

Research on the Legislation of American Special Education and Its Implication to China

Ren Nianlu

Beijing International Studies University, Beijing, China 100024

ABSTRACT

The origin of special education came from Europe and flourished in North America. Since the reform and opening up, due to the continuous development of the economy and the further improvement of the political system, China's comprehensive national strength has been greatly improved. With the continuous enhancement of national strength, the national government has paid more and more attention to the development of special education, which has made some achievements in China's special education, but it still cannot change the fact that China's special education is still in the primary stage. Therefore, we must study the advanced legislative programs of western developed countries, especially the achievements and advanced legislative experience of special education legislation in the United States, so as to effectively influence the legislation of special education in China.

Keywords: *American special education, lawmaking, Comparative study*

1. INTRODUCTION

The origin of special education came from Europe and flourished in North America. The United States is supported by the world's top special education legislative system, advanced special education ideas as a supplement, and multi-democratic management methods for overall planning. This combination makes special education researchers and practitioners in various countries pay more attention and research. The US legislative system is called: the separation of powers. It is closely integrated with the social and political forces of the United States and the outbreak of the human rights and civil rights movements, and jointly promotes the improvement of American special education legislation. Driven by the awareness of human rights, the United States has continued to innovate in the practical operation of special education legislation. It has issued a number of laws and regulations on the protection of special children's education, and used practice to feed back the theory, deepen theoretical research, and further improve the theory. Then supplement the practice to form a very reasonable and optimized circulation system.

children, and the federal and state constitutions did not support it. Because of the low social productivity at that time, people thought that disabled children were the signs of danger and evil, so they were discriminated against and abandoned by the society. At the beginning of the rise of special education in the United States, there were resistance from all sides. However, with the beginning of the enlightenment, people began to publicize the concept of freedom and equality, and the group of special children was gradually recognized by the society. In order to protect the right of special children to receive education, the federal government and the states have launched special education legislation, and have continuously revised and improved the special education bill afterwards. The history of American special education legislation can be divided into four periods: the beginning period (before 1960s), the initial development period (1965-1974), the gradual improvement period (1975-1999), and the progressive period (since 2000).

The influencing factors of American early special education legislation are as follows.

2. THE HISTORICAL BACKGROUND AND DEVELOPMENT PROCESS OF AMERICAN SPECIAL EDUCATION LEGISLATION

In the United States, at the beginning, the state did not attach importance to the right to education of special

2.1. The rise of the civil rights movement

The United States is a big country of immigrants. To a certain extent, racial issues can be said to be the direct cause of special education. It is precisely because of the United States' complicated form that the United States is born with the concept of democracy and equality. However, in the United States, blacks are still

discriminated against and do not receive corresponding social status despite the special laws and regulations. In the Fourteenth Amendment to the Constitution of the United States of America, Lincoln mentioned that "all citizens are equally protected by the law" to protect the citizenship of blacks, and the beginning of the U.S. Constitution also stipulated that "everyone is born equal."

Globally, the United States has enacted education law related bills for the first time. The states introduced compulsory education laws in the mid-nineteenth century. However, in the history of American education for persons with disabilities, public schools have excluded children with special needs, and they have been hindered in all aspects, and their rights have not been protected. In the 1950s, affected by the success of the Civil Rights Movement and the Brown Lawsuit, the disadvantaged groups were actively fighting for their equal rights and interests. Their fight cannot be ignored. Therefore, the federal government has begun to favor black children, special children and poor children in terms of education policies and funding. Abolished the long-standing "segregation but equality" racial discrimination principle, and began to pay attention to special children and train teachers for special children. In this way, it also accelerates the speed of legislation of the federal government to a certain extent.

2.2. Appeals from parents of children with disabilities

In Ohio in 1933, five mothers of special children spontaneously formed an organization of parents of special children and named it the Committee for Special Children. In the 1950s, more and more parents of children with special needs united, and the committee gradually developed and became a national group for the protection of special rights. The formation of this group has guaranteed many rights of disabled children, which has greatly promoted the development of special education legislation.

2.3. The rise of lawsuits for children with disabilities

By the 1960s and 1970s, supporters of disabled children began to try to force the government to treat them fairly, hoping to get educational opportunities. After the success of the Brown lawsuit, a large number of related lawsuits have also been successful, in order to seek fairness and safeguard their rights. Based on the success of these efforts, the federal government has finally introduced relevant bills to ensure that the rights of disabled children and their supporters can be protected. Special education will

conduct isolation education for disabled children and provide them with targeted training¹.

