

# China's Education Legal System



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## 1 Background of China's Education Legal System

In China's thousands of years of development history, the Chinese legal system, which is different from the "continental legal system" and the "common law system", has been formed. The Chinese legal system not only had an important impact on the development of ancient China, but also on the legislation of some countries in East Asia and Southeast Asia. After the defeat of several wars and economic decline in the middle and late nineteenth century, the Government of the Qing dynasty government began to reconstruct the legal system in the early twentieth century with the "continental law system" as a model. After the establishment of New China in 1949, the legislative model of the former Soviet Union also had a significant impact on China. In 1978, China began implementing the policy of reform and opening up, which greatly promoted the development of China's economy, society, and the rule of law. So far, China has formed a legal system with the Constitution as the commander, the law as the backbone, administrative regulations and local regulations as important components, and the Constitution, civil law and commercial law, administrative law, economic law, social law, criminal law, litigation and non-litigation procedural law and other legal departments.

At present, there are nearly 530,000 schools of all levels and types in China, with over 290 million students enrolled. The level of education popularization at all levels has reached or exceeded the average level of middle-income countries, with preschool education and compulsory education reaching the world average level of high-income countries, and higher education entering the stage of popularization. The average length of education for the working-age population is 10.9 years. 200,000

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dropouts from compulsory education all returned to school for education, which historically solved the long-standing problem of dropping out of school.<sup>1</sup>

In recent years, China has highlighted the priority of education development and put forward that education is a “national priority”. It has made remarkable progress in promoting the popularization of higher education, strengthening the construction of modern vocational education system, starting the construction of the Double First Class University Plan, deepening the reform of the examination and enrollment system, promoting the reform of education evaluation, and deepening the classified management of private education. Since the promulgation of China’s first education law, the Degree Regulations, in 1980, China has successively promulgated laws in the field of education, such as the Education Law, Teachers’ Law, Compulsory Education Law, Higher Education Law, Vocational Education Law, Private Education Promotion Law, and Family Education Promotion Law. In addition, the National People’s Congress is currently reviewing the “Preschool Education Law” and is expected to complete the legislative process in the near future. These educational legislations have greatly promoted the development of education.

## **2 Composition of China’s Education Legal System**

### ***2.1 China’s Education Administration System***

The Constitution, Education Law, and other education laws of the People’s Republic of China have made clear legal provisions for the education administrative system. The Constitution stipulates that the State Council leads and manages educational work, and local governments at or above the county level shall manage the education affairs within their respective administrative regions in accordance with the law. Article 14 of the Education Law stipulates: “The State Council and local people’s governments at all levels shall lead and manage education work based on the principle of hierarchical management and division of responsibilities. Secondary and lower education shall be managed by local people’s governments under the leadership of the State Council. Higher education shall be managed by the State Council and the people’s governments of provinces, autonomous regions, and municipalities directly under the Central Government”.

In accordance with the State Council’s institutional reform plan approved at the first session of the 11th National People’s Congress and the Notice of the State Council on Institutional Structure, the Ministry of Education was established as a component department of the Ministries of the People’s Republic of China. At present, there are 27 functional departments and bureaus of the Ministry of Education, including the General Office, Department of Policies and Regulations, Department

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<sup>1</sup> The Propaganda Department of the CPC Central Committee held a press conference on the results of education reform and development. <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/47673/49089/index.htm#1>.

of Development Planning, Department of Comprehensive Reforms, Department of Personnel, Department of Finance, Department of Basic Education, Department of Supervision of After-School Tutoring Institutions, Department of Vocational and Adult Education, Department of Higher Education, Office of National Education Inspection, Department of Minority Education, Department of Teacher Education, Department of Physical Health and Arts Education, etc.<sup>2</sup> The Ministry of Education has a total of 18 responsibilities, which mainly include: researching and formulating guidelines and policies for educational work, drafting laws and regulations on education, researching and proposing education reform and development strategies and the national education development plan, and overall management of education funds of the department, etc.<sup>3</sup> In addition, the Ministry of Education also has 32 directly affiliated units such as China National Academy of Education Sciences, National Academy of Education Administration, etc.<sup>4</sup>

Local education institutions are institutions where local people's governments at all levels organize, lead, and manage educational undertakings, mainly referring to local governments at all levels and their education administrative departments. Local education administrative departments are divided into three levels: province, city, and county, under the unified leadership of the government at the same level, and under the guidance of higher education administrative departments.

## ***2.2 The Sources of Education Law in China***

The education legal system in China consists of education laws, administrative regulations, and departmental regulations. With the development of the times and the need for education reform, since the promulgation of the National Medium and Long Term Education Reform and Development Plan Outline (2010–2020) in 2010, China has further supplemented and adjusted the existing education legal system. At this point, China has basically formed an education legal system with complete departments, sound systems, standardized content, and good results. More importantly, China's education legal system is based on China's basic national conditions, fully absorbing and drawing on international education and education legislation concepts and experiences to form an education legal system.

The specific sources of China's education legal system will be explained separately below.

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<sup>2</sup> [http://en.moe.gov.cn/about\\_moe/departments/](http://en.moe.gov.cn/about_moe/departments/).

<sup>3</sup> [http://en.moe.gov.cn/about\\_moe/what\\_we\\_do/](http://en.moe.gov.cn/about_moe/what_we_do/).

<sup>4</sup> [http://en.moe.gov.cn/about\\_moe/affiliated\\_institutions/](http://en.moe.gov.cn/about_moe/affiliated_institutions/).

