

A Comparative Study on Disability Laws of China and the USA

**Commissioned by
UNICEF Office in the P.R. CHINA**

**Report Prepared
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 Published by
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Section I

Introduction

During the Spring of 2001 this report's author met with Mr. Wang Daming, Program Officer for the Child Protection Section of the United Nations Children's Fund (UNICEF) Office in Beijing to discuss the practicality and merits of comparing disability laws of the Peoples' Republic of China (PRC) with disability laws of the United States of America (USA). In numerous subsequent meetings with Mr. Wang and his supervisor, Mr. Masahiro Ono, Project Officer for the Family and Child Welfare Section, the need for such a comparison was clarified and endorsed. In consultation with Mr. Wang, this report's author selected Mr. Huang Bolin, a professor from the Beijing Language and Cultural University, to research and translate Chinese laws that related to disabilities.

On May 17, 2001 this report's author was invited to a meeting held at the UNICEF office with Mr. Ono, Mr. Wang and representatives of the Chinese Disabled Persons' Federation (CDPF). Mr. Huang Bolin and members of the UNICEF staff were also present at this meeting. Ms. Chen Jianping of the China Disabled Persons' Federation, China Fund for the Handicapped, Department of International Affairs, Liaison Division, discussed the role of the Federation in disability laws and implementation. Ms. Chen answered questions addressed to her by the UNICEF staff and this report's author. During the meeting the CDPF representatives also distributed a 320-page text entitled, "The Legal Knowledge Handbook on Rights of the People with Disabilities." The Handbook was written in Chinese, but pages 1 through 14 contained 158 questions written in English. The questions pertained to Chinese law and informed the reader where to look in the Handbook for the answer (which was written in Chinese.) Several of the laws related to disabilities.

At a follow-up meeting on May 23, 2001 in the UNICEF Office, Mr. Wang, Mr. Ono and this report's author discussed the merits of using selected questions from the Handbook published and distributed by the CDPF—questions that relate to disability laws in China—to create a document which can allow for the comparison of PRC and USA disability laws. It was agreed that the format of the CDPF Handbook afforded an excellent opportunity to concisely compare disability laws between the nations.

Since many of the questions translated into English in the Handbook do not relate directly to disabilities, this report's author selected 34 questions from the Handbook's 158 questions that he found to be generic to disabilities. These English translations questions were selected with two purposes in mind: 1) Find out what is the answer regarding Chinese Law on disabilities as translated from

Chinese and 2) Compare the PRC Law with the USA Disability Law answer on the same question. Questions were selected according to the following criteria:

1. In the judgment of the report's writer, the (provided Chinese into English translation) questions in the Handbook appeared to be of interest to Americans who would like to have a better understanding of Chinese disability laws.
2. Obtaining answers to the selected questions afforded this report's author with an opportunity to offer insightful information to Chinese colleagues in the disability profession who would want to gain a better understanding of USA disability laws.
3. The report's author wanted to assist the UNICEF staff in offering technical information that could be shared with the China Disabled Persons' Federation (CDPF) and other agencies in China that are interested in providing improved services and programs for people with disabilities.

This report's author returned to the United States on June 1, 2001 to begin researching USA disability laws and regulations. Meanwhile, Mr. Huang Bolin's task was to continue to translate the Chinese answers to questions into English. The agreement was that Mr. Huang Bolin would complete the translations and he would e-mail them to the report's author. When this report was officially authorized on May 17, 2001 the entire project was to have been completed by June 22, 2001. Unexpectedly, the translations of the Chinese language answers provided in the Handbook took an extra amount of time to complete and the report's deadline was extended to August 1, 2001.

In collecting research to provide answers to the selected questions posed by the Handbook, this report's author consulted with several authorities in the disability profession who freely provided their time and resources to assist in locating information that described USA disability laws. These authorities are:

- Mr. Phil Magalong, Rehabilitation Counselor, California Department of Rehabilitation, San Francisco Regional Office
- Ms. Anita Aarron, Executive Director, Rose Resnick Lighthouse for the Blind, San Francisco, CA
- Ms. Carol Bradley, Executive Director, Independent Living Resource Center, San Francisco CA
- Ms. Ruth Walker, Collaborative Specialist, California Department of Rehabilitation, State Administrative Offices, Sacramento, CA
- Nancy Lim-Yee, Psychiatric Social Worker, Chinatown Child Development Center, San Francisco, CA and Chairperson of Protection and Advocacy, Inc.
- Paul Johnson, Chairperson of Disabled Students Programs and Services, City College of San Francisco, San Francisco, California

A number of web sites also proved to be of help in obtaining valuable information:

<http://www.google.com>

<http://www.members.aol.com/disabilityparty/ImportantLinks.html>

<http://www.disabilityworld.org>

<http://www.usdoj.gov/crt/ada/publicat.htm>

Additionally, Mr. Luong Tran, Mr. Almario Bonifacio, and Mr. Hongbin Li provided valuable technical and electronic retrieval assistance.

What follows is the scope and intent of this project as it was submitted as a proposal by the author on April 25, 2001.

Comparative Study on the Disability Laws of China and the USA Proposal

Approved May18, 2001

Purpose

The purpose of this proposal is to create a wide-ranging and in depth document that will assist the People's Republic of China in comparing and contrasting its exiting National disability laws protecting adults and children with disabilities, with the disability laws of the USA.

Background

Over the past ten years important and precedent-setting National laws have been implemented to protect the rights of adults and children in P.R. China. These laws are of particular significance when considering the rights of children to an education and to all people with disabilities. On December 28, 1990 the Law of the People's Republic of China on the Protection of Disabled Persons was adopted at the 17th Meeting of the Standing Committee at the Seventh National People's Congress and was promulgated on May 15, 1991. According to Article 1 of this Law, "This Law is formulated in accordance with the Constitution for the purpose of protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal and full participation in social life and their share of the material and cultural wealth in society." (Chapter 1, General Provisions).

Regarding protecting the rights of school children with disabilities, laws have been created in P.R. China. These laws are of greatest importance when viewing children's rights to an education. On August 23, 1994 The State Council of China promulgated Degree No. 161: "Regulations on the Education of Persons with Disabilities." According to Article 1, "These Regulations are formulated in accordance with the Law of the People's Republic of China on the Protection of Disabled Persons and laws concerning education, for the purpose of safeguarding the right of persons with disabilities to education and developing educational undertaking for persons with disabilities." Though the government of the PRC has made significant progress in ensuring the rights of disabled children to education, their entitlements to other rights such as health, access to information, participation, protection, identification, etc., are not clearly spelled out in the existing law.

In the past UNICEF examined the existing legislation vis-à-vis the Convention on the Rights of the Child. However, while the analysis of Article 23, which addresses the rights of children with disabilities was examined, legislation relative to disabilities was not examined comprehensively.

As an industrialized country, the United States has a long and more comprehensive legal framework protecting the rights of disabled children and adults. Legislation in the USA is considered progressive and a model for ensuring the rights of adults and children with disabilities.

In the USA, National disability laws for children have been in place since 1975 with the passage of **Public Law 94-142** and the passage of the June 4, 1997 reauthorization, Individuals with Disabilities Education Act (**IDEA**). According to a 1975 United States Commission on Civil Rights Report, the 1975 Act was stimulated by "congressional concern and dissatisfaction with the complete exclusion of millions of disabled children from the nation's public schools and with the inappropriateness of educational programs available to additional millions of disabled children."

US laws relating to education of children with disabilities, for example, include the following components:

1. Children with disabilities have the right to enroll in any school at all levels from kindergarten to high school inclusive.
2. Schools have a mandate to provide education to all disabled children. Schools must provide education, or risk losing their government financial aid.
3. Children with disabilities should be taught in the least restrictive environment (LRE). Furthermore, they should, as far as possible, be "mainstreamed" into regular classes so that they can develop appropriate peer models.
4. Individualized education programs (IEPs) should be developed for children with disabilities, in order to ensure that each child gains the maximum benefit from special education. IEPs are to include:
 - a) A statement of the present level of education performance of the child.
 - b) A statement of annual goals.
 - c) A statement of the specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs.
 - d) The projected date of initiation of services and their anticipated duration.

- e) Appropriate criteria and evaluation procedures for determining on an annual basis whether the plan is achieving its stated instructional goals.

Laws protecting the rights of adults with disabilities have also been created in the USA. One famous law that is strictly enforced is **Public Law 93-112**. This law is commonly referred to as *The Rehabilitation Act of 1973*. The Rehabilitation Act of 1973 and is generally considered the first "civil rights" legislation for people with disabilities. This Act targets USA federal agencies, and also public and private entities receiving federal financial support. It was the first law on a national level calling for non-discrimination of people with disabilities.

Modeled after Title VI of the Civil Rights Act of 1964, which prohibits race discrimination, and Title IX of the Education Amendments, which prohibits sex discrimination, **Section 504** of the Rehabilitation Act prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance. Prior to this Act the term "discrimination" had never been applied to the exclusion and segregation of people with disabilities.

Section 504 of the Rehabilitation Act contains two important mandates. The *first* is that non-discrimination, in order to be meaningful for people with disabilities, has to require affirmative steps. These steps should include both removal of architectural barriers and the provision of reasonable accommodations in the workplace and in institutions of higher learning and in the awarding of scholarships, all of which would assure equal opportunity. The *second* has to do with integration. People with disabilities should not be segregated because of lack of access to buildings and accommodations in the workplace, school and in the provision of services.

With the passage of the Rehabilitation Act, otherwise qualified people with disabilities could no longer be denied employment, recreation, transportation or admission to institutions of higher learning. Further, regulations contained within the Act specify that employers and institutions of higher learning are required to make "reasonable accommodations" for people with disabilities.

In reviewing the progress of the two nations in the areas of disabilities, it would be very useful to compare and contrast the disability laws for adults and children of China and the USA. Such a study would facilitate China's decision makers and legislators in identifying the gaps in the areas of disability laws, between China and the industrialized countries, and to assist them when considering future changes and improvements.

Proposal Author

The author for this proposed report, Dr. John Wilde, is highly qualified in the area of disability law and teaches a course, *Perspectives on the Rights of the Disabled*

at City College of San Francisco. John Wilde received his Ph.D. in Special Education from Southern Illinois University. He has been a professor at University of Missouri, the State University of New York and is currently a professor and counselor in the Disability Department at City College of San Francisco. In the area of disability, he has written grants, conducted research, and has developed college coursework in the areas of college study skills for students with disabilities, language and speech improvement, and disability counseling. He currently is a counselor for college students with disabilities, for the past ten years has been teaching a college level course titled, *Perspectives on Disability Rights* and he has written two textbooks on disability rights.

Dr. Wilde had been a disability consultant to the United States Food and Drug Administration, the California Department of Rehabilitation and numerous public and private schools and agencies throughout the United States and he has offered expert witness testimony in federal courts.

Dr. Wilde speaks Chinese, studied at the Beijing Language and Cultural University for four and a half years. He has visited China 12 times in the past ten years, has written textbooks in China for students wanting to better understand American culture and he is currently writing a textbook titled, *Intercultural Communication: China and America at the Same Global Table*.

Assignment and Expected Outcomes

At the end of this study the consultant will develop a report containing the following items:

1. A written overview and analysis of China's Law on the Protection of Disabled Persons, Regulations, for the Education of Persons with Disabilities and other relevant legislation of China regarding the rights of disabled adults and children.
2. A written overview and analysis of the USA's **Public Law 94-142/IDEA** and **Public Law 93-112**.
3. A written comparison of the laws protecting the rights of children and adults with disabilities in China and the laws protecting the rights of children and adults with disabilities in the USA.
4. An item-by-item analysis of the gaps between the two Nation's laws protecting the rights of children and adults with disabilities.
5. Specific examples and recommendations where China can make changes that will better protect the rights of children and adults with disabilities.

United Nations Commitment to Persons with Disabilities

In researching this report the author found that the United Nations has a long and active history of advocating for persons with disabilities. According to the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities as found at . . .

<http://www.independentliving.org/STANDARDRULES/StandardRules2.html#anchor1448034>

there are several rules that bear heavily on how a nation should go about the task of ensuring the rights of people with disabilities. Here is a brief summary of relevant rules that have been promulgated by the United Nations as they relate to the rights of persons with disabilities:

Rule 5. Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programs of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

Rule 6. Education

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

Rule 7. Employment

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labor market.

Rule 8. Income maintenance and social security

States are responsible for the provision of social security and income maintenance for persons with disabilities.

Rule 9. Family life and personal integrity

States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do

not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

Rule 10. Culture

States will ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis.

Rule 11. Recreation and sports

States will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports.

Rule 12. Religion

States will encourage measures for equal participation by persons with disabilities in the religious life of their communities.

Rule 13. Information and research

States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities.

Rule 14. Policy-making and planning

States will ensure that disability aspects are included in all relevant policy-making and national planning.

Rule 15. Legislation

States have a responsibility to create the legal bases for measures to achieve the objectives of full participation and equality for persons with disabilities.

Rule 16. Economic policies

States have the financial responsibility for national programs and measures to create equal opportunities for persons with disabilities.

Rule 17. Coordination of work

States are responsible for the establishment and strengthening of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters.

Rule 18. Organizations of persons with disabilities

States should recognize the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States

should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters.

Rule 19. Personnel training

States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programs and services concerning persons with disabilities.

Rule 20. National monitoring and evaluation of disability programs in the implementation of the Rules

States are responsible for the continuous monitoring and evaluation of the implementation of national programs and services concerning the equalization of opportunities for persons with disabilities.

Rule 21. Technical and economic cooperation

States, both industrialized and developing, have the responsibility to cooperate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries.

Rule 22. International cooperation

States will participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.

This Report's Format

This Report is divided into three sections. The first section deals with the introduction to how this report came to be developed and provides a copy of the original proposal that the author submitted to the UNICEF Office for approval. As an acknowledgment of the United Nations' role in working for the equal recognition of the disabled around the world, the author added the information on what is the United Nations' commitment to people with disabilities.

The second section of this report presents each question selected from the HANDBOOK titled "The Legal Knowledge Handbook on Rights-Protecting of the People with Disabilities," as published by the China Disabled Persons' Federation (CDPF). Following that question is the Chinese answer (printed in red ink) translated into English by Mr. Huang Bolin. Following that answer is the USA answer (printed in black) to that same question. At the end of each answer is an analysis of the differences in the two answers, with an emphasis on pointing out the gaps that may or may not exist. Finally, after each question is analyzed, suggestions for improving disability rights and services in China are offered to the P.R.C., CDPF, and to UNICEF.

The Third section presents the conclusion of the report's author on what China needs to do to modify the application of disability laws and regulations and at the same time improving disability services.

Thus, with the United Nations Rules described above serving as a focus in attempting to compare and contrast China's and America's disability laws, this report is hereby submitted on this date of August 1, 2001.

Section II

Questions-and-Answers on Legal Knowledge of Right Protecting of the Disabled Person

As presented in
“The Legal Knowledge Handbook on Rights-Protecting of the People with Disabilities”
Published by
The China Disabled Persons’ Federation

Social Equal Rights

QUESTION 2.

“Why must the social equal rights of the disabled person be guaranteed?”

ANSWER FOUND IN HANDBOOK

The PRC uses the definition of a disability as it was adopted the Disabled Persons Rights Declaration adopted by the UN ASSEMBLY in December 9th, 1975. Thusly, “A disabled person refers to one who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and who has lost wholly or in part the ability to engage in activities in a normal way.” According to the Disabled Persons Federation, disability refers to those with congenital or non-congenital defects, which can be of physical or psychological origin. And to those who cannot have a normal personal life and cannot take part in the necessities of society. In China disabled persons are classified according to five types [1] visual disabilities; [2] hearing and speech disabilities; [3] mental retardation; [4] physical disabilities and [5] mental disorders. Those with two or more disabilities are classified as multiple disabilities.

If a person with disabilities cannot get suitable rehabilitation treatment, their disease will get worse, and even become quite serious in some cases. Therefore, it is not just only a problem of prevention and rehabilitation for the disabled, but also a problem of social prejudice to the disabled and segregation between the disabled and the society.

In order to solve the problem of disabilities, China must diminish discrimination, let the disabled return to society, and thereby share in the achievements of society with the non-disabled. The most important thing is that we must practically guarantee the social equal rights of the disabled .To realize this goal, the following points should be achieved:

- [1] To acknowledge the equal rights with non-disabled people;
- [2] To respect these rights;
- [3] To carry out possible measurements to ensure that the disabled are able to exercise all human rights equally and efficiently.

USA ANSWER

According to a publication produced jointly by the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Justice, Civil Rights Division, "Barriers to employment, transportation, public accommodations, public services and telecommunications have imposed serious economic and social costs on American society and have adversely impacted well-intentioned efforts to educate, rehabilitate and employ people with disabilities. By eliminating these barriers, the social rights of people with disabilities are enhanced by enabling society to benefit from the skills and talents of individuals with disabilities and will allow all to gain from the increased purchasing power and ability to use it."

Further, the July 29, 2001 *San Francisco Chronicle* reported that in his radio broadcast to the nation on July 28, 2001, President George W. Bush urged the US Congress to strengthen national legislation for the disabled and said that better laws provide greater access for the disabled to the everyday world. President Bush was quoted as saying, "As people with disabilities find more opportunities to use their gifts and talents, we also become a stronger, more productive nation."

ANALYSIS OF QUESTION #2

This answer seems to be a sensitivity awareness item. The P.R.C. and the U.S.A. disability laws both present excellent rationales for why the rights of the disabled must be protected. Both nations show a sensitivity and awareness of the special needs of the disabled as they live in society. In this answer China indicates that it has a definition of disability that it borrows from the United Nations, thus taking from the influence of the international community much of its leadership on disability rights and the obligations of society. The P.R.C. also depends heavily upon the input and advice of the Chinese Disabled Persons' Federation as it moves toward building better lives for people with disabilities.

The USA answer to this question reflects more of an individual awareness of each person with a disability disabled, rather than the disabled as a separate class of citizens. In the USA there are thousands of books and magazine articles written each year by disabled and non-disabled authors telling about the "disability experience" and also offering insights into what it is like to be disabled and offering constant reminders as to why the societal rights of the disabled must be protected.

SUGGESTIONS FOR QUESTION #2

1. The CDPF should sponsor at least ten books per year to be written by disabled persons who in detail and inspirational ways describe what it is like to have a disability.
2. The CDPF should place posters around each large city telling citizens to be aware of the special needs of people with disabilities. These posters can be the results of artwork created by school children who compete for prizes and awards to create the most interesting poster.
3. The CDPF should form four committees for the purpose of identifying and eliminating discrimination against the disabled in society 1) A Social Committee might search for ways in which to increase the social acceptance and sensitivity to disabilities; 2) An Economic Committee might look for ways to increase the workforce numbers of people with disabilities; 3) A Political Committee might seek ways in which to assist the disabled to self-advocate and work for their own improved services; and 4) A Psychological Committee might examine the everyday trauma that people with disabilities deal with and then explore ways in which to eliminate and decrease the isolation, despair, and alienation that many disabled deal with.

4. The CDPF should conduct surveys from time to time asking for input from people with disabilities and at the same time determine their level of satisfaction with government and CDPF services.

QUESTION 3.

“What is the legal basis of the social equal rights of the disabled person?”

ANSWER FOUND IN HANDBOOK

Social equal rights are the basic and most important human rights. The United Nations World Human Rights Declaration, Article 1 says: All people are born with freedom, and have equal rights before the dignity and the law. Article 2 says: All people are qualified to share all the rights and freedom, no matter what their race, color, sex, language, religion, politics or other beliefs. Article 7 says: All people are equal before the law, have the right to be protected equally, and not be discriminated by any means. The International Convention On Economical, Social, And Cultural Rights and the International Convention on Civil and Political Rights both stipulated the concern for human rights.

As an important part of human rights, the disabled must share equal dignity and rights with non-disabled people. But because of the uniqueness of the disabled group, it is necessary to pay special concern to their social rights. On December 20th, 1971, The Slow Intelligence Right Declaration was adopted by the UN General Assembly on December the 9th, 1975 The Disabled Person Rights Declaration was adopted, too. On December the 3rd, 1982, The World Action Creed of Disabled Persons was adopted also by the UN General Assembly.

According to the Constitution of the P. R. China Article 33, [2], All citizens of the P. R. China are equal before the law with no exception.

The P.R. China Protection of Disabled Person Law was adopted by the Standing Committee of the Seventh National People's Congress on December 28th, 1990. Equal participation and sharing were the purpose of this law.

[1] The intent of this law is to ensure the equal and full participation of the disabled in society and to further ensure their share of the material and cultural wealth of society. Article 3 says: “Disabled persons shall enjoy equal rights with other citizens in political, economic, cultural and social fields, in family life and other aspects . . . All rights and personal dignity of disabled persons shall be protected by law . . . Discrimination against, insult of and infringement upon disabled persons shall be prohibited . . .

[2] According to this law, the state shall provide disabled people with special assistance by adopting supplementary methods and supportive measures with a view to alleviating or eliminating the effects of their disabilities and external barriers and ensuring the realization of their rights. According to this law, obligations of the state include: (a) The state and society shall adopt measures of rehabilitation to help disabled persons regain normal functions or compensate for lost functions, thus enhancing their ability to participate in society; (b) The state shall guarantee the rights of disabled persons to education; (c) The state shall protect disabled persons' rights to work; (d) The state and society shall

encourage and assist disabled persons to participate in various forms of cultural, sports and recreation activities and work to meet the needs of the spiritual and cultural life of disabled persons; and (e) The state and society shall step by step create a sound environment to improve the conditions for disabled persons to participate in society.

USA ANSWER

(Excerpted from *About Disabilities*, 2nd Edition, by John W. Wilde, Ph.D.)

Modeled after Title VI of the Civil Rights Act, which prohibits race discrimination and Title IX of the Education Amendments, which prohibits sex discrimination, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance. Prior to this Act the term "discrimination" had never been applied to the exclusion and segregation of people with disabilities.

Section 504 of the Rehabilitation Act contains two important mandates. The *first* is that non-discrimination, in order to be meaningful for people with disabilities, has to require affirmative steps. These steps should include both removal of architectural barriers and the provision of reasonable accommodations in the workplace in order to assure equal opportunity. The *second* has to do with integration. People with disabilities should not be segregated because of lack of access to buildings and accommodations in the workplace, school and in the provision of services.

With the passage of the Rehabilitation Act, otherwise qualified people with disabilities could no longer be denied employment, recreation, transportation or admission to institutions of higher learning. Further, regulations contained within the Act specified that employers and institutions of higher learning were required to make "reasonable accommodations" for people with disabilities.

Under the Rehabilitation Act, the definition of "disabled person" is broad and includes many persons who might never have thought of themselves as disabled. The definition includes all persons with *physical* and *mental impairments*, or those with a *history* of such impairments, or those who are *perceived* as having such impairments, even though such impairments do not, in fact, exist. In the area of employment, this means an applicant or employee with a physical or mental impairment (real or perceived) who experiences discrimination by an employer covered by the Act, falls within the Rehabilitation Act's protection. It should be noted here, however, short-term, temporary disabling conditions (e.g., broken leg, sprained wrist, etc.,) are probably not included under the Act.

The Rehabilitation Act prohibits a federally funded employer from denying employment to or causing adverse employment action to be taken against any "otherwise qualified disabled person" because of his/her disability. A "otherwise qualified disabled person" is defined by the Act as one who, with or without

accommodations, can perform the essential functions of a job without endangering his or her health and that of others.

The two basic steps in determining whether an individual is "otherwise qualified" are:

1. Determine if individual meets necessary prerequisites for the job such as education, work experience, skills, licenses, training, certificates, and other job-related requirements such as good judgment or ability to work with others.
2. Determine if individual can perform the essential functions of the job. It is necessary to identify the essential functions of the job first, and then determine if the individual can perform the tasks with or without any accommodations.

The Rehabilitation Act mandates that public institutions identify a 504 Coordinator for their institutions and conduct *Self-Evaluations* to determine the extent to which they are complying with the Act's programmatic and architectural requirements. They must then complete *Transition Plans* for meeting accessibility deficiencies identified in *Self-Evaluations*.

The Rehabilitation Act of 1973 was an inevitable outgrowth of consumer activism. Increasingly, the disability community came to see the similarity between its situation and the experience of other groups. People with disabilities rightfully identified with those who had experienced both subtle and overt segregation in education, transportation, housing, employment, etc. The Rehabilitation Act of 1973 was an attempt to change societal attitudes and barriers.

Even though the Act was passed in 1973, implementation regulations were not issued until 1977. Following the issuing of 504 regulations, several states and localities also passed laws to further protect the rights of disabled people. Some laws provide greater protection than the existing federal laws, and when this is the case, federal and state courts have held that the more stringent law must prevail.

What follows is the definition of a disability and a close examination of what the Rehabilitation Act covers.

Definition of Disability

According to both the ADA and Section 504 of the Rehabilitation Act, a person with a disability is . . .

1. One who has a physical or mental impairment that substantially limits one or more major life activities.

- A. Definition includes **physical** and **mental** impairments.
- B. **Substantially limits** means unable to perform major life activities, or is restricted significantly in the condition, manner or duration under which a major life activity can be performed -- compared to others.
- C. **Major life activities** include, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.

or

- 2. One who has a record or history of a disability.*

or

- 3. One who is regarded as having a disability.*
 - A. Has a physical or mental impairment that does not substantially limit major life activities, but who is treated by others as if the impairment does constitute such a limitation.*
 - B. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment.*
 - C. Has *no* impairment but who is *treated* as if they have a substantially limiting impairment.

The Rehabilitation Act of 1973 is also referred to as **Public Law 93-112**. This law applies to all recipients of federal aid.

Recipients include . . .

- 1. State Education Agencies, 2. Elementary and Secondary Schools,
- 3. Colleges and Universities, 4. Libraries, 5. Cities, and 6. Vocational Schools

Section 504 of the Act mandates programmatic and architectural accessibility for people with disabilities.

While the Americans with Disabilities Act (ADA) was not specifically addressed in this report's original proposal approved by UNICEF on May 18, 2001, it is the opinion of this author that the ADA is even more comprehensive than the Rehabilitation Act. The ADA is an example of more recent USA disability legislation and further augments the Rehabilitation Act. It is anticipated that presenting an overview of the ADA here will offer additional information about

USA disability laws. On the next pages will be found *An Introduction to the Americans with Disabilities Act (P.L. 101-336)*.

A Brief Overview of the ADA

(Excerpted from *About Disabilities*, 2nd Edition, by John W. Wilde, Ph.D.)

The Americans with disabilities Act (ADA) of 1990 was enacted to give individuals with disabilities the same civil rights equal to those accorded to others on the basis of race, sex, national origin, nationality, religion and age. Unlike the Rehabilitation Act of 1973, which was limited to federal agencies and other institutions receiving federal funds, this broad-ranging law guarantees equal opportunities for people with disabilities, both in the public and private sector. The ADA addresses implementation guidelines within the context of four specific sections called "titles."

- Title I) Employment
- Title II) State and local government
- Title III) Public Accommodations
- Title IV) Communications

TITLE I

Employers must ensure that their employment practices do not discriminate against qualified persons with disabilities in the application and recruitment process, or in the hiring, advancement, training, compensation or discharge of an employee, or in any other terms, conditions and privileges of employment.

TITLE II

Prohibits state and local governments from discriminating against persons with disabilities or from excluding participation or denying benefits of programs, services or activities to persons with disabilities.

TITLE III

Requires places of public accommodation to be accessible to and usable by people with disabilities. Private businesses must not discriminate in the "goods, services, facilities, procedures, privileges, advantages and accommodations" offered to the public. Also covers transportation services by requiring that private and public transportation systems be accessible to all people, including individuals with disabilities.

TITLE IV

Requires telephone companies offering communication services to the general public increase the availability of interstate and intrastate telecommunications relay services to hearing and speech impaired people.

The ADA became law July 26, 1990, but its history began in 1986 when the National Council on the Handicapped presented a Report to the president of the

United States outlining drastic legislative recommendations for enhancing the productivity and quality of life for people with disabilities. The Report, *Toward Independence*, recommended enactment of a comprehensive law requiring equal opportunities for individuals with disabilities and suggested that the law have clearly defined coverage and standards for prohibiting discrimination on the basis of disability. It is generally believed that this Report was one of the cornerstones for the eventual passage of the ADA in the United States House of Representatives by a margin of 377-28 and the Senate by 91-6.

It is important to note that the ADA's definitions, obligations and policies are virtually identical to those of the Rehabilitation Act of 1973. Throughout the ADA and closely wound into its history of legislative development can be found references to the Rehabilitation Act. In fact, throughout the Act are explicit directions to follow the Rehabilitation Act's examples of implementing regulations for guidance.

Like the Rehabilitation Act, the ADA has a three-part definition of disability, ACTUAL, HISTORY or PERCEIVED. Similar to the Rehabilitation Act, in the area of employment, the ADA protects only "otherwise qualified" individuals with physical or mental impairments. Generally, a qualified disabled person is one who, with or without reasonable accommodation, can perform the essential functions of the position held or desired. Importantly, the individual must not pose a significant danger to himself or others.

Note: The ADA has specific wording that addresses illegal use of drugs and alcohol:

The ADA excludes from coverage active drug users, but prohibits discrimination against those who are perceived as having a disability by reason of a drug history, have participated in a supervised drug rehabilitation program, or are erroneously regarded as engaging in such use.

Overview of the ADA Title I EMPLOYMENT

Also see the response to this item under LABOR RIGHTS (Question #55)

All private employers who have 15 or more employees, employment agencies, labor organizations and joint labor and management committees are covered by this Act. Private employers with less than 15 employees are not subject to the ADA's provisions.

The ADA prohibits discrimination against any "qualified individual with a disability." A person with a disability who is considered for a job is generally defined as someone who satisfies the requirements of the employment position if they can perform the *essential functions* of the position with or without *reasonable accommodations*.

Essential functions are defined as job tasks that are fundamental to the job and are not considered marginal. Evidence of whether a function is essential may include many factors including:

- A. The employer's judgment
- B. Written job descriptions prepared before advertising or interviewing job applicants
- C. Amount of time needed to spend in performing the task
- D. Consequences of not performing the task

Reasonable Accommodations in employment are defined as modifications that allow an employee with a disability to demonstrate that he/she can perform the essential functions of a job. It is critical that accommodations are reasonable and not an undue hardship on the employer. Employers must make reasonable accommodations for the known physical and/or mental limitations of a qualified applicant or employee with a disability. In this sense, reasonable accommodations include:

- A. Modification or adjustment to the job application process
- B. Modification to the work environment or the manner in which the job tasks are routinely performed

Forms of reasonable accommodations that are generally recommended include but are not limited to:

1. Job restructuring
2. Modifying work schedules
3. Making facilities accessible
4. Acquiring and/or modifying equipment or devices
5. Readers, interpreters and assistants
6. Reassignment to similar positions

When employers are attempting to design the most appropriate accommodation for an employee with a disability, ADA guidelines recommend that the employer consider the following points:

- A. All applicants and employees with disabilities must be notified of the employer's obligation to provide reasonable accommodations
- B. The employee has the responsibility of requesting accommodations
- C. The employee is often the best source of ideas and suggestions for designing accommodations. The federal government offers a free "Hot Line" for employers who are seeking information on how to design accommodations

There are two major areas where an employer may not have to provide accommodations. 1) If the employer can prove that to provide an accommodation for a disabled person would be an *undue hardship* to the business, or 2) An accommodation would pose a *direct threat*.

