencies (*disanfang zhuanye jigou* 第三方专业机构) to offer external appraisal of a proposed institution at the time of examination and approval (Article 29) and in assessment of teaching, efficiency and quality of education (Article 44).[16] Greater attention to market forces appears at several places in the revised law but in particular in Article 60, which stipulates that higher education institutions should operate within a system that aspires to the following principles: the parties running higher education institutions should shoulder the main investment burdens, students receiving higher education should bear their own costs, and higher education institutions should be able to secure funding from a variety of sources.

However, Article 60 has been subject to a significant degree of academic criticism. It is argued, for example, that it fails to make clear the extent to which a higher education institution might be financially autonomous and that firmer and more precise language is needed to prevent administrative departments or other agencies from involving themselves too closely in a university's finances. The use of external experts and specialist agencies for assessment purposes is also to be questioned in that the language of the Higher Education Law does not avoid the problems of conflict of interest just noted – it is difficult to guarantee the separation of the interests of "administrative management," higher educational institutions and the evaluation specialists and agencies in the process of external review.[17] This critical observation is consistent with the suggestion made above that in processes of external evaluation, academic and related personal networks tend to work in favour of prestigious institutions in large cities.

16 I had direct experience of dealing with such external experts and agencies and while my experience may not be necessarily typical, I formed the impression that conflicts of interest constituted a problem that was tolerated.

17 Zhan 2016.

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Finally, Article 29 is criticized for being too conservative. It should have allowed the authority for setting up and approving institutions of higher education offering an undergraduate education to be firmly and fully devolved to the provincial level. Given the requirement added to Article 4 that higher education should be delivered more in accordance with social practice, this suggested reform seems to be based on a valid criticism.[18]

Disability

In addition to the Higher Education Law, the PRC is a state party to the UN Convention on the Rights of Persons with Disabilities (UN Convention hereafter). After acceding to that convention in 2008, revisions were introduced to the Law on the Protection of Persons with Disabilities so that it more closely reflected the provisions in the convention. But, as indicated above, a number of social values and government policies and practice in contemporary Chinese society make this commitment to the UN Convention and to its domestic implementation rather distinctive.

Briefly stated, the 2008 revised (further revised 2018) Law on the Protection of Persons with Disabilities is more rights-based in its ethos than its predecessor, and expresses the rights it offers in clearer and more inclusive language than did its 1990 predecessor. Its characterization of disability may also mean that more people than in the past are brought within the protective scope of the law.[19] It also, at Article 1, encourages disabled persons' equal and full participation in social life (*pingdengde chongfen canyu shehui shenghuo* 平等地充分参与社会生活). Nevertheless, the law retains an approach which sees the disabled in China as persons who are to be treated differently from other groups, rather than as encouraging individual self-determination and active involvement in wider society – values which infuse the UN Convention. In addition, its language still has something of an aspirational feel, and it does not deal at all clearly with

18 It should also be noted that the Higher Education Law does not, however, offer any specific articles on enforcement. Unless enforcing this legislation is made part of the local official's performance evaluation (alongside such success indicators as GDP, cleaning up the environment and social stability), then probably it will not be accorded any significant priority. A more symbolic approach to enforcement appears to be intended: starting 2019, the Standing Committee of the National People's Congress has adopted the process of enforcement inspection for assessing the effectiveness of the Higher Education Law. See Li 2020; "China's top legislature to inspect Higher Education Law enforcement." *Xinhua*, 20 June 2019, http://www.npc.gov.cn/englishnpc/c2764/201907/d5fb568cf5cb4ce28d37c6fecb148a8a.shtml.

19 Further revised, 2018. Art. 2 of the Protection of Persons with Disabilities Law defines disability in the following terms: "a 'disabled person' shall mean one who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically, or in anatomical structure, and who has lost wholly or in part the ability to engage in activities in a normal way. Disabled persons shall include persons who have visual, hearing, speech or physical disabilities, mental retardation, mental disorder, multiple disabilities and/or other disabilities." Here, we may see that the law retains a mainly "medical" approach to the characterization of disability. The UN Convention offers a much more "social relational" and "participatory" perspective (at Art. 1): "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." The 2008 and 2018 laws' characterizations are in fact the same as that offered in the original 1990 law.