### 2.2.1 Constitution

The Constitution of China stipulates the fundamental social, economic and political system of contemporary China, various basic principles, guidelines and policies, the basic rights and obligations of citizens, the composition, functions and powers, and responsibilities of major state organs, which involve the most fundamental and important aspects of all fields of social life. The Constitution is formulated and revised by the National People's Congress, the highest authority in China. The status of the Constitution determines that its formulation and revision procedures are extremely strict. The Constitution has the highest legal effect, and all laws, administrative regulations, and local regulations shall not conflict with the Constitution. In China, the National People's Congress supervises the implementation of the Constitution, the Standing Committee of the National People's Congress interprets and supervises the implementation of the Constitution, and holds accountable any violations of the Constitution.

In the Constitution, the specific provisions on education mainly include:

The basic principles for the development of education by the state are stipulated, namely: "The state develops socialist education and improves the scientific and cultural level of the people throughout the country. The state establishes various schools, popularizes primary and compulsory education, develops secondary education, vocational education, and higher education, and develops preschool education", etc. (Article 19); The state strengthens the construction of spiritual civilization by popularizing ideal education, moral education, cultural education, disciplinary education, and legal education, and by formulating and implementing various rules and conventions among people of different ranges in urban and rural areas (Article 24); The state trains young people, adolescents, and children to develop in an all-round way in morality, intelligence, physique, and other aspects (Article 46).

The right to education of citizens is stipulated, namely: "Citizens of the People's Republic of China have the right and obligation to receive education" (Article 46, paragraph 1).

The educational obligation of parents is stipulated, namely: "Parents have the obligation to raise and educate underage children" (Article 49, Paragraph 3).

The principles of national management education are stipulated, namely: the State Council "leads and manages education, science, culture, health, sports, and family planning work" (Article 89, Paragraph 7); "Local people's governments at or above the county level shall manage the education, culture, health, and sports undertakings of their respective administrative regions within the limits of their authority as prescribed by law..." (Article 107); "The organs of self-government of China's national autonomous areas independently administer local education, science, culture, public health and sports..." (Article 119).

### 2.2.2 Education Law

In the Chinese education legal system, the effectiveness of education laws is weaker than the Constitution. Education laws stipulate the basic national education system, which are the prerequisite and basis for the formulation of education administrative regulations, local education regulations, and departmental rules. At present, China has promulgated eight special education laws, including the Education Law, the Compulsory Education Law, the Higher Education Law, Regulations on Academic Degrees, the Vocational Education Law, the Teachers' Law, the Private Education Promotion Law, and the Law on Standard Spoken and Written Chinese Language. In addition to the above laws, China has also formulated laws closely related to education, such as the Law on the Promotion of Family Education, the Law on the Protection of Minors, and the Law on the Prevention of Juvenile Delinquency.

### 2.2.3 Education Administrative Regulations

Education administrative regulations refer to normative education documents formulated by the highest administrative organ of the country, the State Council, which have a legal status and effectiveness second only to the Constitution and laws. The decisions and orders issued by the State Council, which are normative, also belong to the sources of law. For example, the Regulations on Teacher Qualifications, the Regulations on School Health, the Regulations on School Physical Education, the Interim Measures for the Implementation of the Regulations of the People's Republic of China on Academic Degrees, and the Interim Provisions of the State Council on Studying Abroad at One's Own Expense. At present, the number of educational administrative regulations in China far exceeds the number of education laws formulated by the National People's Congress and its Standing Committee.

The administrative regulations formulated by the State Council shall not conflict with the Constitution and laws. Therefore, the Standing Committee of the National People's Congress has the power to revoke administrative regulations, decisions, and orders formulated by the State Council that contradict the Constitution and laws. According to the Provisional Regulations on the Procedure for Formulating Administrative Regulations issued by the General Office of the State Council, educational administrative regulations generally have three forms, namely regulations, orders, and rules. The comprehensive and systematic regulations on a certain aspect of educational administrative work are called "regulations", the regulations on a particular aspect of administrative work are called "orders", and the specific provisions for educational administrative work are called the "rules".

### 2.2.4 Local Education Regulations

Local education regulations are normative education legal documents formulated by certain local state power organs in accordance with the specific situation and

actual needs of education development in their respective administrative regions, which have legal effects within their respective administrative regions. According to the provisions of the Constitution and the Organization Law and Legislative Law of Local People's Congresses and Local People's Governments revised in 1986, the people's congresses and standing committees of provinces, autonomous regions, municipalities directly under the central government, cities where provincial people's governments are located, and larger cities approved by the State Council have the power to formulate local regulations. Local education regulations are effective only if they do not conflict with the Constitution, laws, and administrative regulations.

The "Regulations on the Prevention and Handling of Personal Injury Accidents among Primary and Secondary School Students in Beijing" passed at the 6th meeting of the 12th Standing Committee of the Beijing Municipal People's Congress belong to this type of regulation.

### **2.2.5 Education Regulations in China's National Autonomous Areas**

Regional ethnic autonomy is a fundamental political system in China. The people's congresses in China's national autonomous areas have the right to formulate regulations on autonomy and separate regulations on education in accordance with the political, economic and cultural characteristics of the local ethnic groups, but they shall not take effect until they are submitted to the standing committees of the national or provincial people's congresses for approval. Autonomous regulations are comprehensive regulations with a wide range of contents. The separate regulations on education are normative documents related to a certain aspect of educational affairs, generally using names such as "regulations", "orders", "alternative regulations", and "alternative measures". The regulations on ethnic autonomous education are only valid within the autonomous region. For example, on November 28, 2002, the 31st Meeting of the Standing Committee of the Ninth People's Congress of Xinjiang passed the "Several Provisions of the Xinjiang on the Implementation of the Teachers' Law of the PRC".

