

# On the Rule of Law Path for Inclusive Education to Empower Education Assistance for Persons with Disabilities

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**Abstract:** *Inclusive education is the mainstream of developing education for persons with disabilities worldwide. It advocates the recognition and protection of the right of persons with disabilities to receive inclusive education in mainstream schools. From the perspective of inclusive education, the educational assistance system for persons with disabilities represents a theoretical innovation in traditional educational support methods, playing a crucial role in integrating persons with disabilities into society, reversing their disadvantaged status, and maintaining educational equity. At present, China's legal system for inclusive education assistance for persons with disabilities needs improvement, and faces several obstacles, including conceptual "limited capacity", "monotonous" subjects, "crowding-out" obstacles and "absence" of supervision. It is urgent to begin with the transformation of the rule of law concept, clarify the legal positioning of multiple responsibility subjects, achieve mutual reinforcement of education law and education aid legislation, establish a supervision system for inclusive education assistance, and improve the legal framework for educational assistance for persons with disabilities. This will ensure that persons with disabilities can successfully realize their right to education, share in the benefits of social development, and ultimately contribute to achieving common prosperity.*

**Keywords:** inclusive education ♦ the right to education of persons with disabilities ♦ education assistance ♦ multiple responsible entities

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In October 2022, the report to the 20<sup>th</sup> National Congress of the Communist Party of China (CPC) emphasized that "For persons with

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disabilities, we will improve the social security and service systems and promote all-around development of related programs.”<sup>1</sup> As a physically and psychologically disadvantaged group, persons with disabilities have been subject to insufficient education and economic hardship, which have caused the intergenerational transmission of poverty. “Education assistance is not only a powerful means to cut off the intergenerational transmission of poverty among the disadvantaged groups, but also an important way to enhance the sense of gain of the disadvantaged groups.”<sup>2</sup> As a major branch of social assistance, educational assistance for persons with disabilities is a long-term mechanism intended to empower persons with disabilities to receive equal opportunities and abilities in education through the provision of materials or services by the state and society, so that they can enhance their knowledge and skills, and improve their own conditions. With the proposal of “Chinese modernization” in the report to the 20<sup>th</sup> CPC National Congress, “the goal of no drop-out for lack of financial resources is only a low-level one. The higher-level goal should be to pursue the quality of education, uphold people orientation, and activate human capital, so as to fully realize the potential of all children in education.”<sup>3</sup> It can be seen that the current model of educational assistance for persons with disabilities based on material assistance is unable to meet their educational needs, and “faces the risk of deprived feasibility.”<sup>4</sup> In fact, educational assistance for persons with disabilities should focus on sustainability, integrity and dynamic orientation, be geared to the needs of persons with disabilities for development, and highlight their subjective status, to help them better integrate into the mainstream environment, and fully display the advantages of “capacity-enhancing” educational assistance. To this end, it is necessary to remove all obstacles that may hinder the goals of the national vision and to introduce the concept of inclusive education assistance so that persons with disabilities can fully realize their right to education in more inclusive general schools through educational assistance.

Currently, the biggest obstacle to the education of persons with disabilities in China is the lack of a systematic legal system for inclusive education assistance. Despite the introduction of the “learning in regular class” model in

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<sup>1</sup> The definition of World Health Organization on persons with disabilities: “Persons with disabilities are those who have lost or have suffered a severe impairment of a certain tissue or function mentally, physiologically, or anatomically, and who are subject to persistent limitations in daily life or social activities.” Therefore, persons with disabilities include those with physical disabilities; hearing, visual, intellectual, speech and mental impairment, or impairment of multiple functions.

<sup>2</sup> Chen Chengwen, “Education Assistance and the Realization of ‘Support for All the Disadvantaged’ in the New Era,” *Social Scientist* 1 (2019): 120.

<sup>3</sup> Wang Shencheng and Liu Baochen, “Building More Positive Education Assistance: the Inspiration of Social Investment Theory,” *Social Security Studies* 1 (2019): 47.

<sup>4</sup> Lan Jian and Ci Qinying, “Social Risks and Countermeasures of the Operation of Social Assistance Policy in the New Era,” *Qinghai Social Sciences* 2 (2018): 125.

the *Regulations on the Education of Persons with Disabilities* (hereinafter referred to as the “*Regulations*”) revised in January 2017, persons with disabilities are not respected and accepted in class, nor can they achieve individualized development goals. The model was often reduced to a mere formality, and “learning in regular class” became “sitting in regular class,” failing to truly develop the potential of persons with disabilities, and thus becoming incompatible with inclusive education.<sup>5</sup> Article 32 of the 2020 *Social Assistance Law (Draft for Solicitation of Comments)*<sup>6</sup> (hereinafter referred to as the *Draft*) does not provide for corresponding services and assistance to persons with disabilities based on the concept of inclusive education, and thus fails to realize the right to education for persons with disabilities. In August 2023, the Ministry of Education, the National Development and Reform Commission, and the Ministry of Finance jointly issued the “Opinions on Implementing the Action Plan for the Expansion and Quality Improvement of Basic Education in the New Era,” pointing out that it is necessary to launch care actions for students with disabilities, and “to promote inclusive and integrated development, promote the combination of special education with general education and vocational education, and strengthen the construction of integrated education resources,” so as to address the inadequacy and ill adaptability of special education resources. In August 2023, the *Preschool Education Law* was submitted to the fifth session of the Standing Committee of the 14<sup>th</sup> National People’s Congress for initial review, and it also proposed that “non-profit kindergartens should admit children with disabilities who are capable of adapting to life in kindergarten” during the preschool education stage. In September 2023, Xinhua News Agency released the legislative plan of the Standing Committee of the 14<sup>th</sup> National People’s Congress, and the social assistance law was among the first category with relatively mature conditions. As an important special assistance system from the perspective of development-oriented social policies, educational assistance should make corresponding institutional innovations at this critical juncture. Inclusive education emphasizes the quality of education for persons with disabilities in

<sup>5</sup> Jia Lishuai, “Harmony in Diversity: Examining the Relationships between Inclusive Education and Learning in Regular Classes from the Perspective of ‘Two Leaps within Three Stages’,” *Modern Education Review* 3 (2023): 107-108.

<sup>6</sup> Article 32 of the *Social Assistance Law (Draft for Solicitation of Comments)* stipulates that the State shall provide targeted educational assistance for persons living in extreme poverty at different stages of education, members of families living on minimum subsistence allowance, members of low-income families, and school-age minors unable to attend compulsory education because of disabilities. In accordance with the needs of persons living in extreme poverty, members of family on minimum subsistence allowances, and the realities of members of low-income families, educational assistance is provided in accordance with regulations for different stages, such as pre-school education, compulsory education, high school education (including secondary vocational education), and general tertiary education, by reducing or exempting relevant fees, issuing grants, arranging work-study positions, and making education accessible at home.

ordinary schools, so promoting a systematic and innovative legal system for inclusive education assistance for persons with disabilities is an urgent issue facing educational assistance for persons with disabilities in the new era. It is necessary to comprehensively summarize the logical demands of educational assistance for persons with disabilities from the perspective of inclusive education, with this as a starting point, introduce the concept of inclusive education assistance for persons with disabilities, clarify the legal positioning and division of responsibilities of all entities, break down the local obstacles of the dual-track educational assistance system, strengthen the supervision of inclusive education assistance, and enhance the accessibility of inclusive education assistance services. This paper attempts to conduct an in-depth analysis of the above issues, to pursue the paradigm shift from exclusion of the disabled from entering ordinary schools to their inclusion through capacity-enhancing special support in educational assistance, in order to benefit the theoretical research of inclusive education assistance for persons with disabilities in China, ensure the substantive equality of their educational rights and equal opportunities, and help them gain respect and grow into active citizens.

## **I. The Alignment of the Concept of Inclusive Education with the Education Assistance for Persons with Disabilities**

### **A. Definition of inclusive education assistance and its theoretical logic**

The predecessor of inclusive education has its roots in the European concept of “normalization” education in the 1960s, which advocated the return of persons with disabilities to normalized life, and the education of persons with disabilities should be “launched in a manner as normalized as possible, for establishment or maintenance of individual behaviors and characteristics as culturally appropriate as possible.”<sup>7</sup> The concept of “normalization” education led to the germination of the “mainstreaming movement,” which held that the education of persons with disabilities should aim to provide education in non-special settings with the least obstacles, so as to help persons with disabilities better study in ordinary schools, and prepare them for integration into society. Subsequently, in 1994, the United Nations issued the *Salamanca Statement*, which first proposed the concept of “inclusive education”, declaring that every child has the right to education, and specifically calling on governments to take educational assistance actions to promote the enrolment and accommodation of persons with disabilities in “regular schools.”<sup>8</sup> On 13 December 2006, the United Nations General Assembly adopted the *Convention on the Rights of*

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<sup>7</sup> Wolfensberger W. Normalization, *The Principle of Normalization in Human Services* (Toronto, Canada: National Institute of Mental Retardation, 1972), 28.

<sup>8</sup> World Conference on Special Needs Education, *Salamanca Statement and Framework for Action on Special Needs Education*, U. N. Doc. ED94/WS/18, 1994, page 7-10.