3. CHARACTERISTICS AND ACHIEVEMENTS OF AMERICAN SPECIAL EDUCATION LEGISLATION

The principles of democracy, equality and freedom set forth in the declaration of independence and the constitution of the United States guarantee citizens' freedom of personality. The Fourteenth Amendment of the constitution of the United States makes it more clear that "non discriminatory and equal protection shall be provided to citizens regardless of their age, gender, race or nationality". The United States has always used litigation, legislation, and child rights related initiatives to protect the rights of children with disabilities. The federal government's involvement in education is regarded as a basic means to overcome discrimination and poverty and achieve human rights goals. The United States Congress often enacts federal laws to ensure the education and social welfare of the disabled. From 1827 to 1975, the United States issued 175 federal laws specifically for the disabled. The achievements of American special education legislation are embodied in the promulgation of the following special education laws.

3.1. Education of all- Handicapped Children Act

In 1975, the U.S. Congress passed the "Education of all-Handicapped Children Act" to protect the rights and interests of disabled children in education and regulate special education in schools. The act is a milestone in the development of special education in the United States, providing legal support for disabled children to receive equal and appropriate education. Six basic principles are established to protect the rights and interests of disabled children and their parents: 1. Zero refusal; 2. Non-discriminatory assessment; 3. Individualized education; 4. The least restrictive environment; 5. Legal procedures; 6. Parents' participation. Since its promulgation in 1975, the "Education of all- Handicapped Children Act" has been revised many times, and its six basic principles have been re authorized in the new law, and the contents and details have been further developed.

3.2. Individuals with Disabilities Education Act, (IDEA, 1990)

In 1990, the United States passed Individuals with Disabilities Education Act, (IDEA), The act changed

the name of "education law for all disabled children" in 1975 to "Individuals with Disabilities Education Act". This change in the appellation of service objects reflects the people-oriented concept in the special education language, that is, obstacles are only some characteristics of people, and people should not be equated with obstacles. In this revision, two new disability categories, autism and traumatic brain injury, have been added to the obstacle categories.² The objects receiving special education services have also changed in age, beginning to extend to both ends, covering the disabled people aged 0-21. The education plan for special children includes not only the individualized family service plan for special children aged 0-2 years, In addition, it includes the individualized education program (IEP) for school-age children aged 3-15 and the individualized transfer program (ITP) for disabled youth aged 16-21. Rehabilitation counseling, social work and other services and rehabilitation fields have been added to relevant education services.

3.3. Individuals with Disabilities Education Act Amendments (1997)

In 1997, the law on education for people with disabilities was revised. The amendment to the law on education for people with disabilities has been promulgated again. In view of the shortcomings in the process of special education, such as the low expectation for special children and the difficulty in ensuring the use of effective education and teaching methods confirmed by research, the amendment emphasizes the benefit and effectiveness of education for special children. In the individualized education plan, we should attach importance to the connection with general education, take responsibility for the standardized education results of students with disabilities, and pay more attention to the improvement of students' academic achievements; in terms of educational effectiveness, we should highlight the effective goals of special education proposed by Congress in the aspects of equal opportunity, independent life, integration and sharing, and economic independence.

3.4. Individuals with Disabilities Education Improvement Act

On December 3, 2004, President Bush signed and promulgated the Individuals with Disabilities Education Improvement Act, which revised the IDEA again. Through the implementation of the law, there is a general consensus in American society, that is, all

children have the right to receive a good education, all children have the right to enter public ordinary schools, and all children's educational needs be met.

In addition, special education in the United States has a special dependence on the law. From the situation of special education legislation in the United States, we can summarize the following important characteristics: first, the understanding of special education is deepening day by day, the civil rights movement and the appeal of children's parents have played an important role in promoting the legislation of special education; second, introducing the modern concept of special education into the special education law, Regulating special education with special education laws, such as the least restrictive environment, family education, early education and so on, has made outstanding contributions to the development of special education law. Thirdly, several special education law cycles promote mutual influence and produce extremely good effect. Fourthly, the rights and obligations of American special education law are not only comprehensive and specific, but also very rigid, which ensures the authority and compulsion of special education legislation.

4. EXISTING PROBLEMS IN CHINA'S SPECIAL EDUCATION LEGISLATION

4.1. China's legal system of special education is not complete and its structure is not complete.

Although the current special education law has begun to form its own system and become a subsystem of the education legal system, from the perspective of systematization, it is obvious that there is no legal system with harmonious content and complete and unified form.

From the vertical system of special education law in China, although the existing special education laws and regulations exist in every level of education laws and regulations, there is no independent "special education law" which is parallel with the laws of major education departments, so there is no basic law of special education. There is only one regulation on education for the disabled, and there are no independent supporting laws and regulations and detailed rules for implementation. For example, the reward and punishment system of special education teachers, the protection and relief of special children's rights are lack of independent and systematic legal basis and corresponding relief measures. From the perspective of the horizontal system of special education law in China, there are still many legislative gaps, which make many special education relations that should be regulated by law unable to be relied on.