Undue hardship means an accommodation would require significant difficulty or expense. The hardship could be too costly, extensive, disruptive or require an action that would fundamentally alter the nature of the workplace and/or business.

Direct threat means a significant risk of substantial harm to the health and safety of the individual with a disability or others who will have to work with this individual. Importantly, this risk cannot be eliminated or reduced with the use of an accommodation. While the ADA is clear in stating that the employer has an obligation to follow the regulations of the Act, the employer also has an obligation to protect the health and safety of both employees with disabilities and other employees as well as the health and safety of the public.

Because of a concern that some employers might too readily consider *direct threat* as a way in which to circumvent the Act, the federal government stipulates in the Act's regulations that the employer must meet specific and stringent requirements to establish that a direct threat really exists: These regulations include:

- A. There must be a high probability of substantial harm; not a slightly increased risk or a speculative or remote risk
- B. There must be a real threat of harm based upon facts; not fears, generalizations and stereotypes
- C. The potential of direct threat must be based upon the individual's current status rather than the possibility of future incapacity

The ADA says illegal use of drugs and use of alcohol may be prohibited in the workplace and employees may be required to refrain from being under the influence of illegally used drugs or alcohol on the job. Title I of the ADA as well as Titles II and III provide regulations for employees to conform with the Drug-Free Workplace Act, thereby the employer may hold the drug user or person who is an alcoholic to the same standards as other employees.

What Title I Says about the Employment Application Process

The ADA requires that employers may not make inquiries about a disability on job applications, but may ask questions to determine if an applicant can perform specific job functions. For example, an employer may not say, "Do you have a learning disability?" Instead the employer may ask, "Can you type 65 words per minute?"

It is understood that certain types of jobs require that an employer administer a test to determine if an employee is eligible for a job. Examples of such jobs include, firefighter, police officer, flight attendant, mechanic, etc. If an employer administers a test, the test must be in an accessible format for people with disabilities who have impaired sensory, manual or speaking skills.

Testing must be administered in what is referred to as an "accessible format" if an applicant or trainee has a disability. Examples of alternative test formats and accommodations are:

1. Substituting a written test for an oral test for people with impaired speaking and hearing.
2. Administering a test in large print, in Braille, by a reader, or on a computer for people with visual disabilities.
3. Allowing people with visual or learning disabilities or who have limited use of their hands to record test answers through the use of a tape recorder or computer.
4. Allowing extra time to complete tests for people with learning disabilities or impaired writing skills.
5. Scheduling rest breaks for people with disabilities who require such relief.
6. Ensuring that the test site is accessible to a person with a mobility disability.
7. Allowing a person who, because of a disability, is highly distracted, to take tests in a separate room.

After a job offer is made to an employee, the employer may require a medical evaluation only if medical examinations are given to all employees entering into the job. However, as part of the application process, the employer may not require that a medical evaluation be a condition for employment. That is, requiring that a person with a disability submit to a medical evaluation before hiring in order to determine if he/she is able to do the job, would be a form of discrimination.

Title II STATE AND LOCAL GOVERNMENT

There are two basic tenants state and local governments must adhere to when following ADA regulations. Government entities must provide both

1) *Programmatic Access* and 2) *Architectural Access*.

Programmatic Access

A state or local government is required to operate each program so that all programs are readily accessible to and usable by people with disabilities. In the case of a state college (which is also required to follow the provisions of Section 504 or the Rehabilitation Act) and all municipal training programs (e.g., such courses as "Management Team-Building for City Managers," "Cost Accounting," "Quality Control in the Mailroom," etc.) if requested, study materials must be provided in alternative formats, interpreters must be available for classroom instruction and announcements of extra-curricular events and the actual events must all be open to people with disabilities. Announcements of government meetings where the public is invited and minutes of those meetings must also be provided in alternative formats.

Government entities that must conduct business over the phone are required to have telecommunication devices for the deaf (TDDs). Government personnel charged with responsibilities of conducting business with the public over the phone also must be skilled in using these devices in order to receive and transmit communications.

Further, additional methods of achieving program access might include reassigning meetings to accessible buildings, the use of televised meetings and temporary structural alterations of facilities (building of temporary ramps, modification of desks, etc.). Program access is not required where the government entity can show that providing it would result in fundamental alteration of the program (e.g., training a person who is a quadriplegic to be a police officer or firefighter), or when to provide an accommodation would pose an undue burden (e.g., transcribing a 5000 page manual into Braille).

Architectural Access

Methods of achieving architectural access are in large part the same as those mandated by Section 504 of the Rehabilitation Act. Public entities are required to ensure that facilities are accessible to those with physical disabilities and in some cases it is required that existing facilities must be altered. For example, sidewalks must have curb ramps, buildings must have accessible entrances and

restroom facilities, meeting rooms, training sites and recreational areas must be accessible.

There are exceptions to this ADA accessibility requirement:

1. Historic sites may not have to undergo any restructuring in order to make them physically accessible.
2. Certain buildings, because of when, where or how they were constructed may not be able to be altered in order to make them physically accessible.
3. It may not be necessary to make a fundamental alteration in a building if, to do so, would be a substantial financial burden.

In the case of an individual with a disability needing personal services and/or devices (wheelchairs, individually prescribed eyeglasses or hearing aids or services of a personal nature, including assistance in eating, toileting or dressing), the ADA also stipulates that a government agency does not have to provide personal services and devices.

Just like the Rehabilitation Act's provisions, there is an evaluation component attached to the ADA. All government agencies must conduct a *Self-Evaluation* and then develop a *Transition Plan*.

The Self-Evaluation

By January 26, 1993 all government agencies were to have completed a Self-Evaluation to determine the extent to which they were complying with the regulations of the ADA. Following strict guidelines published in the ADA, both programmatic and architectural assessments were to be conducted and findings were to have been made available to the federal government and the public.

The Transition Plan

In this written document accompanying the Self-Evaluation, all structural changes identified in the Self-Evaluation were to have been made by January 26, 1995. The Transition Plan is to be used to further identify the obstacles that limit program and architectural access, to describe methods to achieve access and to set forth a schedule for changes that are to occur each year in order to comply with the regulations of ADA.

Title III PUBLIC ACCOMMODATIONS

For some, the confusion about the ADA regarding Public Accommodations lies in the use of the term, "public." The primary difference between the Rehabilitation Act of 1973 and the Americans with Disabilities Act is that the ADA is meant to establish disability rights in the private sector. Therefore, most of the guidelines

of the ADA are aimed at making private entities both programmatic and architecturally accessible to people with disabilities. In Title III, public accommodations means a private entity that *owns* a place of public accommodation, *leases* a place of public accommodation, *leases to* a place of public accommodation, or *operates* a place of public accommodation.

What is a place of public accommodation?

Facilities fitting within one of the following 12 categories:

1. Hotels or other places of lodging
2. Restaurants, bars or other establishments serving food or drink.
3. Theaters, stadiums or other places of exhibition or entertainment.
4. Convention centers, union halls or other places of public gathering.
5. Stores, banks, shopping centers, or other sales or rental establishments.
6. Laundromats, dry cleaners, banks, travel agencies, hospitals, professional offices of a) health care providers, b) accountants, c) insurance agents, d) lawyers and e) any other establishments that serve the public.
7. Terminals, depots or stations used for public transportation.

[Note: Airlines are not covered by the ADA. They follow regulations imposed by the Federal Aeronautics Administration (FAA)]

8. Museums, libraries or other public places that display or collect books.
9. Parks, zoos and other places of amusement and recreation.
10. Private schools, vocational schools and other places of education.
11. Day care centers, food banks, senior centers and all social service centers.
12. Gymnasiums, bowling alleys, golf courses, and other places designed for exercise and recreation.

[Note: *In general, religious entities and private clubs are not covered by the ADA.*]

General Requirements of Title III

1. A covered entity (see previously identified facility categories) may not deny the following to a person with a disability . . .

- A. Goods
- B. Services
- C. Facilities
- D. Privileges
- E. Accommodations

2. Goods and services must be offered in the most integrated setting appropriate to the needs of the individual. If specialized programs are offered, individuals with disabilities may participate in general programs or special programs - - - whichever they prefer.

3. An entity may not apply and impose eligibility criteria in order to screen out or segregate or otherwise create a special class of individuals with disabilities. While imposing eligibility criteria would be tantamount to demonstrating discrimination, an entity is permitted to apply eligibility criteria if it can show that to do so is necessary for the provision of goods and services.

4. An entity may impose legitimate safety requirements. These requirements must be based on actual risks and facts about the individual's disability - - - not on speculation or stereotypes.

5. An entity may not deny goods and/or services to an individual because that individual associates with or has a relationship with someone who is disabled.

6. An entity may not impose a surcharge to cover the cost of compliance with the ADA solely on people with disabilities.

7. A covered entity may have to implement accommodations to ensure communication accessibility. Examples include:

- A. Qualified interpreters, assistive listening systems, decoders, closed captioning, telecommunication devices for the deaf (TDDs), etc.
- B. Qualified readers, audio recordings, Brailled materials, large print materials, materials on computer disk, etc.

C. Speech synthesizers, computer terminals, communication boards, etc.

Note: *TDDs may not be required where outgoing calls are on an incidental convenience basis.*

8. Closed caption decoders are required in places of lodging that have five or more guest rooms.

9. Entities must remove architectural barriers where it is *readily achievable* to do so. Readily achievable is defined as easily accomplishable and able to be carried out without much difficulty and expense.

10. An entity is required to rearrange furniture, equipment and display racks in order to make a facility accessible to people with physical disabilities. However, if such rearrangement results in (or possibly has potential for resulting in) significant loss of selling or serving space, such rearrangement is considered not readily accessible. 11. An entity that provides seating in assembly areas must provide a reasonable number of wheelchair seating spaces and seats with removable armrests. Seats for people with disabilities must be dispersed and individuals who use wheelchairs should be permitted to sit with companions.

11. If barrier removal is not readily achievable, entities must make accommodations so that goods and services are available through alternative methods. Examples include:

- A. Curb service
- B. Personnel to retrieve merchandise from inaccessible locations (shelves, counters, tables)
- C. In the case of gas refueling services at self-service pumps, personnel provide necessary accommodations
- D. Relocation of services

12. All new construction completed after January 26, 1993 must be accessible to people with physical disabilities. New construction includes public accommodations and *commercial facilities*. The ADA defines commercial facilities to include all "non-residential facilities whose operations affect commerce" (e.g., warehouses, factories, private offices). Elevators may be exempted if a building is less than three stories or less than 3000 square feet per story. However, elevators may not be exempted if the newly constructed building is a:

- A. Shopping mall
- B. A professional office of a health care provider
- C. Public transportation terminal/depot

13. All exclusionary provisions pertaining to a) direct threat, b) personal services and devices, and c) illegal use of drugs and alcohol identified in Titles I and II, are also identified in Title III.

Important Points to Know about Title III

1. Title III of the ADA requires places of public accommodation and commercial facilities to be accessible to and usable by persons with disabilities.

2. Because the term "public accommodation" often presents confusion, the federal government has identified 12 categories of private businesses that offer goods and services to the public and considered examples of public accommodations. (The reader should review the text for a list of those covered entities).

3. Title III requires private businesses to :

- A. Provide goods and services in an integrated setting.
- B. Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- C. Make reasonable modifications in policies, facilities practices and procedures that deny equal access to individuals with disabilities.
- D. Provide auxiliary aids when necessary to ensure effective communication.
- E. Remove architectural and communication barriers in existing facilities.
- F. Provide alternative measures when removal of barriers is not readily achievable
- G. Provide equivalent transportation services and purchase accessible vehicles.
- H. In designing, constructing and altering facilities, comply with ADA accessibility guidelines issued by the Architectural and Transportation Barriers Compliance Board (ATBCB).

4. A private entity is not required to provide personal devices and services. Interpreters for speech/hearing impaired are **not** considered a personal service.

5. A private entity may not discriminate against an individual because of the known disability of a person with whom that individual has a relationship or association.

6. Private entities offering certain examinations or courses such as those related to licensing, applications, certification, or credentialing for professional or trade purposes, must offer their services in an accessible place and format.

7. ADA requirements for existing facilities apply only to public accommodations and they require that architectural, communication and transportation barriers must be removed where it is *readily achievable* to do so. The ADA defines "readily achievable" as easily accomplishable and able to be carried out without much difficulty or expense.

Important points to know about Title IV TELECOMMUNICATIONS

Overview

Title IV of the Americans with Disabilities Act is intended to improve access to communications of persons who are deaf, hard of hearing or speech impaired. The ADA requires the establishment of telecommunications relay services and captioning of public service announcements. These relay services are to be made available to individuals who use Telecommunications Devices for the Deaf (TDDs) so that they may have telephone conversations with individuals who use conventional voice telephones.

Under the regulations of Title IV specially trained Relay Service Agents complete phone calls and remain on-line to relay messages to either party. The agent can relay messages either electronically over a TDD or verbally to the non-disabled parties. Relay agents are to be held to a strict code of ethics and are required to play a non-participating role in phone conversations.

Phone companies, through publication in their directories, periodic billing inserts, placement of Relay Service instructions in telephone directories, through directory assistance services, etc., are required to inform callers in their service areas that Relay Service is available. Phone companies must provide a hearing aid compatible telephone to a subscriber. Installation of specialized phone equipment for people with disabilities and the maintenance of this equipment must be without surcharge for the customer with a disability who requests such equipment or services.

Title IV also requires that any televised public announcement that is produced or funded by any agency or department of the United States government must include closed captioning that allows the viewer to see the verbal content of such an announcement (the viewer, however, must have a television that has an attached decoder or a TV that was produced in the U.S. after July 1, 1993).

ANALYSIS OF QUESTION #3

The USA and the P.R.C. both have definitions of disability. However, the USA presents a much more detailed and specific description of what is a disability. The P.R.C., however, presents a more general definition that may or may not include people who have an impairment that substantially limits one or more major life activities. China presents a legal basis for the equal rights of the disabled but does not specify as to how these rights are to be implemented.

The USA has hundreds of laws protecting the rights of people with disabilities. These laws are at the state and federal level. Certainly the most powerful and far-reaching among these laws is the Americans with Disabilities Act signed into law in 1990. The Rehabilitation Act of 1973 is also another law that significantly impacts the rights of the disabled. Both of these laws detail in clarity how they are to be implemented.

SUGGESTIONS FOR QUESTION #3

The P.R.C. needs to enact a law that contains two important mandates.

1. The *first* is that non-discrimination, in order to be meaningful for people with disabilities, has to require affirmative steps. These steps should include both removal of architectural barriers and the provision of reasonable accommodations in the workplace in order to assure equal opportunity.
2. The *second* has to do with integration. People with disabilities should not be segregated because of lack of access to buildings and accommodations in the workplace, school and in the provision of services.

The CDPF should work to encourage the P.R.C. to enact a law that:

1. Ensures that employment practices do not discriminate against qualified persons with disabilities in the application and recruitment process, or in the hiring, advancement, training, compensation or discharge of an employee, or in any other terms, conditions and privileges of employment.
2. Prohibits national and local governments from discriminating against persons with disabilities or from excluding participation or denying benefits of programs, services or activities to persons with disabilities.
3. Requires places of public accommodation to be accessible to and usable by people with disabilities. Private businesses must not discriminate in the "goods, services, facilities, procedures, privileges, advantages and accommodations" offered to the public. Also covers transportation

services by requiring that private and public transportation systems be accessible to all people, including individuals with disabilities.

4. Requires the national telephone company offering communication services to the general public to increase the availability of telecommunications relay services to hearing and speech impaired people.

QUESTION 4.

“What are the basic rights the disabled person can enjoy equally by law?”

ANSWER FOUND IN HANDBOOK

All citizens' basic rights are provided for directly by the Constitution of the P.R of China. Basic human rights are the most important rights in the constitution. Disabled persons in China should enjoy equally the following rights according to the Constitution's Article 34 which addresses: [1] political rights and freedom; [2] freedom of religious belief; [3] freedom of person; [4] authority to supervise; [5] social economical rights of a citizen; and [6] cultural and educational rights.

Article 34 stipulates that the state shall protect the property ownership and the managerial decision-making power of welfare enterprises and institutions for disabled persons, whose lawful rights and interests shall not be violated.

No discrimination shall be practiced against disabled persons in recruitment, employment, obtainment of permanent status, promotion, determining technical or professional titles, payment, welfare, labor, insurance or in other aspects.

No enterprises or institutions shall deny graduates assigned by the state from institutions of higher learning, polytechnic schools, or technical schools solely on the grounds of their disabilities; in case of such denial, the disabled graduates may appeal to departments concerned with disposition and relevant departments shall instruct the enterprises or institutions concerned to accept the said graduate students.

Enterprises and institutions where disabled persons work shall provide the disabled workers with appropriate working conditions and labor protection. Article 35 of the Protection of the Disabled Law adds that enterprises and institutions where disabled person work shall provide in-service technical training for disabled employees with a view to upgrading their skills and techniques.

USA ANSWER

In the USA, several laws have impacted the quality of life of people with disabilities. What follows is a sampling of six of those laws:

1. *Title II of the Social Security Act of 1935.*

This Act established the Social Security Disability Insurance program (SSDI), which provides monthly disability insurance payments to workers with disabilities and their eligible dependents.

2. *Title XVI of the Social Security Act of 1972.*

This Act established the Supplemental Security Income (SSI) program which provides benefits to low-income, aged, blind and disabled persons and extends benefits for children.

3. *Individuals with Disabilities Act of 1975 (IDEA)*

First passed as the Education for All Children Act, (P.L. 94-142), this law gives federal funds to local school districts for instruction and support services for students with disabilities in grades kindergarten through 12. This Act requires schools to provide free, appropriate public education in the least restrictive environment (LRE) for disabled children. A 1986 amendment established a preschool mandated program. (*substantial amendments were made to this bill in the 1997 IDEA Reauthorization Act.*)

4. *Developmentally Disabled Assistance and Bill of Rights Act (P.L. 94-103) of 1975.*

This Act provides federal funds for services for persons who are developmentally disabled. Developmental disabilities were defined as chronic cognitive or physical impairments that originate at birth, or during childhood, are expected to continue indefinitely and substantially restrict a person's functioning in several major life activities.

5. *The Fair Housing Amendments to the Civil Rights Act (P.L. 100-430) of 1988.*

This Act extended to persons with disabilities the same civil rights and protections in housing guaranteed to other minority groups.

6. *Technology-Related Assistance for Individuals with Disabilities Act (P.L. 100-407) of 1988.*

This Act funds States to create consumer-responsive programs of technological assistance for individuals of all ages and disabilities.

While each of these laws greatly influenced the lives of persons with disabilities, legislation came about because of certain societal trends and influences. What follows is a perspective on events that occurred since the turn of the century in the USA and how each influenced attitudes about disability-related rights and legislation.

The Civil Rights Act of 1964

The Civil Rights Act of 1964, signed into law by President Johnson, established civil rights for all, regardless of sex, age, race, religion, nationality, or national origin. This Act firmly set into United States Law:

1. The Right to Vote
2. The Right to Transportation
3. The Right to Services
4. The Right to Equal Access

The Civil Rights Act had the effect of then influencing court cases throughout the United States. In the push for civil rights for people with disabilities, it was from 1968 to 1974 that state and federal courts began to look at the Civil Rights Act of 1964 as also a law to bar discrimination on the basis of disability.

A number of important and precedent-setting lawsuits were filed against school districts that had refused to give civil rights to people with disabilities. Among these were a series of class-action suits filed by the Pennsylvania Association for Retarded Children (P.A.R.C.) against schools refusing to educate children with disabilities. Thus, the public schools were among the first to be engaged in the civil rights battle of people with disabilities.

Of the cases successfully tested in the courts, three consistent rulings emerged:

1. Schools could not refuse to educate students with disabilities by claiming that they did not have sufficient funds to provide special education for disabled children. Children, regardless of their disability, had the constitutional right to an education.
2. Children with disabilities could not be segregated from non-disabled children in the educational system. Schools could no longer create "dumping ground" classes where "all the handicapped children could be put for the school day." Children with disabilities had the right to have non-disabled role models in the classroom and to receive the same education as non-disabled students.
3. Students with disabilities must make academic progress and schools are required to hold disabled children to the same criteria as non-disabled children in educational progress. Schools were likewise responsible for the progress of children with disabilities.

Passage of Public Law 94-142

Almost as a testimony to the extraordinary number of successfully fought court cases argued on behalf of children with disabilities, Congress passed the Education for all Handicapped Children Act, Public Law. 94-142 in 1975. According to a 1975 United States Commission on Civil Rights report, the Act was stimulated by "congressional concern and dissatisfaction with the complete exclusion of millions of disabled children from the nation's public schools and with the inappropriateness of educational programs available to additional millions of disabled children."

P.L. 94-142 includes four major provisions:

1. Education for children with disabilities enrolled in all public schools from kindergarten through twelfth grade is mandated.
2. Education for disabled children is mandated. Schools must provide education or risk losing their federal aid.
3. Children with disabilities must be taught in the least restrictive environment (LRE). To the maximum extent possible, children are to be "mainstreamed" into regular classes so that they can have appropriate peer models.
4. Children with disabilities must have individualized education programs (IEPs). Individual plans are to be developed in order to ensure that each student is benefiting from special education. IEPs must include:
 - a) A statement of the present level of education performance of the child.
 - b) A statement of annual goals.
 - c) A statement of the specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs.
 - d) The projected date of initiation of services and their anticipated duration.
 - e) Appropriate criteria and evaluation procedures for determining on an annual basis whether the plan is achieving its stated instructional goals.

Another event occurring two years before the passage of Public Law 94-142 was the passage of the Rehabilitation Act of 1973 (discussed elsewhere in this report). This Act further adds to the history of the movement. Some view the passage of the Rehabilitation Act as the beginning of the "Golden Age of Rehabilitation."

As the 1970s approached, numerous consumer groups within the disability community had successfully argued in the courts that they had been denied the right to services, equal access, transportation and employment because of their

disability. Drawing on the legislation imposed by the Civil Rights Act of 1964, courts almost consistently ruled in favor of people with disabilities.

The Americans with Disabilities Law passed in 1990 has several provisions that offer basic human rights to the disabled.

Summary Of Title I of the ADA

1. Applicants for jobs and employees with disabilities may be entitled to reasonable accommodations. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired -- unless to do so would impose an undue hardship.

2. If an employee or applicant with a disability thinks they will need a reasonable accommodation in order to participate in the application process or to perform an essential function of a job, he/she should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodations only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

3. If the cost of providing the needed accommodation for a person with a disability would be an undue hardship for the employer, the employee may be given the choice of providing the accommodation or paying for a portion of the accommodation that causes the undue hardship.

4. An employer cannot make up the cost of providing a reasonable accommodation by lowering the salary of a person with a disability or paying him/her less than other employees in similar positions.

5. The ADA's requirements to provide reasonable accommodations covers all services, programs and non-work facilities provided by the employer. If making an existing facility accessible (e.g., bathroom, cafeteria, etc.) would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would also be an undue hardship.

6. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because s/he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions. The ADA permits an employer to refuse to hire an individual if s/he poses a direct threat to the health or safety of herself/himself or others. A direct threat means a significant risk of substantial harm. The

determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire an applicant because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

7. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

8. The ADA makes it unlawful to discriminate against an individual, whether disabled or not, because of relationship or association with an individual with a known disability.

9. Legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

Summary Title II of the ADA

1. Title II specifies that a public agency may not, directly or through contractual arrangements:

- A. Deny opportunities to people with disabilities who wish to participate in or benefit from any aid, benefit or service.
- B. Deny persons with disabilities the right to participate as members of planning or advisory boards.
- C. Require persons with disabilities to participate in programs, services or activities that are separate or different from those offered others.
- D. Select location of facilities and services that have the impact of excluding or discriminating against people with disabilities.

2. Public agencies are required to ensure that their communications with people who have disabilities are as effective as their communications with non-disabled people.

3. All public transportation (other than aircraft) that operates a fixed-route system must be accessible to people with physical disabilities. Retrofitting of existing buses is not required but new purchases and leases by public transport agencies must demonstrate good-faith efforts to ensure accessibility.

4. All public agencies must prepare a Self-Evaluation reviewing their policies, programs, services, activities and practices to determine if they comply with ADA regulations.

5. Public agencies are to complete a Transition Plan based upon their Self-Evaluation specifying how they intend to comply with and modify as soon as feasible their existing policies, programs, services or activities and practices that are determined to be in violation of ADA regulations.

Summary of Title III of the ADA

1. Title III of the ADA requires places of public accommodation and commercial facilities to be accessible to and usable by persons with disabilities.

2. Because the term "public accommodation" often presents confusion, the federal government has identified 12 categories of private businesses that offer goods and services to the public and considered examples of public accommodations. (The reader should review the text for a list of those covered entities).

3. Title III requires private businesses to:

- A. Provide goods and services in an integrated setting.
- B. Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- C. Make reasonable modifications in policies, facilities practices and procedures that deny equal access to individuals with disabilities.
- D. Provide auxiliary aids when necessary to ensure effective communication.
- E. Remove architectural and communication barriers in existing facilities.
- F. Provide alternative measures when removal of barriers is not readily achievable
- G. Provide equivalent transportation services and purchase accessible vehicles.
- H. In designing, constructing and altering facilities, comply with ADA accessibility guidelines issued by the Architectural Transportation Barriers Compliance Board (ATBCB).

4. A private entity is not required to provide personal devices and services. Interpreters for speech/hearing impaired are **not** considered a personal service.

5. A private entity may not discriminate against an individual because of the known disability of a person with whom that individual has a relationship or association.

6. Private entities offering certain examinations or courses such as those related to licensing, applications, certification, or credentialing for professional or trade purposes, must offer their services in an accessible place and format.

7. ADA requirements for existing facilities apply only to public accommodations and they require that architectural, communication and transportation barriers must be removed where it is *readily achievable* to do so. The ADA defines "readily achievable" as easily accomplishable and able to be carried out without much difficulty or expense.

ANALYSIS OF QUESTION #4

China and the USA are in agreement in stating that basic human rights are the most important of all rights in their constitutions. Historically, however, each nation has had different experiences in interpreting human rights. In its long history, China has developed a cultural viewpoint of the individual having less importance than the needs of society. The West has a cultural viewpoint of the individuals' rights as being of equal or greater importance than the needs of society. Thus, with regard to disability rights in China, it appears that the needs of people with disabilities are of lower status in achieving societal stability.

Because the USA disability movement is closely tied to other movements in American history, such as the fight for rights of women, Blacks, gays and lesbians, there is precedence for self-advocacy and strong opposition to government *status quo*. Given this emphasis on making change for the betterment of individuals and the subsequent civil unrest that it causes, the government has created laws according to the specifications of those making these demands. Simply, the laws protecting the rights of the disabled in the USA came about because of pressure from citizens.

SUGGESTIONS FOR QUESTION #4

In order to ensure that the disabled can enjoy all rights equally by law, the CDPF should:

- Work with the UNICEF office in creating focus groups composed of people with disabilities. These groups could offer suggestions on how to better ensure the rights of the disabled are enjoyed equally.

China needs to enact laws relating to education of children with disabilities, that include the following components:

- Children with disabilities have the right to enroll in any school at all levels from kindergarten to high school inclusive.
- Schools have a mandate to provide education to all disabled children. Schools must provide education, or risk losing their government financial aid.
- Children with disabilities should be taught in the least restrictive environment (LRE). Furthermore, they should, as far as possible, be "mainstreamed" into regular classes so that they can develop appropriate peer models.

- Individualized education programs (IEPs) should be developed for children with disabilities, in order to ensure that each child gains the maximum benefit from special education. IEPs are to include:
 - a) A statement of the present level of education performance of the child.
 - b) A statement of annual goals.
 - c) A statement of the specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs.
 - d) The projected date of initiation of services and their anticipated duration.
 - e) Appropriate criteria and evaluation procedures for determining on an annual basis whether the plan is achieving its stated instructional goals.

QUESTION 5.

“What are the basic duties the disabled person must perform?”

ANSWER FOUND IN HANDBOOK

According to the Constitution, the disabled must perform the following basic duties:

[1] Safeguard the unity of the state and to uphold the unity of all nationalities, (see the Constitution Article 52 and Article 4);
 [2] Abide by laws and to respect social morality. Constitution Article 53 specifies that:

- A. A citizen shall abide by Constitution and laws;
- B. A citizen shall keep the state secrets;
- C. A citizen shall take good care of the public property;
- D. A citizen shall abide by labor laws;
- E. A citizen shall observe public order; and
- F. A citizen shall observe public morality.

[3] Uphold the safety, honor and interests of the state, (see Constitution Article 54);

[4] Protect the state; and

[5] Pay taxes by law. (see Constitution Article 56)

Besides these duties, the disabled also must perform society duties such as

- 1) birth control,
- 2) provide for parental support, and
- 3) ensure their children's welfare and education.

USA ANSWER

All citizens are expected to uphold the United States Constitution RATIFIED BY THE STATES

Note: The following text is a transcription of the amendments in their original form to the United States Constitution and is offered here for the reader to compare to the Chinese Constitution.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall be issued, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

Note: Article III, section 2, of the Constitution was modified by amendment 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

Passed by Congress December 9, 1803. Ratified June 15, 1804.

Note: A portion of Article II, section 1 of the Constitution was superseded by the 12th amendment.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three

on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of] Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

*Superseded by section 3 of the 20th amendment.

Amendment XIII

Passed by Congress January 31, 1865. Ratified December 6, 1865.

Note: A portion of Article IV, section 2, of the Constitution was superseded by the 13th amendment.

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

**Changed by section 1 of the 26th amendment.*

Amendment XV

Passed by Congress February 26, 1869. Ratified February 3, 1870.

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude--

Section 2.

The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI

Passed by Congress July 2, 1909. Ratified February 3, 1913.

Note: Article I, section 9, of the Constitution was modified by amendment 16.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

Passed by Congress May 13, 1912. Ratified April 8, 1913.

Note: Article I, section 3, of the Constitution was modified by the 17th amendment.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

*Passed by Congress December 18, 1917. Ratified January 16, 1919.
Repealed by amendment 21.*

Section 1.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

Passed by Congress June 4, 1919. Ratified August 18, 1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Passed by Congress March 2, 1932. Ratified January 23, 1933.

Note: Article I, section 4, of the Constitution was modified by section 2 of this amendment. In addition, a portion of the 12th amendment was superseded by section 3.