*Persons with Disabilities* (CRPD). As the first binding international law in this field, the CRPD emphasizes the reshaping of traditional educational assistance and notes the obligation of States parties to ensure equal access to inclusive, free and quality general education for persons with disabilities, and to provide reasonable accommodation and adequate and effective individualized assistance services for persons with disabilities with different needs. Those provisions indicate the growing commitment of the international community to establishing a model of social rights in educational assistance for persons with disabilities. Accordingly, China signed the CRPD in 2007, and as China is a party to CRPD, the international community's paradigm shift in educational assistance for persons with disabilities is increasingly affecting the future development of China's legal system for educational assistance for persons with disabilities, while proposing new requirements and orientation for its goals and methods of educational assistance for persons with disabilities. This scenario is sufficient for the present author to explore the research topic — the concept of inclusive education and the goal of China's educational assistance system for persons with disabilities are intrinsically aligned and mutually reinforcing.

At the theoretical level, inclusive education transforms the contradictory question of “whether persons with disabilities can receive education” into “the issue of which education to receive and where and how,” which contains the value of substantive justice, and advocates that the concept of disability should be approached from the perspective of human rights, and that the “problems” rising from disabilities should be regarded as inherent external factors, such as perception of persons with disabilities based on social stereotypes, prejudices and ignorance, rather than from persons with disabilities themselves.<sup>9</sup> Generally speaking, the connotations of inclusive education are fourfold. First, persons with disabilities should enjoy an equal right to education; second, the right to dignity of persons with disabilities should be respected; third, the starting point, process, and results of education for persons with disabilities should be equal; fourth, inclusive education emphasizes the acceptance and inclusiveness of persons with disabilities by general schools, and opposes discrimination against and exclusion of them. This assertion of a social rights approach to disability itself implies that persons with disabilities are seen as rights holders, i.e. subjects of rights. Corresponding to this right, the state has an important duty to “tackle barriers created by society in order to ensure full respect for the dignity and equal rights of all people.”<sup>10</sup> Therefore, inclusive education cannot be achieved without the guarantee of the legal system on

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<sup>9</sup> Helence Combrinck, *The Hidden Ones: Children with Disabilities in Africa and the Right to Education, Children's Rights in Africa*, 2008, page 31.

<sup>10</sup> Gerard Quinn, *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability, Human Rights and Disability*, 2002, page 10.

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educational assistance for persons with disabilities centered on state obligations. In fact, it should be placed at the core of the legalization of educational assistance for persons with disabilities, and efforts should be enhanced to realize inclusive educational assistance and services from the perspective of inclusive education, so as to promote the integration of persons with disabilities with normal students, and help them establish and pursue their self-value in educational assistance, obtain more opportunities to get into contact with society, and alleviate the trend of being isolated while receiving educational assistance.

Based on the above analysis, this paper puts forward “inclusive education assistance” as a contemporary and innovative concept. “Inclusive Education Assistance” is human rights-oriented. Aiming to “integrate persons with disabilities into the mainstream of education and help them integrate into society” through educational assistance,<sup>11</sup> it opposes segregated educational assistance for persons with disabilities, holding that such educational assistance methods as making education accessible at their homes and providing special subsidies to special education schools will further exacerbate the social exclusion of persons with disabilities and create obstacles for them to participate in society.

“Inclusive education assistance” not only means that persons with disabilities have the right to non-discriminatory access to ordinary schools, but also means that the legal system on educational assistance must consider their diverse needs in the ways of assistance, provide personalized educational services for them, and make major adjustments to the environment, resource platforms and curricula, so as to maximally help their social integration through educational integration.

In addition, it should be noted that, while most scholars involved in education research use the terms “integrated education” and “inclusive education” interchangeably, there is a fundamental difference between the two. The differentiation is not pedantic but practical. The theory of integrated education argues that “the separation of students on the basis of differences due to disability is harmful not only to persons with disabilities, but also to other participants in educational institutions”<sup>12</sup> and advocates “placing persons with mild, moderate and severe disabilities in regular classrooms on a full-time basis.”<sup>13</sup> It can be seen that integrated education focuses on ensuring that persons with disabilities receive education in the same physical space as able-

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<sup>11</sup> T. Boezaart, “A Constitutional Perspective on the Rights of Children with Disabilities in an Educational Context,” *South African Public Law*, 2012, page 471.

<sup>12</sup> R. Guthrie and E. Waldeck, “Disability Standards and Inclusiveness in Education: A Review of the Australian Landscape,” *International Journal of Discrimination and the Law* (2008): 133-141.

<sup>13</sup> D. Staub and C. A. Peck, *What are the Outcomes for Nondisabled Students?*, Educational Leadership, 1995, page 36.

bodied students, and it highlights the right to access and settlement. Although persons with disabilities can receive additional assistance once in a while, the curriculum has not been significantly modified to adapt to their particular needs.<sup>14</sup> The history of democracy is one of increasing inclusiveness, and inclusion should not be simply treated as the inclusion of persons with disabilities in the regular system for integration. It should also be consistent with the social rights model, focus on meeting the needs of persons with disabilities and effectively achieve their equal right to education. Therefore, the concept of inclusive education assistance focuses on an educational environment and individualized support, and the quality of participation of persons with disabilities, requiring the reduction of prejudice in education, the development of a common learning environment and a pluralistic assistance structure, the transformation and adjustment of school environments, curricula and teaching methods, the enhancement of prudential supervision of resources, and the reduction or removal of barriers to access to education for persons with disabilities through educational assistance, so as to ensure their optimal participation and benefits in mainstream education.

#### **B. The logical demands of educational assistance for persons with disabilities from the perspective of inclusive education**

The logical demands of educational assistance for persons with disabilities from the perspective of law enforcement and practice is the fundamental premise and logical basis for the government, society and schools to implement inclusive education assistance for persons with disabilities. At present, China has formed a pattern of education for persons with disabilities, “with learning in regular class and special education classes as the main body, special education schools as the mainstay, and education at the doorstep and family education as the supplement.” It can be seen that the policy and system prerequisites for promoting inclusive education assistance for persons with disabilities in China have been ready. However, despite the immeasurable popularization of inclusive education in modern education, and the emphasis on the need for inclusive education assistance in China, those policies have hardly been put into practice. Currently, inclusive education assistance services for persons with disabilities are few and sparse, and are mostly temporary, without an institutionalized legal construction. It can be seen that China has much to do to meet the educational needs of persons with disabilities and meet the challenges faced in providing inclusive education assistance to them. We must clarify their logical demands and establish a comprehensive legal system to promote the successful implementation of inclusive education assistance.

“Empowerment” specifically means “empowerment for capacity

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<sup>14</sup> S. Chhabra, “Inclusive Education in Botswana: The Perceptions of School Teachers,” *Journal of Disability Policy Studies* 4 (2010): 219.

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enhancement,”<sup>15</sup> and it requires the legal system related to educational assistance be designed according to the needs of persons with disabilities. The best way to provide educational assistance to persons with disabilities is to enable them to improve their abilities and qualities in regular schools, and it requires the improvement of their educational assistance benefits by embracing the concept of inclusive education. It is not that persons with disabilities are reluctant to receive education in the mainstream environment, on the contrary, they are often eager to leave special schools and integrate into regular schools. Inclusive education assistance denies that the obstacles to the integration of persons with disabilities into society are caused by their own disabilities, and believes that it can stimulate their potential, and that with the introduction of the concept of inclusive education, their right to educational assistance can be expanded beyond the scope of material assistance. The purpose of empowerment includes both subjective and objective aspects. First, to make it possible for persons with disabilities to objectively enjoy the same right to education as able-bodied students, multiple-party accountability and a barrier-free environment are implemented and the “general + special” education system is optimized, to improve and enhance their ability to integrate into society, so that they can achieve development on their own. Second, by rebuilding a balanced mechanism for them to receive education as a disadvantaged group, we can ensure their right to inclusive education assistance, subjectively give them self-confidence, and stimulate their potential. Therefore, the following principles must be followed in exploring the logical demands of inclusive education assistance for persons with disabilities along the practical logic: (1) The purpose of the legal system of educational assistance for persons with disabilities from the perspective of inclusive education, that is, to enable persons with disabilities to integrate into society and obtain the ability for sustainable development, thus getting rid of welfare dependence. (2) The fairness of the legal system for educational assistance for persons with disabilities from the perspective of inclusive education, that is, everyone has an equal right to education, persons with disabilities should have equal access to educational content, system, methods and environment, and their eligibility to enter ordinary schools should be protected.