### **2.2.6 Rules of the Education Department**

The rules of the education department are administrative legal normative documents, which are normative educational legal documents formulated by the State Council of the People's Republic of China within the scope of authority. The matters stipulated in the departmental educational rules should belong to the implementation of laws or the administrative regulations, decisions and orders of the State Council. For example, the Measures for Handling Student Injury Accidents issued by the Ministry of Education are educational rules.

In the vertical structure of the education legal system, the principle of constitutional supremacy, the principle that education laws are superior to education regulations, the principle that education regulations are superior to education rules, and the principle that national education regulations are superior to local education regulations should be followed in determining the legal effect of laws and regulations.

## 2.3 *Main Education Laws*

### 2.3.1 **Education Law of the PRC<sup>5</sup>**

The Education Law is the most important law in the education legal system. The Education Law comprehensively regulates the nature, policies, and basic systems of education, the basic principles of educational activities, clarifies the basic norms of educational activities, and provides a legal basis for the formulation of other special education laws. It also lays the foundation for establishing an education legal system in line with China's national conditions. The formulation of the Education Law not only opened up a new stage of China's education legal system construction, but also has milestone significance in the history of education development. It marks the beginning of China's education development being fully integrated into the legal track.

The Education Law was formulated in 1995 and was revised three times in 2009, 2015, and 2021. Its content is very rich, with the characteristics of combining comprehensiveness and pertinence, standardization and guidance, principles and operability. As the Basic Law of Education, the Education Law not only comprehensively regulates and adjusts various educational relationships, but also highlights the prominent issues in educational reform and development at that time and makes targeted provisions; At the same time, forward-looking development directions have been proposed based on the trend of education development. The Education Law mainly formulates basic norms on major issues related to education as a whole, such as the status of education, educational policies, basic principles of education, basic systems, guarantee of educational investment and conditions, the legal status of schools, the relationship between education and society, external exchanges and cooperation in education, and legal responsibilities, providing a legislative basis for the formulation of other education laws and regulations, The specific issues related to various levels and types of education are formulated by other special education laws and education administrative regulations.

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<sup>5</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191385.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191385.html).

### 2.3.2 Compulsory Education Law of the PRC<sup>6</sup>

The compulsory education system is one of the important education systems in the country, which is of great significance for the development of citizens themselves. At the same time, compulsory education is also a fundamental project for cultivating qualified talents and improving the quality of the entire nation. Ensuring that school-age children and adolescents receive compulsory education is an important manifestation of the country's guarantee of citizens' equal right to education, and it is also an important responsibility of the government.

The Compulsory Education Law was enacted in 1986, which established the compulsory education system in the form of national laws and provided a clear legal guarantee and basis for the implementation of compulsory education; The implementation of the compulsory education system has established the concept that all people must accept compulsory education in accordance with the law, which is the beginning of truly moving towards the rule of law in education. The revised Compulsory Education Law in 2006 highlights the characteristics of compulsory education in the new era, with specific and clear legal norms, strong pertinence and operability, providing comprehensive legal protection for the implementation of compulsory education in the new era.

### 2.3.3 Teachers' Law of the PRC<sup>7</sup>

The Teachers' Law is a law formulated around the important subject of educational activities—teachers, and is also a very important law in the education legal system. The Teachers' Law was promulgated in 1993, before the Education Law, and was amended in 2009. The drafting of the Teachers' Law has been ongoing for 8 years. In the mid-1980s, China's reform and opening up continued to deepen, and economic development provided more opportunities for personal development. Due to the relatively lagging education reform and development at that time, the country's investment in education was insufficient, teacher salaries were low, and the instability of the teacher team had become a prominent issue affecting the quality of education and the development of the education industry. Solving the problem of teachers, improving their treatment and quality, and building a high-quality teaching team are urgent requirements for promoting education development, adapting to the needs of reform and opening up and the realization of socialist modernization. It has become an urgent task for education reform. With the development of national legal construction, ensuring the construction of the teaching staff in accordance with the law and establishing a targeted teacher system have become important tasks in educational legislation.

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<sup>6</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191391.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191391.html).

<sup>7</sup> <https://flk.npc.gov.cn/detail2.html?MmM5MDImZGQ2NzhiZjE3OTAxNjc4YmY2Yzc5OTA0Zml%3D>.



The main content of the Teachers' Law includes the rights and obligations of teachers, the qualifications and appointment of teachers, the cultivation and training of teachers, the assessment and treatment of teachers, rewards for teachers, and related legal responsibilities.

#### **2.3.4 Vocational Education Law of the PRC<sup>8</sup>**

The Vocational Education Law was formulated in 1996 and revised in 2022, a special law specifically regulating vocational education. Vocational education is an important component of Chinese education. Vocational education, as a form of education to cultivate various practical and skilled talents, is of great significance for China's economic development and the improvement of labor quality. The Vocational Education Law stipulates that vocational education is a type of education that holds equal importance to general education, and the state promotes the coordinated development of vocational education and general education. The Vocational Education Law also stipulates the basic principles of vocational school education and training, the system of educational certificates, training certificates, and vocational qualification certificates, the management system of vocational education, the level of vocational school education, the investment and guarantee conditions of vocational education funds, and the responsibility of enterprises for the development of vocational education.