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the issue of enforcement, which is a serious weakness. Cases of discrimination against disabled persons which do go to court tend to concern claims involving relatively small and specifically local issues, such as no barrier access at particular train stations, or discounted tickets for local buses or sightseeing attractions for disabled persons from out-of-town.

The conservative aspects of the legal regime for disability protection also reflect the generally paternalistic ethos of social law,[20] in which (as noted above) specific categories of person – in particular, women, children, the elderly and the disabled – whose traditionally marginalized position in society[21] is seen to have been worsened by the impact of the economic reform process. Such disadvantaged persons are therefore characterized as being in need of "special protection." The state offers protection for the "rights and interests" (*quanli liyi* 权利利益, or *quanyi* 权益 in shortened form) of these persons by means of social law, this being a distinctive mix of civil, criminal and administrative law and which bears some imprint from German law. This approach to dealing with the problems of socially disadvantaged kinds of person, from a political point of view, is seen as encouraging social stability and harmony, and as facilitating social control, and has at its heart the idea that such protection is a paternalistic gift of the party-state and a demonstration of the party-state's benevolence and legitimacy.

In addition, it is important to note that not only rights but also interests are protected. "Interests" in the PRC system have a more overtly political character than rights, and their protection means that those groups that have recognized interests need special treatment in order to realize social justice in China's socialist system. These interests, unlike rights, are not burdened by correlative duties. The party-state recognizes that various kinds of social grouping have a stake in the changing social system, and that stake needs protecting and prioritizing, especially in the face of growing divisions in society that are in large part a result of the market-orientated reforms. In addition, the need for such specific legislation arises because of the distinctive non-judicable nature of the 1982 Chinese Constitution. So, although there is a clear constitutional statement in support of protection for persons with disabilities, it may not be relied on in trial proceedings even though the PRC Constitution ensures protection for individuals with disabilities.[22]

In relation to the protection of the rights and interests of students with disabilities, the revised Persons with Disabilities Law (2008 and 2018) contains one important provision: Article 25 stipulates that "ordinary educational institutions" must provide education for disabled persons "capable of receiving ordinary education" and make efforts to facilitate their study. It also requires higher education institutions to admit disabled students who meet the relevant admission

20 Yu 2014; Palmer 2010.

21 Bodde 1972–73.

22 "Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill or disabled. The State develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right … The State and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes, and other handicapped citizens" (Art. 45).

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requirements and may not refuse to admit them on the grounds of their disabilities. In the event of refusal, a disabled student or her or his relative or guardian may seek the assistance of the relevant authority, and that authority will order the school to admit the student.

However, the evidence is that this provision on non-discriminatory recruitment and enrolment is not as effective as might be thought. The primary and secondary education of many disabled students is mainly carried out in special education schools. The basic educational curriculum that they follow is not standardized, tends to be vocationally-orientated[23] and in many cases is not well integrated with subsequent stages of educational opportunity.[24] Even when students with disabilities are placed in mainstream schools, they are not necessarily treated as the equals of other students.[25] In special education schools, students with disabilities are likely to be segregated according to disability, so that they can receive what is considered to be appropriate education.[26] It has been suggested that these factors impact so negatively on disabled school students that they are afraid or unable to choose to apply to regular universities, but instead continue to tend to select a vocationally orientated path leading to a separate examination (*dankao danzhao* 单考单招) which limits their subsequent choice of college.[27]

Moreover, there is a significant problem of the limited willingness by colleges and universities to recruit students with disabilities (*gaoxiao zhaoshou yiyuan bu gao de wenti youwei tuchu* 高校招收意愿不高的问题尤为突出). Although there is improvement on the more overt discrimination of the early 2000s, there are still issues that might be usefully categorized as subtle discrimination, reflecting deep-rooted social prejudices and judgements, and therefore generally considered socially acceptable. The problem is easily identified, for example, in the ideas and recommendations of "unsuitability" still to be found in the recruitment webpages of general universities, and reflected provisions in the Ministry of Education's 2001 "University student enrolment medical standards, revised" (*putong gaodeng xuexiao zhaosheng tijian biaozhun, xiuding* 普通高等学校招生体检标准，修订) and other documents of a similar nature subsequently issued by the Ministry of Education. The recruitment webpages list a number of diseases and other disabling conditions on the basis of which the university will not accept a student. Thus, the 2018 admission rules for applicants seeking entry as undergraduates to Peking University state at Article 19:

> If a student with disabilities can take care of herself or himself … or live independently … (*shenghuo nenggou zili* 生活能够自理) and fulfil the requirements of her or his intended subject of study, and her or his college entrance exam grade reaches the Peking University standard, then the student will be accepted normally (*zhengchang luqu* 正常录取).