Based on the above principles, the logical demands of inclusive education for educational assistance for persons with disabilities mainly include the following aspects: (1) The legalization of educational assistance for persons with disabilities should focus on the conceptual dimension of inclusive education, and the rule-of-law concept should be clearly reflected in the legislative improvement of inclusive education assistance for them, so as to

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<sup>15</sup> Wang Ying and Tan Lin, “Empowerment for Capacity Enhancement: The Development and Reflection of China’s Education for the Elderly”, *Population Journal* 1 (2011): 32-41.



furnish a legal basis to it. Through “equality, participation and sharing,” “marginalized groups can participate in social construction with full consideration for their own conditions, and share the fruits of social development.”<sup>16</sup> (2) The multiple legal entities responsible for inclusive education assistance for persons with disabilities should be clearly positioned. The legal system of inclusive education assistance requires the participation of multiple legal entities, including the government, society, schools, families and communities, and the extensive participation of multiple subjects can help socialize and popularize educational assistance.<sup>17</sup> Clarifying the legal positioning and responsibilities of those subjects is an important link in making inclusive education for persons with disabilities a reality. (3) Only by realizing the mutual construction of the law on the education of persons with disabilities and educational assistance can we better ensure equal education opportunities and quality for persons with disabilities, and establish equal respect. (4) A scientific and reasonable supervision system is the premise for ensuring that inclusive education assistance for persons with disabilities is self-contained in its generation and operation. The top-level design of the systematic supervision system further serves to fill the gap in the system of such assistance, and the positive interaction between various supervision systems is realized through collaborative supervision, so as to improve the effectiveness of inclusive education assistance for persons with disabilities.

## II. The Rule-of-Law Dilemma of Inclusive Education Assistance for Persons with Disabilities in China

Considering the development trend of the rights of international community in educational assistance of persons with disabilities, China’s legal system should also respond to the needs and challenges faced by persons with disabilities in educational assistance as soon as possible. Under the guidance of the *Constitution*, China has basically formed a system of laws and regulations that protect the right of persons with disabilities to education, including the *Education Law*, the *Compulsory Education Law*, the *Law on the Protection of Persons with Disabilities*, the *Regulations*, the *Teachers Law*, the *Vocational Education Law*, and the *Interim Regulations for Special Education Schools*. However, the laws lack operability in practice. Meanwhile, under the new perspective of inclusive education, there are many obstacles to the educational assistance of persons with disabilities, including obstacles in research paradigms and legislative concepts, the obstacles of unclear legal positioning of responsible subjects, obstacles from the local generation of the dual school

<sup>16</sup> Huang Kai, “On the Local Shaping of Social Assistance Rights: From the Perspective of the Interaction between Laws and Policies,” *Journal of Nantong University (Social Sciences Edition)* 6 (2018): 60.

<sup>17</sup> Cao Hongtao, “An Analysis of the Education Assistance of Poor Students in Colleges and Universities from the Perspective of Social Justice,” *Economic and Social Development* 4 (2016).

system, and the lack of a supervision system. Those obstacles have hindered the integration of persons with disabilities into ordinary schools, and ultimately the realization of their right to education.

**A. Obstacles of conceptual “limited capacity”**

Persons with disabilities are incapable of full and effective social participation on an equal footing with others because of “the interaction of societal attitudes and explicit and implicit environmental barriers.” To this end, the CRPD and relevant laws and regulations of China emphasize respect for the personal dignity and equal right to education of persons with disabilities, and oppose discrimination and prejudice against them. Articles 21 to 29 of China’s *Law on the Protection of Persons with Disabilities* protect the right of persons with disabilities to education and require the state to provide them with educational assistance in accordance with their physical and psychological characteristics. However, general educational institutions provide education only to persons with disabilities who are capable of receiving general education. The educational needs of the large number of persons with disabilities enrolled in school cannot be met. As a result, they are forced to attend segregated special schools. The inclusive education concept has been embodied at the level of education laws and regulations in the Regulation,<sup>18</sup> emphasis has been laid on the educational rights and interests of persons with disabilities, and attention has been paid to their all-round development. Those indicate a major adjustment and shift of China’s education legislation for persons with disabilities from isolation to integration, and constitute a reconstruction of the education system for them, but the form “learning in regular class” currently stated in China after practical exploration is not inclusive education in the substantive sense — it is only in the initial stage.<sup>19</sup> “Learning in regular class” has increased and ensured the compulsory education enrollment rate of persons with disabilities, improved their access to education, and contributed to their physical and mental development and social integration to a certain extent. However, under this model, the quality of education for persons with disabilities is worrying, with many outstanding limitations. For example, schools regard “learning in regular class” as a means to ensure educational fairness, but they have no time for it in practical teaching. As a result, they lack the enthusiasm to formulate special education plans for students with disabilities, and care for students with disabilities. Meanwhile, “[educational assistance] should not be limited to financial or material payments, but should

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<sup>18</sup> Paragraph 3 of Article 3 of the *Regulations on the Education of Persons with Disabilities* stipulates that general or special education should be provided for people with disabilities according to the type of disability and their receptive competence, and ordinary educational institutions should be fully leveraged in providing education to persons with disabilities.

<sup>19</sup> Fang Junming, *The Philosophical Foundations of Special Education* (Beijing: Peking University Press, 2011), 128-129.

also include service payments and even moral assistance or care.”<sup>20</sup> The existing laws are insufficient to ensure that every person with a disability is admitted to schools. Although the *Draft* provides for the basic content of educational assistance for persons with disabilities, it does not require the state to provide assistance from the perspective of inclusive education. As a result, educational assistance for persons with disabilities is still at the level of material assistance, featuring monetary assistance across the board, “ignoring or confusing the problem of mental poverty, and confusing spiritual assistance with mental health education.”<sup>21</sup> In addition, “the quality, living conditions, psychological state, emotional patterns, interpersonal communication and social participation of educational assistance recipients are profiled in advance, to decide that they are disadvantaged.”<sup>22</sup> Then, educational assistance measures are then implemented accordingly, “ignoring the humanistic care for the recipients in the process of assistance,”<sup>23</sup> and making it difficult to meet their sustainable development needs. Meanwhile, it is impossible to stimulate their intrinsic potential, let alone help them integrate into society. In addition, the concept of assistance has not been elevated to the empowerment value for equal rights of subjects and substantive justice. It can be seen that inclusive education has not yet been socialized.

In addition, opponents of inclusive education assistance argue that the socialization part of education being given priority is to the detriment of academic education, and that in many cases, inclusive education assistance is merely an embellishment without tangible benefits. They hold that it deprives disabled students of special environments that are appropriately adapted to their special needs, and that the prevailing environment is simply characterized by them sitting in regular classes and pretending to be normalized, without taking into account their participation in learning. A further argument is that mainstream life is characterized by fear, frustration, ridicule and isolation, and that inclusion can lead to their being harmed or teased by able-bodied students, threatening their self-esteem and self-control. In addition, inclusive classes can even have a devastating effect on the learning progress of able-bodied students. Educators, students and parents of ordinary schools also tend to be against the admission of persons with disabilities. This social exclusion leads to the

<sup>20</sup> Han Junling, “On the Basic Principles of China’s Social Assistance Law: A Perspective of the Integration of Socialist Core Values,” *Administrative Reform* 1 (2021): 29.

<sup>21</sup> Tang Xianbin, Li Hongxia and Shen Qiong, “Analysis of the Education Assistance for Poor Students in Universities in Xinjiang,” *Journal of Inner Mongolia Normal University (Education Science Edition)* 4 (2020): 100.

<sup>22</sup> Chen Lixue, “Exploration of the ‘Capacity-enhancing’ Education Assistance for Older Orphans,” *Contemporary Youth Research* 1 (2020): 14.

<sup>23</sup> Zhao Dahua, “The Improvement of Social Assistance Legislation under the Guarantee of Social Assistance Rights: A Case Study of the Interim Measures for Social Assistance,” *Law Science* 3 (2016): 118.

“shortcomings” of inclusive education assistance itself, making it difficult to be accepted by the whole society. It is not difficult to see that these identified problems are attributable to a lack of understanding of the inclusive education concept, and it is urgent that the state and society provide a barrier-free environment, relevant teaching materials, equipment, and other forms of assistance, and support for professionals.

Despite those criticisms, the mainstreaming of education for persons with disabilities through inclusive education assistance has symbolic and practical significance, namely, all citizens are born with equal dignity and must not be treated differently unless with justifiable reasons or it would be against the concept of inclusive education assistance as stipulated in the CRPD. In practice, inclusiveness emphasizes and guarantees equal educational rights and opportunities for people with and without disabilities. Inclusive education assistance for persons with disabilities is not only a qualification for education, but also an empowerment, a right to the full realization of the right to education, and a decisive right to the realization of other rights, such as the right to survival, the right to information, and the right to employment. With the popularization of balanced educational assistance, the situation of “school drop-out due to poverty” will gradually disappear. But more importantly, how should we better protect the right of persons with disabilities to educational assistance through inclusive education assistance under the goal of common prosperity and Chinese modernization. The answer is to “make up for the lack of resocialization by providing culturally appropriate educational assistance.”<sup>24</sup>

### **B. Obstacles of monotonous subjects**

In recent years, the theory of collaborative rescue has become increasingly more popular, as an expanded theory of subject relationship based on the theory of affirmative responsible government. The relationship is open, transparent, inclusive and responsible, and the participating subjects are also active and voluntary, not compulsory.<sup>25</sup> With the development of a pluralist society, persons with disabilities may not be able to access regular schools due to a lack of funding, rigid curricula, hard-to-adapt buildings, untrained teachers, and many other factors. The multifaceted barriers to access show that inclusive education for persons with disabilities is no longer possible with the government alone. “The subject of obligations should be expanded accordingly.”<sup>26</sup> Society, schools, families, and communities are all

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<sup>24</sup> Li Zihua, “Research on Education Assistance Problems and Countermeasures for Disadvantaged Children Based on Grounded Theory,” *Theory and Practice of Education* 11 (2020): 17.