#### **2.3.5 Higher Education Law of the PRC<sup>9</sup>**

The Higher Education Law was formulated in 1998 and revised in 2015. It is a special law that comprehensively regulates higher education. Higher education is an important component of Chinese education and the most important stage for cultivating high-level specialized talents. Standardizing higher education in accordance with the law is of great significance in ensuring the development of higher education and promoting higher education reform in accordance with the law. The Higher Education Law, based on the basic principles of the Education Law and the characteristics of higher education, stipulates the tasks, training objectives, management system, educational forms, levels, years of study, enrollment methods, admission conditions, academic qualifications and degree systems of higher education. It also stipulates the basic conditions and procedures for the establishment of higher education institutions, as well as the internal management system and autonomy of higher education institutions, the rights and obligations of teachers and students, as well as the guarantee of funding and conditions for higher education.

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<sup>8</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191390.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191390.html).

<sup>9</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191386.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191386.html).

### **2.3.6 Private Education Promotion Law of the PRC<sup>10</sup>**

The Private Education Promotion Law was formulated in 2002 and revised in 2016. It is a law in the education legal system that specifically regulates private education. Since the reform and opening up, private education in China has developed rapidly, playing a positive role in promoting the reform of the school system, promoting education development, increasing citizens' educational opportunities, and ensuring citizens' right to choose education.

The "Private Education Promotion Law" first clarifies the scope of application of private education in the "General Provisions": "Social organizations or individuals outside of state institutions who use non-state financial funds to organize activities of schools and other educational institutions for society shall be subject to this law." The main characteristics of private education, such as the main body of education, the sources of funds, and the enrollment targets, have been clarified. At the same time, the public welfare nature of private education has been clarified: "Private education belongs to public welfare undertakings and is an integral part of socialist education." The revised "Private Education Promotion Law" in 2016 stipulates the classification management of non-profit and for-profit private schools, providing a guarantee for the standardized development of private education.

### **2.3.7 Regulations on Academic Degrees of the PRC<sup>11</sup>**

The Regulations on Academic Degrees were formulated in 1980 and amended in 2004 to promote the growth of Chinese scientific professionals, the improvement of academic levels in various disciplines, and the development of education and science, and meet the needs of modernization construction. The degree is divided into three levels: bachelor's, master's, and doctoral. Foreign students studying in China and foreign scholars engaged in research work in China may apply for degrees from the degree awarding unit. For those who have the academic level specified in this regulation, corresponding degrees shall be awarded.

### **2.3.8 Law on the Standard Spoken and Written Chinese Language of the PRC<sup>12</sup>**

The Law on the Standard Spoken and Written Chinese Language was formulated in 2000 in accordance with the Constitution in order to promote the normalization, standardization and healthy development of the common language of the state, make the common language of the state play a better role in social life, and promote

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<sup>10</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191387.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191387.html).

<sup>11</sup> Regulations on Academic Degrees of the People's Republic of China [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191392.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191392.html).

<sup>12</sup> [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191388.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191388.html).

economic and cultural exchanges among ethnic groups and regions. This law establishes the legal status of Putonghua and standardises Chinese characters as the “national common language and writing system”, which mainly includes the use, management and supervision of the national common language and writing system.

## **2.4 Judicial Precedents**

China belongs to the continental legal system, so legislation holds the most core and important position in the education legal system. Compared to countries with case law systems, judicial precedents not only lack legal validity in China's judicial practice, but also appear relatively weak in China's educational law research. However, with the trend of mutual learning and integration between the continental legal system and the case law system in recent years, the Chinese education law community has increasingly attached importance to the research on educational judicial precedents. This research not only promotes the development of the theoretical system of education law itself, but also promotes education legislation and justice. China's Supreme People's Court has also successively issued some guiding cases in recent years, requiring that “people's courts at all levels should refer to similar cases when trying them” (Ma 2016).

China's education law also attaches great importance to case study. For example, Professor Zhan Zhongle from Peking University once presided over the selection and research of the “Top Ten Administrative Dispute Cases for Promoting the Rule of Law in Education”, which effectively promoted the improvement of the theoretical system of education law and the relevant legal regulations of education legislation. One of the most representative cases is Liu Yanwen v. Peking University. In 1999, Liu Yanwen, a doctoral student at Peking University, sued Peking University for not obtaining a doctoral degree certificate and graduation certificate. The debate in this case involves whether the internal affairs of higher education institutions can be litigated, and whether the refusal of Peking University to issue Liu Yanwen's degree certificate and graduation certificate is legitimate, etc. After this case, it has to some extent promoted the process of improving the internal governance system of Chinese universities, and there has been a clearer division of academic and administrative power in universities.

## **3 Main Legal Developments**

Since 2011, the center of China's education legislation has gradually shifted from legislation to revision and interpretation, in order to better adapt to the development of the times and meet the needs of the people (Shen 2018). This is mainly reflected in significant revisions to existing education laws such as the Compulsory Education Law, Education Law, Higher Education Law, Vocational Education Law, and

Private Education Promotion Law. At the same time, the revision of laws such as the Teachers' Law and the Degree Regulations is also being promoted through the legislative process. Furthermore, it is worth noting that educational judicial precedents have significantly impacted education legislation and justice.

### ***3.1 Revision of the Compulsory Education Law***

China officially formulated the Compulsory Education Law in 1986, which significantly promoted the development of compulsory education in China. However, with the realization of China's "two basic" goals (basically popularizing nine-year compulsory education and basically eliminating illiteracy among Young adult people) at the beginning of this century, compulsory education has shifted from a low-level popularization focusing on school opportunities to a high-level popularization stage that improves education quality and promotes balanced development. Compulsory education is facing new development opportunities and many new problems and challenges. Therefore, revising the Compulsory Education Law has become a hot topic of concern for all sectors of society (Sun 2006). On June 29, 2006, the 22nd Session of the Standing Committee of the Tenth National People's Congress adopted the newly revised the Compulsory Education Law of the PRC.