Although the Ministry of education has promulgated more than 20 administrative rules and regulations to regulate the management and behavior of special education, it is limited to adjusting the internal relations of special education, focusing on the implementation of the party's special education policies, while there are few laws and regulations to protect the rights and interests of special educators and educatees, such as the law on teachers, staff and students in special schools: regulating the evaluation of special education. There are no regulations on the evaluation of special education, the investment law of special education, etc. It is necessary to formulate different learning content according to different students, determine the student's learning range, and delineate how to evaluate the label, which provides students with flexible and wide-ranging options.³

4.2. The overall legislation standard is low and the legal effect is low.

According to the previous analysis, there is no special law on special education in China so far. The regulations on education for the disabled is the first special law on special education in China, which is located at the third level. Most of the special education laws are in the form of educational administrative regulations and local education regulations. Therefore, the legislative specifications of special education laws in China are low and the legal effect is not high. In 1975, the United States promulgated the education for all disabled children act, South Korea enacted the special education Revitalization Act in 1977, Taiwan enacted a special one-step special education law Taiwan Special Education Act in 1984, Japan had the disabled Education Act in May 2001, and Britain passed the special educational needs and disability act which came into force in September 2002.

4.3. The scientificity of legislation needs to be improved.

The existing legislation shows that our legislative department's understanding of the disabled is still in a vague state, far behind the actual academic field of special education research. For example, Article 2 of the law of the people's Republic of China on the protection of disabled persons stipulates: "disabled persons include persons with visual disability, hearing disability, speech disability, physical disability, intellectual disability, mental disability, multiple disability and other disabilities." This legal concept is relatively general and not detailed. At present, the legislation of special education in the world shows more and more common

The development trend of the disabled: from less to more, from simple to complex, from the existing classification to refine learning disabilities, emotional disorders and other different types. The special education law, enacted by Taiwan's legislature in 1984, has already included gifted talents, lack of intelligence, visual impairment, hearing impairment, language impairment, physical impairment, physical weakness, personality disorder, behavior disorder, learning disability, multiple barriers, and other significant obstacles as the objects of special education. Special education is divided into three stages: pre-school education stage, national education stage and post national education stage. We said that on the one hand, the refinement of the types of disability reflects the progress of social civilization, on the other hand, it is conducive to provide different modes of compensation for the disabled with different needs, to provide different and diverse material facilities and equipment for the disabled with different needs, and to help them overcome the differences caused by different physiological and psychological defects. Therefore, if the content of our legislation on special education can be combined with the research on special education in the real academic field in time and improve the scientificity of the content, we can better play its due role and promote the development of special education.

5. THE ENLIGHTENMENT OF AMERICAN SPECIAL EDUCATION LEGISLATION TO CHINA

Special education slowly emerged after the formation of general education. Although the development is relatively slow, it also has its own system. Therefore, if we want to make this system complete, no matter whether it is the society, the education sector or the family, every aspect of support is indispensable. After developing for such a long time, the special education legislation of various countries has formed the following characteristics: First, at the beginning, the standard for dividing the objects of special education was very simple, with the deepening of classification and level, the classification criteria became more and more detailed and the classification standards have also increased; secondly, the relatively new concept of special education was introduced into the special education law; thirdly, special education cannot be done with hard work on one side. It requires the full cooperation and efforts of all departments, so there should be a clear regulation of what each department should do. Fourth, the setting of rights and obligations must not only cover multiple aspects, it is not enough. It must be ensured that they can be implemented smoothly. Therefore, after analyzing the characteristics of each country, what our country needs most now is to actually issue a special law to solve special education problems on the basis of its

own policies and regulations, instead of those fractional payments. This can make special education have a strong support behind it, ensure that special groups can receive suitable education, and improve the quality of education on this basis.

5.1. Speeding up the process of China's special education legislation.

It can be seen from the analysis presented in the previous article that what our country needs most now is to actually issue a special law to solve special education problems on the basis of the existing policies and regulations, instead of the fragmentary funds. According to our country's own development background, although our early development was very slow, According to our own development background, although our early development is very slow, but in our own efforts, and finally, we have made great progress. It can also be seen from the previous comparative analysis that one of the most important factors leading to the slow development of special education in our country is some specific issues in the legislative link. Although there are many relevant policies in special education legislation, the quality is not high and the overall level still needs to be improved.