<sup>25</sup> Ted Fellman, “Collaboration and the Beaver-head-Deerlodge Partnership: The Good, the Bad, and the Ugly,” *Public Land & Resource Law Review* 30 (2009): 30.

<sup>26</sup> Qiao Yu and Liu Xueqin, “Research on the Transformation of Social Assistance Right Under the Visual Threshold of Precision Poverty Alleviation,” *Journal of North China Electric Power University (Social Sciences)* 2 (2019): 87.

indispensable forces in the system of inclusive education assistance for persons with disabilities, and they should earnestly fulfill their responsibilities within their respective scope to provide inclusive education assistance to persons with disabilities, so as to better protect the right of persons with disabilities to inclusive education assistance. Meanwhile, it is of great importance to share the responsibilities in a reasonable and fair manner; otherwise, it will be difficult to achieve the sustainable development of inclusive education assistance for persons with disabilities. At present, in terms of the legal positioning of the subjects for educational assistance, the state is the primary obligatory subject, and the provision of educational assistance is the obligation of the state. How to position schools, social organizations, families and communities in the legal system as the assistance subjects is still unclear, as their respective assistance responsibilities are not clear.

In China's current practice of educational assistance for persons with disabilities, the reasons for the monotonous subject are as follows. First, the legislative guarantee is insufficient. The discussion on the right to inclusive education assistance for persons with disabilities has received great attention in the international community, but China only enshrines a certain trend of integrated education in education regulations and relevant policy documents, and lacks legislation to protect the rights of persons with disabilities to inclusive education assistance, undermining their ability to leverage their potential for future development. At the same time, a series of policies alone to address the right to educational assistance for persons with disabilities can easily create a false impression of a commitment to protecting their rights. The reason is that policies are not legally binding in nature and legalization is seen as a way to give substance to policy objectives. Therefore, the state must fulfill its obligations to introduce a law on inclusive education assistance, clarify the legal positioning and division of responsibilities of multiple subjects, to make inclusive education assistance an achievable priority, rather than a policy stunt. Second, access to inclusive education is hampered by a lack of trained teachers. The lack of a sound legal system for teacher training and qualification is the main reason implementation of teacher training is difficult, undermining the effectiveness of inclusive education assistance, and the reason behind the lack of sustainability and fairness in assistance. Merely acknowledging the right of persons with disabilities to education<sup>27</sup> does not ensure that they receive education; the special education experience of educators in general schools is key to influencing inclusive education assistance. The biggest difference between ordinary schools and special schools is that the former lack special

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<sup>27</sup> Martha E. Snell, *Characteristics of Elementary School Classrooms Where Children with Moderate and Severe Disabilities are Included: A Compilation of Findings*, Inclusive Schooling: National and International Perspectives, 1998, page 76-78.

education teachers. In many cases, teachers of mainstream schools do not know much about “inclusive education.” While the majority of teachers believe that it is necessary for persons with disabilities to be educated in mainstream settings, there are a few advocating segregated special education, fearing that persons with disabilities will affect the learning of able-bodied children. Thus, it can be seen that there are generally obstacles such as unreasonable quantitative structure, unbalanced quality structure, and uncoordinated regional structure in the allocation of special education teachers, and those obstacles will undermine the efforts to integrate persons with disabilities into regular school classrooms.<sup>28</sup> Third, ordinary schools do not satisfy the standards of providing reasonable accommodation for persons with disabilities. If the right to equal access to education has any meaning, it must be to create an environment favorable for effective learning in accordance with the disability; otherwise, it would constitute a violation of the right to equal access to education. Inclusive education focuses on the inclusiveness of relevant schools, advocates for the construction of a barrier-free environment for campus facilities and classroom teaching and activity participation, and provides an alternative model for people with special needs to meet their needs and maximize their academic and social development. However, many mainstream schools lack resources and classrooms suitable for the educational needs of persons with disabilities. Even if they have such resources, their functions are very limited, while relevant teaching materials, teaching aids, library materials, and facilities cannot meet the standards of barrier-free environment construction. For example, they cannot timely provide hearing aids for deaf and mute students, handbooks for deaf children to learn sign language, and barrier-free passages for blind students. In addition, the special needs of persons with disabilities are rarely considered in teaching methods, and there is a lack of targeted individualized education programs, while services and assistance need to be strengthened.

The improvement of the legal system for inclusive education assistance for persons with disabilities is a systematic and holistic endeavor. So the grasp of the key subject elements in the institutional system that play a central role should not be isolated and separated. The interactions of different subject elements jointly determine the direction of development and improvement of the legal system for educational assistance for persons with disabilities. In promoting the assistance process, we cannot rely only on the government as a single subject. Instead, we should also give full play to the role of multiple other actors. While fulfilling the obligation of inclusive education assistance for persons with disabilities, the government should also introduce the “interest”

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<sup>28</sup> S Mukhopadhyay, “Voices of experience: Botswana primary school teachers on inclusive education,” *European Journal of Educational Studies* 5 (2013): 73-77.

element to enhance the subjective awareness and enthusiasm of social organizations, schools, families and communities through the balance of interests and incentives, so that they may jointly help with the implementation of a legal system of inclusive education assistance for persons with disabilities.

### C. “Crowding-out” obstacles of the system

At present, China still implements a dual school system in which ordinary schools and special education schools develop in parallel and independently. Students with disabilities and able-bodied students are placed in different educational environments, while the education law is detached from the laws related to educational assistance, and can hardly meet the needs of the rule-of-law transformation in China’s inclusive education assistance. According to statistics, in 2020, the compulsory education enrollment rate of children with disabilities in China exceeded 95 percent,<sup>29</sup> but the popularization rate of inclusive education was not high, with about 60 percent of persons with disabilities studying in special education schools. In contrast, most foreign countries have formed a single-track inclusive education system based on ordinary schools. According to the degree of disability, persons with disabilities can choose ordinary classes, ordinary class learning with auxiliary teaching services, special education classes in ordinary schools, special schools, or boarding schools. For example, in the United States, 13 types of persons with disabilities are enrolled in ordinary schools, and 94.8 percent of these students are receiving education in integrated educational institutions such as ordinary classes, resource classrooms, and special education classes in ordinary schools.<sup>30</sup> It can be seen that the dual school system has caused “crowding-out” barriers to inclusive education assistance for persons with disabilities, and constitutes the fundamental factor restricting inclusive education assistance. Its practical limitations are seen in the following aspects.

First, the teaching philosophy, objectives, methods and content, and quality of teachers in special education schools are out of touch with ordinary schools and society. It is undeniable that special education schools have played a certain role in the development of education for persons with disabilities, realizing their right to education, “opening up ways for them to receive education adapted to their needs, turning them into individuals that can make useful contributions to society, and making them equal members of society” through professional teachers.<sup>31</sup> However, by restricting the scope and radius of

<sup>29</sup> China Disabled Persons’ Federation. [EB/OL], accessed April 16, 2024, <https://baijiahao.baidu.com/s?id=1685683053172087276&wfr=spider&for=pc>.

<sup>30</sup> Zhang Chao, Yu Zongfu and Fang Junming, “A Comparative Study on the Implementation of Integrated Education for Special Children in China and the United States,” *International and Comparative Education* 11 (2013).

<sup>31</sup> Piao Yongxin, “Integration and Learning in Regular Class,” *Educational Research and Experiment* 4 (2004): 37.

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education for persons with disabilities, special education schools have led to differentiated segregated education, uprooting persons with disabilities from their culture and society, and creating a social rift between “the disabled and the mainstream.” Those are not conducive to the formation of the value orientation of inclusive education assistance for persons with disabilities, let alone their growth and development.

Second, it leads to unclear rights and responsibilities and unclear targets in implementing inclusive education assistance. Does the educational assistance for persons with disabilities belong to the “special education” or “general education and social public services”? This question makes inclusive education assistance “unattainable,” and the fundamental reason is “who should be responsible for the education of persons with disabilities.” Under the situation of unclear rights and responsibilities, it is impossible to truly realize inclusive education assistance for persons with disabilities. In addition, it has led to the ambiguity of the inclusive objects. Is inclusive education for persons with disabilities or for all students? Within the logical framework of the dual school system, inclusive education is intended only for a narrow group of persons with disabilities. If only persons with disabilities need inclusive education, what is the basis for able-bodied people to shoulder “responsibilities and obligations” to include them in the general group? “Social virtues” and “inherited morality” would be far from sufficient to explain them!

Third, the dual school system has led to unfair distribution of resources between “general and special schools.” Governments tend to invest more funds in special education schools to help persons with disabilities, and less funds to help those educated in mainstream settings based on the concept of inclusive education. The disparity in funding undermines efforts intended to provide aid to inclusive education, as it perpetuates and entrenches social exclusion through the parallel education system that encourages persons with disabilities, leading to barriers to the implementation of inclusive education and raising concerns about its effectiveness and quality.