23 This is not to say that vocational higher education is necessarily seen as second class, especially as in some cases graduates are more employable than their counterparts at provincial universities.
24 Human Rights Watch 2013, 53–54.
25 Ibid., 57–58.
26 Ibid., 54.
27 Ministry of Education and All-China Federation of Persons with Disabilities 2017.

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It is unclear from the bare wording of this provision what kind of student might be "abnormally" accepted. The undergraduate enrolment examination standards of Peking University, according to Article 21 of the Peking University rules, follow those set out in the 2007 "Guiding opinions on university enrolment medical examination work" (*putong gaodeng xuexiao zhaosheng tijian zhidao yijian* 普通高等学校招生体检指导意见) issued by the Ministry of Education, the Ministry of Health and the All-China Federation of Persons with Disabilities.[28] Although only "guidelines," they send a clear signal to universities (and to students with disability, their families, teachers, and to the general public) that they may discriminate in admissions on the basis of students' physical or mental attributes or disabilities. The guidelines typically list specific forms of disability and illness and link them to areas of study that are considered to be unsuitable for the prospective student, who may therefore be denied admission or at least given advice to the effect that certain subjects are inappropriate for her or his disability. It is not clear that the disabilities are in fact always relevant to the subject. All students applying to universities must undergo a detailed physical examination and submit the test outcomes, together with their academic records, for consideration, and this medical test may therefore be a basis for rejection, as is explained further below.

Moreover, under Article 11 of the "Provisions on the administration of students in regular institutions of higher education" (2017 revision), within three months of a student's admission to a university, there is a requirement for a review of the original application in order to assess consistency with state enrolment rules. This review includes investigation into whether or not "(4) … the students' physical and mental health complies with the physical examination requirements of the specialty or the category of specialty the student applies for and can guarantee the normal study and life of the student at school." If the student is found to have secured admission by fraudulent means, such as submitting a false medical statement, then paragraph (5) of Article 11 of the 2017 revised "Provisions" provides that this is characterized as "failing to pass the review," and that her or his student status be cancelled. If the circumstances are deemed serious, then a criminal investigation may ensue. This leaves students with disabilities in a very difficult situation: should they declare fully their health circumstance, as is strictly required, carrying with it as it does the risk of rejection by the universities? However, if subsequently in the course of the review they are shown to have failed truthfully to report their disabilities, they risk being subsequently rejected for making a dishonest application. Paragraph (5) also stipulates that in other cases if a student is found during the review to have physical and psychological issues that make it inappropriate for her or him to study at school,

28 See Peking University 2018. See also "Beijing daxue xuesheng ruxue tijian biaozhun" (Peking University student entrance examination standard), 2018, http://www.sohu.com/a/193584417_99908600 (although this source is not a formal source). For the physical examination requirement for admission to Tsinghua University, see Tsinghua University Admissions 2018. See also the Ministry of Education 2003.

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then a hospital diagnosis is to be used to determine whether or not that student should be sent home. If required to rest at home, the student's admission qualification may be retained until there is recovery (Article 10).

It seems that the proportion of students with disabilities who do reach general higher education is small. It is my impression from the literature on this issue that those who do succeed are students with relatively minor physical or mental disabilities.[29] The statistics on how many students with disabilities fail to enter institutions of higher education need to be treated with caution, however. Moreover, it is imperative to know how many are discouraged from applying to their preferred universities and academic fields by the unwelcoming university recruitment webpages, the systematic pressures on them to pursue vocational education, media advice to the effect that disabled students should choose the "right" subject for their condition, and the self-fulfilling sense that any application that they make might well fail.