Section 1.

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Passed by Congress February 20, 1933. Ratified December 5, 1933.

Section 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2.

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII

Passed by Congress March 21, 1947. Ratified February 27, 1951.

Section 1.

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII

Passed by Congress June 16, 1960. Ratified March 29, 1961.

Section 1.

The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Passed by Congress August 27, 1962. Ratified January 23, 1964.

Section 1.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

Passed by Congress July 6, 1965. Ratified February 10, 1967.

Note: Article II, section 1, of the Constitution was affected by the 25th amendment.

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Passed by Congress March 23, 1971. Ratified July 1, 1971.

Note: Amendment 14, section 2, of the Constitution was modified by section 1 of the 26th amendment.

Section 1.

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

Originally proposed Sept. 25, 1789. Ratified May 7, 1992.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.

ANALYSIS OF QUESTION #5

This question seemed most interesting to the author because it had never been raised before. That is, do disabled in China have to perform duties that are different from those performed by non-disabled? Thus, this author wanted to find, indeed, what is the Chinese answer to this question. The decision was made to copy the entire US Constitution as the USA's answer to this question created in the HANDBOOK. It was gratifying to learn that both the Chinese Constitution and the US Constitution make no distinction between the duties of the disabled and the non-disabled

In the USA people with disabilities also are treated equally in the constitution. However, there was one item that is different between the USA and P.R.C. The USA constitution does not mention the requirement of practicing birth control or providing for parental support.

SUGGESTIONS FOR QUESTION #5

No basis upon which to make any suggestions here at this time.

QUESTION 6.

“How to reduce and eliminate discrimination against the disabled?”

ANSWER FOUND IN THE HANDBOOK

According to the Handbook published by the CDPF, the P.R. China must

[1] Carry out publicity and education throughout the whole society, enhance humanitarian ideals, adopt the concept of the disabled fully belonging and participating in a modern civilized society.

[2] Vigorously strengthen the legal guarantees and policies of assistance to the disabled.

[3] Carry out widespread activities of helping and assisting the disabled in the whole society.

[4] Wage a struggle to firmly eliminate the phenomena of discrimination against the disabled by using the mass media, administration, law and other methods and

[5] Encourage the disabled to be able to display a spirit of self-respect, self-confidence, self-exertion, and self-reliance, in order to raise their own quality of life, and be able to make a contribution to society.

According to Article 36 of the Protection of the Disabled Law says that the state and society shall encourage and assist disabled persons to participate in various forms of cultural, sports and recreation activities and work to meet the needs of the spiritual and cultural life of the disabled. Article 37 says that cultural, sports and recreation activities should be oriented towards grassroots levels, integrated in public cultural life geared to the different characteristics and needs of different categories of disabled persons with a view to bringing about extensive participation.

USA ANSWER

In the USA, in 1945 Public Law 176 was passed by the United States Congress designating the first week in October as National Employ the Physically Handicapped Week” and the president of the United States, Harry Truman, appointed the President’s Committee on Employment of People with Disabilities to oversee the Act. The Committee has continued to work to eliminate depictions and caricatures of people with disabilities as evil, to be pitied and to be avoided. In 1962 President John Kennedy’s family established the Special Olympics for people with mental and physical disabilities.

There are also thousands of agencies in the USA that assist people with disabilities fight discrimination in housing, health care, transportation, education,

employment and doing business. These agencies will help in filing lawsuits, filing complaints with local governments and offer advice on how to lobby legislators to create laws that further protect the rights of people with disabilities. The reader is referred to the answer to question #131 for a listing of these agencies in the USA.

ANALYSIS OF QUESTION #6

From the answers provided by the USA and the CDPF, it is obvious that both nations are aware of the discrimination experienced by the disabled. In the USA there is more of a push to eliminate discrimination. Many universities, municipalities and many TV stations attempt to highlight the abilities of people with disabilities. Discrimination exists all cultures and in all nations. How a nation and a culture deals with discrimination toward the disabled is the critical factor.

SUGGESTIONS FOR QUESTION #6

To eliminate discrimination against the disabled in China may be too grandiose of a plan. However, in order to at least attempt to prevent it, China should create laws that

- Require businesses to provide goods and services in a disability-friendly setting.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- Make reasonable modifications in policies, facilities practices and procedures that deny equal access to individuals with disabilities.
- Provide auxiliary aids when necessary to ensure effective communication.
- Remove architectural and communication barriers in existing facilities.
- Provide alternative measures when removal of barriers is not readily achievable
- Provide equivalent transportation services and purchase accessible vehicles.
- Comply with the Design Code for the Accessibility to Urban Roads and Buildings guidelines issued by the Ministry of Construction of the P.R.C., the Ministry of Civil Affairs of the P.R.C, and the CDPF. when designing, constructing and altering facilities

China needs to enact laws that:

- Provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- Provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- Ensure that the Central Government plays a vital role in enforcing the standards established in disability laws on behalf of individuals with disabilities;

- Invoke the sweep of presidential authority, including the power to enforce the Protection of the Disabled Law and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

QUESTION 7.

“What is the significance of realizing the disabled person’s life value by expanding the spirits of self-respect, self-confidence, and self-support?”

ANSWER FOUND IN THE HANDBOOK

The Law of the P. R. China on the Protection of Disabled Persons, Article 10 says: Disabled people should display an optimistic and enterprising spirit, have a sense of self-respect, self-confidence, self-exertion and self-reliance, and make a contribution to society. The society should vigorously work to assist the disabled by encouraging their equal participation in society in order for them to realize their life value, to raise their spirits of the self-respect, self-confidence, self-exertion, and their self-reliance.

USA ANSWER

According to the AMERICANS WITH DISABILITIES ACT OF 1990 42 U.S.C. Chapter 12 **Sec. 12101 Findings and purposes**

(a) Findings

The Congress finds that--

- (1) as of 1990 some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

ANALYSIS OF QUESTION #7

In the CDPF Handbook and in the preamble of the ADA “findings and purposes,” it is clear that both nations see the significance of the disabled expanding their spirit, self-respect, self-confidence and self-support. For many Chinese and Americans with disabilities, barriers in their communities take away or severely limit their choices. These barriers may be obvious, such as ramped entrances for people who must use wheelchairs, lack of interpreters or captioning for people with hearing impairments, lack of Brailled or taped copies of printed material for people who have visual impairments. Other barriers—frequently less obvious—can be even more limiting to efforts on the part of people with disabilities to have self-respect, self-confidence and to be independent, especially if they result from people’s misunderstandings and prejudices about disabilities.

SUGGESTIONS FOR QUESTION #7

The CDPF should establish the following components in each regional office for the purpose of helping the disabled to expand their spirits of self-respect, self-confidence, and self-support.

Information and referral center. –This Center can maintain comprehensive information files on availability in their communities of accessible housing; transportation; employment opportunities; rosters of persons available to serve as personal care attendants, interpreters for hearing impaired people, or readers for visually impaired people and many other services.

Independent living skills training center-This Center can provide training courses to help people with disabilities gain skills that we enable them to live more independently; courses may include using various public transportation systems, managing a personal budget, dealing with insensitive and discriminatory behaviors of members of the public, and many other subjects.

Peer counseling center. -This center can offer a service in which a people with a disability can work with other persons who have disabilities and who are living independently in the community. The object is to explore options and to solve problems that sometimes overwhelm people with disabilities, for example, making adjustment to a newly acquired disability, experiencing changes in living arrangements, or learning to use community services more effectively.

Advocacy center. -This center can provide two kinds of advocacy: (1) consumer advocacy, which involves center staff working with persons with disabilities to obtain necessary support services from care-giving agencies in the community and (2) community advocacy which involves center staff, board members, and volunteers initiating activities to make changes in the community that make it easier for all persons with disabilities to live more independently.

Political Rights and Freedom

QUESTION 9.

“How does the disabled person exercise the right to vote and the right to stand for election?”

ANSWER FOUND IN THE HANDBOOK

According to The Constitution, Article 34: Citizens of the P. R. China over 18 years have the right to vote and the right to stand for the election, regardless of their nationality, race, sex, occupation, family, religion, education, property, and duration of residence. Excluded from the right to vote are those who are deprived of voting rights by the law due to criminal activities.

According to the Constitution, two groups of people do not have the right to vote and to stand for election. One is people below 18 years, the other is those who are deprived of political rights by the law. Because exercising the right to vote is an expression of a citizen's personal will, people with serious mental disorders, even though over 18 years are not to be listed as a voter. But it is quite different from those being deprived the rights by law to vote and to stand for election. According to Electoral Law Article 26[2], People with mental disorders, who cannot exercise their right to vote, if confirmed by the electoral committee, will not be listed on the voting register. People with visual or physiological disabilities who cannot fill in the ballot, can entrust other people to write for them. Citizen's right to vote and to stand for election are protected by state law.

USA ANSWER

USA ALTERNATIVE VOTING PROCEDURES - STATE AND FEDERAL ELECTIONS as they relate to the persons with disabilities

(Excerpted from Legal Rights of Persons with Disabilities, published by the California Department of Justice, July, 1998)

In State elections, California law, for example, requires that notice of a polling site must state whether the location is accessible to the disabled. Election officials must try to select accessible voting sites. If a site is not accessible, a disabled person can vote in a nearby accessible location.

If a voter is unable to mark a ballot, he or she must be permitted to vote with the assistance of not more than two persons, excluding employers, or their agents, or union representatives. The voter must declare under oath to a member of the precinct board present at the time that he or she is unable to mark the ballot. (Cal. Elec. Code, §§ 12280, 13004, and 14282.)

In national elections, throughout the USA, any voter requiring assistance because of blindness or disability to vote in a federal election may receive assistance from a person of the voter's choice. (42 U.S.C. § 1973aa-6.) State and political subdivisions must ensure that registration and polling places for federal elections are accessible to handicapped and elderly persons, or that alternative means for casting ballots are provided. Registration and voting aids which are required include:

- instructions, printed in large type, conspicuously displayed at registration and polling places; and
- information by telecommunications for hearing-impaired people.

If a state or political subdivision does not comply with this law, the United States Attorney General or anyone affected by the noncompliance can bring a lawsuit in court. (42 U.S.C. § 1973ee.)

ANALYSIS OF QUESTION #9

This question represents a vast difference between the USA and the P.R.C. in election laws. The USA has no laws banning persons with disabilities—no matter how severe—from voting in local and national elections. The USA Civil Rights Act of 1964 specifically forbids any “test” for voting eligibility. In the USA history there was an attempt to prevent certain races from voting by insisting that they take a test before voting. Since this was a clear act of discrimination, the Civil Rights Act was enacted. Today, in the USA all American Citizens beginning on their 18th birthday, are eligible to vote. Convicted felons are not allowed to vote.

This question’s answer also has a philosophical basis. The feeling in the USA among many is that even if a person is severely disabled, to take away his voting right, is at the same time symbolically taking away his right as a citizen. Certainly, it is doubtful that one who is severely intellectually disabled can understand the complexity and importance of the right to vote as mentioned in the Handbook, but for disabled advocates and their families in the USA, the feeling is that the right to vote is a God-given right and that government has no power to take that right away.

SUGGESTIONS ON QUESTION #9

No suggestions are made at this time.

The Right of Education and Culture

QUESTION 42.

“What are the regulations on the enrollment age of disabled children who can receive the nine-year compulsory education?”

ANSWER FOUND IN THE HANDBOOK

Rules regarding the disabled may be found in the Implementation of the Compulsory Education Law of the People's Republic of China Article 4 which says: Children and adolescents' schooling period may be determined by the provincial government and the enrollment age and schooling period for children with visual, hearing, speech disabilities, and those children with mental retardation disabilities may be extended considerably. The Handbook suggests that the reader look to another publication produced by the CDPF, *Regulations on the Education of Persons with Disabilities*.

What follows is excerpted information from the *Regulations on the Education of Persons with Disabilities* published by the China Disabled Persons' Federation:

Chapter I General Provisions

Article 1

These Regulations are formulated in accordance with the Law of the People's Republic of China on the Protection of Disabled Persons and laws concerning education, for the purpose of safeguarding the right of persons with disabilities to education and developing educational undertaking for persons with disabilities.

Article 2

The education of persons with disabilities shall be carried out in compliance with the state's educational policies to raise in an all-round way the quality of persons with disabilities according to their physical and mental needs, and to create conditions for their equal participation in social life.

Article 3

The education of persons with disabilities is a component of the State education programme.

The principle of combining popularization with upgrading of quality shall be implemented in developing the education of persons with disabilities, with emphasis on the former. Priority shall be given to compulsory education and vocational education, while efforts shall be made to carry out preschool education and gradually develop education at or above senior middle school level.

The education of persons with disabilities shall be carried out by adopting normal or special methods of education according to the different categories of disabilities and varied learning abilities and aptitudes of individuals, and by

bringing into full play the role of ordinary educational institutions in the education of persons with disabilities.

Article 4

People's government at various levels shall strengthen their leadership over the education of persons with disabilities, formulate overall plans for its development, and increase step by step funds for the education of persons with disabilities so as to improve conditions for running schools.

Article 5

The administrative department of education under the State Council shall be in charge of the education of persons with disabilities throughout the country. The administrative departments of education of the people's governments at or above the county level shall be in charge of the education of persons with disabilities within their respective administrative areas.

People's government at or above the county level and other relevant departments shall, within the scope of their respective functions and responsibilities, be responsible for the relevant work of education of persons with disabilities.

Article 6

The China Disabled Persons ' Federation (CDPF) and its local branches shall actively promote and develop the education of persons with disabilities.

Article 7

Pre-school educational institutions, schools of various types and levels and other educational institutions shall carry out the education of persons with disabilities in accordance with the provisions of relevant laws and regulations of the State.

Article 8

Families of persons with disabilities shall assist those persons to be educated.

Article 9

All members of society shall concern themselves with and support the educational undertaking of persons with disabilities.

Chapter II **Pre-school Education**

Article 10

Pre-school education for children with disabilities shall be carried out by the following institutions:

- (1) Pre-school educational institutions for children with disabilities;
- (2) Ordinary pre-school educational institutions;
- (3) Welfare institutions for children with disabilities;

- (4) Institutions of rehabilitation for children with disabilities;
- (5) Pre-school classes of ordinary primary schools and pre-school classes of special education schools. Families shall be responsible for the preschool education of their children with disabilities.

Article 11

The education of children with disabilities shall be carried out in combination with childcare and rehabilitation.

Article 12

Health care institutions, as well as pre-school educational institutions for children with disabilities and families of children with disabilities shall pay attention to early detection of childhood disabilities, as well as early rehabilitation and early education of children with disabilities.

Pre-school educational institutions for children with disabilities and health care institutions shall provide consultation and guidance on children with disabilities in respect of early detection of their disabilities, early rehabilitation and early education.

Chapter III **Compulsory Education**

Article 13

Local people's government at various levels shall include the education of children with disabilities and adolescents in local plans for the development of compulsory education and make overall arrangements for its implementation. People's government at or above the county level, in conducting supervision, guidance or inspection of the implementation of compulsory education, shall subject the implementation of compulsory education for children and adolescents with disabilities to their supervision, guidance or inspection.

Article 14

Parents or other guardians of school-age children and adolescents with disabilities shall make their children or wards receive compulsory education according to the law.

Article 15

The age limit for admission and schooling of children and adolescents with disabilities receiving compulsory education shall be the same as that for their non-disabled peers; when necessary and as appropriate, the age limit for admission and schooling may be raised.

Article 16

The administrative departments of education and public health of the people's government at the county level shall organize consultations on the enrollment of school-age children and adolescents with disabilities, conduct

assessment of their disabilities, and put forward suggestions regarding the ways through which they receive education.

Article 17

School-age children and adolescents with disabilities may, in light of the actual conditions, receive compulsory education through the following ways

- (1) Study in classes of ordinary schools;
- (2) Study in social education classes attached to ordinary schools, welfare institutions for children or other institutions;
- (3) Study in special education schools.

Local people's government at various levels shall gradually create conditions to provide, through other appropriate ways, compulsory education to school-age children and adolescents with disabilities who are unable to study in school due to their levels of physical functioning.

Article 18

In respect of students with disabilities who have financial difficulties, fees and other expenses shall be reduced or exempted according to the circumstances.

Article 19

Educational work in special education schools (classes) shall adhere to the principle of combining ideological, cultural and labour skill education with due attention to meeting their physical and mental needs; classification teaching shall be offered to meet the individual needs of students with diverse disabilities; teaching on a one-to-one basis shall be offered in schools where conditions permit.

Article 20

The curricula, teaching programmes and teaching material of special education schools (Classes) shall be adapted to the needs of children and adolescents with disabilities.

The curricula and teaching programmes of schools (classes) of special education for children and adolescents with disabilities shall be developed by the administrative department of education under the State Council, while the teaching material shall be reviewed and approved by the administrative departments of education of the people's government at or above the provincial level.

Article 21

Ordinary schools shall, in accordance with the relevant provisions of the State, admit school-age children and adolescents with disabilities who are able to adapt themselves to study in ordinary classes, and shall provide assistance to them according to their special needs in study and rehabilitation. Schools, where conditions permit, may have classrooms for guidance in their study.

The administrative departments of education of the people's government at the county level shall, within their respective administrative areas, strengthen their guidance in the teaching work of ordinary schools in which children and adolescents with disabilities study.

The curricula, teaching programmes and teaching material for ordinary schools implementing compulsory education may be applied to students with disabilities receiving compulsory education in ordinary schools; however, the requirements for the study of such students may be determined with appropriate flexibility.

Article 22

Special education schools that implement compulsory education shall, in accordance with need and at appropriate stages, carry out labour skill education, vocational education and vocational guidance among students with disabilities.

Chapter IV **Vocational Education**

Article 23

People's government at various levels shall include vocational education for persons with disabilities in the general plan for the development of vocational education, establish a system of vocational education for persons with disabilities and, formulate overall plans for its implementation.

Article 24

In respect of vocational education for persons with disabilities, priority shall be given to the development of primary and secondary vocational education. Due attention shall be paid to the development of higher vocational education. Medium and short-term training, with practical skills training as a main focus, shall be conducted.

Article 25

The system of vocational education for persons with disabilities is composed of institutions of ordinary vocational education and institutions of vocational education for persons with disabilities, with institutions of ordinary vocational education as the main body. Local people's government at or above the county level shall, according to need, establish in a rational way institutions of vocational education for persons with disabilities.

Article 26

Ordinary schools of vocational education must enroll persons with disabilities who meet the State's admission requirements, while ordinary institutions of vocational training shall make efforts to enroll persons with disabilities.

Article 27

Schools of vocational education for persons with disabilities and institutions of vocational training for persons with disabilities shall, in accordance with the social need as well as the levels of physical and mental functioning of persons with disabilities, set up courses, and in line with teaching needs and conditions, develop well-run school owned enterprises as a basis for practical skill training.

Article 28

In respect of students with disabilities who have financial difficulties, tuition and fees shall be reduced or exempted according to the circumstances.

Chapter V **Education at or above Ordinary Senior Middle School Level and Adult Education**

Article 29

Ordinary senior middle schools, institutions of tertiary education and institutions of adult education must enroll students with disabilities who meet the State's admission requirements and shall not deny them enrollment on account of their disabilities.

Article 30

Local people's government at or above the level of cities divided into districts may, according to need, establish special education schools (classes) at or above senior middle school level in order to enhance the level of the education of persons with disabilities.

Article 31

The administrative departments of education of the people's government at or above the county level shall, in conjunction with broadcasting and television departments and in light of the actual conditions, offer or retransmit programmes on subjects or courses suitable for persons with disabilities.

Article 32

Units where persons with disabilities work shall carry out education in cultural knowledge and technical training with regard to persons with disabilities working in those units.

Article 33

Anti-illiteracy education shall include illiterate or semi-literate persons with disabilities who have reached the age of 15 and who have not lost their ability to study.

Article 34

The state and society shall encourage and assist persons with disabilities to fulfill their potential through, inter alia, self-teaching.

Chapter VI

Teachers

Article 35

People's government at various levels shall attach great importance to the cultivation and training of teachers engaged in the education of persons with disabilities, adopt measures to gradually promote their status and welfare benefits, improve their working environment and conditions, and encourage them to devote their whole lives to the education of persons with disabilities.

Article 36

Teacher engaged in the education of persons with disabilities shall devote themselves to their professional responsibilities, value their students, have the spirit of humanitarianism, be concerned about their students and possess the professional knowledge and skills necessary for the education of persons with disabilities.

Article 37

The State shall institute a certificate system of qualification for teachers engaged in the education of persons with disabilities; the specific measures shall be formulated by the administrative department of education under the State Council, in conjunction with other administrative departments under the State Council.

Article 38

Units that sponsor special education schools shall, in line with the standards for size of teaching staff in special education schools, assign to those schools teachers to undertake such work as teaching and rehabilitation.

The standards for size of teaching staff in special education schools shall be developed by the administrative department of education under the State Council, in conjunction with other administrative departments under the State Council.

Article 39

The administrative department of education under the state Council and the people's government of provinces, autonomous regions and municipalities directly under the Central Government shall systematically set up degree courses in special education schools and teachers colleges, or, attach special education teachers training classes (departments) to ordinary teachers' schools to train teachers for special education.

Article 40

The administrative departments of education of the local people's government at or above the county level shall include the education and training of special education teachers in their work plans and, by establishing training

bases, or through other means, carry out advanced training of teachers engaged in special education.

Article 41

Ordinary teachers' colleges and schools shall offer in a planned way compulsory or elective courses of special education so that trainee teachers may master the basic knowledge and skills of special education, and thus meet the needs for teachers who teach students with disabilities studying in ordinary schools.

Article 42

Teachers, staff members and workers engaged in the education of persons with disabilities shall, in accordance with relevant provisions of the State, be entitled to subsidies and other benefits for the education of persons with disabilities.

Chapter VII **Guarantee for Material Conditions**

Article 43

People's government of provinces, autonomous regions and municipalities directly under the Central Government shall, in light of the special features of the education of persons with disabilities and on the basis of the guiding standards of persons with disabilities and on the basis of the guiding standards of the competent administrative departments under the State Council, lay down, within their respective administrative areas, standards for construction, expenditure and allocation of teaching aids and equipment to schools for persons with disabilities.

Article 44

People's government at various levels shall be responsible for raising funds to cover expenditure for the education of persons with disabilities, and the funds shall be guaranteed and gradually increased along with the increase of the educational operating expenses.

People's government at or above the county level may according to need, set up special subsidy funds, which shall be used for the development of the education of persons with disabilities

In respect of the fund appropriated by the local people's governments at various levels for compulsory education and the collected educational surcharges, a certain proportion of the fund and surcharges shall be used for compulsory education of children and adolescents with disabilities.

Article 45

The State shall encourage all sectors of society to sponsor educational institutions for persons with disabilities or to contribute funding support for their education

Article 46

Local people's government at or above the county level shall make overall plans and rational layouts in respect of the establishment of educational institutions for persons with disabilities.

The establishment of schools for persons with disabilities shall be- subject to the examination and approval of the administrative departments of education, in accordance with the relevant provisions of the State.

Article 47

The construction of educational institutions for persons with disabilities shall be adapted to meet the special needs of students with disabilities in their study, rehabilitation and life.

Ordinary schools shall, in light of their actual conditions, provide an enabling environment for students with disabilities to pursue their studies and student life.

Article 48

People's government at or above the county level and their concerned departments shall adopt preferential policies and measures to support the research and production of instruments and equipment, used for the education of persons with disabilities, and to support educational institutions for persons with disabilities in the establishment and development of school-run enterprises or welfare enterprises.

Chapter VII **Rewards and Punishments**

Article 49

Rewards shall be given by the people's governments at various levels or their administrative departments of education to units and individuals that have performed any of the following deeds:

- (1) Made outstanding contributions to the teaching of or research on the education of persons with disabilities;
- (2) Exerted great efforts in helping persons with disabilities to attend school;
- (3) Achieved remarkable success in the research and production of instruments, equipment, teaching aids and assistive devices used for the education of persons with disabilities, as well as in improving the quality of their education;
- (4) Accomplished significant achievements in the construction or development of schools for persons with disabilities; or
- (5) Made other major contributions in the educational undertaking of persons with disabilities.

Article 50

If anyone commits any of the following acts, the concerned departments shall impose on the persons who are held directly responsible administrative sanctions:

- (1) Refusing to enroll any person with a disability who should be enrolled according to the relevant provisions of the State;
- (2) Insulting, imposing corporal punishment on or beating any student with a disability;
- (3) Seizing, embezzling or misappropriating funds intended for the education of persons with disabilities.

In the case specified in sub-paragraph (1) of the preceding paragraph, the concerned administrative department of education shall order the school in question to enroll the person with a disability in school.

In the case specified in sub-paragraph (2) of the preceding paragraph, if there has been a violation of the Regulations of the People's Republic of China on Administrative Penalties for Public Security, administrative sanctions shall be imposed by the public security organ.

Whoever has committed any of the acts specified in sub-paragraph (2) and/or (3) of the preceding paragraph, if the case constitutes a crime, it shall be investigated for criminal responsibility according to the law.

Chapter IX

Supplementary Provisions

Article 51

People's government of provinces, autonomous regions and municipalities directly under the Central Government may formulate implementing rules in accordance with these Regulations.

Article 52

These Regulations shall enter into force as of the date of promulgation.

THE USA ANSWER

The United States Congress enacted P.L. 94-142, the Education for All Handicapped Children Act in 1975 in response to the widespread failure of public school systems to provide appropriate-or in many cases, any education to children with disabilities. The Act, which was renamed the Individuals With Disabilities Education Act ("IDEA") in 1990 and reauthorized in 1997, provides states with funds for special education programs. In return, a state accepting these funds-as well as the local school systems to which it channels them-must comply with the substantive and procedural requirements set forth in IDEA. All fifty states accept IDEA funds.

REQUIREMENTS OF IDEA

IDEA requires states and local education agencies to provide a "free appropriate public education" for all "children with disabilities." The statute and the U.S. Department of Education regulations implementing it set forth requirements for

identifying and evaluating "children with disabilities," the components of a free appropriate public education, the process by which such an education is to be designed for individual children, and the procedures by which their parents and guardians may challenge the adequacy of the education offered them.

WHO IS RESPONSIBLE FOR ADMINISTERING AND ENFORCING IDEA?

The Office of Special Education Programs or "OSEP," a division of the U.S. Department of Education, is responsible for administering and enforcing IDEA. In addition, state departments of education are responsible for ensuring that local school districts (as well as other public, and in certain instances, private, agencies in the state that provide educational services) comply with IDEA. The Act is also enforced through administrative and judicial actions initiated by parents and students who allege that their IDEA rights have been violated.

ELIGIBILITY

Only those students who are "children with disabilities" within the meaning of IDEA are entitled to its protections. For purposes of IDEA,

The term children with disabilities means children “. . . with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities . . . who by reason thereof need special education and related services."

IDEA does not allow for some possibility that some children are too severely disabled to be served; states and school systems may not refuse to provide educational services on the ground that a child is too severely disabled to benefit from them.

AGE RANGES

IDEA compels states to serve all children with disabilities aged three through twenty-one years *unless*, with respect to three through five year olds and eighteen through twenty-one year olds, this requirement will be inconsistent with a state law or practice or a court order. If a state, school district or other public agency does undertake to serve 3 through 5 or 18 through 21 year olds, however, all of IDEA's substantive and procedural requirements apply.

SECTION 504 OF THE REHABILITATION ACT OF 1973 AND EDUCATION OF CHILDREN

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute designed to prohibit discrimination on the basis of disability. Modeled after Title VI of the Civil

Rights Act of 1964 and title IX of the Education Amendments of 1972—which address racial or national origin and sex discrimination, respectively- it applies to recipients of federal funds. Section 504 as amended provides in relevant part that:

"No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving federal financial assistance . . ."

Because virtually all local school and school districts receive federal funds of some sort, section 504 provides an additional tool for assuring that school-age children with disabilities receive the education to which they are entitled. Section 504 is enforced

through administrative complaints and compliance reviews by the U.S. Department of Education's Office of Civil Rights or "OCR," and also through litigation by individuals who allege deprivation of their section 504 entitlements.

INDIVIDUALS PROTECTED

For purposes of section 504, an "individual with handicaps" is an individual who "... (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

Major life activities, means activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Virtually all children eligible for special education and related services under IDEA will fall within this definition, and be protected by section 504, as well. The section 504 definition of an "individual with handicaps," however, is broader than the IDEA definition of "children with disabilities," protecting many children who are not IDEA-eligible. For example, a child who has an "other health impairment," such as epilepsy or AIDS, for example, but who does not need specialized instruction and so is not a "child with disabilities" within the IDEA definition is nonetheless protected against discrimination by section 504 and its implementing regulations. Similarly, a child who does not have any of the kinds of disabilities required for IDEA eligibility might nonetheless have an impairment-or be regarded as having an impairment or have a history of an impairment-covered by section 504.

In order to be protected from discrimination by section 504, an "individual with handicaps" must be "otherwise qualified." For purposes of public preschool, elementary or secondary school services and activities, a child or student is "otherwise qualified" if she or he is:

* of an age during which non-handicapped individuals are provided with such services, or

* of any age during which it is mandatory under state law to provide such services to handicapped individuals, or

* is someone IDEA requires the state to provide with a free appropriate public education.

CONTENT, QUALITY AND MEANING OF "FREE APPROPRIATE PUBLIC EDUCATION"

IDEA requires school systems to provide eligible children with a "free appropriate public education" consisting of "special education and related services." For purposes of section 504, "a free appropriate public education" may consist of either "special education" or "regular education" and "related aids and services." Both statutes also call for a child with disabilities to be educated in regular education settings with non-disabled peers to the maximum extent appropriate in view of his or her individual needs. This latter requirement is often referred to as "least restrictive environment" or "mainstreaming"

Another component of the "free appropriate public education" mandated by IDEA is the "Individualized Education Program" or IEP that school systems must design at least annually for each child with disabilities. Under IDEA, a school system is not providing a free appropriate public education if it is not following a properly developed IEP.

An IEP must among other things, set forth annual goals and instructional objectives for the student, describe the special education and related services the child is to receive, and specify the extent to which he or she will be integrated with non-disabled peers.

Section 504 does not require the development of an IEP. However, the section 504 regulations provide that implementation of an IEP developed pursuant to IDEA is one means of providing an "appropriate" education under section 504.

THE MEANING OF "APPROPRIATE"

IDEA defines "free appropriate public education" by simply describing its components: special education and related services meeting state and IDEA standards provided at public expense, with no cost to parent or child, under public supervision, in conformity with the child's IEP. A "free appropriate public education" must also "...meet the standards of the State educational agency ...(and) include an appropriate preschool, elementary and secondary education in the State involved..." Nowhere, however, does IDEA actually define the term "appropriate." Put another way, neither IDEA nor its regulations specify how well

a package of special education and related services must meet a child's needs in order to be deemed "appropriate."