Fourth, the dual school system requires the classification of persons with disabilities as eligible for “general schools” or “special schools.” The approach emphasizes their shortcomings rather than environmental constraints, such as lack of physical access, adequate equipment and access to special education. Therefore, inclusive education assistance requires a transformation in the dual school system. In fact, there should not be two parallel education systems: one for persons with disabilities and the other for able-bodied people. Instead, educational assistance for persons with disabilities must be provided in mainstream educational institutions, so as to eradicate the invisible social stratification. In other words, the exclusion of persons with disabilities from mainstream education without providing them with the necessary assistance deprives them of their rights. In the future, the necessary adjustments and



modifications should be made to accommodate the wider capacities of persons with disabilities and to guarantee their right to integration into mainstream education and social life.

#### **D. Obstacles of regulatory “absence”**

The rule of law of inclusive education empowering educational assistance for persons with disabilities is separable from a supervision system, and the guarantee and implementation of the systematic supervision system is crucial to the multi-faceted responsibility implementation with regard to the protection of the legitimate educational rights and interests of persons with disabilities, including the registration of persons with disabilities and the determination of their eligibility for assistance regarding inclusive education assistance, their educational placement and training, the rational use of inclusive education assistance resources, and the evaluation of inclusive education assistance. However, due to the fact that the inclusive education assistance system for persons with disabilities is still in the exploration stage, the current *Regulations* do not touch on supervision, but only mention the government’s proposal to supervise the implementation of compulsory education. The core issue of the supervision system is still undergoing theoretical discussion, and there are still deficiencies and lacking operability in the key aspects. Therefore, how to balance the degree of freedom given to the government and schools and the established standards by improving the supervision system is also an important challenge for the law-based development of inclusive education assistance for persons with disabilities in the future.

First, the separation of power and supervision has not been realized. The government is responsible for leading inclusive education assistance, and the proper use of power and prudent performance of responsibilities by relevant government departments are crucial to its realization. However, the *Regulations* do not impose a strict check-on implementation mechanism but invest the key right of supervision to the government that also has the power to govern. Article 12 of the *Regulations* clearly stipulates: “The supervision, guidance and inspection of the implementation of compulsory education by the people’s governments at or above the county level shall include the supervision, guidance and inspection of the implementation of compulsory education for children and adolescents with disabilities.” The purpose of supervision is to ensure the legitimate operation of public power. However, in the case of inclusive education assistance, the subject of governance and that of supervision power are the same, making it difficult for supervision to actually work. In addition, it can easily lead to administrative peremptoriness or inaction.<sup>32</sup> Therefore, it is urgent that we make institutional innovations and

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<sup>32</sup> Jiang Guohua and Mei Yang, *Legal Research on Major Administrative Decision-making Procedures* (Beijing: China University of Political Science and Law Press, 2018), 151.

establish an independent and authoritative mechanism for the protection of rights and the expression of demands for inclusive education assistance for persons with disabilities, so as to improve the effectiveness of its supervision.

Second, there is a lack of supervision and assessment system. A scientific and efficient evaluation system is an important foundation for inclusive education assistance work. At present, the assessment network is very weak, the scope of assessment subjects is narrow, and the efficiency of the assessment methods is too low. The loopholes in the assessment system have undermined the supervision system, and the obstacles in inclusive education assistance are not fully revealed, hampering the implementation of the obligations of inclusive education assistance and the rational use of educational resources, and failing to meet the requirements of scientific supervision.

Third, there are deficiencies in the accountability system for inclusive education assistance. The main problems affecting the supervision of inclusive education assistance, which involves multiple supervision subjects and complex supervision functions, are the decentralized supervision body and supervision functions, the imperfect cross-departmental supervision mechanism, and information asymmetry in the supervision process, which have undermined the operability and timeliness of the supervision system. As a result, negligence becomes a frequent occurrence without effective accountability. Therefore, further improving the accountability system of multiple responsible subjects for inclusive education assistance remains a practical issue that needs to be urgently addressed.

### **III. A Way Out of the Rule-of-Law Dilemma of Education Assistance for Persons with Disabilities from an Inclusive Perspective**

The perspective of inclusive education has opened up a new development direction for constructing a legal system for educational assistance for persons with disabilities in the future, encapsulating educational equity and social civilization. However, there is a certain gap between the ideal and the reality, and a rigorous legal system is required to ensure its implementation. In view of the above-mentioned rule-of-law dilemma in inclusive education assistance for persons with disabilities, it is necessary to put forward the approach options from the perspective of inclusive education, further study the legislative concept of inclusive education assistance and the issue of education system guarantees, clarify the rights and obligations of the legal subjects, and build a supervision system, so as to realize the transformation of material assistance to endogenous service assistance, improve the welfare of educational assistance for persons with disabilities, and promote the full realization of their right to education.

### A. Introducing the rule-of-law concept for inclusive education assistance for persons with disabilities

There has been a substantial shift in the current concept of educational assistance for persons with disabilities, from the biomedical model of disability to the social rights model of disability. The “medical” model holds that the shortcomings of persons with disabilities are inherent and naturally exclude them from the dominant culture. For example, the *Universal Declaration of Human Rights* confuses disability with circumstances beyond the control of the individual, such as unemployment, illness, old age and widowhood. Although it provides for the right to education, it does not specify what measures States should take to ensure it. The 1982 *Constitution* of China stipulates that all citizens have the right to education. However, Article 45 of the *Constitution*<sup>33</sup> borrows the medical-model-based wording of the *Universal Declaration of Human Rights*, affirming that the State shall provide material assistance to persons with disabilities and help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens. In addition, Article 2 of the *Law on the Protection of Persons with Disabilities* classifies persons with disabilities as “abnormal,”<sup>34</sup> also defining disability in terms of the medical model rather than the social rights model, exerting a negative impact on the interpretation of subsequent provisions. The “social rights” model, on the other hand, achieves a paradigm shift from exclusion to inclusion, by embracing two elements. The first one is the recognition of the basic human rights inherent in persons with disabilities, including the right to human dignity and the right to education, and to the extent feasible, to allow persons with disabilities to receive education on an equal footing with able-bodied persons in the general education system. The State is required to provide assistance to persons with disabilities and their families “in a manner conducive to achieving their fullest possible social integration and personal development, ensuring effective access to and reception of education for persons with disabilities.” The state should recognize and respect differences in abilities and remove obstacles to the enjoyment of the right of persons with disabilities to inclusive education, with the aim of recognizing their right to receive educational assistance that enables them to reach their full potential, and with greater emphasis on their rights and capacities. The second one is the

<sup>33</sup> Paragraph 1 of Article 45 of the *Constitution* stipulates that “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. Paragraph 3 stipulates that “The State and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens.”

<sup>34</sup> Paragraph 1 of Article 2 of the *Law on the Protection of Persons with Disabilities* stipulates that a person with disabilities refers to one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal.

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emphasis that disability is to a large extent caused by social and external barriers, and the requirement for the state and society to assume the responsibility of inclusive education assistance, reshape the current way of educational assistance through reasonable system design, change the current monotonous material assistance function (mainly limited to reducing the burden of education) of educational assistance for persons with disabilities, and actively promote the comprehensive functions of independent development, mental health improvement and potential tapping, so as to realize the functional reshaping of the transformation to endogenous educational assistance. Endogenous educational assistance is not a denial of traditional material assistance featuring aided grants, student loans, scholarships, work-study grants, etc.; instead, it emphasizes that these means of assistance cannot ultimately be separated from the rule-of-law concept of inclusive education.

The social rights model holds that in the education of persons with disabilities, rights and support<sup>35</sup> should be approached from a human rights perspective, and “the former paradigm of caring for the weak should be transformed into development orientation”<sup>36</sup> to provide quality educational assistance for them in an inclusive environment. At the operational level, the core concept of “inclusive education” should be introduced and followed in educational assistance for persons with disabilities through legislation. Meanwhile, the existing legal system of educational assistance for them should be reformed, the content of inclusive education and the legal system should be changed simultaneously, the legitimacy of inclusive education assistance should be solved, and the behavior of inclusive education assistance should be made fairer, more standardized, stable, binding and sustainable. Considering that the social assistance law has not yet been promulgated, a special regulations on education assistance may be drafted first. The civil affairs department of the State Council may also work with the departments of finance and education to formulate specific systems to issue supplementary regulations on the identification of aid recipients, assistance methods, and assistance standards. In addition, the existing *Regulations* are low in status, and a law of education for persons with disabilities embracing the concept of inclusive education should be enacted to guide the development of subsequent regulations and policies. Legalization of inclusive education assistance should be pursued. A shift from policy documents to normative legal documents shall be achieved, to clarify the rights and obligations of all subjects, and ensure that persons with disabilities can enjoy the right to educational assistance from the perspective of inclusive education. Efforts should also be made to follow the

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<sup>35</sup> Wang Haiping, “Promoting Society Inclusion of Intellectually Disabled People by Social Model of Disability,” *Chinese Journal of Special Education* 9 (2006): 7.

<sup>36</sup> Li Yanlin, “The Normative Structure of the Right of Social Assistance,” *Hebei Law Science* 4 (2021): 158.

view of the CRPD that inclusive education is a basic human right, accept more types of persons with disabilities to study in regular schools, realize capacity-enhancing educational assistance for persons with disabilities, and embark on the rule of law track.