Teachers and Disability

As a state party to the UN Convention on the Rights of Persons with Disabilities, the government of the PRC is obligated to employ teachers, including teachers with disabilities, who are qualified in sign language and/or braille. The UN Convention also prohibits discrimination in employment and requires that employers provide reasonable accommodation in the workplace. There are teachers with disabilities employed in the special education schools and colleges but, in my experience, there is discrimination against them in the mainstream university system. In the case of one intended hire in the law school in which I served, a young scholar with a disability performed so well in her presentation for an advertised post that it was clear that she would make an outstanding appointment. The human resources department took so long to accept our recommendation, however, that by the time she was made an offer, she had accepted an appointment elsewhere. I was advised that there had been reservations against the appointment of a disabled teacher, even though there was at least one other teacher on campus with disability.

Although the Teacher's Law 1993, which applies to university academic appointees (Article 11[5]), does not specify medical testing as a pre-condition for appointment, it does encourage (at Article 15) graduates of mainstream universities to teach in mainstream universities, and graduates of non-mainstream institutions of higher education (*fei shifan gaodeng xuexiao* 非师范高等学校) to take up teaching appointments in primary or secondary schools or vocational schools rather than universities. Local legislation, such as the 1998 "Shanghai municipal procedures for the implementation of the Teachers Law" do, however, set standards based on provisions in the State Council's 1995 "Regulations on

29 Human Rights Watch 2013, 44.

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teacher qualifications" (*jiaoshi zige tiaoli* 教师资格条例) (and the associated "Implementing regulations" 2000, *jiaoshi zige tiaoli shishi banfa* 教师资格条例实施办法), issued by the Ministry of Education. These allow provincial governments considerable discretion in selecting the standards to be used in physical check-ups to determine suitability as a teacher and, not surprisingly, local policies and regulations that discriminate against people with disabilities have apparently proliferated.[30] Given the practical limitations on teaching human rights courses in Chinese universities, there is little space available in the law schools' course offerings to raise these issues in the university classroom.

Further Reform? State Council 2017 Regulations on the Education of Persons with Disabilities

Given the problems facing students with disabilities that are found in particular in the relationship between pre-university special education and university and other forms of higher education, recent reforms to the 2017 revised "Regulations on the education of persons with disabilities" (replacing the regulations first introduced in 1994) are potentially very significant. Not only are there several provisions directly addressing issues facing higher education students with disability but, of course, reforms to pre-university education will likely impact on recruitment of students with disability to institutions of higher education. It is clear that the 2017 regulations are indeed moving PRC law progressively towards the standards found in the International Covenant on Persons with Disabilities, but also it is evident that they retain some old-style "special treatment" thinking and also do not deal effectively with the issue of enforcement. There is still a strong social protection imprint in the revised regulations, for example, through Article 6, which gives a leading role to the All-China Disabled Persons Federation for the promotion of the education of the disabled, and Article 8, which places a specific burden on the family of disabled persons to assist the students with disability to receive education. Article 27 continues to place strong emphasis upon vocational education and enhancement of employability of the disabled, traditional features of policies on disability. Overall, the new regulations seem unlikely to change noticeably the current situation in which mainstream institutions of higher education are prepared only to admit students with relatively minor physical disabilities or other forms of incapacity and, indeed, prevent the admission of many others. Indeed, some commentators have suggested that what is needed is a comprehensive Education Law for the Disabled that covers not only disability per se but also has a broader vision so that it addresses issues of "special needs" for all children who are different in some way from mainstream students.[31]

30 Ibid., 49.
31 Huang, Wei 2017; Wang 2018; Liu and Wang 2017; Bao and Li 2016.

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In general terms, the 2017 regulations provide an inclusive view of the education arrangements that should be offered to students with disability and, as noted above, require at Article 2 the state to guarantee the right of equal access to education for students with disabilities. The same article characterizes mainstream education provision for disabled students as the preferred mode – educational institutions should develop, as far as they are able, individualized educational plans for students with disabilities. Article 3 stresses the importance of "inclusive education" (*ronghe jiaoyu* 融合教育) and "normal education methods" (*putong jiaoyu fangshi* 普通教育方式), but at the same time does also stress the importance of vocational education. Article 16 now requires people's governments at the county level to select certain mainstream schools for the provision of special education resources, especially for the creation within those schools of classrooms which meet special education needs, as well as, of course, constructing special education schools. Article 22 indicates that mainstream schools are expected to enrol disabled students in ordinary classes. Only if there are a substantial number of disabled students in a school should specialized classes be established, offering separate education to such students. The same article says that educational institutions must ensure that disabled students participate equally in the education, teaching and other relevant activities arranged by mainstream schools. Article 45 requires an education department in local people's governments at county level and above to incorporate the training for special education teachers into their training plan so as to ensure that these teachers are given adequate training. Article 46 provides for the evaluation of and rewards for specialist teaching, with good promotion prospects considered to be important. Article 52 stipulates that institutions of education should ensure that disabled students intending to take national examinations of education are given appropriate support so as to be able to participate fully in the examination process. Thus, the 2017 regulations place a clear obligation on local governments to plan for and to allocate adequate funding and resources to local programmes of education for people with disabilities. Moreover, provision for teacher training, and the evaluation of and rewards for specialist teaching, and good promotion prospects are characterized as important features of the system.