The US supreme court took up this issue in *Board of Education of the Hendrick Hudson Central School District v. Rowley*. In *Rowley*, the court ruled that the special education and related services offered a child with disabilities must meet two criteria in order to be "appropriate" for purposes of IDEA:

- 1) The IEP must be developed in accordance with the procedures set forth in IDEA, including those governing resolution of disputes between parents and school systems
- AND
- 2) The IEP must be "reasonably calculated to enable the child to receive educational benefits."

The requirement that an IEP enable a student to receive educational benefits in order to be deemed "appropriate" does not mean that any degree of benefit is enough to satisfy IDEA standards. "*de minimis*" or trivial benefit is not enough; rather, the IEP must be one "under which educational progress is likely."

In developing this two-part test for "appropriateness," *Rowley* held that IDEA does not require states and school systems to provide education designed to maximize the potential of children with disabilities. Advocates, however, should pay close attention to their state's law concerning the quality of education to which children with disabilities are entitled. As interpreted in *Rowley*, IDEA sets a "basic floor" for special education quality. It does not prohibit states from setting higher quality and benefit standards, and a number of states do so by statute, regulation, judicial decision, or state constitutional provision. Because special education and related services must meet the standards of the state education agency, where a higher state quality standard exists, it is automatically "incorporated" into IDEA. In these states an education meeting the higher state quality standard is an IDEA right, and IDEA compliance may thus require IEPs designed to maximize potential or otherwise exceed the *Rowley* benefit standard.

On an issue related to educational quality, school districts must insure that the variety of educational programs and services available to children in the system who do not have disabilities—such as art, music, industrial arts, consumer and homemaking education and vocational education—is available to children with disabilities as well. This requirement encompasses all programs and services in which children without disabilities participate, and applies to all children with disabilities, regardless of school or educational program they attend. School systems must also make physical education services available to all children with disabilities, specially designing it to meet individual needs if necessary.

SPECIAL ISSUES REGARDING RELATED SERVICES

In *Irvington Independent School District v. Tatro*, the U.S. supreme court held that if a student cannot attend school unless provided with certain health-related assistance during the school day, such help is a "supportive service" necessary to assist him or her to benefit from special education. If the necessary health-related assistance can be provided by a school nurse, trained layperson or other non-physician, it is not an excludable medical service; rather, it is a "school health service" as defined by the IDEA regulations- and so a required related service under IDEA

In *Tatro*, the supreme court applied these principles to require a school district to provide clean intermittent catheterization to a student needing it every three to four hours during the school day. Other courts have required services such as the suctioning and reinsertion of tracheostomy tubes. In each of these cases, the courts found that the medical exclusion did not apply because, among other things, the service in question was not to be performed by a physician.

RELATED SERVICES FOR CHILDREN DIAGNOSED AS HAVING A PSYCHIATRIC DISORDER

A psychiatric disorder in and of itself does not automatically make a child eligible for special education and related services under IDEA. In order to fall under IDEA, he or she must also meet the criteria of one of its listed disabilities-such as "serious emotional disturbance" or "other health impairment-and need special education and related services as a result. For purposes of section 504, a psychiatric disorder is likely to constitute "mental impairment which substantially limits one or more major life activities" entitling a child to section 504 protections, especially if the condition has resulted in hospitalization.

PSYCHOTHERAPY AS A RELATED SERVICE

Although Psychotherapy is not specifically mentioned in the list of examples of "related services" contained in IDEA and its regulations, it has been recognized as a related service that school districts must provide if necessary to assist a child to benefit from special education. Psychotherapy also fall within the IDEA definitions of "psychological services" and "counseling services," both of which appear in the regulations as examples of related services.

RELATED SERVICES FOR STUDENTS WITH DRUG OR ALCOHOL ABUSE PROBLEMS

Substance abuse or addiction in and of itself does not automatically make a student eligible for special education and related services under IDEA; to be eligible, he or she must fall within one of the disability categories listed in the statute and need special education and related services as a result. To date, OSEP has maintained that chemical dependence is not an "other health impairment" and so does not trigger IDEA eligibility, regardless of its effect on

educational performance. This interpretation has not yet been judicially challenged.

Even under OSEP's interpretation, however, if a student is eligible for special education and related services under IDEA because of some other condition and has a substance abuse problem that interferes with his or her ability to benefit from special education, he or she is entitled to supportive, related services aimed at the substance abuse problem.

ANALYSIS OF QUESTION #42

The P.R.C. and the USA both have extensive special education programs. A major difference is that China has regulations for education of people with disabilities, and the USA had a national law. It is assumed by this author that regulations are not as strenuously enforced as are laws. Another difference is that the definition of a disability seems to be not as clear in the China regulations as it is in the American IDEA law. Likewise, it appears to this author that there is no centralized authority to mandate that the "regulations" be followed.

SUGGESTIONS FOR QUESTION #42

The CDPF should promote the following education components for the disabled:

1. Special education for children from pre-school through twelfth grade should be mandated.
2. Schools must provide special education or risk being punished.
3. Children with disabilities must be taught in the least restrictive environment (LRE). To the maximum extent possible, children are to be "mainstreamed" into regular classes so that they can have appropriate peer models.
4. Children with disabilities must have individualized education programs (IEPs). Individual plans are to be developed in order to ensure that each student is benefiting from special education. IEPs must include:
 - a) A statement of the present level of education performance of the child.
 - b) A statement of annual goals.
 - c) A statement of the specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs.
 - d) The projected date of initiation of services and their anticipated duration.
 - e) Appropriate criteria and evaluation procedures for determining on an annual basis whether the plan is achieving its stated instructional goals.
5. The Ministry of Education needs to set up an Office on Special Education and give the personnel in that office the authority to develop guidelines regulations for enforcing educational requirements for children with disabilities.
6. The P.R.C. needs to enact national legislation enforcing special education.

QUESTION 44.

“What is senior high school on special education?”

ANSWER FOUND IN HANDBOOK

Senior high school on special education is that for the students with visual and hearing disabilities. In 1993, the former state education committee and the CDPF entrusted Qingdao Blind School in Shandong province to run a blind high school and entrusted Nanjing Deaf School run a senior high school for deaf students. Both of them have been able to achieve remarkable success.

USA ANSWER

Special education schools have been established throughout the USA and most are public schools. There are special tax supported schools for severely disabled students located in each state. In accordance with the mandates of the IDEAS law, however, students with disabilities are most often taught in the same schools as non-disabled students.

There are still thousands of *private* non-tax supported schools throughout the USA that are designed for senior high school students with disabilities. There are private senior schools for students with learning disabilities, students who are blind, students who have hearing impairments, etc. Some of these schools do receive federal assistance, but most are not tax supported. Most often parents choose to enroll their children in these schools because they want them to receive some presumably special learning treatment that may greatly enhance their child's academic and social capacities. Parents wishing to have their children attend these schools must pay tuition fees that may range from \$1000 to \$10,000 per year.

ANALYSIS OF QUESTION #44

This question represents a difference in the P.R.C. and the USA regarding special schools. With the passage of the 1975 IDEA law in the USA, special schools and special classes for the disabled were virtually eliminated—except in cases of the most severely disabled. Most disabled children are now educated in the least restrictive environment (LRE) and “mainstreamed” into all the regular classrooms for the purposes of ensuring that students have role models of non-disabled students and to help ensure that disabled students are held to the same academic and social standards as their peers.

SUGGESTIONS FOR QUESTION #44

The CDPF needs to consider that very often the creation of special classes for the disabled leads to a “dumping ground” approach to special education. At least, this has been the observation of disability advocates around the world. The US congress established the requirement that disabled children be taught in the least restrictive environment simply because so many children with disabilities were making no progress and were becoming more disabled by not being exposed to classroom the same requirements as children without disabilities.

The PRC needs to follow the international education model that has been in place for the past 25 years. This model requires the placement of disabled children in the regular class with non-disabled children. Certainly, there are parents who do not favor this approach and they should have the right to place there children in private tuition charging schools where there will presumably have smaller classes and where children will receive a more specialized education that is presumably designed for students with specific types of disabilities.

QUESTION 46.

“What are the other ways besides the common higher education for the disabled students to receive higher education?”

ANSWER FOUND IN THE HANDBOOK

Besides the common higher education for the disabled students, the state successfully set up organizations to admit disabled students. For example, the 2nd medical department, Bilnzhou medical university enrolls students with physiological problems. The Special Education School of Changchun University in Jilin Province enrolls students with visual, hearing, physiological and other disabilities. The Deaf Engineering College at Tianjin Technological Institute enrolls students with hearing problems. The Special Education College of Beijing United University enrolls students with visual and hearing problems. These are but a few examples of higher education offering education to students with physiological disabilities.

USA ANSWER

In the USA there are extensive programs for students with disabilities who enter the post-secondary system or higher education. Students may choose to attend any college or university they wish. It is interesting to note that there are a significant number of programs for disabled students within most American post-secondary institutions. In all of these institutions can be found an office that specifically meets the educational needs of disabled students. These offices are mandated under section 504 of the Federal Rehabilitation Act of 1973 which was published in the May 4, 1977 and found in the Federal Register on page 22684. The Act's regulations provide for all disabled students enrolled in secondary institutions that receive federal monies and says . . .

"No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any . . . post-secondary education program or activity . . . [84.43(a)]

also . . .

"(An institution) . . . shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discrimination, on the basis of handicap, against a qualified handicapped applicant or student . . . Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and Special education schools have been established throughout the USA and most are public schools. There are special tax supported schools for severely disabled students located in each state. In accordance with the mandates of the IDEA

law, however, students with disabilities are most often taught in the same schools as non-disabled students.

As noted above, the Rehabilitation Act is a program access statute that also applies to post-secondary institutions. The Act requires that no otherwise qualified person be denied access to, or the benefits of, or be subjected to, discrimination by any program or activity provided by any post-secondary institution. Section 504's mandate has promoted development of disability support service programs at colleges and universities.

Subpart E of Section 504 deals specifically with the mandate for post-secondary institutions. While it does not require that special educational programming be developed for disabled students, it does require institutions to be prepared to make appropriate academic accommodations and reasonable modifications in policies and practices. The institution must allow the student with disabilities to fully participate in programs, activities and services available to non-disabled students.

An overview of Section 504 as it applies to post-secondary education:

Section 504 defines a disability, in part, as a physical or mental impairment that substantially limits a person from performing one or more major life activities. Major life activities in a post-secondary institution might include, but not be limited to, listening to lectures, copying material from the chalkboard, reading assignments, utilizing campus facilities (e.g., classrooms, toilets, recreation areas, offices, etc.,) completing written assignments, participating in out-of-class required activities and, of course, taking tests.

Section 504 requires that disabled students may not, on the basis of their disability, be denied admissions or be subjected to discrimination in admissions recruitment at a post-secondary institution. All testing must be as non-discriminatory as possible.

Section 504 mandates that institutions of higher learning make modifications in academic requirements to ensure that they do not discriminate against students with disabilities. These modifications may include, but are not limited to - lengthening of time for degree requirements, substitution of specific courses, extended time for tests, testing in a non-discriminatory environment and use of auxiliary aids. These auxiliary aids may include tape recorders, taped texts, interpreters for the deaf, use of computers and other forms of technology.

Section 504 clarifies that institutions need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

Section 504 requires that the provision of instruction and services for students with disabilities should be at no extra cost to individuals or to their parents or guardians.

Section 504 encourages development of campus or systems grievance procedures for students with disabilities.

Section 504 stipulates that students must make their disability and educational limitations known in order to be covered under the Act. Students are further urged to monitor the institution's compliance with the law.

Section 504 prohibits exclusion of otherwise qualified students with disabilities from any course or area of concentration on the basis of disability. Moreover, it is considered discriminatory to counsel students with disabilities toward more restrictive careers than non-disabled students, unless such counseling information is based upon knowledge of strict licensing or certification requirements in a profession that would most likely bar the student because of his/her functional limitations (e.g., a student who is blind who wants to pursue a vocation as a pilot).

Section 504 allows the student the option of filing a lawsuit without having to first exhaust administrative remedies at the post-secondary institution.

Section 504 mandates that post-secondary institutions make reasonable accommodations to permit students to fulfill academic requirements expected of non-disabled students. For example, using a tape recorder might be one type of accommodation to assist in taking notes. If using a tape recorder is a reasonable accommodation to ensure the student with disability's full class participation, it would be unlawful to prohibit using this auxiliary aid.

Regarding reasonable accommodations, it is important to note that they must be customized to the educational limitations of the student and are therefore provided on a case-by-case basis.

What follows on the next page is a simplified chart showing examples of educational limitations that are due to disabilities and the possible accommodations that might be prescribed.

STUDENTS WITH EDUCATIONAL LIMITATIONS (MAY RANGE FROM MILD TO SEVERE)	POSSIBLE ACCOMMODATIONS
Cannot ascend and descend stairs/cannot travel between classroom/office sites	Classroom/service moved to accessible location. Registration assistance provided.
Difficulty standing in registration lines	Registration assistance
Difficulty taking tests in a traditional manner.	Extra time on tests Distraction free test-taking environment Reader and/or scribe
Difficulty performing written tasks	Notetaker assistance Tape recorder for classes Scribe for written tests Electronic spell checker Use of wordprocessor No grade penalty for spelling errors
Difficulty using standard classroom furniture/unable to sit for long periods of time	Special classroom seating Alternative test-taking procedures Extra breaks Modified chairs and desks
Difficulty seeing or reading printed symbols	Books on Tape/Recordings for the blind Reader and scribe for tests Electronic spell checker Use of computer Magnification Note taker assistance Tests presented in Braille Registration assistance
Difficulty hearing verbal information	Special classroom seating Interpreter services Electronic spell checker Assistive listening devices Notetaker assistance Registration assistance
Difficulty carrying heavy learning materials throughout the day while on campus	Lockers provided for storage of materials between classes
Difficulty performing mathematical computations	Use of calculator/computer on assignments and tests

(This chart was taken from
About Disabilities, 2nd Edition, by John Wilde, Ph.D.)

ANALYSIS OF QUESTION #46

It appears to this author that Regulations on the Education of Persons with Disabilities addresses secondary education in a minimal way. Also in a widely read article appearing in the May, 22, 2001 *Chronicle of Higher Education* titled, "China Bars Students With Disabilities from Various Academic Programs," by Daniel Walfish, it is reported that China is preventing students with disabilities from enrolling in certain academic programs and, in some cases, from attending any university, according to a report by the China News Service. Disorders like cancer, heart disease, high blood pressure, and tuberculosis or a history of diseases like epilepsy and "mental disorders," completely disqualify people from undergraduate studies, according to the report.

The *Chronicle* says even some Chinese special-education experts complain that the rules are too discriminatory and reports that, for example, Qu Xueli, president and Communist Party secretary of Beijing Union University's Special Education College says, "Some aspects of the rules are unreasonable."

As can be seen in the extensive description of Section 504 of the Rehabilitation Act presented here by the author, there are many guarantees for educational rights of the disabled student pursuing a higher education.

The CDPF may want to read the following excerpt from the author's book to gain insights into how to better serve the needs of post-secondary students with disabilities.

SUGGESTIONS FOR QUESTION #46

Students with Disabilities in The College Classroom *Challenges and Opportunities for Faculty and Students* (Excerpted from *About Disabilities*, 2nd Edition by John Wilde, Ph.D.)

How instructors and how students with disabilities each view their respective situations is critical to their successful working relationship. Faculty must be willing and open to making adjustments in their instructional and assessment routines, while simultaneously, demonstrating a sensitivity that is caring, but not patronizing. For some, that task can be difficult. Students, however, must be self-advocates while at the same time demonstrating a certain amount of vulnerability in sharing that which is private and, perhaps, hurtful - an equally difficult task. Let's better prepare each for their respective roles.

What the Faculty Should Know

Of most concern should be the teacher's awareness that he/she is bound by state and federal law to ensure that "qualified" students with disabilities are not excluded from educational programs and that these students are not subjected to

any discrimination. There are ways in which to establish an atmosphere that gives students with disabilities a feeling of safety and a sense of being welcome. One way is to include a commitment statement in the course syllabus. Here's an example:

"If you need course adaptations or accommodations because of a disability/have emergency medical information to share with me/need special arrangements in case the building must be evacuated/ please make an appointment with me as soon as possible. My office location and hours are . . . "

Faculty should never assume that all persons with a similar disability have the same accommodation needs, or that solutions to one person's problems will generalize to another's. Although there are students with a severe disability who may require a significant number of accommodations, it is possible that another student with the same disability may require few if any accommodations.

For example, some students with a learning disability (LD), some who have post-traumatic syndrome (PTS), or some with a seizure disorder, may need extra time on tests. However, other students with the same diagnosis might not need such an accommodation. Each student brings to the learning activity a variety of life experiences, coping strategies and disability levels ranging from mild to severe.

Coincidentally, the severity of the disability may also vary according to the subject matter. It is possible that someone may have a disability in the area of mathematics, but demonstrate no limitations in other academic areas. Similarly, another person may have a disability where educational limitations in a certain subject matter are minimal, but in another area the limitations are of such major proportions, the individual is rendered incapable.

The key is for the professor to be particularly sensitive to the possibility of students with disabilities having varied ways in which they deal with their condition. Further, as a consequence of their disability, some students might have a heightened fear of failure and anxiety about learning situations where they feel vulnerable.

In the area of vulnerability, what constitutes a vulnerable situation varies from person to person. For some students with disabilities who must have accommodations - as in the case of students who need extra time on tests in order to function at their ability level - making the request can be traumatic. Generally speaking, people with disabilities want to be in the so-called mainstream. The knowledge that it is not possible to be like everyone else, for some, can be both frustrating and embarrassing.

There are students with disabilities who find it is a difficult experience to approach a professor to inform him or her that extra time is needed to complete

the course examinations, or that an auxiliary aid is needed, or that something has to be altered in the way the professor presents instruction. Again, depending on which stage of adjustment the student is in, he/she may or may not want to tell the professor that accommodations are vital to academic success.

There are still other students who may have the mindset of a less assertive person and who will not request accommodations. Some might thereby assume the role of "victim" by failing to achieve. Conversely, there are also those who may demonstrate behaviors that are overly-aggressive and blaming. Some may view the professor as an adversary and one who must be confronted.

Faculty can rightfully feel perplexed if the student with a disability approaches the student-teacher relationship in an adversarial, complacent or fearful manner. Unfortunately, there is no clear and easy prescription to follow when dealing with a student who is experiencing failure that appears to be directly attributable to the way in which he/she is adjusting to their disability.

In a post-secondary institution, however, the student is ultimately responsible for the coping process. While the student may seek support of the professor, the school's internal disability support services and/or the assistance of outside agencies, it is the student who has the ultimate task of coping with the disability. The student is responsible for his/her own academic success. Through the development and use of appropriate self-advocacy skills, the student is responsible for learning to be as independent as possible in meeting the goals of a post-secondary education.

It is in both the student's and the professor's best interests to ensure that the student with a disability meets the same standards of performance as all students. This means that the student with a disability does not and should not deserve an inflated grade, simply because he/she is disabled.

Just like non-disabled students who deserve a failing course grade, there are also disabled students who deserve to fail. Some students with disabilities do not study for tests, do not have the intellectual ability, fail to submit assignments, show lack of motivation, have poor study skills, etc.,. Conscientious faculty create a classroom learning environment where *all* students are aware that grades are based on merit only, and not on sympathy.

On the next page are some common sense tips for instructors at institutions of higher learning:

ASK THE STUDENT	Students should discuss their needs with instructors, but this is not always done. Have questions about whether or not a student needs an accommodation? Ask the student!
BE AWARE OF YOUR LANGUAGE	Use terms such as "students with disabilities" rather than "disabled students." Emphasis on the person rather than their disability.
RELAX	Don't be afraid to approach the person with a disability. Treat people as you would like to be treated—with respect.
SPEAK DIRECTLY TO THE STUDENT	Don't consider a companion to be the conversation go-between. If the student has an interpreter, speak directly to the student, not the interpreter.
GIVE YOUR FULL ATTENTION	Be considerate of the extra time it might take for a person with a disability to get things said or done. Don't talk for the student with a disability in speech, but give help when needed. Encourage rather than correct.
SPEAK SLOWLY AND DISTINCTLY	When talking to a person who is hearing impaired or has other problems in comprehension, speak slowly without exaggerating lip movement. Stand in front of the person. Many students who are deaf rely on reading lips; a bright light behind your face makes this difficult. It's usually OK to write notes.
APPRECIATE ABILITIES	Students with disabilities, like all of us, do some things well and others not as well. Focus on what is done well instead of deficits. Build confidence.
BE FAIR IN ADMINISTERING GRADES	It's not fair to give a student with a disability a passing grade because you feel sorry for him/her. Like everyone, grades should be based on merit. There are students with disabilities who deserve good grades and others who do not.

*(This chart was taken from
About Disabilities, 2nd Edition, by John Wilde, Ph.D.)*

Teaching College Students with Disabilities in the USA

by
John Wilde, Ph.D.

Faculty should be aware that in no way do disability laws in the United States mandate that curricula must be changed for students with disabilities. No laws mandate that test questions must be changed or that course content should be modified for students as an accommodation. Faculty are not asked to overlook disruptive behavior or to "water down" course material for students with disabilities. What is expected of students with disabilities in terms of acquired course knowledge should be the same as for non-disabled students.

What the Student Should Know

In attempting to shed some insights into the post-secondary experience for students with disabilities, it is probably safe to begin with the assumption that most students do not enroll in a course or program to fail or minimally achieve. Likewise, it is probably an accurate consideration that most faculty want to do a good job.

With these assumptions and considerations we should be able to logically conclude that success is inevitable for everyone.

The realist knows, however, as the saying goes, "Nobody's perfect." Problems arise. Professors do not always succeed. Students sometimes fail. Grievances and complaints are filed. Third parties sometimes must intervene.

Indeed, there are faculty who are better than others in teaching students with disabilities. Just as there are some sales people, bus drivers, bank presidents and priests who are better at their efforts than others, so too, there are educators who demonstrate remarkably superior skills in teaching people with special needs.

The problem for students with disabilities is that at post-secondary institutions, they may enroll in classes where they perceive that the professor is less than perfect. The key word here is *perceive*. While the professor's teaching skills may or may not be satisfactory, it really is the student's perception of those skills that matters.

The student may perceive the professor negatively as talking too fast or too slow, not providing enough or too much discussion, rushing through material or taking too much time, discouraging questions or encouraging too many questions. It is important to consider that in the act of perception, what one may perceive or feel, another may not. This is to say, all students - including those with disabilities -

may differ in their perceptions of what is a "good" or "bad" faculty. In fact, one professor's approach to teaching may be a perfect match for some students with disabilities, while for others with disabilities, it may be way off the mark.

Nonetheless, it is important to acknowledge that perception *is* reality. That is to say, without wishing to sound too philosophical here, if a student feels that the professor is not meeting his/her needs, it is important for the student to take action. It is not a good idea for the student to fail a course because there is a mismatch of teaching and learning styles. The student has at least five choices. He/she can . . .

- 1) Drop the course.
- 2) Remain in the course and possibly fail or receive a poor grade.
- 3) Explain the learning/teaching problem to the professor and attempt to see if help can be offered or at least a compromise can be reached.
- 4) Complain to the professor's supervisor if it is felt that the professor is being antagonistic and unwilling to listen to requests for an understanding of the educational limitations.
- 5) Explore with the disability counselor or service provider the possibility that there may be a need for additional accommodations to ensure academic success.

There are students with disabilities who must overcome seemingly insurmountable obstacles in order to be able to attend school, complete course requirements and to receive at least a passing grade. Some must depend upon attendants to assist them in dressing, transportation, and other basic needs. Some must be humiliated daily by people snickering, staring, asking offensive questions and refusing to help. Some must deal with constant physical and mental pain, lack of services and insensitive or abusive service providers. Some must deal with common and pervasive smells and fragrances that make them so ill they cannot function. Of course, it's easy for an advocate to take their side.

An advocate knows there are qualified students with disabilities who fail because they do not get appropriate accommodations. An advocate knows there are students who do not succeed because of institutional discrimination. There are students who abandon their post-secondary education goals because the fight for their educational rights seems like a losing battle.

It would be unrealistic and absurd to believe that all faculty have the sensitivity it takes to teach students with every kind of special need imaginable. In fact, there are those who are unwilling to teach students with disabilities. Some even view the provision of special services and accommodations for students with disabilities as a waste of valuable resources.

Thus the student should be ever-mindful of the fact that disability rights legislation was enacted, not in a vacuum, but out of necessity. In the history of

the disability movement, activists had to fight for laws protecting the rights of people with disabilities - sometimes resorting to acts of civil disobedience and going to jail. In all likelihood, schools and programs today would continue to refuse appropriate education for students with disabilities if it were not for fear of losing their vital federal funds as a punishment for violating laws.

Without disability laws there would be no building ramps and campus sidewalk curb cuts for wheelchair users. There would be no sign language interpreters for students who are deaf. There would be no alternatives for students who are blind who must take written tests. There would be no special provisions for students with psychiatric disabilities.

Laws are real motivators!

It is incumbent upon the student with a disability to be aware of his/her rights. With these rights, however, come responsibilities. The student must give the institution and the faculty an opportunity to meet his/her needs. This means that the student must show a willingness to work within the system by demonstrating a spirit of cooperation in using prescribed accommodations. For example, if interpreters, tests and auxiliary aids are assigned to be at the student's needed time and place, it is vital that the student avail him/herself of these accommodations in an efficient way.

Further, as part of the student's responsibility, he/she must divulge information that is felt to be private and confidential. The law is explicit here. To receive an accommodation for a disability the person with a disability must be able to be fairly specific in describing the condition and in most cases, provide written proof.

Fortunately in the USA, under Section 504, post-secondary institutions are required to provide a confidential service for students with disabilities in order to ensure their academic success. How this service is provided varies among institutions, but it is supposed to be operated under the watchful eye of the institution's 504 Coordinator. Depending on the size of the institution, there may be an office, a department or a single counselor assigned to accommodating students with disabilities.

If China's institutions of higher learning implemented such approaches as mandated by Section 504, students, working with specially trained professionals in the area of disability, should be able to seek support in determining and implementing the most appropriate accommodations. If the student is unaware of how to go about the task of getting supportive help or if he/she feels that supportive help has been denied or is in some way unsatisfactory, the student with a disability should contact someone in the institution like the USA's 504 Coordinators. The 504 Coordinator in the USA is charged with the responsibility of ensuring that the institution meets its legal obligations in providing education for students with qualified disabilities.

QUESTION 51.

“How to carry through the professional training for the disabled?”

ANSWER FOUND IN HANDBOOK

1. The vocational and professional training organizations of labor departments should take the responsibility to carry through the employment training for the disabled;

2. The vocational institutions of education departments, at the same time of teaching the disabled students, should run short or middle term training classes;

3. The vocational institutions of industrial departments and social organizations should provide professional training to the disabled;

4. In rural areas, special training classes should be run to provide practical skills for the disabled.

USA ANSWER

In all 50 States of America there are local offices of Rehabilitation Departments. These offices have a mandate that was established by the Rehabilitation Act of 1973. California's Department of Rehabilitation, for example, has several goals in assisting the disabled to achieve full employment. Department of Rehabilitation materials list these *measurable* goals for helping the disabled gain employment:

According to these materials, it is the purpose of the Department to:

1. Increase the quality and quantity of employment outcomes
2. Increase the quality and availability of independent living services
3. Increase employer knowledge of the Department of Rehabilitation
4. Develop methods to improve internal and external communications
5. Increase participation of people with disabilities, and all stakeholders, in the department's planning process
6. Improve administrative processes and the quality of department services
7. Increase consumer involvement in development of their IPE (Individualized Plan for Employment)
8. Provide for a comprehensive system of personnel development
9. Maximize the availability and use of assistive technology

ANALYSIS OF QUESTION #51

China describes several tasks that must be carried out in order for the disabled to gain employment and delegates these tasks to various government agencies. The USA, too, delegates the responsibility of assisting the disabled gain employment, but the US government has given the primary responsibility to the Department of Rehabilitation as established by The Rehabilitation Act of 1973. Also, the US government carefully audits the successes and failures of these offices by demanding measurements of client employment. Further, each Rehabilitation counselor is evaluated annually on the client successes he/she has. Administratively, each Rehabilitation Office is funded by the individual states. Thus, while California and New York, for example, may have Rehabilitation Offices that operate differently, both offices still have the same Federal mandate of ensuring the employment of the disabled. In many Rehabilitation Offices a counselor may specialize in working with blind clients, deaf, young adults, older adults, industrial injuries, etc. In the answer provided by the Handbook, it appears that China does not have *measurable* goals for the success or failure of its many local CDPF offices as they attempt to ensure the employment of the disabled.

SUGGESTIONS FOR QUESTION #51

- China's CDPF may want to develop stringent measurable objectives to find out the success rates of local offices. If the CDPF does have a document that specifies what are to be the outcome performance levels in assisting the disabled find employment, it might want to publish these outcomes widely throughout the nation.
- The CDPF's web site currently under construction (which was last updated on 5/29/2001) should consider adding the following components:
 - a) A listing of local offices
 - b) "Success stories" that tell employers of how well a disabled person has been on the job.
 - c) A central phone number that employers can call to locate prospective employees.
 - d) A description of what the CDPF can do for people with disabilities in terms of finding appropriate employment.
 - e) An interactive e-mail system where disabled and their families can ask for assistance in career development.
- The CDPF should advertise to industries and businesses the availability of the website as a place where employers can locate potential employees.

QUESTION 52.

“What are the main measures of the culture helping given to the disabled?”

ANSWER FOUND IN HANDBOOK

According to The Protection of the Disabled Law, Article 36: The state and society shall encourage and assist disabled persons to participate in various cultural, sports, and recreation activities and strive to meet the needs of the spiritual and cultural life of disabled persons.

Main measures include:

- Public cultural places opened to the disabled;
- Public cultural activities to for the disabled to take part in;
- Socialization and intellectual enhancement to help the disabled and their children in education;
- Publication of positive stories about the disabled in books and magazines;

Production of arts performances to the disabled in the areas where the disabled persons are concentrated in living quarters.

USA ANSWER

In the USA there are a number of agencies, including the Independent Resource Living Centers, Lighthouses for the Blind, Learning Disability Associations, etc, that advocate for their constituencies and at the same time outreach to those who may be unfamiliar with their services. Each of these agencies campaign extensively for increased access and sensitivity to disabilities. Some have radio broadcasts and TV shows on independent stations. Most all have websights, newsletters and brochures that describe activities and goals and missions. All disability agencies are considered to be “consumer agencies” and as such, strive to ensure that Public cultural places are opened to the disabled; Cultural activities should include the disabled and their families; Publication of positive stories about the disabled in books and magazines

Fortunately, people with disabilities do not have to do it all on their own. Regarding organizations, called *independent living centers*, they offer extraordinary help and most often they are run by people with disabilities who themselves have been successful in establishing independent living. These people have both training and the personal experience to know exactly what is needed to live independently. And, they have a deep commitment to assisting other disabled people in become more independent.