### **B. Clarifying the legal positioning of multiple responsible entities for inclusive education assistance for persons with disabilities**

In order to eliminate the obstacles to the implementation of the law on inclusive education assistance for persons with disabilities due to the lack of funds, teachers, barrier-free educational environment and individualized support, we need not only the guidance of the rule of law concept, but also the micro-level entity responsibility system. To this end, China should gradually establish a “five-in-one” structure including the government, society, schools, families, and communities for educational assistance, rationally allocate the rights and obligations between the subjects, fully mobilize the enthusiasm of each subject, and develop a benign closed loop of the legal system for the subjects of inclusive education assistance for persons with disabilities, so as to better ensure its implementation.

#### **1. The legal obligations to provide inclusive education assistance under the leadership of the government**

Persons with disabilities have the right to educational assistance, and the government’s provision of educational assistance to them is the basis of its legitimacy and bounden responsibility. Meanwhile, the principle of equality requires affirmative action in order to eliminate conditional discrimination in exceptional circumstances. The social rights model, which is characterized by inclusive education assistance, provides an appropriate framework for the government to respond to the challenges and needs of educational assistance for persons with disabilities. It gives practical meaning to their dignity and subjectivity, and requires that the government fulfil the corresponding obligations to provide assistance and special administrative support to make inclusive education assistance operational, so as to ensure that persons with disabilities are given non-discriminatory access to general education, to help them integrate with their peers in regular schools, and to obtain practical and effective learning as much as possible.

First of all, the essence of inclusive education assistance for persons with disabilities is “to provide a barrier-free soft and hard environment”<sup>37</sup> for them to better participate in society and cultivate and give full play to some of their possible strengths. To achieve this goal, it is necessary to improve the government-led multi-channel relief fund guarantee mechanism, and

<sup>37</sup> Ding Xiangshun, “The Convention on the Rights of Persons with Disabilities and the Development of Integrated Education for Persons with Disabilities in China: Interpretation of the Regulations on the Education of Persons with Disabilities,” *Chinese Journal of Special Education* 6 (2017): 23.

vigorously develop inclusive education assistance services. The government may offer direct subsidization or make arrangements with social organizations, featuring subsidies from the government and services from social organizations. The government can purchase education services in the market and propose specific educational assistance service projects, while social organizations can formulate specific implementation plans for review by the government, which will select the winning plan and sign a funding agreement with the formulator.

Second, a specific government agency should be established that is specifically responsible for educational assistance for persons with disabilities, and the professional services of educational assistance personnel at the grassroots level should be improved. A separate administrative body is usually able to effectively defend the specific interests of persons with disabilities, ensure their educational resources and coordinate the relationship between the various organizations that provide educational assistance for persons with disabilities. Proceeding from the status of persons with disabilities as the subject of the rights, assistance agencies have the obligation to work with the education department to provide educational assistance services for persons with disabilities in the most appropriate manner, for example, reasonable accommodations in audio books, Braille teaching materials, desks, chairs, equipment, wheelchairs, etc., and highly interactive teaching materials, special education equipment, special education libraries, etc., so as to achieve a learning atmosphere featuring maximal academic vigor and pluralist equality. Inclusive education expert committees can also be established at the local level to guide inclusive education, train professional teachers, guide parents in family education, mediate disputes, etc.

Finally, a registration system should be established for the enrollment and transfer of persons with disabilities, together with a series of dispute resolution mechanisms and accountability mechanisms. Efforts should also be made to improve the entire work flow of application, examination, approval, and supervision, and set up a special education aid and rights protection center with social participation, systematically supervise and evaluate the implementation of educational assistance, exercise a mechanism of administrative accountability for general schools that refuse to admit persons with disabilities, and give corresponding legal sanctions to illegal acts, so as to ensure the legal supervision of educational assistance.

## **2. Responsibilities of inclusive education assistance services supplemented by the private sector**

In the process of development, inclusive education assistance has encountered many challenges and difficulties. One of the important reasons is the lack of continuous and extensive professional social service assistance. Based on public choice theory, the social policies of democratic governments

tend to have a “median orientation,”<sup>38</sup> making it difficult to meet the special needs of vulnerable groups with disabilities. The active participation of social forces can effectively make up for the government’s shortcomings in inclusive education assistance for persons with disabilities, and provide various services such as education funding, psychological guidance, employment information, entrepreneurship training, and pre-job training, so as to improve the efficiency of inclusive education assistance.

First, inclusive education for persons with disabilities is a human rights issue as well as an economic issue. Lack of funding hampers the ability to provide access to universal education for persons with disabilities and it is a key risk factor for social exclusion of persons with disabilities. At present, financial and family support are the absolute mainstream of educational assistance, while the support of social forces for the disabled is still seriously insufficient. Therefore, social forces such as social work service organizations, administrative institutions under the leadership of the government, and disabled persons' federations at all levels, non-governmental organizations, charities, enterprises (such as banks), scientific research institutes, NGOs, and individuals should be mobilized to participate in the educational assistance for persons with disabilities. Efforts should also be made to encourage social forces to set up non-governmental education funds, and tax incentives should be offered to enterprises and individuals that invest in educational assistance, so as to provide material assistance for persons with disabilities. Second, the unique advantages of professional social workers in educational assistance services for persons with disabilities should be leveraged, to provide a professional assistive environment, equipment, psychological services, and education and training services for them, enhance their sense of agency and empowerment, and help them acquire a more positive sense of self-awareness and self-improvement. For example, persons with disabilities may become psychologically distorted, withdrawn and uncommunicative due to long-term repression, and may find it difficult to adapt to society even when they grow up. In order to promote their healthy physical and mental growth, while offering educational assistance to them, specialized psychologists or medical service personnel may be hired to periodically examine their psychological conditions, promptly administrate treatment to those that have abnormal conditions, and provide mental health guidance. Finally, sustainability is an inevitable requirement for educational assistance, and an effective connection should be realized between educational assistance and employment assistance for persons with disabilities. Public employment service agencies, social work organizations, and social workers should provide professional social work

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<sup>38</sup> Wang Sufen, “The Theoretical Basis and Realization Path of Non-profit Organizations Participating in Social Security,” *Contemporary Law Review* 3 (2012): 97.

services such as job information, job introductions, and career guidance to them free of charge, as well as fee reductions, interest discounts, and other relevant support, so that educational assistance for persons with disabilities does not stop at “graduation” but last to “employment.”

### **3. The feasibility of school-centered inclusive education assistance**

The growing challenges for inclusive education assistance include what schools can offer to students, how to offer it, and whether they can meet the individual needs of persons with disabilities. However, schools currently have too much discretion and there are not enough benchmarks to assess progress. Article 23 of the *Law on the Protection of Persons with Disabilities* requires the use of either general or special methods of education, depending on the type of disability or the needs and abilities of the individual with a disability, rather than recognizing the range of options and services available to persons with disabilities. In the absence of clear outcome goals, schools may make assistance decisions that do not actually increase their access to education.<sup>39</sup> Therefore, in order to ensure the implementation of inclusive education assistance, schools need to make systemic changes, to recognize that each child has unique characteristics, interests, abilities and learning needs. Meanwhile, all types of educational institutions, whether public or private, should provide individualized assistance centered on the educational needs of persons with disabilities.

The first is to improve the legal system for teacher training in inclusive education. Students with special educational needs are an extremely vulnerable group; teachers with special education experience in mainstream schools can effectively reduce the prejudice against persons with disabilities in the classroom, and are thus a key force in improving the quality of inclusive education assistance. Therefore, improving a systematic legal system for the pre-service or in-service training of teachers is a necessary prerequisite for inclusive education assistance. Training for teachers in normal colleges should be made the mainstay, and special teacher training institutions for inclusive education should be established, targeted special education training should be included in pre-service and in-service training, and the scope of application of the existing special education allowance should be revised, so as to materialize the financial guarantee for inclusive education teacher training. Efforts should be made to further increase the recognition of the concept of inclusive education by teachers of general schools, and improve the professional level, professional quality and special education teaching capacity of existing teachers in mainstream schools, so that they have the ability to implement

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<sup>39</sup> Jean B. Crockett and James M. Kaufmann, “The Concept of Least Restrictive Environment and Learning Disabilities: Least Restrictive of What?” *Research and Global Perspectives in Learning Disabilities*, 2001, page 147.



inclusive education assistance for persons with disabilities, and adapt teaching to their needs.

The second is to establish a “double certificate” teacher qualification access system for inclusive education. In order to realize law-based management of teaching, it is urgent to implement a statutory professional eligibility recognition system for inclusive education teachers, so as to help inclusive education move towards standardization and the rule of law. At present, the United States has achieved remarkable results in this aspect, and we can learn from its useful experience to revise the “single-certificate” model in the current *Regulations* that require “ordinary teacher qualifications + having special education professional training and passing the assessment,” and adopt a “dual-certificate” recognition model for inclusive education teacher qualification. In implementing inclusive education assistance, teachers in inclusive schools must be qualified as both general education teachers and special education teachers, and the qualification criteria for professional teachers should be clarified, including the qualification of students with disabilities, the assessment of their educational needs, the necessary special education skills, teaching methods for them and the setting of individualized education plans. In order to meet the practical problem of an insufficient team of inclusive education teachers in China, we can learn from the certificate incentive system of the United Kingdom and link the acquisition of special teacher qualification certificates with preferential governmental policies such as job title evaluation, performance salary, and special education allowance for special education talents, so as to play an incentive role.