The revision of the Compulsory Education Law mainly focuses on the following aspects: first, it emphasizes the public welfare, unity and mandatory principles of compulsory education, and exempts students from tuition and miscellaneous fees at the compulsory educational stage; The second is to promote the balanced development of compulsory education, solve the problem of unbalanced development between the east and the west, between urban and rural areas and between schools in the process of China's compulsory education development, and give students at the compulsory educational stage fair learning opportunities and conditions; The third is to clarify the mechanism for ensuring the funding of compulsory education by governments at all levels, stipulate that compulsory education should be included in the national financial guarantee, shared by the State Council and local people's governments at all levels, and implement a new mechanism for ensuring funding through provincial coordination; The fourth is to establish a management system for compulsory education, which is led by the State Council, planned by the people's governments of provinces, autonomous regions, and municipalities directly under the central government, and mainly managed by county-level people's governments; The fifth is to propose the concept of quality education, requiring schools to comprehensively promote the comprehensive development of students; The Sixth is to make new regulations on improving the status and treatment of teachers in the compulsory educational stage, and made it clear that the average salary of teachers should not be lower than the average salary of local civil servants. The revision of the Compulsory Education Law this time significantly reflects the trend of China's compulsory education from "having access to education" to "having access to good education".

### 3.2 *Education Law Package Revision*

The Education Law Package Revision is an innovation in China's education legislation. On July 27, 2012, the Ministry of Education submitted the "Revised Proposal for the Education Law Package (Draft)" to the State Council for review, requesting that the revised proposals for the Education Law, Higher Education Law, and the Private Education Promotion Law be submitted to the National People's Congress for revision. On December 26, 2015, the Standing Committee of the National People's Congress passed a decision on revising the Education Law and the Higher Education Law. On November 7, 2016, the National People's Congress passed a decision on revising the "Private Education Promotion Law". The comprehensive revision of education laws has played a significant role in accelerating the process of education legislation and improving its efficiency. In addition, the Education Law was once again revised by the National People's Congress on April 29, 2021.

The revision of the Education Law first reflects the two major concepts of improving quality and promoting fairness. It puts forward that "the state guarantees the priority development of education", and pays special attention to protecting the right of minority students and vulnerable groups to receive education; Secondly, the concepts of building a "modern national education system", "lifelong education system", and "modernization of education" were proposed, which adapted to the new trend of education development and improved China's education system; Once again, the Education Law has redefined the public welfare nature of education, removing the previous law's provision that "no organization or individual may establish schools or other educational institutions for profit." Finally, the revision of the Education Law has strengthened the provisions on legal responsibility in education, providing detailed legal responsibilities for behaviors such as cheating in national exams.

The revision of the Higher Education Law mainly focuses on the following contents: first, improving the policies and tasks of higher education, stipulating that higher education must serve the people and be combined with productive labor, and emphasizing that the task of higher education is to cultivate high-level professionals with a sense of social responsibility, innovative spirit and practical ability; The second is to strengthen the role of academic committees in higher education institutions and enhance their status and role in universities; The third is to decentralize the examination and approval power of higher education, and delegate the licensing power for establishing higher education institutions and other higher education institutions that implement education below the junior college level to the provincial people's government; The fourth is to improve the investment mechanism for higher education, clarify that higher education implements a mechanism that focuses on the investment of the organizers, the educated share the training costs reasonably, and higher education institutions raise funds through multiple channels.

The revision of the "Private Education Promotion Law" mainly focuses on the following contents: firstly, implementing classified management of private schools, dividing them into two categories: non-profit private schools and for-profit private schools. The organizers of non-profit private schools shall not receive educational

benefits, while the organizers of profit private schools can obtain educational benefits. The remaining balance of non-profit private schools is used for educational purposes, while the remaining balance of profit private schools shall be handled in accordance with relevant laws and administrative regulations such as the Company Law. The second is to increase support measures for private schools. It is specially stipulated that non-profit private schools can also adopt supportive measures such as government subsidies, fund rewards, donation incentives, etc. Article 47 of the new “Private Education Promotion Law” stipulates that private schools enjoy tax preferential policies stipulated by the state: among them, non-profit private schools enjoy the same tax preferential policies as public schools to promote the development of non-profit private schools.

### ***3.3 Revision of the Vocational Education Law***

On April 20, 2022, the Standing Committee of the National People’s Congress passed the revision of the Vocational Education Law. This revision mainly focuses on the following aspects: firstly, it emphasizes the equal importance of vocational education and general education. The new law stipulates that vocational education is a type of education with equal importance to general education, and vocational school students have equal opportunities with ordinary school students at the same level in terms of enrollment, employment, career development, etc. Discrimination policies are prohibited (Zhou and Anlei 2017). The second is to promote the integration of vocational education and the general education system. The new law focuses on establishing and improving a modern vocational education system that serves lifelong learning for the whole nation. It stipulates that higher vocational school education is implemented by higher vocational schools and ordinary institutions of higher learning at the junior college, undergraduate and higher education levels, and supports vocational enlightenment, vocational cognition, vocational experience, etc. in ordinary primary and secondary schools. The third is to clarify the important role of enterprises in vocational education. The new law stipulates that enterprises should play an important role in running schools, promote their deep participation in vocational education, and encourage them to hold high-quality vocational education.