SERVICES OF INDEPENDENT LIVING CENTERS

Centers offer a wide variety of services. Four are essential for people with disabilities to live independently, including:

Information and referral. -Centers maintain comprehensive information files on availability in their communities of accessible housing; transportation; employment opportunities; rosters of persons available to serve as personal care attendants, interpreters for hearing impaired people, or readers for visually impaired people and many other services.

Independent living skills training-Centers provide training courses to help people with disabilities gain skills that enable them to live more independently; courses may include using various public transportation systems, managing a personal budget, dealing with insensitive and discriminatory behaviors of members of the general public, and many other subjects.

Peer counseling-Centers offer a service in which a person with a disability can work with other persons who have disabilities and who are living independently in the community. The object is to explore options and to solve problems that sometimes overwhelm people with disabilities, for example, making adjustment to a newly acquired disability, experiencing changes in living arrangements, or learning to use community services more effectively.

Advocacy-Centers provide two kinds of advocacy: (1) consumer advocacy, which involves center staff working with persons with disabilities to obtain necessary support services from care-giving agencies in the community and (2) community advocacy which involves center staff, board members, and volunteers initiating activities to make changes in the community that make it easier for all persons with disabilities to live more independently.

(The above information on independent living resource centers was taken from a publication developed by the ILRU Research and Training Center on Independent Living of Houston as part of its National Technical Assistance Project for Independent Living. It was written by Laurel Richards and Quentin Smith.)

ILRU is a national center for information, research, training, and technical assistance for independent living. One of its purposes is to improve the spread and utilization of results of research and demonstration projects in the field of independent living.

The ILRU Research and Training Center on Independent Living is sponsored by NIDRR (National Institute on Disability and Rehabilitation Research), U.S. Department of Education.)

ANALYSIS OF QUESTION #52

It appears from the answer presented by the HANDBOOK, the CDPF is the sole entity charged with the responsibility of ensuring that the disabled in China are accepted by society and at the same time fulfilled as human beings. From other literature published in China, including the Protection of the Disabled Law, it is clear that the nation has a commitment to people with disabilities. In the USA, instead of only one entity charged with the welfare of the disabled, there are hundreds of “consumer-type” of agencies that take on this task.

SUGGESTIONS FOR QUESTION #52

Since Independent Living Resource Centers are so successful in the USA, perhaps China may want to create similar entities throughout the nation. These agencies could have the following Centers.

An Information and referral Center. ---Where, in their community, can be found comprehensive information files on available and accessible housing; transportation; employment opportunities; rosters of persons available to serve as personal care attendants, interpreters for hearing impaired people, or readers for visually impaired people and many other services.

Independent living skills training Center.--- Where training courses can be provided to help people with disabilities gain skills that will enable them to live more independently; courses may include using various public transportation systems, managing a personal: budget, dealing with insensitive and discriminatory behaviors of members of the general public, and many other subjects.

Peer counseling Center.--- Where a service can be offered to assist people with a disability to work with other persons who have disabilities and who are living independently in the community. The object is to explore options and to solve problems that sometimes overwhelm people with disabilities, for example, making adjustment to a newly acquired disability, experiencing changes in living arrangements, or learning to use community services more effectively.

Advocacy Center.--- Where two kinds of advocacy can be provided: (1) consumer advocacy, which involves center staff working with persons with disabilities to obtain necessary support services from care-giving agencies in the community and (2) community advocacy which involves center staff, board members, and volunteers initiating activities to make changes in the community that make it easier for all persons with disabilities to live more independently.

Labor Rights

QUESTION 55.

“How to ensure the realization the labor rights of the disabled?”

ANSWER FOUND IN THE HANDBOOK

Labor rights are provided for by the Constitution. Employment it is both the citizen's right and duty.

The Disabled Persons Federation of China at all levels has set up service centers for the disabled in urban and rural areas, formed a network of employment service to . . .

- [1]. improve the employment of disabled persons through multiple channels
- [2]. implement the quota scheme of employment of disabled persons nationwide.
- [3]. carry out the work of poverty alleviation for the disabled through rehabilitation and assistance in rural areas, have made 60% of the rural disabled take part in productive labor.

USA ANSWER

In the USA, Title I of the ADA (Employment) covers both public and private institutions. All the substantive issues under the act are equally in force for both types of institutions. The disabled are to experience no discrimination or unequal treatment in the areas of:

- job assignments, job classifications, organizational structures, position descriptions, lines of progression, seniority lists
- leaves of absence, sick leave, other leave *fringe benefits available through employment
- selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training
- activities sponsored by an employer including social and recreational programs

Determining Whether an Individual Is Qualified

In order to be considered a "qualified person with a disability", the individual must satisfy the requisite skills, experience, education, and other job-related requirements of the employment position in question and, with or without reasonable accommodation, be able to perform the essential functions of such position. The determination of whether the individual is qualified for the job must be based on current status, and not on speculation about the individual's future ability to perform. The employer is free to choose and maintain qualified workers

and has no obligation to prefer applicants with disabilities over other applicants. Title I of the ADA is not an affirmative action statute. However, Section 503 of the Rehabilitation Act does carry some responsibility for affirmative action in seeking qualified candidates with disabilities for employment in federally funded programs and activities. For those institutions covered by Section 503, this obligation is not diminished in any way by Title I of the ADA.'

Essential Functions of the Job

In order to be considered a qualified person with a disability, the prospective employee must be able to perform the essential functions of the job, with or without reasonable accommodation. Essential functions are those considered fundamental, and not marginal, to the job.

The essential functions of a job may need to be determined on a case-by-case basis rather than solely through the review of job descriptions. The essential functions of a job (and the availability of reasonable accommodation) may be viewed differently in different circumstances

ANALYSIS OF QUESTION # 55

From the answer provided by the Handbook, it appears that China does not have a special law to protect the employment rights of the disabled in the legal arena. In the USA, however, each state has special laws to protect the employment rights of persons with disabilities and also in the USA there is a special all-encompassing law that has national requirements. The Americans with Disabilities Act (ADA) has four sections, called "titles." The first title deals exclusively with employment rights of the disabled.

Below is a summary of Title I: **Points to Know**

1. Applicants for jobs and employees with disabilities may be entitled to reasonable accommodations. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired -- unless to do so would impose an undue hardship.
2. If an employee or applicant with a disability thinks they will need a reasonable accommodation in order to participate in the application process or to perform an essential function of a job, he/she should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodations only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.
3. If the cost of providing the needed accommodation for a person with a disability would be an undue hardship for the employer, the employee may be given the choice of providing the accommodation or paying for a portion of the accommodation that causes the undue hardship.
4. An employer cannot make up the cost of providing a reasonable accommodation by lowering the salary of a person with a disability or paying him/her less than other employees in similar positions.
5. The ADA's requirements to provide reasonable accommodations covers all services, programs and non-work facilities provided by the employer. If making an existing facility accessible (e.g., bathroom, cafeteria, etc.) would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would also be an undue hardship.
6. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has disability. The ADA only prohibits

discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because s/he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions. The ADA permits an employer to refuse to hire an individual if s/he poses a direct threat to the health or safety of herself/himself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire an applicant because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

7. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

8. The ADA makes it unlawful to discriminate against an individual, whether disabled or not, because of relationship or association with an individual with a known disability.

Also, another difference between China disability laws and those disability laws in the USA, is that the USA federal government has strict affirmative action laws that are regulated by the Federal Equal Employment Opportunities Commission (EEOC). That is, when an employer advertises for a position he must not discriminate against someone on the basis of their race, skin color, age, sex, religion and creed or disability. Many federal employers must make an accounting to the EEOC explaining *why* they did not apply affirmative action rule when hiring, should someone hired not fall into an "affirmative class." The requirement of each state to establish affirmative action goals and timetables is contained in Government Code Section 19232 which states:

" . . . each state agency shall develop and implement an affirmative action employment plan for individuals with a disability, which shall include goals and timetables. These goals and timetables shall be set annually for disabilities identified pursuant to guidelines established by the State Personnel Board.

SUGGESTIONS FOR QUESTION #55

1. The CDPF needs to promote a similar law to the USA's ADA, Title I in China.
2. The CDPF needs to promote affirmative action regulations in all government hirings.

QUESTION 56.

“What are the functions of the service organization for the employment of the Disabled?”

ANSWER FOUND IN THE HANDBOOK

The main functions of the employment service providers for the employment of the disabled are: Under the supervision of the departments of labor, industry and commerce, to carry out investigation of labor resources and social employment, evaluation of labor ability, registering of employment information about employment, vocational training; to arrange employment with proportion; to administer the employment fund for the disabled; to run welfare enterprises for the disabled; and to help the disabled in rural areas to take part in productive labor.

USA ANSWER

In the USA the functions of the disability service organizations are to expand and improve services for individuals with disabilities. These organizations also outreach to various ethnic and special interests communities (Hispanics, Blacks, Chinese, single parents, gays and lesbians, etc.) in order to identify those who might benefit from services—some of whom may not even know that services are available to them. Throughout the States there are organizations that provide employment services for people with disabilities that include:

- education,
- vocational training,
- job preparation,
- job coaching,
- career assessment,
- rehabilitation
- family planning,
- peer counseling
- personal counseling
- respite
- religious training,
- computer training
- driver training

Agencies include Goodwill Industries, The Salvation Army, Association for Retarded Citizens, Independent Living Resource Centers, and federal programs which include Equal Employment Opportunity Programs.

ANALYSIS OF QUESTION #56

Number of service agencies is the key difference between the USA and China on this question. China's CDPF is the single most important entity in making sure that people with disabilities enjoy employment rights and opportunities. However, in the USA, there are thousands of such programs that take on the role similar to the CDPF in providing a variety of services for the disabled. Thereby, a person with a disability can "shop" for a program that he/she feels best and most suitable. An internet search found that in the USA there are agencies in every State that provide advertised assistance in many traditional and non-traditional ways.

SUGGESTIONS FOR QUESTION #56

Since the CDPF is formally recognized by the government to be the sole representative of the agency protecting and promoting the employment rights of the disabled, the CDPF may want to consider reviewing ways in which to expand services and to advertise these services to people with disabilities. Since the CDPF already has a web site, it might be possible to create an interactive site where disabled people and their families and care givers can

1. ask what services are available to them,
2. "talk" with other disabled people, their families and their care givers.
3. buy and sell disability appliances (wheel chairs, walkers, etc.),
4. ask for advice,
5. take on-line courses,
6. get emotional support

Given the fact that in China a very small percentage of the disabled have computers, it might be possible for each CDPF regional office to open a special office or room that has a computer or computers that may be used by consumers. That is, this room could allow persons with disabilities to learn how to use a computer for one hour per day. Gradually, this concept could be increased to allow for a dozen or more computers in each regional office and in these computer rooms a hired teacher can train large classes of people with disabilities to use computers and thereby encourage them to be computer-literate.

QUESTION 57.

“How can the disabled get employed in our country?”

ANSWER FOUND IN HANDBOOK

Currently in China there are many channels for the disabled to be employed.

[1] To be recommended for the vacancies in the welfare factories by the department of labor and administration, or be employed by common enterprises or undertakings; or to find employment through voluntary organizations or to open individual businesses.

[2] Regardless state owned, collective, private or individual, no matter what kinds of jobs in urban and rural areas, all may be the channels for the disabled.

[3] Government at all levels should provide convenience for the disabled to gain employment.

USA ANSWER

In the USA, Title I of the ADA (Employment) ensures that people with disabilities are not denied employment due to their disability. This Act covers both public and private institutions. All the substantive issues under the act are equally in force for both types of institutions.

Determining Whether an Individual Is Qualified

In order to be considered a "qualified person with a disability", the individual must satisfy the requisite skills, experience, education, and other job-related requirements of the employment position in question and, with or without reasonable accommodation, be able to perform the essential functions of such position. The determination of whether the individual is qualified for the job must be based on current status, and not on speculation about the individual's future ability to perform. The employer is free to choose and maintain qualified workers and has no obligation to prefer applicants with disabilities over other applicants. Title I of the ADA is not an affirmative action statute. However, Section 503 of the Rehabilitation Act does carry some responsibility for affirmative action in seeking qualified candidates with disabilities for employment in federally funded programs and activities. For those institutions covered by Section 503, this obligation is not diminished in any way by Title I of the ADA.

Additionally, there are several nation-wide government agencies that are responsible for assisting the disabled in finding employment. What follows is a comprehensive listing of those agencies.

- Departments of Rehabilitation
- Department of Developmental Services
- Department of Mental Health
- Department of Education

- Community Colleges (Disabled Student Programs and Services)
- Employment Development Department
- Job Training Partnership Office
- State Personnel Board LEAP Program
- Department of Social Services

ANALYSIS OF QUESTION #57

It is important to have government support efforts to ensure the employment of people with disabilities. It is clear that China and the USA governments have a commitment to employment of the disabled. Methods of ensuring that employment levels increase, however, differ. The USA takes more of a legal approach by creating and enacting laws that require that employers not discriminate against the disabled when hiring employees. While this approach does not ensure that disabled people will be hired for jobs, it does create an atmosphere where there is a "level playing field." The P.R.C., however, appears to more encourage employers to hire the disabled and does give some attractive rewards to employers in terms of tax breaks and incentives.

SUGGESTIONS FOR QUESTION #57

The CDPF should consider these techniques to ensure the employment of persons with disabilities.

1. Create a Speakers Bureau. Speakers can be employers of the disabled, disabled, families of the disabled. Anyone who can favorably speak to the employment successes of the disabled would be of help. These speakers can talk to employers about the value of hiring the disabled.
2. Encourage each University to enroll more disabled students. Create a special Disabled Student Program at each University (similar to the Disabled Students Program at City College of San Francisco where this author works). Disabled students also could get special assistance in preparing for employment from this Program.
3. Encourage Universities to create an academic major that is devoted to "Rehabilitation of people with disabilities and industrial injuries." Personnel need to be trained in assisting disabled to become ready for employment.

QUESTION 58.

“What are the preferential and supporting policies for the employment of the disabled?”

ANSWER FOUND IN HANDBOOK

The Protection of the Disabled Law Article 33 says:

[1] The state shall implement the policy of tax reduction or exemption in relation to welfare enterprises and institutions for disabled persons and self-employed disabled workers in urban and rural areas, and provide assistance in production, management, technology, funds, materials supply, working site and other fields.

[2] Local people's government and departments concerned shall determine the types of products suitable for production by disabled persons, given priority to the production of such products by welfare enterprises for disabled persons and gradually determine which products are to be produced exclusively by such enterprises.

[3] Governmental departments with concerned staff shall, in determining the quota for employing and engaging workers and staff members, allot a certain proportion of the quota to disabled persons.

[4] Departments concerned in verifying and issuing business licenses give priority to disabled persons apply for licenses as self-employed workers or businessmen and give them preferential treatment in allotting work sites and loans and in other ways.

[5] Departments concerned shall provide assistance to disabled persons engaged in various kinds of labor in rural areas by way of production services, technical guidance, supply of materials for agricultural use, collection and purchase of farm and sideline products and loans.

The government has preferential and supporting policies for employment of the disabled, both in law and in a series of special policies. See The Protection of the Disabled Law Article 33 from previous question #3 for further discussion. For many years, the PRC government has made a series of preferential policies to support the employment of the disabled, mainly on taxation and credit and other aspects. For example:

Taxation: The practice is to exempt from income tax of the welfare enterprises in which the disabled employees accounted for over 50% and exempt from product tax or increment tax of these enterprise's income of their production; to exempt from business tax for enterprises being engaged in labor, repairing and service; to exempt income tax of welfare enterprises in which the disabled accounted 35%-50%; to exempt product tax or increment tax of those enterprises in case they suffer from loss or small profits; if the disabled employees accounted 10%-

35% in a welfare enterprises, the income tax may be exempted for one year since the month put into production, and may be reduced to half income tax after one year; to exempt from agricultural tax, all public welfare fees, children's tuition and incidentals of the disabled people who lose their work ability or in poverty.

Loans: For enterprises in which the disabled employees accounted for over 35%, the state loans may be favorable with a 20% discount if their product can satisfy the social needs. Additionally, the welfare enterprises may be taken into consideration in technical reforming, material supplying, capital, loan and product selling; some products may be arranged specially to be produced by the welfare enterprises if fit the disabled to produce.

USA ANSWER

Tax Credit in the USA. The tax credit, established under Section 44 of the Internal Revenue Code, was created in 1990 specifically to help small businesses cover ADA-related eligible access expenditures. A business that for the previous tax year had either revenues of \$1,000,000 or less or 30 or fewer full-time workers may take advantage of this credit. The credit can be used to cover a variety of expenditures, including:

- provision of readers for customers or employees with visual disabilities
- provision of sign language interpreters
- purchase of adaptive equipment
- production of accessible formats of printed materials (i.e., Braille, large print, audio tape, computer diskette)
- removal of architectural barriers in facilities or vehicles (alterations must comply with applicable accessibility standards)
- fees for consulting services (under certain circumstances)

Note that the credit cannot be used for the costs of new construction. It can be used only for adaptations to existing facilities that are required to comply with the ADA.

The amount of the tax credit is equal to 50% of the eligible access expenditures in a year, up to a maximum expenditure of \$10,250. There is no credit for the first \$250 of expenditures. The maximum tax credit, therefore, is \$5,000.

Tax Deduction in the USA

The tax deduction, established under Section 190 of the Internal Revenue Code, is now a maximum of \$15,000 per year a reduction from the \$35,000 that was available through December 31, 1990. A business (including active ownership of an apartment building) of any size may use this deduction for the removal of architectural or transportation barriers. The renovations under Section 190 must comply with applicable accessibility standards.

Small businesses can use these incentives in combination if the expenditures incurred qualify under both Section 44 and Section 190. For example, a small business that spends \$20,000 for access adaptations may take a tax credit of \$5000 (based on \$10,250 of expenditures), and a deduction of \$15,000. The deduction is equal to the difference between the total expenditures and the amount of the credit claimed.

Example: A small business' use of both tax credit and tax deduction

\$20,000 cost of access improvements (rest room, ramp, 3 doors widened)

- \$5,000 maximum credit

\$15,000 remaining for deduction

The Ticket to Work and Work Incentives Improvement Act of 1999

Public Law 106-170 extends the Work Opportunity Tax Credit (WOTC) to December 31, 2001. The WOTC, which includes the Welfare-to-Work Tax Credit, has two purposes:

- To promote the hiring of individuals who qualify as a member of a target group, and
- To provide a federal tax credit to employers who hire these individuals.
-

An employer may qualify for a tax credit of up to \$8,500 if the employee is a member of a designated target group and meets that group's specific requirements.

The disabled are one of the target groups for WOTC eligibility but they must be Department of Rehabilitation referrals. In the process, the employer verifies the employment with EDD.

<http://www.edd.cahwnet.gov/wotcind.htm>

The EDD agency then supplies the employer with paperwork that they submit with their taxes at the end of the year.

Additionally, in California as in many other states, there are On the Job Training Programs (OJT) that are covered by state funds to Department of Rehabilitation (DOR) offices. Barclays California Code of Regulations is an agreement that Department of Rehabilitation extends to an employer to provide training for a DOR client at the worksite. Current cap is \$1,500 dollars but can be extended with "prior approval". Barclays 7157.5 (Article 3).

ANALYSIS OF QUESTION #58

The difference in the government policies of the USA and China regarding hiring of the disabled seem to center around tax incentives. The USA will allow tax reductions to employers and owners of buildings for making establishments accessible. At this time China does not offer tax incentives for making establishments accessible. China provides tax incentives to “welfare enterprises” that hire the disabled, but apparently there are no tax incentives offered to industries and to private companies. In the USA, local Department of Rehabilitation offices that refer clients to business for employment can assist the employer in applying for a tax credit for the first year of employment of that individual. The P.R.C., however, gives tax incentives directly to welfare enterprises to hire people with disabilities.

SUGGESTIONS FOR QUESTION #58

The CDPF needs to promote a tax incentive approach to small and large businesses to encourage them to make their properties accessible.

The CDPF needs to promote a tax incentive scheme that encourages industries, including small businesses, joint ventures and state companies to hire the disabled.

QUESTION 59.

“What is the proportionate-employment principle of the disabled? How to bring it into effect?”

ANSWER FOUND IN THE HANDBOOK

The proportionate-employment principle has a goal of arranging the employment of the disabled by certain proportion. Internationally the special ratio is about 1.5% ~ 6%; in China the ratio is 1.5% ~ 2%. Different areas may determine the ratio in line with their actual conditions.

There are two ways to arrange the employment of the disabled, a) individual proportionate-employment, and b) collective or concentrated employment. There are many good points regarding “a) individual proportionate-employment” and how they can impact the disabled. For example they can assist in . . .

- [1] decreasing the burden of the state;
- [2] increasing more opportunities for the disabled, to raise the ratio of employment of the disabled;
- [3] providing convenience for the disabled to be employed nearby; and
- [4] returning the disabled to the society and participating in the social life equally with the non-disabled.

This work is a systematic and complicated project.

- [1] Governments at all levels shall make concrete implementation to the Protection Law to arrange the employment for the disabled.
- [2] Federation of the disabled at all levels shall set up employment service providers to arrange the employment for the disabled.
- [3] To investigate into the grassroots to master concrete data for the sake of arrangement of the disabled.
- [4] To carry out the work of employment registration and ability evaluation.
- [5] To do the work better of vocational training for the disabled. And
- [6] To encourage concerned units to employ the disabled; to reward the better ones and to punish the worst ones.

USA ANSWER

In the USA laws have been enacted to decrease discrimination in hiring the disabled (e.g. the Americans with Disabilities Act, The Rehabilitation Act and the Civil Rights Act of 1964). Further, the US government requires that American businesses and training programs adhere to affirmative action requirements when hiring and outreaching. These affirmative action policies include the disabled as one group that employers and training programs are to ensure get hired and trained. Numerous non-government agencies also work to ensure the employment and/or training of persons with disabilities. These agencies include the Independent Living Resource Centers, Goodwill Industries, Catholic Charities, The Salvation Army, etc.

ANALYSIS OF QUESTION #59

The USA has no proportionate-employment principle of the disabled, but does have Affirmative Action guidelines that are required to be used in the hiring of new employees. These guidelines are an attempt to increase the proportion of disabled, as well as other minorities, in the workplace.

SUGGESTIONS FOR QUESTION #59

The CDPF needs to promote affirmative action policies in the hiring of disabled people. These guidelines should be similar in wording to most affirmative action statements in the international community. Many US employers place a statement like this in advertising for jobs:

It is the policy of our company not to discriminate against a candidate for employment based upon his/her gender, age, country of origin, race, religion, disability and sexual orientation.

QUESTION 61.

“How to support the disabled in the country to become employed?”

ANSWER FOUND IN HANDBOOK

The government has preferential and supporting policies for employment of the disabled, both in law and in a series of special policies. See The Protection of the Disabled Law Article 33 from previous questions #3 and # 58 for further discussion. For many years, the PRC government has made a series of preferential policies to support the employment of the disabled, mainly on taxation and credit and other aspects. For example:

Taxation: The practice is to exempt from income tax of the welfare enterprises in which the disabled employees accounted for over 50% and exempt from product tax or increment tax of these enterprise's income of their production; to exempt from business tax for enterprises being engaged in labor, repairing and service; to exempt income tax of welfare enterprises in which the disabled accounted 35%-50%; to exempt product tax or increment tax of those enterprises in case they suffer from loss or small profits; if the disabled employees accounted 10%-35% in a welfare enterprises, the income tax may be exempted for one year since the month put into production, and may be reduced to half income tax after one year; to exempt from agricultural tax, all public welfare fees, children's tuition and incidentals of the disabled people who lose their work ability or in poverty.

Loans: For enterprises in which the disabled employees accounted for over 35%, the state loans may be favorable with a 20% discount if their product can satisfy the social needs. Additionally, the welfare enterprises may be taken into consideration in technical reforming, material supplying, capital, loan and product selling; some products may be arranged specially to be produced by the welfare enterprises if fit the disabled to produce.

USA ANSWER

In the USA, one program is the National Institute on Disability and Rehabilitation Research (NIDRR) which has established ten regional centers to provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the Americans with Disabilities Act (ADA).

The centers act as a "one-stop" central, comprehensive resource on ADA issues in employment, public services, public accommodations, and communications. Each center works closely with local business, disability, governmental, rehabilitation, and other professional networks to provide ADA information and assistance, placing special emphasis on meeting the needs of small businesses. Programs vary in each region, but all centers provide the following:

- Technical Assistance
- Education and Training

Materials Dissemination
Information and Referral
Public Awareness
Local Capacity Building

Cornell University, for example, has a four-year Research and Demonstration Project (1997 - 2001) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research (Grant No. H133A70001), entitled Improving Employer Practices under Title I of the Americans with Disabilities Act (ADA). This project is being conducted in collaboration with the Society for Human Resource Management (SHRM), the Washington Business Group on Health (WBGH), and the Lewin Group. The purpose of the project is to investigate the impact of the ADA on the employment practices of private sector small, medium, and large businesses. The intended outcome of the research is to assist in the identification of employment practices which have been the most challenging in implementing the ADA, and to identify those interventions which can be used by private sector employers and persons with disabilities to address these challenging employment practices. Employment policy and practices which enhance both the hiring and retention of workers with disabilities are being examined.

For those wishing further information, the contact person is:

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ANALYSIS OF QUESTION #61

The USA's National Institute on Disability and Rehabilitation Research (NIDRR) establishment of ten regional centers to provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the Americans with Disabilities Act (ADA), appears to be a more long term commitment to supporting the disabled becoming employed. These centers were selected in competitive bids from Universities around the nation. The concept of these centers is simple: find out what are the best methods of increasing the numbers of disabled in the workforce. The PRC's main approach, on the other hand, appears to be in giving tax incentives to welfare enterprises to urge them to hire the disabled.

SUGGESTIONS FOR QUESTION #61

- The CDPF should promote the teaching programs of the normal universities to create a major similar to the many majors in the USA colleges that are named "Rehabilitation." These majors most likely would entail creating entire academic departments within selected universities that would offer students a variety of courses designed to prepare them to be rehabilitation professionals. In the development of these academic departments, the CDPF could promote the government's involvement in development of research centers similar to the NIDRR's model.
- The CDPF should advertise on its website that it offers job coaching for new employees after they get hired. This coaching should be offered to ensure that the newly employed person with a disability does not fail in the job.
- The CDPF should list on its website the employers that have successfully hired disabled workers. This practice should encourage other employers to hire the disabled.

QUESTION 65.

“Why are the blind encouraged to engage in medical massage?”

ANSWER FOUND IN THE HANDBOOK

Massage is a disease-curing and health-building method peculiar to China. The blind people can do a better job of massage for their keener sense of touch and higher degree of concentration. Over 10 thousand blind people are professionally employed in medical massage; about half of the total number of massage therapists in the whole country. In recent years, with the improvement of people's life, the demand for health-building massage has increased remarkably, offering new opportunities for the blind people to serve society. In China there are about 9 million blind people who are eager to make contribution for the society.

USA ANSWER

In the USA, the blind are not encouraged to engage in medical massage. Just like other disabling conditions, blindness does not necessarily make one automatically eligible, or even appropriate, for certain professions and careers. With the assistance of specially trained rehabilitation counselors and educational programs offered by USA universities, community colleges and vocational schools, the blind have found careers in a number of fields, including education, psychology, law, music, theater, etc.

ANALYSIS OF QUESTION # 65

There is a difference between the USA and China in specially targeting certain disabilities as being appropriate for certain types of careers/employment. In the USA, approximately twenty-five years ago there was a movement toward earmarking the disabled for certain types of jobs, but with the growing technological and rehabilitative innovations of recent years and with the increasing activism of people with disabilities, a wider assortment of jobs for the disabled to choose from has been created.

SUGGESTIONS FOR QUESTION #65

The CDPF should move toward promoting a wide assortment of jobs that are available to people who are blind.

QUESTION 67.

“Can the work contract of an employee who is mentally ill be rescinded?”

ANSWER FOUND IN HANDBOOK

According to state regulations, the labor relations between employers and employees with mental illness may be classified into two types:

[1] If a contract worker in an enterprise is identified as having a mental disease in the probation period, the employer may terminate or stop the labor contract according to the contract;

[2] If a contract worker is found to have mental illness after the probation period and is identified as having mental disease by the Labor Authenticate Committee, the employer may handle the case by regulations concerning contract worker suffering illness during employment in a state run enterprise, i.e. give the disabled employee 3 months to 1 year treatment time according to his working length. If the disabled employee has been employed for over 20 years, the period of treatment may be extended considerably. During the treatment period, the treatment condition and payment for sick leave may equal with what the permanent worker enjoyed.

In the required treatment period, if the employee recovers or the disease is controlled and the employee is identified to have a working ability by the authorized organization, the employer may rearrange a suitable post for him and cannot dissolve the contract because of his illness. After the treatment period, if the employee is identified as not have working ability, the employer may dissolve the contract and pay the employee with medical subsidy equal to the employee's 3 to 6 months standard salary.

USA ANSWER

According the United States Surgeon General, mental illness is a term rooted in history that refers collectively to all of the diagnosable mental disorders. Mental disorders are characterized by abnormalities in cognition, emotion or mood, or the highest integrative aspects of behavior, such as social interactions or planning of future activities. These mental functions are all mediated by the brain. It is, in fact, a core tenet of modern science that behavior and our subjective mental lives reflect the overall workings of the brain. Thus, symptoms related to behavior or our mental lives clearly reflect variations or abnormalities in brain function. On the more difficult side of the ledger are the terms disorder, disease, or illness. There can be no doubt that an individual with schizophrenia is seriously ill, but for other mental disorders such as depression or attention-deficit/hyperactivity disorder, the signs and symptoms exist on a continuum and there is no bright line separating health from illness, distress from disease. Moreover, the manifestations of mental disorders vary with age, gender, race,

and culture. The thresholds of mental illness or disorder have, indeed, been set by convention, but the fact is that this gray zone is no different from any other area of medicine. Ten years ago a serum cholesterol of 200 was considered normal. Today, this same number alarms some physicians and may lead to treatment. Perhaps every adult in the United States has some atherosclerosis, but at what point does this move along a continuum from normal into the realm of illness? Ultimately, the dividing line has to do with severity of symptoms, duration, and functional impairment.

For a more detailed discussion of the USA's research into mental illness the reader is urged to view. . .

<http://www.surgeongeneral.gov/Library/MentalHealth/chapter2/sec2.html>

In the USA, the employment rights of those with mental illness are no different from the rights of individuals with physical disabilities. The accommodations on the job may vary and may need more precise follow-up, but there is essentially no difference in ADA or Section 504 implementation.

The ADA prohibits discrimination against any "qualified individual with a disability." A person with a disability (including a person with a mental illness, or a psychological disability) who has a job or is considered for a job is generally defined as someone who satisfies the requirements of the employment position if they can perform the *essential functions* of the position with or without *reasonable accommodations*.