The third is to strengthen the legal system for the standardization of barrier-free environments in ordinary schools. Based on the perspective of the life course, we must “continuously remove obstacles to the equal realization of citizens’ right to education in the system, and build a barrier-free education system throughout the life cycle.”<sup>40</sup> In building new school buildings or renovating original ones, the concept of universal design (ULD) should be upheld, i.e. the design and implementation of all public space in the education system should be in the most flexible and inclusive way, with benefits for the most inconvenient groups in mind,<sup>41</sup> for example, adopting induction for doors; retrofitting some of the existing school buildings by installing ramps; providing accessible learning environments or other reasonable accommodations such as accessible courses, accessible instructional media and technologies, alternative modes of communication and alternative learning strategies, etc. The concept of universal design aims to address the lag in the construction of a barrier-free

<sup>40</sup> Wu Zhendong, Wang Yang and Ye Jingyi, “The Legislative Construction of China’s Barrier-free Environment Construction from the Perspective of Social Integration.” *Disability Research* 1 (2022): 27.

<sup>41</sup> Wang Guoyu, “Discourse on Obstacle Research and Social Participation: Accessibility, Universal Design, Capabilities and Differences,” *Chinese Journal of Sociology* 6 (2015).

environment and the lack of reasonable accommodation in mainstream schools, help persons with disabilities overcome the environmental barriers to education, make corresponding adjustments according to their diverse needs, and ensure that they can use school facilities more effectively to participate in the classroom learning in ordinary schools, so that they can benefit from inclusive education.

The fourth is to formulate a personalized teaching plan and establish a simultaneous tracking and feedback mechanism. Schools should be allowed the “flexibility” to adapt teaching methods and content to meet the learning needs of persons with different disabilities. Through data-leading technologies such as internet big data and cloud computing, we can understand the personal situation, family situation, assistance needs, and educational needs of persons with disabilities, and then classify the types of educational assistance methods for them in view of their physical and mental development and intellectual level, for example, children with intellectual disabilities, children with psychological disabilities, and children with physical disabilities. This way, we may formulate individualized assistance plans, and enhance the accessibility of individualized services and assistance for persons with disabilities, so as to ensure their full participation and better realize their right to inclusive education assistance.

#### **4. The reasonableness of family intervention in inclusive education assistance for persons with disabilities**

Persons with disabilities initially understand from their family culture the material deprivation because of illness-caused poverty, together with the inferiority, loneliness, vulnerability, and radical tendencies brought about by physical disabilities, they tend to feel the negative psychological impact of their disability since childhood, and their weak learning ability and social communication barriers lead to reduced educational opportunities and the intergenerational transmission of poverty. Therefore, parents, caregivers or guardians of persons with disabilities should become an important force in the implementation of inclusive education assistance for persons with disabilities, and only by giving full play to the function of family assistance can we develop a benign relationship between family security and social assistance.<sup>42</sup>

From the perspective of rationality, the intervention of the family in inclusive education assistance for persons with disabilities includes two aspects, namely, the granting of rights and the imposition of obligations. In terms of the former, the rights of parents, caregivers or guardians of persons with disabilities should be clarified at the legal level. They should be given the right to participate in the settlement, obtain relevant information and materials, and

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<sup>42</sup> Lin Min'gang, “On the Positioning, Relationship and Realization of the Responsibility of Multiple Subjects in Social Assistance,” *Social Science Research* 3 (2020): 98.

participate in the assessment of special educational needs, the formulation and revision of individual teaching plans, and object and appeal. The provisions should be refined for their participation procedures, so as to increase their awareness of and enthusiasm for inclusive education assistance. Meanwhile, if we blindly increase government investment and adopt a “blood transfusion” type of assistance, we will not only increase the burden on the government, but also cause the welfare dependence of disabled families, as can be seen from lessons abroad. Therefore, in terms of imposing obligations, it is necessary for the families of persons with disabilities to provide “special assistance or care” for them, establish a correct concept of family education, respect their individual differences, and teach them to ensure their self-esteem and self-reliance, so that they may actively participate in social, cultural and educational activities based on their mental and physical abilities. This way, families can assume their due obligations and responsibilities for mutual assistance, become independent and self-reliant and get rid of welfare dependence.

In addition, parents, caregivers or guardians of persons with disabilities are the main recipients of social assistance. The physical characteristics of persons with disabilities entail that they need the company and care of family members in life. As a result, parents, caregivers or guardians of persons with disabilities tend to have unsatisfactory employment, and are very likely to fall into poverty due to sudden or endogenous reasons. If parents are busy running around to make ends meet, it will lead to the neglect of persons with disabilities, which is not conducive to the growth of persons with disabilities. Therefore, families have dual identities: they are not only the main participants in educational assistance, but also the main recipients of educational assistance. The government and society need to pay special attention to the needy groups in these families.

### **5. The normativity of community participation in inclusive education assistance for persons with disabilities**

The accelerating urbanization process has promoted the construction of social life communities, composed of people within small spatial distances, and having the organizational form of a micro-society, the cells of a meso-society, and the links between political institutions and residents. In order to better realize the division of functions of inclusive education assistance, the focus of inclusive education assistance for persons with disabilities should also be gradually shifted from the government to the grassroots, and a certain field mechanism should be provided through the grassroots level.<sup>43</sup> From a spatial point of view, the autonomy of the village (neighborhood) committee is a grassroots organization of community education and assistance, while persons

<sup>43</sup> Wang Sufen and Yang Xiaoting, “Research on Restrictive Mechanism of the Derogation of the Rights of the Recipients in Social Assistance Law,” *Hebei Law Science* 7 (2023): 79.

with disabilities are part of the community. From the temporal perspective, community educational assistance runs through the whole process of childhood, youth, middle age and old age for persons with disabilities. Therefore, community educational assistance features pluralism, advocacy, inclusiveness, voluntariness, and randomness, and communities have the conditions to become an important means of inclusive education assistance. Therefore, communities should be the mainstay in the institutional design for the responsibility-sharing of inclusive education assistance for persons with disabilities, and give full play to its empowering function with the communities as a carrier. The community education organizers and workers can provide assistance services for persons with disabilities in practice.

Therefore, it is necessary for communities to participate in inclusive education assistance, but the most important thing is whether the inclusiveness of community education assistance can be fully realized, and its subjectivity and randomness overcome, so that persons with disabilities can truly stand to benefit. The “community centers” of the United Kingdom, the “community colleges” of the United States, the “public institutions” of Japan, the “Neighborhood Home” of Germany and the “folk’s high school” of Northern Europe are all paradigms of community participation in inclusive education that have proven successful, and worth learning from. However, the difference between China’s community educational assistance and that of developed countries is that the government plays a decisive role to a certain extent. In China, the communities are only administrative institutions, while the market mechanism has always been outside the community educational assistance system. In order to realize the transformation from “school-administration” to “community-market,” efforts must be made to further standardize the generation, implementation and leadership plans of community participation in inclusive education assistance, launch effective education for persons with disabilities, adopt a paradigm of educational resource collection system, and develop, utilize and integrate the educational resources of schools, communities and social institutions. This way, we may give full play to the community characteristics of the assistance model, promote the concept of inclusive education and organize persons with disabilities to participate in educational activities aimed at promoting the all-round development of individuals and the sustainable development of the community through the cooperation between the community and the school. By improving their social participation through inclusive education, we can empower persons with disabilities to establish a sense of belonging to the learning community, so as to enrich their emotional sustenance and make the community a basic space for their socialization.

**C. Realize the mutual construction of the education law and inclusive education assistance for persons with disabilities**

In view of the current dual school system, it is necessary to clarify the position of inclusive education in educational assistance. The legal basis for the inclusion and implementation of inclusive education in the general education system is that inclusive education covers the public as a whole, and it is not just the privileges of persons with disabilities. While allowing the extensive participation of persons with disabilities in ordinary schools, it can also lead to exclusion or acceptance, conflict or integration between persons with disabilities and able-bodied students, to become a universal consensus of the public and condense the social values of pluralism and equality. Therefore, in response to the “crowding-out” barriers in the above-mentioned system, we must start from the education law to stipulate that all persons with disabilities have the right to attend ordinary regular schools, and revise the relevant provisions of the Regulations to change the current situation of excessive importance attached by the existing regulations to special education schools. We should clearly stipulate in law that while ensuring their enrollment to ordinary schools, persons with disabilities shall also be provided with corresponding educational assistance services, to increase the popularization of inclusive education for them as much as possible, so that they will not be excluded from society and become marginalized groups because of their own disabilities. Persons with disabilities must be included in the mainstream education system under a single school system, namely the inclusive education system, which brings together all learners in one system, with or without disabilities.<sup>44</sup>

Specifically, the education law can adopt the “general + exception” legislative model, with the principle that persons with disabilities have the “priority to receive general education” from the perspective of “inclusive education,” while their education through special schools should be an exception. A series of assistance measures have been formulated for them to become enrolled in ordinary schools, and detailed provisions have been formulated in terms of their assessment and identification mechanism, the system of enrollment to the nearest school, the support of resources for learning in regular class, education and teaching, and the professional competence of teachers. At the legislative level, the integration of persons with disabilities into ordinary schools for learning should be maximized, and a channel for the mutual transformation of special school education and ordinary school education should be created, so as to realize the connection between special school education and mainstream education. Legislation should not assume that one approach is preferable over another, and inclusive education assistance does not mean that students can never benefit from special education.