Article 20 of the 2017 regulations requires county-level education departments, in cooperation with civil affairs and health administration departments and the Disabled Persons Federation, to create committees of specialists – Expert Committees on the Education of Persons with Disabilities (*canji ren jiaoyu zhuanjia weiyuanhui* 残疾人教育专家委员会) – in the education of persons with disability.[32] These committees assess students' physical state and capacity to be educated and adaptive to mainstream schools. The dispute resolution process laid out in Article 21 favours administrative resolution of disputes and it would seem that Article 20 is linked to this approach – that is, because it is the committees that

32 And, at Art. 25, special education resource centres (*teshu jiaoyu ziyuan zhongxin*) to assist students with disabilities.

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make classification decisions on students' disabilities, the education administrative department is protected from direct blame when parents are unhappy about the extent and manner in which their child's disability has been characterized and seek to bring a complaint. Articles 56 and 57 provide for where a local department of education has been deficient in dealing with issues of student disability, and identify the kinds of sanction they should expect to receive. These sanctions range from notices of criticism, to workplace discipline and, if relevant, to public security administrative penalties. Only when it seems that a crime has been committed should matters be investigated for possible criminal prosecution. One of the specific grounds identified in Article 57 for imposing a penalty is the rejection of an application for enrolment of a disabled student who actually meets the conditions laid down by law and regulations.

More directly applicable provisions, which specifically address issues of higher education, include Article 27, which stresses the overall importance of vocational education and employability; Article 34, which says schools and institutions of higher learning may not reject applications for admission from students with disabilities; Article 35, which encourages local governments to support institutions of higher education to establish special education colleges or set up relevant majors, and generally improve the degree of education of the disabled; and Article 40, which encourages qualified graduates of institutions of higher education to teach in special education schools or other special education institutions.[33]

Conclusions

These reflections on my service in a mainland Chinese law school, and analysis of some of the difficulties in the regulatory regime for students with disabilities – in particular, in respect of their access to higher education – shows, inter alia, that while there are both international and domestic pressures for change, the authoritarian (albeit "fragmented") political environment and retention of traditional social attitudes are perhaps the most important factors encouraging resistance to change. Academic autonomy, inequality and exclusion are among the factors noted in this paper to be especially problematic, and the linkages between these components deserve further examination. The two factors of authoritarian rule and old-style social values have been entwined for many years, in part perhaps because the disability protection laws and regulations were the successors to local experimental legislation introduced from the early 1980s onwards, an approach that was in some ways an expression of Mao's mass-line technique

33 The regulations provide that where it is determined that officials have failed in their duties under the regulations, they may be subject to orders of specific performance, criticism and perhaps disciplinary punishment (Art. 56). For those administering schools, and their teachers, liability may be characterized more seriously, as public security administration punishments may be applied by public security organs; and where a crime is constituted, there will be criminal liability (Art. 57). On the face of it, this seems problematic, as the educational institution administrators and teachers may be unable to fulfil their duties precisely because of inadequacies in the performance of senior officials.