## **4 Typical Cases of Educational Disputes**

### ***4.1 Liu Yanwen v. Peking University***

The plaintiff Liu Yanwen is a doctoral student majoring in Electronic, Ionic, and Vacuum Physics in the Department of Radio Electronics, Peking University, Grade 92. On April 27, 1994, Liu Yanwen passed the written exam arranged by Peking

University, and on May 10 of that year, he passed the comprehensive doctoral examination with a good score. Afterwards, Liu Yanwen entered the preparation stage for his doctoral thesis defense. On December 22, 1995, Liu Yanwen filed an application for thesis defense and submitted his doctoral dissertation "Research on Photocathodes with High Current Density Driven by Ultrashort Pulse Laser" to the university. The relevant departments of the university arranged and hired experts of the discipline to review and peer review the thesis. The peer reviewers believe that the paper meets the level of a doctoral thesis and agree to defend it; The reviewer's opinion is "agree to arrange the thesis defense". In 1996, the overall opinion of academic review and peer review of Peking University paper was "reaching the level of a doctoral thesis and can be defended." On January 10, 1996, the thesis defense committee of Liu Yanwen's department held a thesis defense meeting. After the defense, Liu Yanwen passed the defense with a total of 7 votes. The thesis defense committee made a decision to "grant Liu Yanwen a doctoral degree and recommend that Liu Yanwen make necessary revisions to the thesis." On January 19, 1996, the degree evaluation committee of Liu Yanwen's department discussed the doctoral degree. 13 members were supposed to be present, and 13 members were actually present. 12 people agreed to grant Liu Yanwen a doctoral degree, and 1 person did not agree to grant Liu Yanwen a doctoral degree. The voting result was that it was recommended to grant Liu Yanwen a doctoral degree. On January 24, 1996, the Academic Degrees Evaluation Committee of Peking University held its 41st meeting. Among the 21 members who were supposed to attend, 16 were actually present. There were 6 who agreed to confer the degree of Dr. Liu Yanwen, 7 who did not agree to confer the degree of Dr. Liu Yanwen, and 3 who abstained. The voting result was that the Academic Degrees Evaluation Committee of Peking University did not approve the conferment of the degree of Dr. Liu Yanwen. Afterwards, Peking University awarded Liu Yanwen a graduate certificate. Liu Yanwen filed a lawsuit with the court, requesting the court to order the defendant Peking University to issue him with a doctoral degree certificate. After trial, the court held that after Liu Yanwen obtained the status of pursuing a doctoral degree student status at Peking University as a graduate student in September 1992, he studied the prescribed courses according to the training plan and requirements formulated by Peking University, took the examinations of the courses and passed the examination, and also completed and passed the graduation thesis defense, and passed the moral and physical examination. In accordance with Article 33 of the former National Education Commission's "Regulations on the Management of Graduate Student Status", Liu Yanwen meets the graduation qualifications for obtaining a doctoral degree, and Peking University shall issue him with a doctoral degree certificate. The academic degree committee of the university did not listen to Liu Yanwen's defense opinions before making a decision not to approve the award of Dr. Liu Yanwen's degree; After making the decision, it was not actually delivered to Liu Yanwen, which affected Liu Yanwen's exercise of the right to appeal or file a lawsuit with relevant departments. The decision should be revoked. Peking University did not issue a doctoral diploma to Liu Yanwen due to its doctoral degree not being approved by the university's degree evaluation committee, and instead issued a graduation certificate, which had no legal basis, and the court

did not support it. Based on this, the court ruled to revoke the decision made by the Peking University Degree Evaluation Committee not to grant Dr. Liu Yanwen's degree, and ordered the Peking University Degree Evaluation Committee to review and make a new decision on whether to approve the granting of Dr. Liu Yanwen's degree within 3 months after the judgment came into effect.

Peking University is dissatisfied with the judgment and has filed an appeal. The First Intermediate People's Court of Beijing Municipality ruled to revoke the judgment of the Haidian District People's Court and remand it for retrial. In December 2000, the Haidian District People's Court rejected Liu Yanwen's lawsuit request on the grounds of "exceeding the statute of limitations".

The Liu Yanwen case has attracted great attention in China's judicial practice and legal theory research. The focus of this case mainly lies in whether the judiciary can intervene in the internal affairs of the university, and what the basis and standards for intervening in the internal affairs of the university are. After the Liu Yanwen case, there have been several lawsuits against universities in China due to reasons such as student dismissal, and failure to obtain graduation and degree certificates. Among these cases, the courts in China basically take the form of review, that is, whether the university meets the relevant requirements of Procedural justice when dealing with relevant affairs, and whether there is obvious unfairness to conduct judicial review. In judging purely academic disputes, Chinese courts still respect the basic principles of university autonomy and Academic freedom and do not intervene in principle.

## 4.2 *Qi Yuling v. Chen Xiaoqi*

In 1990, Qi Yuling and Chen Xiaoqi were junior high school students at the 8th Middle School in Tengzhou City, Shandong Province, and both participated in the preliminary examination of the secondary technical school. Chen Xiaoqi failed the preliminary examination and lost her qualification to continue taking the unified admission exam. After passing the preliminary examination, Qi Yuling also exceeded the admission score line for commissioned trainees in the unified enrollment examination that year. Shandong Jining Commercial School issued an admission notice to Qi Yuling, handed over by Tengzhou No. 8 Middle School. Chen Xiaoqi took Qi Yuling's admission letter from Tengzhou No. 8 Middle School and, under the planning of her father Chen Kezheng, used improper means to study at Jining Business School under Qi Yuling's name until graduation. After graduation, Chen Xiaoqi still used Qi Yuling's name and worked at Bank of China Tengzhou Branch. Qi Yuling found that Chen Xiaoqi was taking her name, and filed a civil lawsuit with the Intermediate People's Court of Zaozhuang City, Shandong Province.