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<sup>44</sup> SD Kanga, “Forgotten or Included? Disabled Children’s Access to Primary Education in Cameroon,” *African Disability Rights Yearbook*, 2013, page 27-30.

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Instead, students in special schools are often segregated and marginalized and deprived of the range of academic and recreational opportunities available to students in mainstream schools. Education assistance under the concept of inclusive education provides the best opportunity for most persons with disabilities to improve their abilities. Exceptions to this rule should be considered on a case-by-case basis if only the educational environment of a special school or institution is able to meet their individual needs. Otherwise, introducing students with special educational needs into mainstream educational institutions without considering their ability to cope, amounts to forcing “individuals to adapt to mainstream settings,” which can be detrimental to them. In other words, the principle of the best interests of persons with disabilities should be the primary consideration in their inclusion in mainstream schools, and conclusions should be drawn through an assessment of the suitability of the educational environment. However, the idea of placing children in special settings is incorrect and should not be construed as a principle of general application. The integration of persons with disabilities into the mainstream education system is entirely appropriate if it provides adequate accommodation for them. The correct approach is to create an institutional outlet for special education within the general education system, leverage the merits of special education and make it a useful supplement to mainstream schools, and realize the conditional transformation between the two. This way, we can avoid the failure of persons with disabilities to integrate due to the lack of supporting institutions in mainstream education, and consequently weaken the legitimacy of inclusive education assistance. In addition, the right of persons with disabilities and their parents to freely choose educational assistance should be granted and respected, and the educational assistance agencies and their workers should determine the ideal settlement of students according to their individual needs.

In addition, the connection between “offline” and “online” education for persons with disabilities should be realized. For persons with severe disabilities and currently unable to leave their caregivers or unable to enter the school premises for education due to mobility difficulties or other reasons, we can break through the limitations of time and space and offer diversified appropriate education assistance services such as education in special education schools or welfare institutions for persons with disabilities, home schooling, community integrated classrooms, online education platforms, and online video-based open classes. We can also enable persons with disabilities to access education through a variety of emerging technologies through government purchases. To this end, the government should create the conditions to encourage the development and popularization of online application tools and software for persons with disabilities, promote the development of smart devices, and build online education and learning

platforms for them to learn independently, interact with teachers and students, and collaborate and communicate, so as to make up for the lack of physical environment and facilities for special education. Meanwhile, we should strengthen the unified normative qualification requirements for home-schooling assistance, establish a special certification system for it, and evaluate its results, so as to impose institutional constraints for the healthy development of educational assistance for persons with disabilities.

#### **D. Establish a supervision system for inclusive education assistance for persons with disabilities**

The establishment of a supervision system is a prerequisite for ensuring the standardization and effectiveness of the government and schools' obligations to provide inclusive education assistance, as well as the transparent flow of inclusive education assistance resources. In order to equally protect the rights of persons with disabilities to inclusive education assistance, a whole-process and all-round supervision system of "government leadership — social participation — decision-making hearings — accountability" should be established.

The first is to set up a full-time committee system for inclusive education assistance. In order to effectively address the imperfect supervision mechanism for the implementation of inclusive education assistance for persons with disabilities, we may start from the perspective of helping to unblock channels for the protection of rights of persons with disabilities, to reasonably leverage the system of the Parliamentary Ombudsman of Sweden and the Standing Committees of the People's Congresses at all levels in China, to instate a full-time committee independent of judicial and administrative organs to be responsible for the protection of the rights of persons with disabilities to inclusive education assistance. The establishment of the full-time committee system is conducive to the consultation and complaint system for inclusive education assistance, and its members can handle citizens' consultations and complaints, and carry out investigations, thus building a mechanism to respond to the needs of persons with disabilities for inclusive education. Full-time committee members should respond as soon as possible to inquiries related to the protection of the right of persons with disabilities to inclusive education assistance, promptly handle complaints about inclusive education assistance involving the public or parents, promptly investigate and collect evidence for complaints about schools violating standardized school operations, and give feedback to the complainants, promptly supervise the rectification and improvement of improper performance of government obligations or illegal performance of schools, and make the results public.

The second is to establish a digitized satisfaction evaluation system. Allowing members of society to participate in evaluation and supervision is one of the ways to expand social participation in the supervision of inclusive

education assistance, and an important institutional representation to achieve the fairness of inclusive education assistance. It is recommended that efforts be made to promote a digital supervision and evaluation platform.<sup>45</sup> With full consideration for regional differences, local members of society may assess the satisfaction of the work of teachers, schools, and the government, promptly evaluate and learn about the effectiveness of inclusive education assistance, disclose it to the public in accordance with the law, and make the results an indicator in teacher ethics assessments, school assessments, and the government's annual comprehensive education supervision results. This way, we can make it the common goal of teachers, schools, and relevant government departments to enhance the self-reliance and social integration of persons with disabilities.

The third is to establish a hearing system for the decision-making and implementation of inclusive education assistance. Hearings are no longer merely restricting the process of administrative decision-making on a case-by-case basis, but are also becoming an important part of administrative decision-making.<sup>46</sup> The government's decision to provide inclusive education assistance related to the vital interests of vulnerable groups with disabilities is an act of "the state exercising public power to coordinate the interests of various stakeholders and interest groups in society."<sup>47</sup> So parents of persons with disabilities, relevant experts and social stakeholders should be organized to participate in hearings, and listen to the opinions of all parties, and the society and the government should negotiate and engage in dialogue, address information asymmetry through efficient information communication mechanisms, and maintain the right of different groups to speak on inclusive education assistance. Through a standardized, open and transparent program, effective and scientific decision-making on inclusive education assistance can be realized, and the rationality of decision-making can be enhanced while the efficiency of decision-making can be improved, so as to meet the interests and needs of persons with disabilities and their parents.

The fourth is to clarify the standardized basis for the accountability system for inclusive education assistance. Sorting out rights and responsibilities is only the front-end condition for the rule-of-law orientation in inclusive education assistance. In order to ensure the implementation of different responsibilities, a corresponding accountability system is indispensable. We should establish and improve cross-departmental coordination and supervision mechanisms, divide the key responsibilities at different levels such as the state, society, schools, families, and communities,

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<sup>45</sup> Gao Jingfeng, "Legislative Improvement of Compliance Reform of Enterprises Involved in Cases and Supervision and Evaluation Practice Innovation," *Tribune of Political and Law* 1 (2023): 128.

<sup>46</sup> Shi Xiaoxue, "Administrative Hearing as a Communication Process," *The Jurist* 5 (2018): 45.

<sup>47</sup> Li Jianhua, "Procedural Justice in Public Policy and Its Values," *Social Sciences in China* 1 (2009): 65.



and clarify the standardized basis for the accountability system for inclusive education assistance through the law, and systematically integrate the responsibilities of each entity according to their legal positioning. We should not only maintain and regulate the coordination and cooperation between different responsible subjects, but also judge whether the responsibilities are fulfilled or not, so that the supremacy of the law and the equality of rights constitute the basic axiom of the rule of law in inclusive education assistance for persons with disabilities. In addition, in order to better motivate the relevant responsible entities to implement inclusive education assistance, we should also establish a specific initiation system for the fault-tolerant and error-correcting mechanism, and a lenient approach should be adopted for the mistakes of the responsible entities in the reform and innovation of inclusive education assistance.

#### IV. Conclusion

The decisive factor for improving human well-being are not space, energy or arable land, but the enormous role played by education in the high-quality development of the population. Education is the guarantee of the free and all-round development of citizens. However, on the whole, in China there are still disadvantaged groups unable to go to school or enjoy the right to education with equal conditions.<sup>48</sup> The perspective of inclusive education is of great significance to the educational assistance for persons with disabilities, who can move from exclusion to integration and achieve healthy physical and mental development through inclusive education assistance. As far as society is concerned, the concept of inclusive education assistance has changed the concept of assistance for persons with disabilities and promoted the construction of spiritual civilization in society. Inclusive education assistance for persons with disabilities should undergo the logical transformation from material assistance to service-oriented assistance, from survival-oriented assistance to development-oriented assistance, from satisfaction-based assistance to empowerment-oriented assistance, and from result-based assistance to process-based assistance, so as to open up the last mile of educational assistance for persons with disabilities. However, at present, we are still faced with many obstacles, for example, the contradiction between the urgency of the need for inclusive education assistance and the lagging behind of the rule of law in educational assistance, as well as the dilemma that the inclusive education assistance system is disconnected from the current education system. In the future, we should actively learn from the overseas advanced system design, conduct in-depth research on the fetters of inclusive

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<sup>48</sup> Jiang Wuzhen and Yang Di, "The Legal Dilemma and System Perfection of Education-assistance in China," *Journal of Xiangtan University (Philosophy and Social Sciences)* 5 (2015).

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education assistance for persons with disabilities in China, and establish a more systematic inclusive education assistance system for them in light of national conditions, so as to more effectively realize their right to education.

(Translated by *QIAN Chuijun*)