Essential functions are defined as job tasks that are fundamental to the job and are not considered marginal. Evidence of whether a function is essential may include many factors including:

- A. The employer's judgment
- B. Written job descriptions prepared before advertising or interviewing job applicants
- C. Amount of time needed to spend in performing the task
- D. Consequences of not performing the task

Reasonable Accommodations in employment are defined as modifications that allow an employee with a disability to demonstrate that he/she can perform the essential functions of a job. It is critical that accommodations are reasonable and not an undue hardship on the employer. Employers must make reasonable accommodations for the known physical and/or mental limitations of a qualified applicant or employee with a disability. In this sense, reasonable accommodations include:

- A. Modification or adjustment to the job application process

- B. Modification to the work environment or the manner in which the job tasks are routinely performed

Forms of reasonable accommodations that are generally recommended include but are not limited to:

1. Job restructuring
2. Modifying work schedules
3. Making facilities accessible
4. Acquiring and/or modifying equipment or devices
5. Readers, interpreters and assistants
6. Reassignment to similar positions

When employers are attempting to design the most appropriate accommodation for an employee with a disability, ADA guidelines recommend that the employer consider the following points:

- A. All applicants and employees with disabilities must be notified of the employer's obligation to provide reasonable accommodations
- B. The employee has the responsibility of requesting accommodations
- C. The employee is often the best source of ideas and suggestions for designing accommodations. The federal government offers a free "Hot Line" for employers who are seeking information on how to design accommodations

There are two major areas where an employer may not have to provide accommodations. 1) If the employer can prove that to provide an accommodation for a disabled person would be an *undue hardship* to the business, or 2) An accommodation would pose a *direct threat*.

Undue hardship means an accommodation would require significant difficulty or expense. The hardship could be too costly, extensive, disruptive or require an action that would fundamentally alter the nature of the workplace and/or business.

Direct threat means a significant risk of substantial harm to the health and safety of the individual with a disability or others who will have to work with this individual. Importantly, this risk cannot be eliminated or reduced with the use of an accommodation. While the ADA is clear in stating that the employer has an obligation to follow the regulations of the Act, the employer also has an obligation to protect the health and safety of both employees with disabilities and other employees as well as the health and safety of the public.

Because of a concern that some employers might too readily consider *direct threat* as a way in which to circumvent the Act, the federal government stipulates in the Act's regulations that the employer must meet specific and stringent requirements to establish that a direct threat really exists: These regulations include:

- A. There must be a high probability of substantial harm; not a slightly increased risk or a speculative or remote risk
- B. There must be a real threat of harm based upon facts; not fears, generalizations and stereotypes
- C. The potential of direct threat must be based upon the individual's current status rather than the possibility of future incapacity

ANALYSIS OF QUESTION #67

The PRC's approach to dealing with mental illness in employment appears to center on how to ensure for the proper dismissal of the employee. The USA's approach is to find ways in which to accommodate the employee with a mental disability.

SUGGESTIONS FOR QUESTION #67

The CDPF should begin a movement modeled after the National Mental Health Association's efforts to dispel myths associated with mental illness.

According to the National Mental Health Association in the USA, (<http://www.nmha.org/infoctr/factsheets/14.cfm>) mental illness can strike anyone! It knows no age limits, economic status, race, creed or color. During the course of a year, more than 54 million Americans are affected by one or more mental disorders.

Medical science has made incredible progress over the last century in helping us understand, curing and eliminating the causes of many diseases including mental illnesses. However, while doctors continue to solve some of the mysteries of the brain, many of its functions remain a puzzle. Even at the leading research centers, no one fully understands how the brain works or why it malfunctions. However, researchers have determined that many mental illnesses are probably the result of chemical imbalances in the brain. These imbalances may be inherited, or may develop because of excessive stress or substance abuse.

It is sometimes easy to forget that our brain, like all of our other organs, is vulnerable to disease. People with mental illnesses often exhibit many types of behaviors such as extreme sadness and irritability, and in more severe cases, they may also suffer from hallucinations and total withdrawal. Instead of receiving compassion and acceptance, people with mental illnesses may experience hostility, discrimination, and stigma.

The PRC needs to explore why this stigma about mental illness still exists

Unfortunately, the media is responsible for many of the misconceptions which persist about people with mental illnesses. Newspapers, in particular, often stress a history of mental illness in the backgrounds of people who commit crimes of violence.

Newspapers, in particular, often stress a history of mental illness in the backgrounds of people who commit crimes of violence. Television news programs frequently sensationalize crimes where persons with mental illnesses are involved.

Comedians make fun of people with mental illnesses, using their disabilities as a source of humor. Also, national advertisers use stigmatizing images as promotional gimmicks to sell products. Ironically, the media also offers our best

hope for eradicating stigma because of its power to educate and influence public opinion.

The CDPF needs to better define mental illness to the nation

A mental illness is a disease that causes mild to severe disturbances in thinking, perception and behavior. If these disturbances significantly impair a person's ability to cope with life's ordinary demands and routines, then he or she should immediately seek proper treatment with a mental health professional. With the proper care and treatment, a person can recover and resume normal activities.

Many mental illnesses are believed to have biological causes, just like cancer, diabetes and heart disease, but some mental disorders are caused by a person's environment and experiences.

The are five major categories of mental illness

·Anxiety Disorders

Anxiety disorders are the most common mental illnesses. The three main types are: phobias, panic disorders, and obsessive-compulsive disorders. People who suffer from phobias experience extreme fear or dread from a particular object or situation. Panic disorders involve sudden, intense feelings of terror for no apparent reason and symptoms similar to a heart attack. People with obsessive-compulsive disorder try to cope with anxiety by repeating words or phrases or engaging in repetitive, ritualistic behavior such as constant hand washing.

· Mood Disorders

Mood disorders include depression and bipolar disorder (or manic depression) symptoms may include mood swings such as extreme sadness or elation, sleep and eating disturbances, and changes in activity and energy levels. Suicide may be a risk with these disorders.

·Schizophrenia

Schizophrenia is a serious disorder that affects how a person thinks, feels, and acts. Schizophrenia is believed to be caused by chemical imbalances in the brain that produce a variety of symptoms including hallucinations, delusions, withdrawal, incoherent speech and impaired reasoning.

·Dementias

This group of disorders includes diseases like Alzheimer's which leads to loss of mental functions, including memory loss and a decline in intellectual and physical skills.

·Eating Disorders

Anorexia nervosa and bulimia involves serious, potentially life-threatening illnesses. People with these disorders have a preoccupation with food and an irrational fear of being fat. Anorexia is self-starvation while bulimia involves cycles of bingeing (consuming large quantities of food) and purging (self-inducing vomiting or abusing laxatives). Behavior may also include excessive exercise.

The CDPF needs to assist the nation in eliminating common misconceptions about mental illness

Myth: *“Young people and children don’t suffer from mental health problems.”*

Fact: Millions of young people in around the world may suffer from a mental health disorder that severely disrupts their ability to function at home, in school, or in their community.

Myth: *“People who need psychiatric care should be locked away in institutions.”*

Fact: Today, most people can lead productive lives within their communities thanks to a variety of supports, programs, and/or medications.

Myth: *“A person who has had a mental illness can never be normal.”*

Fact: People with mental illnesses can recover and resume normal activities. For example, many who have clinical depression, if receiving treatment can lead an enriched and accomplished life.

Myth: *“Mentally ill persons are dangerous.”*

Fact: The vast majority of people with mental illnesses *are not* violent. In the cases when violence *does* occur, the incidence typically results from the same reasons as with the general public such as feeling threatened or excessive use of alcohol and/or drugs.

Myth: *“People with mental illnesses can work low-level jobs but aren’t suited for really important or responsible positions.”*

Fact: People with mental illnesses, like everyone else, have the potential to work at any level depending on their own abilities, experience and motivation.

How the CDPF can combat stigma:

1 Encourage your clients to share their experiences with mental illness.

Their stories can convey to others that having a mental illness is nothing to be embarrassed about.

2 Help people with mental illness reenter society. Support their efforts to obtain housing and jobs.

3 Make immediate responses to false statements about mental illness or about people with mental illnesses. Many people have wrong and damaging ideas on the subject. Accurate facts and information may help change both their ideas and actions.

If the CDPF needs more information they can contact:

[Mental Health Association](#)’s website listed above.

Other Resources

National Mental Health Consumer

Self Help Clearinghouse

Phone: 800-553-4539

National Mental Health Public Awareness Campaign

Phone: 202-778-2309

QUESTION 68.

“What are the rights of the disabled in driving appropriate vehicles?”

ANSWER FOUND IN THE HANDBOOK

Appropriate vehicles for the disabled are especially for those with lower limbs disabilities and in general may not be used for business purposes. By way of background, the urban employment rate of the disabled has been historically lower than the society average employment rate. It is estimated that about 50% of the disabled are unemployed. In China, the present social welfare system is not as developed as other more developed countries and thus, cannot resolve all the living problems of the disabled.

Given the above background information, as an interim measure, part of these special vehicles for the disabled may be licensed conditionally to be used for business for the unemployed disabled people in poverty in some cities that are incapable of arranging the employment the disabled. In future, as the undertakings of the disabled developed, all the vehicles for the disabled may be prohibited to be used for business purpose.

Meanwhile, the state strictly controls the general amount of the vehicles of the disabled for business and may forbid those non-disabled people or non-permit able disabled from driving the appropriate vehicles. In order to drive, disabled applicants may be: [1] only with legs problems, 18 to 50 years old, eyesight over 0.7; no color blindness especially to red and green, no mental problems, upper limbs normal, no hearing problems; and [2] be identified to be unemployed and in poverty by the civil affairs department or disabled federation at district [or county] level.

The disabled driving appropriate vehicles for business have to:

[1] apply to the local CDPF;

[2] be trained to get the driver's license.

Disabled applicants must also abide by the concerned regulations: [1] regular checks by the police and concerned department; [2] not rent the vehicles to other people; [3] carry only one passenger; [4] limit the height of their cargo to less than 1.5 meters from the earth and to a weight of less than 100. [5] cargo and people may not be carried together; and [6] speed per hour should be less than 15 km when driving in the no motor vehicle road.

USA ANSWER

In the USA, the right to a driver's license is not absolute, and licensing standards vary from state to state. In California, a physically or mentally disabled person may not be refused a driver's license if the Department of Motor Vehicles (DMV) decides the disability does not affect the individual's

ability to operate a vehicle. By statute, the DMV will not issue a license to a person with a disorder characterized by lapses of consciousness, but the DMV must make license determinations on a case-by-case basis and must issue licenses to persons capable of safe driving. (California Vehicle [herein referred to as "Cal. Veh".] Code, §§ 12806 and 12805; *Smith v. DMV* (1984) 163 Cal.App.3d 321.) The DMV may require a person to use special adaptive devices if necessary to assure safe driving. (Cal. Veh. Code, §12813.)

Parking Privileges

California and most other states have enacted a number of provisions granting special parking privileges to disabled people who drive. In order to take advantage of most of these privileges, a disabled person's vehicle must display either a distinguishing license plate or distinguishing placard, both of which can be obtained on a permanent or temporary basis from the DMV. (Cal. Veh. Code, § 22511.55 et seq.) The license plate is free of additional charge, and the placard costs \$6.00 for two years. The plates cannot be loaned to others. (Cal. Veh. Code, § 4461.) If lost or stolen, they can be replaced without recertification of eligibility. (Cal. Veh. Code, § 22511.55.)

Parking spaces identified with blue curb paint are exclusively for the use of disabled people. (Cal. Veh. Code, § 21458 (a)(5).) Vehicle Code § 22522 prohibits parking a vehicle within three feet of a sidewalk access ramp for the disabled adjacent to a crosswalk if the area adjoining the ramp is designated with a sign or red paint. Local authorities generally decide where special parking spaces will be located. In addition to designating reserved parking spaces on streets and in public lots, local authorities may require private parking facilities which are open to the public to reserve a certain number of spaces for the vehicles of disabled people. Any parking facility controlled by a state agency must reserve a certain number of spaces. If a state agency does not have its own parking facility, the agency must ask local authorities to reserve on-street spaces immediately adjacent to the agency property for the use of disabled people. (Cal. Veh. Code, §§ 21107.8, 22511.7 and 22511.8; Gov. Code, § 14679.)

In addition to parking in reserved spaces, all vehicles which display distinguishing license plates may park without limit in restricted time parking spaces, and in metered spaces without paying, although vehicles displaying disabled placards reported lost or stolen or which are otherwise invalid may be cited. (Cal. Veh. Code, §§ 22511.5, 22511.57, and 22652.6; certain red, yellow and white zones are not included.) Disabled drivers must still observe parking regulations which prohibit all stopping, parking or standing, or which reserve spaces for special types of vehicles. (Cal. Veh. Code, § 22511.5.) Vehicle Code § 42001.5 requires the court to impose a fine of not less than \$250 on any person convicted of specified parking violations, which can only be suspended if the person convicted possessed a placard or plate but failed to display it. A court can suspend all but \$100 of a fine imposed for blocking a disabled access curb or ramp.

California State Law
Accessibility of Equipment and Structures

California law provides that state agencies, boards, and departments, local governmental subdivisions, districts, public and quasi-public corporations, local public agencies and public service corporations, cities, counties and municipal corporations in awarding contracts for operations, equipment or structures shall require that all fixed route transit equipment and public transit structures be built so that individuals with disabilities shall have ready access to, from, and in them. (Gov. Code, § 4500; 70 Cal. Ops. Atty Gen. 70 (1987.)) This section also provides that if state standards are higher than the ADA, those state standards shall be complied with.

Section 99220 of the Public Utilities Code sets forth a legislative finding that since public transportation systems provide an essential public service, they should be designed and operated so as to encourage maximum utilization by handicapped persons. A "handicapped person" is defined as "any individual who by reason of illness, injury, age, congenital malfunction, or other impairment or temporary incapacity or disability, including, but not limited to, any individual confined to a wheelchair, is unable, without special facilities or special planning or design, to utilize public transportation facilities and services as effectively as a person who is not so affected. (A temporary incapacity or disability is one which lasts more than 90 days; Cal. Pub. Util. Code, § 99206.5.) Cities or counties are authorized pursuant to section 99260.7 of the Public Utilities Code to file a claim for state funds to provide transportation services using vehicles for the exclusive use of handicapped persons.

ANALYSIS OF QUESTION #68

It is apparent that the USA and California have stringent laws on vehicles and driving for the disabled. The disabled in the USA are allowed not only to drive an assortment of vehicles that have been modified for their use, but they also have special privileges in parking. It is clear that China has much more restrictive rules on who may have a operate a vehicle legally. Of most importance, China does not allow the disabled to operate a vehicle if their limbs are in any way impaired. In the USA, limb impairment may or may not prevent a physically disabled person from driving a vehicle. In the USA the automobile industry has developed a number of auto modifications that allow a person with limb impairments to still operate an automobile.

SUGGESTIONS FOR QUESTION #68

The CDPF should encourage the auto industry in the China to build cars with special adaptations for people with disabilities.

QUESTION 69.

“What are the labor protecting rights the disabled can enjoy?”

ANSWER FOUND IN THE HANDBOOK

[1]. Protection on the legal rights of the disabled welfare enterprises, undertakings and institutions.

[2]. Non discrimination protection on employment of the disabled. The Protection of the Disabled Law Article 34 says: No discrimination shall be practiced against disabled persons in employment, engagement, status regularization, promotion, determining technical or professional titles, payment for labor, welfare, labor insurance or in other aspects. No enterprises or institutions shall deny disabled graduates assigned by the state from institutions of higher learning, polytechnic schools or technical schools, solely on the ground of their disabilities; In case of such denial the disabled graduates may appeal to departments concerned for disposition and the relevant departments shall instruct the enterprises or institutions concerned to accept the said graduate students.

[3]. Labor conditions shall be created that are suitable for the disabled physiological conditions and other special conditions.

USA ANSWER

Title I of the Americans with Disabilities Act summarizes the employment rights of the disabled in the USA.

1. Applicants for jobs and employees with disabilities may be entitled to reasonable accommodations. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired -- unless to do so would impose an undue hardship.

2. If an employee or applicant with a disability thinks they will need a reasonable accommodation in order to participate in the application process or to perform an essential function of a job, he/she should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodations only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

3. If the cost of providing the needed accommodation for a person with a disability would be an undue hardship for the employer, the employee may be given the choice of providing the accommodation or paying for a portion of the accommodation that causes the undue hardship.

4. An employer cannot make up the cost of providing a reasonable accommodation by lowering the salary of a person with a disability or paying him/her less than other employees in similar positions.

5. The ADA's requirements to provide reasonable accommodations covers all services, programs and non-work facilities provided by the employer. If making an existing facility accessible (e.g., bathroom, cafeteria, etc.) would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would also be an undue hardship.

6. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because s/he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions. The ADA permits an employer to refuse to hire an individual if s/he poses a direct threat to the health or safety of herself/himself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire an applicant because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

7. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

8. The ADA makes it unlawful to discriminate against an individual, whether disabled or not, because of relationship or association with an individual with a known disability.

9. Legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

ANALYSIS OF QUESTION #69

China does have a disability employment protection law, but the extent of its coverage is not clear. The USA's Americans with Disability Act (ADA) Title I, however, is much more specific and detailed as to what are the rights of the disabled in employment.

SUGGESTIONS FOR QUESTION #69

The CDPF should promote a law similar to Title I of the ADA.

QUESTION 70.

“What are the methods of solving labor disputes between the disabled and the employer?”

ANSWER FOUND IN THE HANDBOOK

According to different situations the labor disputes may be put into different classifications:

- Disputes regarding performance of labor contracts;
- Disputes regarding disabled employees who resign, leave their post without authorization or are fired;
- Disputes regarding the employers' regulations on working time, holidays, salary, insurance, welfare, training and labor protection.

According to China's Labor Law, in cases where the disabled employee has a dispute with the employer, [1] first of all, he may negotiate with the employer; [2] if he is not willing to accept the consultation and does not reach a conciliation agreement, he may apply for mediation to the Board of Labor Dispute Arbitration. Both are not legally binding, and can assist only with the confidence of the two sides; [3] If the mediation fails, the employee may apply for arbitration to the Arbitration Board of Labor Dispute; and [4] if the employee refuses to accept the arbitration, he may bring the suit to the people's court [prosecute].

USA ANSWER

In the USA, the Job Accommodation Network (JAN) offers an international toll-free telephone and email consulting service that provides information about job accommodations and the employability of people with functional limitations. The Job Accommodation Network is a service of U.S. Department of Labor (DOL)'s Office of Disability Employment Policy.

Anyone may contact JAN for information. Phone calls and emails are answered by consultants who understand the functional limitations associated with disabilities and who have instant access to the most comprehensive and up-to-date information about accommodation methods, devices and strategies. JAN preserves the confidentiality of communication between caller and consultant.

The mission of JAN is to assist in the hiring, retraining, retention or advancement of persons with disabilities by providing accommodation information.

JAN's work helps

1) Employers

- hire, retain, and promote qualified employees with disabilities;
- reduce worker's compensation and other insurance costs;

- address issues pertaining to accessibility;
- provide accommodation options and practical solutions;

2) Rehabilitation Professionals

- facilitate placement of clients through accommodation assistance;
- find local resources for workplace assessment;
- discover resources for device fabrication and modification;

3) Persons with Disabilities

- acquire accommodation information;
- discover other organizations, support groups, government agencies, and placement agencies.

Why the Job Accommodation Network was created:

Few people have adequate information about the employability of individuals with disabilities and about job accommodation techniques. Before the Job Accommodation Network (JAN), there was no central resource to which one could turn for information on relevant options concerning job accommodations.

Information Services

The Job Accommodation Network provides such information to employers, rehabilitation professionals, and people with disabilities throughout the United States. JAN also provides other helpful information, such as names, addresses, and phone numbers of individuals and organizations experienced in the modification of environments for persons with disabilities.

Development and Operation

The development of the JAN system has been achieved through the collaborative efforts of the U.S. Department of Labor Office of Disability Employment Policy, the West Virginia Rehabilitation Research and Training Center at West Virginia University, Employment and Immigration Canada, and private industry throughout North America.

Desired Influence on Disability Hiring and Successful Employment

The Job Accommodation Network represents the most comprehensive resource for job accommodations currently available. Its work greatly enhances the ability of employers to provide reasonable and appropriate job accommodations for qualified persons with disabilities, and increases job opportunities for persons with disabilities.

Americans with Disabilities Act (ADA) and the Job Accommodation Network

In 1991 the service of the Job Accommodation Network was expanded to provide public access information to businesses and services needing to comply with the Americans with Disabilities Act (ADA). By dialing 1-800-ADA-WORK, or by contacting the website at <http://www.dol.gov>

A caller may speak with a JAN consultant who is knowledgeable about public access issues and ways to modify facilities and equipment to provide access for persons who are disabled.

ANALYSIS OF QUESTION #70

The PRC's method of solving labor disputes as they relate to the disabled, is steeped in labor law and regulations. On the other hand, in the USA the method of dealing with labor disputes regarding the disabled usually has to do with finding and implementing appropriate accommodations. To this end, JAN was established.

SUGGESTIONS FOR QUESTION #70

- The CDPF should establish a component similar to JAN in each of its regional centers.
- CDPF may add a JAN-type of element to its developing web site.

Material Assistance Rights

QUESTION 117.

“What is the main content about the special assistance which is given by country and society?”

ANSWER FOUND IN THE HANDBOOK

The Protection of the Disabled Law Article 4 says: The state shall provide disabled persons with special assistance by adopting supplementary methods and supporting measures with a view to alleviating or eliminating the effects of their disabilities and external barriers and ensuring the realization of their rights.

At present the special assistance given by state and society includes law guarantee, policy assistance, social helping, barrier free conditions, and special devices and appliances and other aspects.

[1]. Law guarantee: The Law on the Protection of Persons with Disabilities and Regulations on the Education of Persons with Disabilities were adopted. Local governments have made implementations in line with provisions of this Law.

[2]. Policy assistance: Local governments at all levels have made a series of policies, regulations, plans on the rehabilitation, education, employment, poverty alleviation, culture and welfare of the disabled.

[3]. Social helping: All urban and rural areas shall create and or encourage activities to help the disabled, such as National for Helping the Disabled, Volunteers to Help the Disabled, Set up Homes for the Disabled, To Be Friends of the disabled, and activity of helping, assisting, taking charge of the livelihood of disabled persons, etc.

[4]. Barrier free environment: To carry out barrier free urban roads and buildings, to develop barrier free in obtaining information and communication.

[5]. Special devices and appliances for the disabled: Set up a supply network of disabled person's necessities and appliances, to develop and supply needed appliances that widely needed, practical and cost effective along with maintenance services.

USA ANSWER

In the USA, people with disabilities want the best that science and engineering can offer. They also want research that takes a collaborative approach, incorporating issues of self-help, consumer control and respect for life experiences into the broader study of health care, rehabilitation and independent

living. For Example, the National Institute on Disability and Rehabilitation Research (NIDRR) is one example of a USA leader in sponsoring research to help bring about this synthesis of scholarship, talent and practical life experience.

People can become disabled at any point in their lives. Disability may be present from birth, or result from an accident in youth, a work-related injury, the aging process or a multitude of other causes. If we, ourselves, do not experience a disability, perhaps we will be caring for a disabled child, spouse, parent or friend. The chances that we will be affected by a disability have increased due to advances in medical technology that have expanded our life expectancies. At this point, disability ranks among the nation's biggest public health concerns, encompassing an estimated 52 million Americans.

It is the mission of National Institute on Disability Rehabilitation Research (NIDRR) to generate, disseminate and promote new knowledge to improve the options available to disabled persons. The ultimate goal is to allow these individuals to perform their regular activities in the community and to bolster society's ability to provide full opportunities and appropriate supports for its disabled citizens. Toward this end, NIDRR conducts comprehensive and coordinated programs of research and related activities to maximize the full inclusion, social integration, employment and independent living of individuals of all ages with disabilities. NIDRR's focus includes research in areas such as employment; health and function; technology for access and function; independent living and community integration; and other associated disability research areas. Balanced between the scientific and consumer communities, NIDRR plays a unique role in federally funded research activities. As part of the scientific community, NIDRR makes an important contribution to the overall knowledge in rehabilitation medicine, engineering, psychosocial rehabilitation, integration, vocational outcomes and the virtual and built environments. In addition, NIDRR's work helps to integrate disability research into our nation's policies regarding science and technology, health care, and economics. Created in 1978, NIDRR is located in Washington, D.C., and is one of three components of the Office of Special Education and Rehabilitative Services (OSERS) at the U.S. Department of Education.

For the reader's information, NIDRR operates in concert with the Rehabilitation Services Administration and the Office of Special Education Programs, which are service programs. This juxtaposition between service and science enhances NIDRR's role. NIDRR has unique institutional relationships with the scientific community through NIDRR the Interagency Committee on Disability Research (ICDR), which the director of NIDRR chairs. In addition, NIDRR co-sponsors research programs with other federal government agencies and with foreign governments and international agencies.

NIDRR-SPONSORED ACTIVITIES

NIDRR's research is extramural, conducted through a network of individual research projects and centers of excellence located throughout the country. Most NIDRR grantees are universities or providers of rehabilitation or related services. NIDRR's largest funding programs are the Rehabilitation Research and Training Centers (RRTCs) and the Rehabilitation Engineering Research Centers (RERCs). NIDRR also makes awards for information dissemination and utilization centers and projects, field-initiated projects, research and development projects, advanced research training projects, Switzer fellowships and model systems of research. Rehabilitation Research and Training Centers (RRTCs) The RRTCs conduct coordinated programs of research targeted toward the production of new knowledge that will improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions and promote the maximum social and economic independence of individuals with disabilities.

The RRTCs also conduct training and information dissemination activities. Some disabling conditions that are currently the subject of individual centers include deafness, low vision, spinal cord injury and long-term mental illness. Other RRTCs focus on cross-disability perspectives such as aging with a disability, the management of independent living centers, drugs and disability, or the particular needs of American Indians. The RRTCs also train rehabilitation personnel and other individuals to provide rehabilitation services and to conduct additional research. In addition, the RRTCs serve as a resource for researchers, people with disabilities, their families, service providers, and advocates by disseminating information and providing technical assistance through workshops, conferences and public education programs.

Rehabilitation Engineering Research Centers (RERCs):

The RERCs plan and conduct research leading to new scientific knowledge and new or improved methods, procedures and devices to benefit people with disabilities. They are engaged in developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge, with the goal of solving rehabilitation problems and removing environmental barriers. The RERCs work at the individual level, focusing on technology to lessen the effects of sensory loss, mobility impairment, chronic pain, and communication difficulties. They also work at the systems level in such areas as eliminating barriers to fully accessible transportation, communications and housing. Partnering with industry, product developers, private sector entrepreneurs and even hobbyists, the RERCs embody the potential to make sweeping changes in public policy and the nature of the built and virtual environments.

ADVANCES IN RESEARCH SUPPORTED BY NIDRR

Research supported by NIDRR has had a tremendous impact on the lives of persons with disabilities and, at the same time, has made an essential contribution to scientific knowledge in the United States and around the globe. In addition to being responsive to the changing needs of disabled individuals, research has kept pace with medical advancements, new technology, community support initiatives, and new statutory definitions of civil rights. NIDRR-supported research also has helped encourage and educate policymakers to envision and design a society that is universally accessible and functional for all people in every stage of life. As a result, it is now possible for people with significant disabilities to live full and fulfilled lives. It is already commonplace to find people who are blind using computers, people who are deaf attending the theater, and people in wheelchairs traveling in planes and driving their own cars. The future holds even more promise.

- **Medical Rehabilitation Research**

Taking a broader look at just one area of NIDRR-funded research - medical rehabilitation research - provides evidence of profound changes. Due to the concerted efforts of medical disability researchers, the lives, outlooks and opportunities for people with disabilities have greatly improved. By supporting research on model systems, NIDRR has enhanced the ability of rehabilitation hospitals and centers to care for, rehabilitate and reintegrate patients with spinal cord injury, traumatic brain injury, and severe burns in a shorter period of time than before. Advancements over the past 25 years have resulted in a steady rise in the life expectancy of individuals with paralysis from spinal cord injuries. Improved medical diagnoses, treatment methods and behavioral protocols, as well as enhanced rehabilitation engineering technologies for seating, cushioning, and positioning, have reduced the occurrence of decubitus ulcers, a severe secondary complication of paralysis. Similarly, due to research, a major reduction in the incidence of severe urinary tract infections has eliminated renal failure as the top-ranking cause of death for people with paralyzing conditions.

- **Rehabilitation Engineering Research**

One focus of rehabilitation engineering research over the last decades has been the adaptation of new, light-weight, but durable materials for wheelchairs and for orthotic and prosthetic devices. A primary objective of Field-Initiated Projects is to make this equipment more serviceable and comfortable for the user, advance rehabilitation knowledge to improve the lives of people with disabilities, complement research already planned or funded by NIDRR, or address the research in a new and promising way.

The researcher proposes the topics of these projects. Some topics recently funded are aging and life adjustment after spinal cord injury, assessing the impact of managed care on rehabilitation research, and a clinical evaluation of pressure-relieving seat cushions for elderly stroke patients. The Advanced

Rehabilitation Research Training Program trains physicians, therapists, rehabilitation engineers, and other professionals in research methods and statistical analysis. Small Business Innovative Research contracts help support the production of new products from development to market readiness. NIDRR also administers two types of one- year Switzer fellowships. Distinguished fellowships are for individuals of doctorate or comparable academic status with seven or more years experience relevant to rehabilitation research. Merit fellowships are for persons with considerable research experience, but who do not meet the above requirements.

THE FUTURE OF DISABILITY RESEARCH

Now and in the years to come, NIDRR will continue to expand its activities to reflect the emerging universe of types and causes of disability. We are only beginning to understand the interaction among the medical, environmental and societal factors that link to disability. New illnesses and conditions are constantly evolving, many of which are associated with poverty, such as low birth weight, poor medical care, lack of prenatal care, substance abuse, violence, and isolation. These factors have a high correlation to impairments and disabilities. NIDRR also will provide leadership to the scientific community and society as a whole to conceptualize disability in a new way. The disability paradigm that undergirds NIDRR's research strategy maintains that disability is an interaction between characteristics (e.g. conditions or impairments, functional status, or personal and social qualities) of an individual and characteristics of the natural, built, cultural, and social environments. NIDRR also recognizes the continuing importance of medical rehabilitation and health within the context of disability. Further, it recognizes that people with disabilities are entitled to accommodations as a civil right under the Americans with Disabilities Act.

RESEARCH

U.S. Department of Education
400 Maryland Avenue, S.W. Washington, DC 20202-2572
Telephone: 202-205-8134 (voice) 202-205-5516 (TTY)

Department's Website at
<http://www.ed.gov>
and in alternate formats upon request.