Due to Chen Xiaoqi's infringement of Qi Yuling's right to name and education, Qi Yuling did not receive higher education and had to undergo further studies. Therefore, according to Article 46 of the Constitution and the reply of the Supreme People's



Court, the High People's Court of Shandong Province determined that Chen Xiaoqi had violated Qi Yuling's right to education under the Constitution. Thus, it was ordered that Chen Xiaoqi and others, as well as the unit, bear corresponding civil legal responsibilities.

The "Qi Yuling Case" is known as the "First Judicial Case of the Chinese Constitution", which is the first judicial case in which a Chinese court has made judgments based on the Constitution in a civil case. It is particularly noteworthy that when the Education Law was revised in 2021, it added the legal responsibility and remedies for "impersonation of enrollment", further improving the scope and procedures for protecting citizens' right to education.

### ***4.3 Meng Mu Tang Incident***

In September 2004, the full-time private school "Meng Mu Tang" was opened in Songjiang, Shanghai. The teaching content mainly focused on the reading of scriptures, such as "The Book of Changes", "Tao Te Ching", "The Analects of Confucius", and other traditional Chinese classics; English starts from A Midsummer Night's Dream; Mathematics is reorganized and arranged by external teachers based on the concept of scripture reading education; Physical education classes mainly focus on self-cultivation exercises such as yoga and Tai Chi. On July 17, 2006, the Education Bureau of Songjiang District, Shanghai issued a notice, pointing out that "Mengmu Hall" is an illegal educational institution, engaged in illegal educational activities, and should immediately stop illegal acts. On the 24th, a spokesperson for the Shanghai Municipal Education Commission explained three main reasons: the school has not been approved by the education administrative department and has not obtained a school license; The requirement of "reading classics education" is not in line with the multi-disciplinary and comprehensive development of compulsory education, which violates multiple provisions of the Compulsory Education Law; Unauthorized collection of high tuition fees without approval from the pricing department. It is also illegal for parents not to send their school-age children to educational institutions approved by the state for compulsory education in accordance with the regulations.

This incident has attracted great attention from the education and legal sectors, and has been selected by relevant institutions as one of the top ten constitutional examples in China in 2006. The focus of this case is whether the guardian of a compulsory education child can choose a form of education outside of school for the child based on the right to family education. According to the relevant provisions of the Compulsory Education Law, compulsory education is compulsory in China, that is, the parents or other legal guardians of compulsory school-age children and adolescents should ensure that they enter school on time and complete compulsory education according to law. At the same time, schools that carry out compulsory education must comply with the educational standards set by the state. The Education Law also stipulates that the establishment, change, and termination of schools and other educational institutions shall go through the procedures of examination, approval, registration, or filing

in accordance with relevant national regulations. The Private Education Promotion Law of China provides legal protection for the legal status of private schools and training institutions, but their operation must comply with relevant registration and approval procedures. In this case, Meng Mu Tang did not have the corresponding educational qualifications without the review and approval of relevant institutions. Meanwhile, China's Compulsory Education Law has not yet allowed home education for children of compulsory education age. However, with the popularization of compulsory education in China, there is still some debate in the academic community on whether legislation can allow compulsory education for school-age children and adolescents to receive home education.

## **5 Trends in China's Education Legal System**

As mentioned earlier, China's education legal system has been basically established. However, China's social and economic development is developing at an unprecedented pace, which has forced education legislation to face several new problems and tasks. At the same time, we should also recognize the guiding role of educational legislation in the development of education, view the development of education from a forward-looking perspective, and predict the future development trend of educational legislation. In the future, China's education legal system may exhibit the following development trends in terms of concept, form, and content:

### ***5.1 Codification Trend***

In China, the trend of codifying education laws is directly related to the overall trend of education legislation. On May 28, 2020, the National People's Congress adopted the Civil Code. The successful formulation of the Civil code has drawn further attention in the legal field. Can codification be adopted in other legislative fields? In 2017, scholars in China proposed the idea of formulating the Education Code and pointed out that it would be a huge, complex, and highly challenging task (Sun and Ma 2017). In 2021, the National People's Congress included the Education Code, the Administrative Code, and the Environmental Code in the country's legislative plan. On the one hand, the codification of China's education law is due to the fact that there are still some gaps in the existing education legislation. However, filling the gap in education legislation in the form of existing separate education legislation may be a lengthy process. On the other hand, the codification of education law can effectively solve the problem of systematic logic and legislative conflicts between current education legislation, thereby promoting the standardization, logicity, and applicability of the education legal system. The compilation work of improving the Education Code is not a simple process of compiling existing education laws and regulations, but a process of following the legislative purpose of the new Education

Code, based on the legislative concept of the new Education Code, adopting a new legislative model of the Education Code, following the legislative logic of the new Education Code, constructing a new legislative framework of the Education Code, and filling in the legislative content of the new Education Code. The codification of education law and the study of education law are interrelated, interdependent, and mutually reinforcing. The process of codification of education law may promote the transformation of basic concepts, system frameworks, and even research paradigms in education law, providing a new space for the development of education law (Ma 2020).

## **5.2 *Fairness Trends***

Education equity is an important means to prevent the intergenerational transmission of poverty, reflecting the value pursuit of social fairness and justice. At present, the right to education of Chinese citizens has been basically protected. However, how to ensure that citizens of different social classes, ethnic groups, and regions can promote their maximum development through education, and provide equal opportunities and conditions for children from different family backgrounds to receive education, especially to promote the opportunity for children from economically disadvantaged families to change their social and economic status through education, It is a particularly important focus for future education legislation. But as Edgar Bodenheimer pointed out: “Justice has a Protean face, which is changeable and can take on different shapes at any time and have very different faces (Bodenheimer 1999).” From different educational subjects or different social cultures, we may have different interpretations of fairness. For example, China's education legislation prohibits the establishment of key schools and key classes in the compulsory educational stage. Is there any contradiction between this provision and the cultivation of innovative top talents? And what kind of impact will this contradiction have on educational equity? However, in any case, educational fairness plays an important role in China's education legislation in the future.