Through legal enforcement, we hope that special education can develop better. We can't just formulate some regulations and put them there, never use them, This is of no practical use,, and we formulate them without meaning. Therefore, once it is formulated, it must be strictly implemented to ensure that it can be used. It then stipulates what penalties will be imposed if some areas cannot do so, so as to ensure the quality of special education from the very beginning. Then we continue to learn from in practice. We all know that a law cannot be promulgated arbitrarily. It may require a lot of investment in manpower, material resources, time, capital, etc. After these trials, it will certainly have a very good development in the future.

5.2. Establish and improve the special education service support system in accordance with the law.

Every object of special education is unique. Therefore, for different objects, it is necessary to be able to educate different special students from various perspectives and the methods should be diversified. For example, if the body's defects are different, the corresponding treatment methods will be different, and the treatment personnel will also be different. In areas where special education is developed, there are personnel specializing in the education and rehabilitation of special children, and their systems for cultivating these relevant personnel are also very complete.

However, from 1850 to the present, so much time has passed. Our country still has not established a professional service system for special education. The professionals needed in each link are not in the same system. They are in each of their professional positions. If they are needed at the same time, it is very difficult and troublesome to bring them together. A very important part of the education of special children is rehabilitation. They are likely to gradually get better after receiving a good education, from not having the ability to live independently to being able to basically master some life skills. However, this kind of rehabilitation is different from medicine, so if you want to combine the two, you must establish a complete mechanism to train a group of such professionals. However, we can't do this only by thinking about it. We need the legal support to realize it.

5.3. Guarantee the rights of parents to participate and appeal.

In American special education, parents of children with disabilities can participate in relevant evaluation. Moreover, with the participation of parents and the increase of understanding of children, it can also develop well in the actual progress. But our country is mainly by the doctor to carry on the appraisal, the doctor's appraisal result has decided whether children belong to the category of special children. In the process of assessing the whole process, only the doctors has the final say, parents cannot participate in it. Therefore, in this way, parents do not have the right to speak, and doctors have the absolute right to speak. If there is any dissatisfaction with the assessment result, the result cannot be changed. It can only be defined by the doctor's diagnosis. Parents cannot protect their children's legitimate rights and interests. Therefore, this may lead to the unreasonable diagnosis of doctors, children miss the best treatment time, and bring many inconvenience to the future rehabilitation. Parents can only act as helpers, but cannot really participate in it. This aspect needs to be improved. In a word, when making legislation on special education in China, we should not only listen to the opinions of medical staff, but also listen to the opinions of parents of children. Parents will have a more comprehensive understanding of their children, and as guardians, they also have the right to ensure that their children receive good education. When identifying, the staff should pay attention to the information provided by parents about their children's daily life, such as what habits the children have and what they like to do. Through the understanding of these information, problems encountered in the follow-up work are continuous communication with parents, so as to give a reasonable, detailed and satisfactory result.

In the future reform of special education, we should pay attention to the overall integrity of the special

education law and provide more opportunities for people to participate in the protection of children in special education.⁴

With reference to so many experiences, China should learn more from their good aspects in the future special education legislation, and formulate laws and policies suitable according to our own actual situation. More importantly, parents should be more involved in children's evaluation. Parents' opinions are of great reference value, so although we are lack of specific funds for parents' participation, we hope to specify them later so that parents can also participate in the growth of children. In addition, our country should also establish relevant supervision institutions to monitor whether each department has really done their respective duties.

6. CONCLUSION

The origin of special education came from Europe and flourished in North America. The United States is supported by the world's top special education legislative system, advanced special education ideas as a supplement, and multi-democratic management methods for overall planning. This combination makes special education researchers and practitioners in various countries pay more attention and research. The US legislative system is called: the separation of powers. It is closely integrated with the social and political forces of the United States and the outbreak of the human rights and civil rights movements, and jointly promotes the improvement of American special education legislation. Driven by the awareness of human rights, the United States has continued to innovate in the practical operation of special education legislation. It has issued a number of laws and regulations on the protection of special children's education, and used practice to feed back the theory, deepen theoretical research, and further improve the theory. Then supplement the practice to form a very reasonable and optimized circulation system.

China's special education started late and its development speed is very slow. Regional development is uneven, leaving us with different degrees of quality and speed gaps with the United States and other educational powers. The existing legislative level of special education in our country is relatively low, relatively fragmented, lack of integration, poor operability, and imperfect supervision and enforcement agencies, which have hindered the development of special education in our country on multiple levels. Facing the increasingly complex and ever-changing types of children with disabilities in China's special education, China's education problems for children with special needs cannot be satisfied.

Therefore, we must study the advanced legislative programs of western developed countries, especially the achievements and advanced legislative experience of special education legislation in the United States, so as to effectively influence the legislation of special education in China.

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