Consult these sites on the World Wide Web for further information:

<http://www.ed.gov/offices/OSERS/NIDRR>
<http://www.ncddr.org>
<http://www.naric.com>

ANALYSIS OF QUESTION #117

A comparison of how each nation views its role in giving special assistance to the disabled is valuable. The author selected one program out of several that are offered nationally for the disabled in the USA. This governmental program presents itself as a model of how to enhance the lives of the disabled. China presents generalized guidelines for industry and others to follow in offering special assistance to the disabled. Again, the problem with generalized guidelines is that they often go unheeded and get lost in a maze of other guidelines.

The USA's concept of setting up Research Centers around the nation to find ways in which to improve the lives of the disabled; their employment, their family, mental health, physical health, and independent living skills, is greatly assisted by the establishment of these Research Centers. The very fact that these Centers have programs that focus on health and wellness strategies for people with disabilities as one means of increasing their quality of life is the important of Society meeting its obligations to offering special assistance to the disabled.

SUGGESTIONS FOR QUESTION #117

- The CFPD should develop similar Centers to the NDIRR in order to capitalize on new techniques such as telerehabilitation to increase the numbers and types of services offered to people in rural or remote areas.
- CDPF should work to increase its activities by more closely monitoring disability research currently be done in the international arena. Through its international authority, NIDRR could work on collaborative research centers in China through improving the skills of rehabilitation personnel both in China and in the United States and at the same time help strengthen disability leadership around the globe

QUESTION 127.

“What is convalescence training?”

ANSWER FOUND IN HANDBOOK

The rehabilitation training is one of the most applicable and easiest to realize among the many methods of rehabilitation. The majority of the disabled may improve their self-condition to participate in the social life. Rehabilitation training focuses on effective and psychological training. Two points should be emphasized during the training. One is that special environments and conditions should be created for the disabled; the other one is that the training methods should vary with each individual. For example, children with disabilities may be trained through medical and educational methods; but meanwhile an adult in poverty with disabilities should be trained through vocational and social methods.

USA ANSWER

In the USA, according to Title IV of the Rehabilitation Act Amendments of 1998 Section 102 (b)(3), **The Department of Rehabilitation in each State is charged with this responsibility** (rehabilitation training). Their regulations say that regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of --

- (A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting;
- (B) (i) a description of the specific vocational rehabilitation services that are --
 - (I) needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and
 - (II) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual; and
- (ii) timelines for the achievement of the employment outcome and for the initiation of the services;
- (C) a description of the entity chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;
- (D) a description of criteria to evaluate progress toward achievement of the employment outcome;
- (E) the terms and conditions of the individualized plan for employment, including, as appropriate,

information describing -

- (i) the responsibilities of the designated State unit;
 - (ii) the responsibilities of the eligible individual, including--
 - (I) the responsibilities the eligible individual will assume in relation to the employment outcome of the individual;
 - (II) if applicable, the participation of the eligible individual in paying for the costs of the plan; and
 - (III) the responsibility of the eligible individual with regard to applying for and securing comparable benefits as described in section 101(a)(8); and
 - (iii) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements as described in section 101(a)(8);
- (F) for an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying -
- (i) the extended services needed by the eligible individual; and
 - (ii) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and
- (G) as determined to be necessary, a statement of projected need for post-employment services.

ANALYSIS OF QUESTION #127

The response to Question #127 in the Handbook is quite short, thus giving this author the impression that rehabilitation training for the disabled is a low priority topic in the PRC. However, in checking a Web Site titled, "China Disability Association," it is reported on that web site that rehabilitation is a very important part of training the disabled to return to employment and it is further reported that millions of people who are blind and deaf return to work annually due to China's rehabilitation efforts. As can be seen in the USA's Answer found in the previous Question #117, "Rehabilitation Training" and "Obligations of Society" are closely tied together. The above document described in the USA Answer, describes the Department of Rehabilitation's role and the procedures it is to follow when offering rehabilitation services to a person with a disability.

SUGGESTIONS FOR QUESTION #127

- The CDPF may want to work closely with international agencies in developing exact standards that describe how rehabilitation services are to be applied and how they are to be measured.
- The CDPF should develop a manual for describing how rehabilitation services are to be delivered on a consistent basis.
- The CDPF should work with the international disability community in creating methods of rehabilitation training that are useful to Chinese citizens.
- The CDPF should promote more Rehabilitation Training coursework in the Nation's universities.

QUESTION 131.

“How many different kinds of organizations are responsible for helping the disabled?”

ANSWER FOUND IN HANDBOOK

In China, besides the Disabled Federation and civil affairs department at all levels, there are many kinds of fostering organizations responsible for helping the disabled, such as: welfare homes for children; social welfare homes; mental disease hospitals; homes for bringing up mental retardant children; sanatorium [home] for wounded and disabled army men; glory home for those honored by the state and some homes for the old people. Among all these organizations, most are run by the state except the homes for old people which are mainly run by the collective unit. The state encourages the society to run more such fostering organizations by different types.

The March 1998 publication from the CDPF titled, “The Work of Persons with Disabilities in China” says Rehabilitation training and community-based rehabilitation services have been all-roundly launched. The modern rehabilitation research center directly under the CDPF is playing the role of resource center in rehabilitation practice, scientific research and personnel training. Due to the advocacy of the CDPF, rehabilitation departments and sections have been set up within comprehensive hospitals, 10, 469 rehabilitation service guiding centers and rehabilitation stations at levels of province, city and county as well as township have been established and introduced to society and 3,400 rehabilitation work treatment stations have been set up for all disabled, including those with mental illness.

USA ANSWER

In an internet search via <http://www.google.com>, the following overview of the various organizations that are responsible for helping the disabled was found. (Each can be accessed via the Web.):

ABLEDATA

A national database of information on over 24,000 assistive technology and rehabilitation products available from domestic and international sources.

Alliance for Technology Access

American Association of People with Disabilities (AAPD)

American Foundation for the Blind

The AFB is committed to leveling the playing field for the 10 million blind or visually impaired Americans. A nonprofit organization founded in 1921 and recognized as Helen Keller's cause in the United States, AFB is a leading

national resource for people who are blind or visually impaired, the organizations that serve them, and the general public.

Americans with Disabilities Act Document Center

Americans with Disabilities Technical Assistance Program

Assistive Technology Industry Association (ATIA)

Bobby

Bobby is a web-based tool that analyzes web pages for their accessibility to people with disabilities.

Center for Assistive Technology

Center for International Rehabilitation Research Information and Exchange (CIRRIE)

The Center is based at the State University of New York at Buffalo and supported through a grant from the U.S. Department of Education's National Institute on Disability and Rehabilitation Research. Its mission is to facilitate the sharing of information and expertise in rehabilitation research between the United States and other countries.

Cornucopia of Disability Information

Deaf World Web

Deaf World Web is a comprehensive deaf-related resource on the Internet.

Disability and the Workplace: An Internet Primer

Disability Resources Monthly

Disability Rights Activist

Disability Rights Education and Defense Fund Inc.

Disability Rights Movement

A virtual exhibit from the Smithsonian

Disability Social History Project

DRM Web Watcher

Subject Guide to the Best Disability Resources on the Internet

EASI: Equal Access to Software and Information

Electronic Resources on Disabilities

This selected list of electronic resources from the American Library Association identifies information sources on disabilities in general, assistive technology, associations and organizations, government resources, and sites centered on specific disabilities, as well as Web page accessibility.

ERIC Clearinghouse on Disabilities and Gifted Education

Famous People with Disabilities

Family Village: A Global Community of Disability-Related Resources

Global Networking

Maintained by the Institute for Independent Living, this Web site provides a free service designed to facilitate networking among organizations working in the disability field.

HalfthePlanet.com (The Disability Network)

"The Internet portal where the entire disability community can access reliable services and products, connect with peer support, and keep up with disability-related news and information all day every day." It pledges to offer "fresh and informative content including original reporting, classifieds, legislative updates, shopping, bulletin boards, travel and entertainment, and thousands of pages of useful products and services that are important to people with disabilities and those who are closest to them.

JAN (Job Accommodation Network)

National Arts and Disability Center

National Information Center for Children and Youth with Disabilities (NICHCY)

Searching NICHCY's Database of Conferences

National Organization on Disability

National Parent Network on Disabilities

NPND promotes and supports the power of parents to influence and affect policy issues at all levels.

NCSA Mosaic Access Page

Open Here: Disability Links

Protection and Advocacy Systems

Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)

Society for Disability Studies

Special Olympics

TASH

TASH is an international association of people with disabilities, their family members, other advocates, and professionals fighting for a society in which inclusion of all people in all aspects of society is the norm.

Through the Looking Glass

A community non-profit organization which emerged from the disability independent living movement in 1982. TLG has pioneered clinical and supportive services, training and research serving families in which one or more members--whether parent or child--has a disability or medical issue.

Trace Research and Development Center

VSA arts (formerly Very Special Arts)

In addition to its community-based and national programs, VSA sponsored the Art and Soul international festival in Los Angeles, May 28 - June 2, 1999.

We Media: The Disability Network

World Institute on Disability

Focuses on the programs of WID, an international public policy center dedicated to carrying out cutting-edge research on disability issues.

Independent Living Centers

These are typically non-residential, private, non-profit, consumer-controlled, community-based organizations providing services and advocacy by and for persons with all types of disabilities. Their goal is to assist individuals with disabilities to achieve their maximum potential within their families and communities. Also, Independent Living Centers serve as a strong advocacy voice on a wide range of national, state and local issues. They work to assure physical and programmatic access to housing, employment, transportation, communities, recreational facilities, and health and social services. These are just a few of the services offered.

There are nearly 500 ILC's in the USA. Many are state supported.

The purpose of the independent living centers is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and to integrate these individuals into the mainstream of American society. Independent living programs provide financial assistance to provide, expand, and improve independent living services; develop and support statewide networks of

centers for independent living; and improve working relationships among State independent living rehabilitation programs, centers for independent living, Statewide Independent Living Councils (SILC), Rehabilitation Act programs outside of Title VII, and other relevant Federal and non-Federal programs.

The Centers for Independent Living programs provides grants for consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and provide an array of independent living services. At a minimum, centers are required to provide the core services of information and referral, independent living skills training, peer counseling, and individual and systems advocacy. Most centers are also actively involved in one or more of the following activities:

- community planning and decision making;
- school-based peer counseling, role modeling, and skills training;
- working with local governments and employers to open and facilitate employment opportunities, interacting with local, State, and Federal legislators;
- staging recreational events that integrate individuals with disabilities with their non-disabled peers.

Additional Resources

What follows is a listing of resources taken from *About Disabilities* (2nd Ed) by John Wilde, Ph.D. where one can write or call for more information:

(Since this is information within the public domain, readers are welcome to make copies of these resources and distribute to those who are seeking information.)

American Disabled for Attendant Programs Today (ADAPT)

1208 South Logan

Denver, CO 80210

(303) 733-9324/Voice, TDD

Activist organization that fights for security of civil rights for dependable attendant care.

ABLEDATA

8455 Colesville Road

Suite 935

Silver Spring, MD 20910-3319

(800)227-0216

(800)227-0216 x22/TDD

Maintains a database with over 15,000 listings of adaptive products and devices for all disabilities. Users with a computer and modem can call the AbleInform bulletin board system at (301)589-3563.

American Speech-Language-Hearing Association

10801 Rockville Pike

Rockville, MD 20852

(301) 897-5700 Voice/TDD

(800) 638-8255 Voice/TDD

Is a professional, scientific association for speech-language pathologists who provide services to people with speech, hearing and language disorders.

Provides written materials to consumers wanting information on communication disorders and professional treatment.

Academy of Otolaryngology-Head & Neck Surgery

1101 Vermont Avenue NW

Suite 302

Washington, DC 20005

(202) 289-4607

Promotes the art and science of medicine related to otolaryngology head and neck surgery, including providing continuing medical education courses and publications. It distributes patient leaflets relating to ear problems, makes referrals to physicians and publishes a journal and newsletter.

Association on Higher Education and Disability

P.O. Box 21192

Columbus, OH 432221-0129

(614) 488-4972/Voice/TDD

(614) 488-1174/Fax

Is an international organization of professionals committed to the full participation in post-secondary education of all people with disabilities.

Access Publishers

1087 E. Otero Avenue

Littleton, CO 80122

(303) 797-2821

This publisher is working to transfer books to disk for personal computer users to have to read from their PC's.

Access Unlimited - Speech Enterprises

9039 Katy Freeway
Suite 414
Houston, TX 77024
(713) 461-0006

A nonprofit corporation dedicated to enhancing the lives of people who need large print or talking text on their PC's or other special access via touch monitors, enlarged keyboards or switches. The company evaluates products, creates software and serves as a clearinghouse for those needing information.

Access USA - Braille Services

528 Riverside Drive
Clayton, NY 13264
(613) 969-5148

A Braille translation service for all types of copying, translation and printing.

ADA Consulting-Compliance Design Co.

2244 West Coast HWY #200
Newport Beach, CA 92663
(714) 646-3756

A consulting firm which offers ADA compliance surveys and implementation plans to make businesses, public and commercial facilities, local and state facilities accessible and in compliance with state and ADA requirements.

American Hearing Research Foundation

55 E. Washington Street
Suite 2022
Chicago, IL 60602
(312) 726-9670

Informs physicians and others about the latest developments in hearing research and education and publishes a newsletter.

American Heart Association

7320 Greenville Avenue
Dallas, TX 75231
(214) 706-1179

Provides publications and research on stroke and cerebro-vascular disease; local chapters nationwide.

American Paralysis Association

2201 Argonne Drive
Baltimore, MD 21218
(800) 526-3456

24-hour toll free hotline provides referrals and other information re: rehabilitation and psychological adjustment.

Arc (The)

500 East Border Street
 Suite 300
 Arlington, TX 76010
 (817) 261-6003
 (817) 277-3491 Fax
 (817) 277-0553 TDD
 thearc@mctronet.com

The Arc was formerly the Association for Retarded Citizens and is a volunteer organization to provide advocacy, support and information on mental retardation.

AT&T National Special Needs Center

2001 Route 46
 Suite 310
 Parsippany, NJ 07054-1315
 (800) 233-1222 Voice
 (800) 833-3232 TDD

Serves the communications needs of customers with hearing, speech, motion or vision impairments and publishes a catalog on TDD services, long distance information and products.

Brain Injury Association

1776 Massachusetts Avenue, NW
 Suite 100
 Washington, DC 20036
 (202) 296-6443
 (800) 444-6443 (Family Hotline)

(Formerly the National Head Injury Foundation) is an organization dedicated to improving the quality of life for people with head injury and their families.

Braille International, Inc.

3290 S.E. Slater Street
 Stuart, FL 34997
 (407) 286-8366
 (800) 336-3142

Brochures, manuals and catalogs available. Technical Theme Park, Guidebooks, employee communication materials for ADA, Restaurant Menus, Braille Business Cards; The William A. Tomas Braille Bookstore now offers fiction and non-fiction titles for adults and children. Bookstore also carries a variety of products such as all-occasion braille/print greeting cards, Braille as well as talking watches, T-shirts and Braille Sterling Jewelry. Call for free catalog, information, or specific Braille needs.

Cancer Information Service

Division of Cancer Control Johnson Comprehensive Cancer Ctr Control -UCLA
1100 Glendon Ave, Suite 760

Los Angeles, CA 90024

(310) 206-0278

(310) 206-3566 Fax

Provides up-to-date information on cancer to patients and their families, health professionals and the general public. The phone service is operated through a single number (1(800) 4 CANCER).

Canine Companions for Independence

4350 Occidental Road

P.O. Box 446

Santa Rosa, CA 95402-0446

(800) 767-BARK

Provides highly trained assistance dogs for people with disabilities other than blindness to help them achieve greater physical independence.

Captioned Films/Videos for the Deaf

Modern Talking Pictures Service

5000 Park Street North

St. Petersburg, FL 33709

(800) 237-6213

Provides free loans of educational and entertainment captioned films and videos.

Center for Accessible Housing

North Carolina State University

P.O. Box 8613

Raleigh, NC 27695-8613

(919) 737 7114

Research and training center focusing on making housing accessible to people with disabilities. Conducts research and develops new designs for homes and products.

Center for Developmental Disabilities

Benson Building

University of South Carolina

Columbia, SC 29208

(800) 922-9234

(803) 777-4839

Center maintains a database, PSI-TECH, with information about resources across the country, including rehab resources, assistive technology and lists of therapists and rehab engineers.

Center for Independent Living

2935 Telegraph Avenue

Berkeley, CA 94704

(415) 841-4776 Voice

(415) 848 -3101 TDD

Provides counseling, support groups, information, referral and independent living skills training,

Children and Adults with Attention Deficit Disorders (C.H.A.D.D.)

488 Northwest 70th Avenue

Suite 101

Plantation, FL 33317

(305) 587-3700

(800) 233-4050

Support group providing education and information for parents and children with ADD.

CDC/National AIDS Clearinghouse

P.O. Box 6003

Rockville, MD 20849-6003

(800) 458-5231

(301) 738-6616 Fax

(800) 243-7010 TDD

Comprehensive information service for health professionals, state and local AIDS program managers and others responsible for AIDS information. Sponsored by the Centers for Disease Control.

Clearinghouse on the Handicapped Disabled

Switzer Building, Rm. 2319

330 C Street SW

Washington, DC 20202

(202) 732-1250

A national clearinghouse group providing information on disabilities.

Choice Magazine Listening

Box 10

Port Washington, NY 11050

Provides free audio materials. Write for free information.

Computer-Disability News

National Easter Seal Society

5120 South Hyde Park Blvd.

Chicago, IL 60615

(312) 667-7400

This newsletter is a computer resource quarterly for people with disabilities and is published by The National Easter Seal Society in Chicago.

Center for Psychiatric Rehabilitation

Psychiatric rehabilitation Services Center
 Boston University
 930 Commonwealth Avenue
 Boston, MA 02215
 (617) 353-3549
 (617) 353-7700 Fax
 (617) 353-7701 TDD

Center's work focuses mostly on training mental health and vocational rehabilitation professionals. Also provides a variety of services including career support, supported housing, PASS Plan Assistance Services, computer skills training, supported education services and wellness programs.

Council for Learning Disabilities

P.O. Box 40303
 Overland Park, KS 66204
 (913) 492-8755

Works with students/clients who have learning disabilities. Publishes a quarterly journal and newsletter.

CREATE-Center for Rehabilitation Engineering and Appropriate Technology Education

1600 Holloway Avenue
 San Francisco State University
 San Francisco, CA 94132
 (415) 338-1333

A federally funded program for students - a hands-on, approach to identifying and designing solutions for persons with disabilities.

Direct Link for the Disabled

P.O. Box 1036
 Solvang, CA 93464
 (805) 688-1603

Referral agency that maintains listings of more than 10,000 organizations and community-based resource centers for all ages and disabilities.

Disability Rights Education and Defense Fund (DREDF)

2212 Sixth Street
 Berkeley, CA 94710
 (510) 644-2555
 (510) 644-2626/TDD
 (800) 466-4232
 75452.120@compuserve.com

National law and policy center dedicated to furthering the civil rights of people with disabilities. Provides an ADA technical assistance hotline at (800) 466-4232 voice/TDD.

Easy Street, Inc.

8 Equality Park West
 Newport, RI 02840
 (401) 846-2580

Offers Catalog of ingenious products that make daily life easier, safer and more enjoyable for people with physical or sensory limitations. Features items for mobility, household activities, dressing, bathing, writing, vision, hearing, recreation, incontinence and safety.

Family Caregiver Alliance

425 Bush Street
 Suite 500
 San Francisco, CA 94108
 (415) 434-3388
 (800) 445-8106 (CA only)
 (415) 434-3508 (Fax)

Statewide network of caregiver resource centers designed to support families caring for members with any type of brain impairment.

Hear Now

4001 S. Magnolia Way
 Suite 100
 Denver, CO 80237
 (303) 758-4919 Voice
 (800) 648 HEAR TDD

A national charitable, non-profit organization which raises funds to provide grants and/or loans to individuals with financial need to help cover the cost of hearing aids or cochlear implantation.

Helen Keller National Center for the Deaf & Blind

111 Middle Neck Road
 Sands Point, NY 11050-1299
 (516) 944-8900

Comprehensive evaluation and prevocational rehabilitation training; conducts extensive field services through regional offices, affiliated programs and a national training team; it maintains the National Register of Deaf-Blind Persons and designs and improves sensory aids.

Institute for Rehabilitation and Research

5100 Travis
 Houston, TX 77002
 (713) 528-0504

Provides therapy and services to head injury patients who have lost their speech or have unintelligible speech. Part of the Texas Medical Center, the institute is a not-for-profit research and rehabilitation facility.

The Kids on the Block Inc.

9385 -C Gerwig Lane

Columbia, MD 21046

(800) 368-KIDS

(301) 290 -9095

Disabled and non-disabled puppets teaching awareness about disabilities through Muppetlike characters interacting with the audience.

International Association of Psychosocial Rehabilitation Services

10025 Governor Warfield Parkway, #301

Columbia, MD 21044

(410) 730-7190

Information Center for Individuals with Disabilities

27-43 Wormwood Street, 1st floor

Boston, MA 02210

(617) 727-5540

(617) 345-9743TDD

(800) 462-5015

Offers information, referral, problem solving assistance on all issues related to disability, without charge, for individuals, their families, employers, and service providers. Publishes monthly newsletter, Disability Issues.

Learning Disabilities Association of America

4156 Library Road

Pittsburgh, PA 15234-1349

(412) 341-1515

(412) 344-0224 Fax

(Formerly the Association for Children and Adults with Learning Disabilities) is a non-profit, 60,000 member national information referral service. Publishes several magazines and journals.

Lekotek

2100 Ridge Avenue

Evanston, IL 60204

(312) 328-0001

Provides a caring place where families with special needs children can come for support and encouragement to integrate kids into the community.

Lions Club International

300 22nd Street
Oak Hill, IL 60570
(312) 571-5466

This international service club has 40,000 clubs in 166 countries. Provides assistance to disabled, primarily in sight and hearing. Contact should be made through the local club; the Oak Hill office provides information.

Mainstream Inc.

1030 15th Street NW
Suite 1010
Washington, DC 20005
(202) 898-1400

Works with employers and service providers to increase employment opportunities for persons with disabilities. Operates a placement program in Washington, DC, and Dallas, TX.

Muscular Dystrophy Association

3561 E. Sunrise
Tucson, AZ 85718
(602) 529-2000

Supports research and provides diagnostic services and rehabilitative follow-up care for neuromuscular disorders through MDA-supported clinics.

National Adult Literacy and Learning Disabilities Center

1875 Connecticut Avenue, NW
Washington, DC 20009-11202
(800) 953-2553
info@nalldc.aed.org

Funded by the National Institute for Literacy, promotes awareness of the relationship between adult literacy and learning disabilities.

National Information Center on Deafness

Gallaudet University
800 Florida Avenue, N.E.
Washington, DC 20002-3695
(202) 651-5051 Voice
(202) 651-5052 TDD

Provides up-to-date information on deafness. Responds to questions from the general public.

National Council on Disability

1331 F Street, N.W., Ste/ 1050
Washington, DC 20004
(202) 272-2004 Voice
(202) 272-2074 TDD

Federal agency that makes recommendations to the President and Congress on issues affecting 49 million Americans with disabilities. Under its congressional mandate, the Council is charged with the responsibility of gathering information on the implementation, effectiveness, and impact of the ADA.

NASA Technology Applications Team

P.O. Box 12194

RTP, NC 27709

(919) 541-6924

(919) 541-7202

The NASA Team works with organizations to match NASA-developed technology to disability problems having wide impact. Collaborates with the public and private sector to re-engineer aerospace technology for use in terrestrial applications.

National Amputation Foundation

12-45 150th Street

Whitestone, NY 11357

(718) 767-0596

Provides information for amputees and their families.

National Association of the Deaf (NAD)

814 Thayer Avenue

Silver Spring, MD 20910

(301) 587-1788

Consumer organization, concerned with communication skills, legislation, employment right and advocacy. Affiliated chapters are nationwide. One of the largest publishers of deafness related materials. Publications: Broadcaster, Deaf American.

National Center for Youth with Disabilities

Box 721 - UMHC

Harvard St. at East River Rd.

Minneapolis, MN 55455

(800) 333-6293

(612) 626-2825

A resource center focusing on adolescents with chronic illness and disabilities. Offers training and educational materials, an assistance referral network, and a newsletter.

National Diabetes Information Clearinghouse

Box NDIC

Bethesda, MD 20892

(310) 468-2126

Free catalog of publications and services.

National Information Center for Orphan Drugs & Rare Diseases

P.O. Box 1133

Washington, DC 20013-1133

(800) 336-4749

Provides a hotline for rare diseases such as Lou Gehrig's Disease, Tourett's Syndrome and Addison's Disease, including a free referral service to foundations, volunteers and support groups.

National Institute of Art and Disabilities

551 23rd Street

Richmond, CA 94804

(415) 620-0290

A comprehensive, visual arts center for people with disabilities featuring a creative art studio, exhibition, teaching, consultation, publications, research and advocacy.

National Organizations Responding to AIDS

1828 L Street, NW, Set 802

Washington, DC 20036

(202) 231-8600

A coalition of 150 national nonprofit groups committed to developing humane federal AIDS policies.

National Parkinson Foundation

1501 NW 9th Avenue

Miami, FL 33136-9990

(800) 327-4545

(305) 547-6666

Research, treatment and rehabilitation programs for Parkinson syndrome. Assistance provided in finding diagnostic and treatment services.

National Rehabilitation Association

633 South Washington Street

Alexandria, VA 22314

(703) 836-0850

(703) 836-0849 TDD

Professional organization composed primarily of service providers. Actively involved in lobbying at the federal level in the areas of Rehabilitation, Vocational Evaluation, Independent living, and Instruction. Publishes Journal of Rehabilitation.

National Special Education Alliance

2025 Mariani Avenue
Cupertino, CA 95104
(800) 732-3131
(408) 974-7910

A resource center which provides local services, information and hands-on training for individuals with disabilities, their families, therapists and others interested in applying technology for persons with disabilities.

National Alliance for the Mentally Ill

2102 Wilson Boulevard
Suite 302
Arlington, VA 22201
(703) 524-7600
(800) 950-6264

A self-help organization of persons with mental illness, their families and their friends. Call 800 number for closest affiliated group.

National Depressive Manic Depressive Association

730 North Franklin, Suite 510
Chicago, IL 60610
(312) 642-0049
(800) 82-NDMDA

National Spinal Cord Injury Association

545 Concord Avenue
Suite 29
Woburn, MA 01801
(617) 441-8500
(800) 962-9629
(617) 441-3449 Fax

Chapters throughout the country providing disability information and publications. Answers inquiries about latest research in spinal injury and maintains a referral service.

New Eyes for the Needy

P.O. Box 332
Short Hills, NJ 07078
(201) 376-4903

Pays for glasses under certain conditions, recipient obtains own prescription, a social service department requests glasses if proof in writing that no other assistance is available, a voucher is given to social worker to give to recipient.

Orton Dyslexia Society

The Chester Building
8600 LaSalle Road

Suite 382

Baltimore, MD 21204

(800) 222-3123

(410) 321-5069 Fax

Conducting research, and providing support and advocacy for people with dyslexia and learning disabilities.

President's Committee on Employment of People with Disabilities

1331 F Street, NW

Washington, DC 20004-1107

(202) 376-6200

(202) 376-6219 Fax

(202) 376-6205 TDD

A national source of information and assistance regarding employment laws and issues as they relate to disabilities. This committee publishes a number of pamphlets and other educational materials aimed at informing the public about disabilities. The committee also sponsors the Job Accommodation Network.

Social Security Administration

US Department of Health and Human Services

(800) 772-1213

(800) 325-0778 TDD

Local offices of SSA across the nation have pamphlets about benefits relating to disability. Staff can answer questions relating to SSI and SSDI over the phone, as well as in writing. Telephone numbers for local offices are found in the US Government section of the telephone directory.

Stuttering Foundation of America

P.O. Box 11749

Memphis, TN 38111-0749

(800) 992-9392

Concerned with prevention and improved treatment for stuttering. Interested in ensuring the full employment of people who stutter.

Self-Help for Hard of Hearing People

7800 Wisconsin Avenue

Bethesda, MD 20814

(301)657-2248

(301)657-2249

Promotes awareness and information on hearing loss, communication, assistive devices and alternative communication skills through publications, exhibits and presentations. Publication: Shhhh.

Recording for the Blind and Dyslexic

20 Roszel Road

Princeton, NJ 08540

(609) 452-0606

(609) 520-7990 Fax

A national organization that provides taped educational books free on loan, books on diskette, library services, and other educational and professional services for people who can not read standard print because of visual, physical or perceptual disability.

Short Stature Foundation

17200 Jamboree Blvd.

Irvine, CA 92713

(714) 474 4554

(714) 558 2405

(800) 243-9273

Provides services, information and advocacy to enhance the self-esteem of short statured individuals. Offers an adaptive device catalog for home and work and provides job training and employment opportunities.

Special Someone Social Club -

STAX Inc

P.O. Box 890368

Temecula, CA 92589

(909) 694-3000

Organization dedicated to facilitating social communication among persons with disabilities. Annual membership fee for advertising in bimonthly newsletter for penpals, video pals and cassette pals, and access to various social functions.

Travel Aids for the Blind

325 - B North Pottstown Pike

Exton, PA 19341

(215) 524-1886

Travel devices are provided to eligible blind persons; scholarships for mobility instructors are also available.

United Cerebral Palsy Association (National Headquarters)

1522 K Street NW

Suite 1112

Washington, DC 20005

(800) 872-5827

(202) 842-1266

A support and advocacy organization; provides info on the nearest local affiliates

Washington Library for Blind & Physically Handicapped

821 Lenora Street

Seattle, WA 98129

(800) 542-0866

(206) 464-6930

Provides Talking Books, Braille books, large print, transcription and reference services.

World Institute on Disability

1720 Oregon Street

Berkeley, CA 94703

(415) 468 -8314 Voice/TDD

A public policy center, it uses research, public education, training and model programs to create a more accessible and supportive society for all--disabled and non-disabled.

"PUBLICATIONS"**"Mouth: The Voice of Disability Rights"**

Published by Free Hand Press, Inc.

61 Brighton Street, Rochester, NY 14607-2656

A fun-to-read magazine offering up to date disability rights information.

Headlines: The Brain Injury Magazine

14 Central Avenue

Lynn, MA 01901

(800) 227-3824

Offers information pertinent to head injury rehabilitation.

"The Disability Rag and Resource."

Published by The Disability Rag

1962 Roanoke Ave., Louisville, KY 40201

Resource that presents articles written by consumers

"WeMedia"

130 William Street

New York, NY 10038

New magazine with lots of up-to-date accessibility information

<http://www.wemedia.com>

ANALYSIS OF QUESTION #131

Apparently there are thousands of disability organizations across the United States, but in China the CDPF is the single most important disability organization with thousands of branches around china located in hospitals and guidance centers.