## **5.3 *High Quality Trends***

As mentioned earlier, the Chinese people's demand for education has shifted from “being able to attend school” to “being able to study well”, and their demand for educational quality is increasing day by day. This demand requires education legislation to make corresponding adjustments to the original legislative contents such as the system and mechanisms of education management, the allocation and use of education funds, the cultivation and construction of teaching staff, and the evaluation and monitoring of learning achievements, so as to meet the needs of education reform

and development. This high-quality development is guided by the people's satisfaction with the demand for high-quality education, continuously improving the degree and level of high-quality education development, shifting from scale expansion to structural upgrading, and from extension-based development to connotation-based development, achieving a more fair, balanced, coordinated, comprehensive, innovative, high-quality, sustainable, and safer development of education (Haimin and Hongjun 2021). For example, China's education legislation still adopts a prohibition on "home education" at the compulsory educational stage, which is based on the background that China's compulsory education has just been popularized. However, with the development of education, people, for example, have diversified demands for education. How to respond these diversified educational needs in education development and legislation? Education legislation must focus on high-quality education, enhance the happiness index of the people through the high-quality development of education, and promote the comprehensive development of the country's politics, economy, technology, culture and other fields.

#### ***5.4 Procedural Trends***

In the past, China's education legislation was often referred to as "soft law" by researchers in the legal field. The key reason was that the previous education legislation was often declaratory legislation, with poor implementation and low illegal costs, which resulted in many cases in which the relevant education legal subjects people intentionally violated the education legislation, but it was difficult to hold them legally responsible based on education legislation. The lack of practice in judicial disputes and conflicts of interest in "soft law" results in a lack of accuracy in the assumed behavior patterns and legal responsibilities of educational law (Wang 2019). Therefore, how to improve the implementation of education legislation, increase the procedural provisions of education legislation, and enable the substantive rights of relevant legal subjects to be protected in a procedural way is the trend that China's education legislation needs to pay attention to in the future. In fact, from the revision of the Compulsory Education Law in 2006 to the revision of the Education Law in 2021, this trend of emphasizing procedural legislation has been reflected, and it is becoming increasingly evident in education legislation. Education legislation has gradually "grown teeth", increasing the cost of illegality, thereby enhancing the authority and enforcement of education legislation, and more fully exerting the various functions and roles of education law.

## 5.5 *Digital Trends*

British scholars Anthony Seldon and Oladimeji Abidoye proposed in their book “The Fourth Education Revolution” that personalized education, with artificial intelligence, augmented reality, and virtual reality as the main contents, constituted the fourth education revolution (Anthony and Abidoye 2019). The fourth educational revolution may have disruptive changes in our educational concepts, content, facilities, methods, and evaluation. It is particularly noteworthy that this digital trend may play a greater role in promoting educational equity. China has begun to attempt to use distance education to transmit some high-quality educational resources to remote and poorly educated areas. The COVID-19, which began at the end of 2019, accelerated the arrival of this transformation to a certain extent. During the epidemic, Chinese schools used online education to teach students, which not only gave play to the advantages of using digital education to disseminate high-quality educational resources, but also emerged teaching obstacles caused by personnel quality and hardware conditions. However, in any case, education legislation must give sufficient attention, anticipate the impact of information technologies such as artificial intelligence on education in advance, and provide necessary guidance and regulation.

## 6 Conclusion

For nearly two hundred years since the failure of the Opium War in the mid-nineteenth century, China has been searching for a development path that is suitable for China's national conditions and in line with the actual situation. Among them, prioritizing the development of education, making it the engine that leads the development of the country and society, promotes all-round progress in politics, economy, technology, culture, and other fields, and enhances people's rights and happiness, is an important experience. Since China implemented reform and opening up in the late 1970s, it has always been the goal of China's education rule of law to guide, promote and guarantee the development of education through education legislation, and safeguard citizens' basic rights to equal access to high-quality education.

As the world's largest developing country, having a large population and insufficient economic development are the basic national conditions of China. The contradiction between the growing need for a better life for the people and insufficient development has become the main contradiction in Chinese society. This determines that China's education legislation must be based on China's basic national conditions, fully absorb and draw on the relevant experience of international education development and education legislation, and form a model of education rule of law construction with Chinese characteristics. However, compared to the rapid development of education in China, the legal system of education in China still needs to be improved as soon as possible. The most prominent issue in China's education legal system currently is that there are still many legislative gaps in the horizontal

structure, and the supporting implementation system or subordinate support system for each law in the vertical structure still needs to be improved (Qin and Kunpeng 2016). In order to meet the above needs, research on educational law should critically inherit traditional research methods and draw on advanced experience from different disciplines and theories, so that the research on the positioning of educational law can accurately reveal the changes in the external environment of educational law, deeply understand the interdisciplinary nature of educational law, and scientifically predict the future development direction of educational law (Lao 2022). In this process, how to better play the fundamental, stable, and long-term guarantee role of the rule of law, promote education reform and development through rule of law thinking and methods, comprehensively improve the level of rule of law in education, enhance citizens' awareness of the rule of law, promote understanding and exchange between countries with different cultural backgrounds, and jointly create harmony, happiness, and development for humanity, is a problem that should be paid attention to in the future construction of China's education rule of law system, It should also be a concern for the development of the rule of law in international education.

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