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of bottom-up reform. The continued emphasis on the importance of family and the Disabled Persons Federation (which is essentially a GONGO) in official policies and programmes may be seen as part of this localized, or *bentuhua* 本土化, approach. In general terms, this approach is the product of a powerful mix of not only culturally embedded Chinese concepts of disability and party-state instrumentalism but also entrenched Chinese values about health issues, and socialist ideals of protecting the "weaker" elements in society at a time of rapid socio-economic change: these are important dimensions of the political-legal culture of disability in the PRC today. Some sociologists have also characterized this sort of approach as "patriarchal socialism" (in which pre-existing patriarchal values are drawn into the "socialist" system rather than being eliminated).[34]

Despite some continuing reliance on exhortatory language in the recent legislation, there is no doubt that many government officials and scholars see greater access to mainstream universities for students with disabilities as an important element of access to social justice, a serious aspect of social protection policies, and a duty under the UN Convention.[35] Greater access, too, is important for mainstream students so that they might be more cooperative and understanding in relating to persons with disability and therefore inclined to be more inclusive. Enforcement issues nevertheless persist, exacerbated by the kind of generalized and programmatic language of legislation, with in-house administrative systems of law enforcement and dispute resolution tending to swallow up rather than solve problems. This partly reflects the fact that the interests of the student with disability are seen in terms of protection rather than rights. The approach taken by the PRC is not supportive of the idea of putting into domestic law a meaningful, comprehensive recognition and general prioritization of disabled students' rights and interests, and so the prevailing system finds it difficult to provide appropriately individualized treatment of such students.

Even if such a law were put into effect, its implementation would need to take into account the educational cultures of universities, and it is likely that outside the most prestigious universities in China, this would create problems. Successful implementation would require university leaders to take a robustly proactive role in encouraging positive attitudes to inclusive education. They would need to convince administrators and teachers that an inclusive approach would not only likely be beneficial for students with disability but at the same time would assist students without disabilities to develop the social skills, understanding and empathy that sustained interaction between the able-bodied and the disabled would bring to the student body as a whole. In addition, problems found in China and many other parts of the world in the teaching abilities and sense of responsibility for student welfare of faculty members and so on are, in my experience, exacerbated in the PRC by a lack of formal assistance in teacher training,

34 Stacey 1983.

35 International organizations such as the International Labour Organization are encouraging reforms, especially in respect of employment issues.

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even when there is an obvious need for such training. There needs to be a re-tooling of teaching staff with the skills needed not only to be good teachers as such, but also – if more inclusive policies are to be successfully introduced on campus – to be able to handle mixed classrooms and to assist students with disabilities to perform well in class. University leaders, especially senior academics and Party secretaries, would need to show their commitment to inclusive education and to work together to create system reform. This might be done through, for example, the creation of well-supported service centres for students with disability.[36] There is a need for such centres because it is not realistic to expect all members of staff to develop sufficient expertise in teaching students with disabilities, and so there here has to be some kind of institutional support. A support system of that nature would need to be developed in a spirit of sustainability rather than the "firework" of a single leader that fizzles out when that leader moves onto another position. It is clear that the Party secretaries would have to be given primary responsibilities in implementing any programme of reform within the institution as they are, by the very nature of their work, close to students, they bear responsibilities for securing employment after students (including students with disabilities) have graduated and, of course, they are influential in decision making in the university. Given that in the introduction of inclusive education on campus there are likely to be many problems encountered until the system has been properly embedded, there is also a real need for a more problem-solving and less exhortatory and didactic approach to decision making in order to ensure a realistic and accurate undertaking of problems encountered.

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Conflicts of interest

None.

Biographical note

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36 See arguments to this effect by Zhang et al. 2018.

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摘要: 在中国，虽然中华人民共和国2015年（经修订）的《高等教育法》赋予了公民享有接受高等教育的权利，但是这种法律理想在实践中并不容易实现。中国高等教育中一个重要问题是，在法律实践中，残疾学生的教育权利和利益在多大程度上得以实现。考虑到权利实现的困难，该法特别要求中国高校必须招收符合相关录取资格的残疾学生，并明确禁止高校以“残疾”为由拒绝录取学生。然而实践中，高校在录取标准和录取程序中仍对残疾人有各种歧视性规定，社会对残疾人的态度并不友好，残疾人在保护自身高等教育权益中仍旧困难重重。而出现这些困难和问题的原因，没有被深入研究和探讨过，对于实践中遇到的问题，《高等教育法》中也没有明确的相关规定。如果不对社会和政府态度进行重大改变，改革的建议就不可能成功。

关键词: 残疾学生; 社会法; 受高等教育权; 社会保护; 歧视; 包容性教育; 中国

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