SUGGETIONS FOR QUESTION #131

The CDPF should promote the development of more independent agencies to be of assistance to the disabled, thereby relieving it of some responsibilities and obligations.

QUESTION 135.

“What are the regulations a) on the disabled taking public transportation facilities and b) mailing and delivery of blind person’s reading materials?”

ANSWER FOUND IN THE HANDBOOK

A) The Protection of the Disabled Law Article 44 says: In taking public transport vehicles, disabled persons shall be given convenience and special consideration; they shall be permitted to carry on board their indispensable and auxiliary facilities free of charge. Blind persons may take local buses, trolley buses, subways and ferries free of charge. B) Mailing and delivery of Braille books shall be free of charge. Mailing and delivery sound books free of charge are under consideration by the departments concerned.

USA ANSWER

(Excerpted from “Legal Rights of Persons with Disabilities” published by the California Department of Justice in July, 1998)

California laws are representative of USA laws on public transportation for people with disabilities. Other than the ADA, there are no national laws that pertain to solely to vehicle operation for people with disabilities.

California law provides that state agencies, boards, and departments, local governmental subdivisions, districts, public and quasi-public corporations, local public agencies and public service corporations, cities, counties and municipal corporations in awarding contracts for operations, equipment or structures shall require that all fixed route transit equipment and public transit structures be built so that individuals with disabilities shall have ready access to, from, and in them. (Gov. Code, § 4500; 70 Cal. Ops. Atty Gen. 70 (1987.)) This section also provides that if state standards are higher than the ADA, those state standards shall be complied with. (See also discussion of Civil Code, § 54.1, supra, regarding accessibility of public transportation.)

Section 99220 of the Public Utilities Code sets forth a legislative finding that since public transportation systems provide an essential public service, they should be designed and operated so as to encourage maximum utilization by handicapped persons. A "handicapped person" is defined as "any individual who by reason of illness, injury, age, congenital malfunction, or other impairment or temporary incapacity or disability, including, but not limited to, any individual confined to a wheelchair, is unable, without special facilities or special planning or design, to utilize public transportation facilities and services as effectively as a person who is not so affected. (A temporary incapacity or disability is one which lasts more than 90 days; Cal. Pub. Util. Code, § 99206.5.) Cities or counties are authorized pursuant to section 99260.7 of the Public Utilities Code to file a claim

for state funds to provide transportation services using vehicles for the exclusive use of handicapped persons.

Federal Law

A. General Provisions

1. Public Entities, Recipients of Federal Funding, and the Federal Government

The ADA provides that public entities must make all services, programs and activities accessible to individuals with disabilities. This general provision extends to transportation services such as buses, trains, and other conveyances provided by state and local government. It also extends to the facilities and stations which provide access to these services. In addition, the Rehabilitation Act ensures that all recipients of federal financial assistance and federal agencies themselves provide access to transportation services and facilities.

2. Private Entities

The ADA also provides that all public accommodations operated by private entities be accessible to disabled individuals. Private entities include all privately owned businesses and organizations which offer services to the public. This means that public transportation provided by private entities, such as buses, trains and taxi cabs, is subject to accessibility requirements.

The ADA makes a distinction between private entities which are primarily engaged in the business of transportation and private entities which provide transportation services incidental to other types of business. Private entities which are primarily engaged in the business of transportation are held to strict accessibility requirements. Private entities primarily engaged in providing transportation must make reasonable modifications to their vehicles and must provide auxiliary aids and services which will aid in creating accessibility. Reasonable modifications may include removing existing barriers where such modifications would not be an undue burden to the business. (42 U.S.C. §§ 12182 and 12184.)

3. Exceptions

While all forms of transportation offered to the public must be accessible, this does not mean that structural alterations must necessarily be made to all transportation vehicles. Rather, transportation systems must be accessible in a manner that provides disabled individuals with service comparable to that offered to the non-disabled. Accessibility rules take into account the need to balance the cost of altering existing transportation systems with the goal of achieving full accessibility. The rules and exceptions which apply to the various modes of transportation are set out in more detail below.

1. Buses Operated By Public Entities

All new buses operated by public entities must be designed so that they are readily accessible and usable by individuals with disabilities, including individuals who use wheelchairs. This applies to all new buses which were ordered after July 26, 1990.

Used vehicles purchased or leased after that date must also be readily accessible and usable by individuals with disabilities, unless the public entity can show that it used good faith efforts to purchase or lease accessible used buses and that none were available. Buses which are remanufactured so that they will last at least another 5 years are also required to be readily accessible and usable by the disabled, including individuals who use wheelchairs. (42 U.S.C. § 12142.)

If a remanufactured vehicle has been made to be accessible to the maximum extent possible, then such a vehicle will comply with accessibility requirements. Historic vehicles need not be made accessible if modifications would significantly alter the historic character of the vehicle. (42 U.S.C. § 12142 (c)(2).) Some transit systems which are considered "demand responsive" and do not have fixed routes may continue to purchase and lease non accessible vehicles, but they must operate a system, which when viewed in its entirety, provides an equivalent level of service for disabled individuals. (42 U.S.C. § 12144.)

In addition, systems which do not provide fully accessible buses are required to provide paratransit and other special services in order to provide a level of service which is comparable to the service provided individuals without disabilities. Paratransit must also be comparable to the extent practical with the response time provided to individuals without disabilities. However, commuter bus service is exempt from this requirement. (42 U.S.C. § 12143.)

2. Buses Operated By Private Entities

Buses operated by private entities are generally subject to the same accessibility rules as those applied to government-funded bus systems. Private entities may not purchase or lease new buses which are not readily accessible and usable by individuals with disabilities, including individuals who use wheelchairs. (42 U.S.C. § 12186; 49 C.F.R. § 37.131 et seq.)

"Over-the road buses," which are buses with baggage compartments located underneath the passenger section, are not required to be structurally altered to accommodate wheelchairs and are not required to provide accessible bathrooms. However, they are required to be accessible in all other aspects, such as by providing handrails and slip-resistant floors where wheelchairs or

mobility aid users are to be accommodated. (42 U.S.C. § 12186; 49 C.F.R. § 38.151 et seq..)

Private entities which are primarily engaged in the business transportation must make reasonable modifications to existing buses and must provide auxiliary aids and services in order to create accessibility. Where an entity uses vehicles with a carrying capacity of 8 passengers or less, it is required to purchase accessible vehicles, unless the entity provides the same level of service to disabled passengers when the system is viewed in its entirety. The same level of service means that the frequency, response time, and destinations covered must be equivalent. (42 U.S.C. § 12184.)

Private entities which are not primarily engaged in the transportation business are required to purchase new buses which are readily accessible and usable by disabled individuals, including wheelchairs users. However, if the vehicle has a carrying capacity of 16 passengers or less, then the vehicle is not required to be accessible, but only if the private entity operates a system which provides the same level of service to disabled users when viewed in its entirety. Public entities which operate a purely demand responsive system - where there is no fixed route - are required to purchase accessible vehicles, unless they can show that the system, when viewed in its entirety, provides the same level of service to disabled users. (42 U.S.C. § 12182.)

Trains, Street Cars and Other Rail Vehicles

1. Rapid and Light Rail Operated By Public Entities

It is considered discrimination under the ADA for a public entity to purchase or lease a rapid or light rail vehicle which is not readily accessible and usable by disabled people, including those who use wheelchairs. A used vehicle must be accessible unless the public entity can demonstrate that it has made good faith efforts to purchase an accessible used vehicle but that none were available. These requirements began operating in August of 1990. (42 U.S.C. § 12142.)

The same requirements apply to rail vehicles which have been remanufactured to extend the use another five years, unless the vehicle has been made accessible to the maximum extent possible.

Historic rail vehicles are excepted from the general rule, but only if modifications would significantly alter the historic character of the vehicle.

In addition to rules requiring accessible vehicles, a public entity must provide paratransit services to the disabled to ensure that rail service is comparable to both the level and response time of designated public transportation services provided to individuals without disabilities. Paratransit is not required, however, if the public entity can show that such services would impose an undue financial burden. (42 U.S. C § 12143.)

The ADA also mandates that a public entity provide at least one car per train, where two or more vehicles operate as a train, which is readily accessible and usable by disabled people. (42 U.S.C § 12148.)

Intercity and Commuter Rail Operated By Public Entities

The same general rules apply to larger trains that apply to rapid and light rail transportation. Public entities such as Amtrack (the national government-owned rail system) or local commuter authorities must purchase or lease readily accessible or usable vehicles subject to the same general exceptions allowed for rapid and light rail.

On intercity trains, there must be at least one space to park, and one space to store and fold, a wheelchair for every two passenger coaches. In the year 2000, this requirement will be one wheelchair space for every passenger car in the train. Accessible bathrooms are required on coaches which provide wheelchair spaces. On trains which provide food service in either single or bi-level cars, auxiliary aids and services must be provided to ensure that the disabled passenger is provided equivalent food service to that provided to other passengers. (42 U.S.C. § 12162; 49 C.F.R. § 37.91.)

Accessible commuter cars need not contain an accessible restroom if none is provided for non-disabled passengers, and no space to fold and store a wheelchair or transfer seat is required. (42 U.S.C. § 12162.)

Rail Operated By Private Entities

Rail operated by private entities is subject to the same accessibility rules as other businesses providing public accommodations. Private entities have an obligation to remove structural barriers and to make alterations where readily achievable. If such alterations are not readily achievable, then the public entity has the duty to use alternative methods of providing services if they are readily achievable. However, public entities are not required to retrofit cars for hydraulic lifts. (42 U.S.C. § 12182 (b)(2)(A)(iv) and (v).)

Private rail is also subject to the same rules as rail provided by public entities; for example, all new passenger cars must be readily accessible to and usable by disabled people. This applies to used cars not already owned or leased by an entity and to cars remanufactured to extend their life ten years. (42 U.S.C. § 12184.)

Remanufactured cars need only be made usable to the extent feasible, and historic cars are granted the same exceptions given to those operated by public entities. (Id.)

Facilities Operated By Public Entities

Transportation facilities are subject to the same types of accessibility requirements as other buildings. New facilities must be built so that they are readily accessible and usable by disabled people, and any alterations to existing

buildings must be done so that they are made accessible and usable to the maximum extent feasible. Whenever an area containing a primary function is altered, the bathrooms, telephones, drinking fountains, and path of travel must also be made accessible, unless disproportionate in cost and scope to the overall alterations. (42 U.S. C. 12146 and 12147 (a).) In addition to the general rules, "key stations" serving rapid and light rail must be made accessible no later than July 26, 1993. Public entities may apply for extensions where making a station accessible would involve extraordinarily expensive structural changes. (49 C.F.R. § 37.41 et seq..)

"Key stations" are chosen by the public entity based on the following criteria:

- stations where passenger boarding exceeds 15 % of the average; transfer stations;
- connections to other modes of transportation, including major parking facilities, bus terminals, rail stations, passenger vessel terminals, or airports; end stations;
- stations serving major activity centers, including employment or government centers, institutions of higher education, hospitals, major health care facilities, or other major trip generators for the disabled; nearby accessible stations. (49 C.F.R. § 37.51.)

Facilities Operated By Private Entities

Transportation facilities operated by private entities are subject to the same requirements as other facilities housing public accommodations. (49 C.F.R. § 37.21 (a)(2); see section 1 above.) Generally, a place of public accommodation is required to facilitate access by:

- (1) modifying policies, practices, or procedures;
- (2) providing auxiliary aids and services; and
- (3) removing architectural barriers.

As previously noted, duties listed above may be avoided if a place of public accommodation can show that their performance would result in an undue burden (significant difficulty or expense), or would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations being offered. (28 C.F.R. § 36.301 et seq..) New facilities must be designed so that they are readily accessible to disabled people and any alterations must be made so as to create accessibility.

Taxis

While providers of taxi service are not required to purchase or lease accessible automobiles, they are subject to the general ADA provisions against discrimination.

For example, taxi service providers may not discriminate against disabled people by refusing to provide taxi services to individuals who can use them, refusing to assist with the stowing of mobility devices, or by charging higher fares or fees for carrying a disabled individual and his or her equipment/or service animal.

If a provider of taxi service purchases or leases a vehicle other than an automobile, then the vehicle is required to be accessible, unless an equivalent service is provided for disabled people. For example, taxi service providers who use vans in airport door to door service may only purchase non-accessible vans if they already provide an equivalent level of service for individuals with disabilities. An equivalent level of service means an equivalency in response time, fares, areas of service and availability. (49 C.F.R. § 37.29.)

Reduced Fares

Mass transportation systems, whether trains or buses, which receive federal funds, are required to charge special rates for disabled and elderly passengers. During non-peak hours, rates for disabled and elderly passengers may not exceed one-half of the regular peak-hour fares. (49 C.F.R. § 609.)

ANSWER FOUND IN THE HANDBOOK

B) "Mailing and delivery of Braille books shall be free of charge. Mailing and delivery sound books free of charge are under consideration by the departments concerned."

USA ANSWER

In the USA under postal bulletin PB 22052 (June 14, 2001) based upon E040 of the Domestic Mail Manual and the United States Code title 39, sections-3403-3405 persons who qualify for free postage when mailing items are those "who are blind or who cannot use or read conventionally printed material due to a physical handicap. Other handicaps that can prevent normal reading include disabling paralysis, muscle or nerve deterioration affecting coordination and control, and confinement in iron lungs or other mechanical devices. Among the cause of such conditions are cerebral palsy, multiple sclerosis, muscular dystrophy, arthritis, infantile paralysis, myasthenia gravis and diplegia."

The following materials can be mailed free of charge:

1. Books, magazines, musical scores, and other reading material, or pages or parts thereof, in raised characters (Braille), large print, or recorded form.

2. Paper, records, tapes, and other matter for the production of reading matter, musical scores, or the sound reproductions for eligible persons.
3. Equipment and parts for equipment used for writing by eligible persons or for educational purposes.
4. Sound playback equipment specially designed or adapted for the use of visually handicapped persons.
5. Equipment or parts for equipment specifically designed or adapted for use by visually handicapped persons, such as Braille watches, white canes, and similar equipment.

ANALYSIS OF QUESTION #135

On this question, regarding transportation of the disabled on public facilities, there is a vast difference between the USA and China. The Chinese law apparently makes no provisions for the disabled in the areas noted in the USA ANSWER. However, in the second part of the question, regarding mailing of materials for the blind, the USA and China appear to be in concert on laws and regulations.

SUGGESTIONS FOR QUESTION #135

In order for China to be in agreement with existing international transit laws for people with disabilities, the CDPF should promote the following:

- Public transportation must be viewed as an essential public service to everyone, including the disabled.
- The central government should subsidize local governments that are trying to make transportation accessible to disabled riders.
- The ministry of transportation should develop enforceable regulations for accessible transportation (these regulations should apply to taxis, rail, and busses.)
- Both private and public transportation vehicles should be held to the same standards.
- People with disabilities should ride transportation at a reduced fare.

QUESTION 136.

“What is the National Assistance for the Disabled Day? When did it begin?”

ANSWER FOUND IN THE HANDBOOK.

The Protection of the Disabled Law Article 48 says: The third Sunday of May each year is the National Day of Assisting Disabled Person. The Disabled Assisting Day is aimed at promoting people with disabilities nationwide to participate in the social life equally. It is also a festival for the state and society to help and assist the disabled. There is a specific topic each year for this day, and many activities may be taken around this topic. The National Day for the Disabled began in 1991.

USA ANSWER

In the USA, in 1945 Public Law 176 was passed by the United States Congress designating the first week in October as National Employ the Physically Handicapped Week” and the president of the United States, Harry Truman, appointed the President’s Committee on Employment of People with Disabilities to oversee the Act. On September 30, 2000 the president of the United States issued the following Proclamation:

National Disability Employment Awareness Month, 2000
By the President of the United States of America
A Proclamation

This year marks the 25th anniversary of the Individuals with Disabilities Education Act and the 10th anniversary of the Americans with Disabilities Act (ADA). These two landmark civil rights laws have opened the doors of opportunity for people with disabilities and increased our awareness of the enormous contributions that Americans with disabilities can make to our national life.

A decade ago, when we were debating the Americans with Disabilities Act, critics said that making workplaces, public transportation, public facilities, and telecommunications more accessible would be too costly and burdensome. But they have been proved wrong. Since passage of the ADA in 1990, more than a million men and women with disabilities have entered the labor force and, as tax-payers, consumers, and workers, they are contributing to a period of unprecedented prosperity and record employment in our country.

Throughout my Administration, we have worked hard to break down the barriers that people with disabilities continue to face on a daily basis. In 1998, I signed the Workforce Investment Act, requiring that information technology purchased by the Federal Government be accessible to people with disabilities. In 1999, I was proud to sign the Ticket to Work and Work Incentives Improvement Act, which enables Americans with disabilities to retain their Medicare or Medicaid coverage when they go to work, because no one should have to choose

between health care and a job. We are also dramatically expanding the income students with disabilities can earn while retaining access to disability benefits; and to lead by example, we are hiring more people with disabilities throughout the Federal Government.

Today's revolution in information and communications technology offers us powerful new tools to expand employment and training opportunities for people with disabilities. Whether translating web pages aloud for people who are blind or visually impaired, creating captioning for those who are deaf or hard of hearing, or enabling people with physical disabilities to control a computer through eye movement and brain waves, these technologies show enormous potential for increasing access to employment and full participation in society. We are exploring ways that Medicare and Medicaid can be enhanced to cover the cost of assistive technology so that people can live and work more independently in the communities of their choosing. And I was pleased to announce on September 21 that dozens of corporate leaders from the technology sector and the presidents of many of America's leading research universities have pledged to make their products and services accessible to and usable by people with disabilities.

A new generation of young people with disabilities is growing up in America today -- graduating from high school, going to college, and preparing to participate fully in the workplace. They have a right to make the most of their potential, and our Nation must make the most of their intellect, talents, and abilities. By working together to break down barriers for Americans with disabilities, we will keep our economy growing, make a lasting investment in the future of our country, and uphold our fundamental commitment to justice and equality for all our people.

To recognize the enormous potential of individuals with disabilities and to encourage all Americans to work toward their full integration into the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated

October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 2000 as National Disability Employment Awareness Month. I call upon Government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to fulfill the letter and spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

WILLIAM J. CLINTON

ANALYSIS OF QUESTION #136

Both the USA and China have a time during the year that recognizes the Disabled. The USA declares October to be Disability Awareness Month. China declares the third Sunday of each May as The National Day for the Disabled.

QUESTION 140.

“What is the function can the disabled league of all levels exert to promote the legal rights and interests of the disabled?”

ANSWER FOUND IN THE HANDBOOK

The disabled league is a united organization of all the disabled acknowledged by the state, and permitted by the central government. The aim of the disabled league is to promote humanitarianism, develop the disability undertakings, promote human rights of persons with disabilities so as to enable them to participate in society with equal status and opportunities and share the cultural and material achievements brought about by the socio-economic development. The Protection of the Disabled Law Article 8 says: The China Disabled Persons' Federation (CDPF) and its local branches shall represent the common interests of disabled persons, protect their lawful rights and interests, unite, educate and provide service to disabled persons. Disabled persons federation shall undertake tasks entrusted by the government conduct work for disabled persons and mobilize social forces in developing undertakings for disabled persons. The functions of the disabled league are as following:

[1] Making close contact with persons with disabilities, listening to their views and suggestions, reflecting their needs and serving them wholeheartedly.

[2] Uniting and encouraging persons with disabilities to abide by the law, perform their duties carry forward the optimistic and up-and-coming spirits and the spirit of self-respect, self-confidence, self-improvement and self-reliance.

[3] Advocating the cause of persons with disabilities, facilitating the links among the Government, society and people with disabilities, and mobilizing society to understand, respect, care and assist people with disabilities.

[4] Developing and promoting rehabilitation, education, employment, cultural life, welfare, social service of persons with disabilities and the prevention of disabilities so as to improve the environment and conditions for the participation of person with disabilities in society. And

[5] Assisting the Government in studying, formulating and implementing disability-related laws, regulations, plans and programmers; fully playing its role of promotion, systemization, organization, coordination, consultation and providing services and monitoring; and guiding the work in related areas.

USA ANSWER

In the USA, in the FY 2001 budget, Congress approved a new Office of Disability Employment Policy for the Department of Labor. Programs and staff of the former President's Committee on Employment of People with Disabilities have been integrated in this new office.

The mission of ODEP, under the leadership of an Assistant Secretary, will be to bring a heightened and permanent long-term focus to the goal of increasing employment of persons with disabilities. This will be achieved through policy analysis, technical assistance, and development of best practices, as well as outreach, education, constituent services, and promoting ODEP's mission among employers.

The President's FY 2002 budget proposes an additional \$20.3 million and 10 new full-time positions in the Office of Disability Employment Policy. To support the President's New Freedom Initiative, ODEP will provide competitive grants to One-Stop Career Centers to make the centers more accessible to people with significant disabilities in a variety of ways. The centers will be expected to utilize assistive technology, provide appropriate staff training and use best practices in order to provide greater access to people with significant disabilities and provide them the services they need to get into the economic mainstream.

Some information that originally appeared on the former President's Committee's website remains on the web page for this new office.

ANALYSIS OF QUESTION #140

It is assumed that in the Handbook translation into English, “the disabled league” is the really the “China Disabled Persons’ Federation.” In the USA there is no one single comparable entity to represent the rights of the disabled and provide so many services under only one umbrella organization. According to the Handbook, the CDPF is a quasi-government agency and its major task is to advise the government on the needs of the disabled. In the past history of the USA, there was such an entity that was established in 1945 by President Truman. It was called the President’s Committee on Employment of People with Disabilities to oversee a law he signed that was written to encourage the hiring of physically handicapped workers. The Committee continued to function until recently. Currently, the President’s Committee no longer exists in the way it did and has now been absorbed into the Department of Labor to become an integral part of the USA’s employment design. Thus, the Committee is no longer a quasi-governmental agency, but is now part of government—a step that clearly indicates an increased level of importance. It occurs to this report’s author that the CDPF may not have the necessary power to enact laws and enforce disability regulations since it is not a government agency. Thus, much of what the CDPF wants to achieve may or may not be in line with what the government wants to achieve for the disabled at this time. From an outsider’s point of view it appears that the CDPF’s major role at the government level is to advocate for the rights of people with disabilities and to alert the government of disability rights violations.

SUGGESTIONS FOR QUESTION #140

The CDPF needs to move from being a quasi-governmental agency that is “allowed” to function in an advisory capacity. The CDPF needs to play a greater governmental role in protecting the rights of people with disabilities.

QUESTION 144.

“How to give professional guidance to the disabled according to their traits?”

ANSWER FOUND IN THE HANDBOOK

According to The Methods of Professional Guidance adopted on October 27, 1994 by the former Ministry of Labor, special professional guidance may be provided for the disabled and other special groups. The psychological barrier of the disabled should be overcome, the physiological characters should be considered fully, and the health conditions should be concerned in the guidance. The concept that the disabled persons are also a part of the social and spiritual property should be developed. Meanwhile, the needs of the potential employers and the job market should be analyzed thoroughly in order to create suitable conditions for the disabled to be employed or to change their post.

USA ANSWER

In the USA, according to Title IV of the Rehabilitation Act Amendments of 1998 Section 102 (b)(3), **The Department of Rehabilitation in each State is charged with this responsibility** (giving professional guidance to the disabled according to their traits). Their regulations say that regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of --

- (A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting;
- (B) (i) a description of the specific vocational rehabilitation services that are --
 - (I) needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and
 - (II) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual; and
- (ii) timelines for the achievement of the employment outcome and for the initiation of the services;
- (C) a description of the entity chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;
- (D) a description of criteria to evaluate progress toward achievement of the employment outcome;

- (E) the terms and conditions of the individualized plan for employment, including, as appropriate, information describing -
- (i) the responsibilities of the designated State unit;
 - (ii) the responsibilities of the eligible individual, including--
 - (I) the responsibilities the eligible individual will assume in relation to the employment outcome of the individual;
 - (II) if applicable, the participation of the eligible individual in paying for the costs of the plan; and
 - (III) the responsibility of the eligible individual with regard to applying for and securing comparable benefits as described in section 101(a)(8); and
 - (iii) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements as described in section 101(a)(8);
- (F) for an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying -
- (i) the extended services needed by the eligible individual; and
 - (ii) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and
- (G) as determined to be necessary, a statement of projected need for post-employment services.

ANALYSIS OF QUESTION #144

It appears that the PRC has more of a philosophical outlook to giving professional guidance to the disabled. The USA has more of a pragmatic approach and delegates this task to Department of Rehabilitation Counselors as one way to assist the disabled find employment.

SUGGESTIONS FOR QUESTION #144

Since the CDPF is currently responsible for assisting the disabled find employment according to their traits it would be beneficial to increase the skills of those who are responsible for assisting the disabled find employment. Those assisting the disabled need to be qualified in:

1. Assisting the client in establishing employment goals that are consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
2. Helping the client achieve an employment goal that will lead to a job.
3. Helping the client understand how his/her disability affects working.
4. Helping the client to understand his/her aptitudes.
5. Helping the client to understand the job market.
6. Helping the client explore assistive technology.
7. Helping the client with on the job assessments and job tryouts.
8. Providing assistance with physical and medical aids.
9. Helping the client explore self-employment.
10. Arranging for support services like interpreters, appliance repairs, transportation

QUESTION 147.

“What is non-obstacle environment?”

FOUND IN THE HANDBOOK

Non-obstacle environment consists of material non-obstacle environment, information and communication non-obstacle environment. The material non-obstacle environment requires that the urban roads, the planning, designing and construction of the public buildings and residential areas should be convenient for the disabled to pass through or use. The information and communication non-obstacle environment requires that the public media should allow people with hearing, speech and visual problems the opportunity to obtain information without obstacle.

USA ANSWER

In the USA, access is a critical issue for people with disabilities. Lack of access to buildings and other facilities is an obstacle in obtaining employment, education, housing, entertainment, health care and other services. Lack of access to transportation services hinders the ability of disabled people to live independent lives. Lack of access to telecommunications services limits the ability of disabled people to obtain information and has often posed a threat to safety.

The USA's public policy is to promote the right to full and equal access to public places, public transportation, telephone facilities, lodging and entertainment. In addition, the federal government has passed a number of laws intended to increase access to facilities, transportation and telecommunications. The most important of these is the ADA, which prohibits discrimination in many areas of life and mandates changes in both government and private services and facilities in order to provide access to people with disabilities. The ADA takes the place of many state laws which do not provide as much protection as the ADA itself, setting minimum access requirements nationwide.

California also has a strong set of laws designed to provide access to individuals with disabilities. California laws which do not conflict with the ADA are still in effect, at times providing greater protection than the ADA itself, and providing disabled individuals with more legal avenues to ensure access.

ANALYSIS OF QUESTION #147

Both the USA and the PRC have an awareness of the importance of a non-barrier environment.

QUESTION 149.

“What are the main contents of Regulations on Non-Obstacle Design of City Road and Construction?”

ANSWER IN FOUND IN THE HANDBOOK

The Regulations were issued on April 1, 1989 by the Ministry of Construction, the Ministry of Civil Affairs and the CDPF and continue at this writing to be in “trial implementation.” In the Handbook the reader is directed to the document. The entire 34-page document is titled, “Design Code for the Accessibility of People with Disabilities to Urban Roads and Buildings,” and is published by Huaxia Publishing House. Main contents are:

- [1] Design of urban streets and roads;
- [2] Design of Buildings; and
- [3] International symbols of accessibility.

This document offers measurements, carefully drawn illustrations and suggestions on how to make public areas accessible.

USA ANSWER

(With excerpts from Legal Rights of Persons with Disabilities, published by the California Department of Justice, July, 1998)

In the USA, both California and federal laws address the goal of increasing physical access and removing architectural barriers. In 1968 California passed broad civil rights and access laws which affect a large number of buildings and facilities (Cal. Civ. Code, §§ 54, 54.1 and Gov. Code, § 4450.) The same year, Congress passed the Architectural Barriers Act (ABA), which marked the beginning of a new federal policy toward disabled people. The ADA further expands the right to accessible buildings and accommodations. Although there are an ever-increasing number of accessible buildings, there are some major exceptions to the accessibility laws (such as most privately-funded residences). A number of cities have passed access ordinances which supplement the state and federal statutes.

The major access laws are all enforced in a similar manner. First, most access laws include specific standards which groups covered under the law must follow when constructing or altering buildings. These laws do not require major changes in older buildings, but reasonable modifications may be required to create access. When a new building is planned, or an existing one is remodeled, it must meet legal accessibility standards. Second, if a proposed building is covered under the law but does not meet accessibility standards, the courts or government agencies can force the builders to comply. An individual who feels discriminated against because of lack of access to a building or facility may file a lawsuit in federal or state court.

A. Discrimination By Government

1.The Federal Government

The ABA does not apply to the federal government. However, the ABA is based in part on earlier laws passed to ensure that individuals with disabilities were not excluded from access to federal buildings and facilities or discriminated against in services or programs. The ABA was passed to ensure that disabled people would have access to buildings and structures designed, altered, or built with federal funds after August 12, 1968. Coverage extends to any portion of a building or facility, including access routes, doors, common use areas, telephones, curb ramps, drinking fountains, seating, and restroom facilities. Roads, walks, parking lots, parks, and other outdoor areas are also included. Public housing is also included, although most residences are not. (42 U.S.C. §§ 4151 et seq.)

The Act is enforced by the Architectural and Transportation Barrier Compliance Board (ATBCB), which has developed guidelines for accessible design. The Board consists of thirteen members of the public, of which a majority must be individuals with disabilities, and eleven government members. The Board's functions include:

- ensuring compliance with the ABA
- reviewing waivers and modifications of standards to make sure that they are consistent with the ABA;
- developing advisory guidelines and providing technical assistance individuals with disabilities or individuals and entities who have duties under the ABA or the ADA;
- establishing minimum standards required under the ABA or the ADA;
- promoting accessibility in all segments of society;
- ensuring that public conveyances are readily accessible;
- holding public hearings;
- finding alternative approaches to architectural, transportation, communication, and attitudinal barriers confronting disabled individuals;
- determining how federal, state, and local governments and other public and nonprofit agencies are eliminating access barriers;
- promoting the use of the International Accessibility Symbols;

- making reports on the results of investigations to the President and to Congress.

One may complain to the ATBCB about noncompliance with the ABA. The Board will investigate the complaint and if a violation is found, the Board can take action to correct the violation. If one is not satisfied with the Board's action, one may seek review of the case in court. (29 U.S.C. § 792.)

All public works projects receiving federal grants must have proper accessibility standards incorporated into *their plans*. The ATBCB is authorized to ensure that any construction or renovation complies with these standards.

2. State and Local Governments

The ADA provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits, services, programs, or activities of a public entity. Also, a public entity may not discriminate in any other manner against an individual due to a disability. This means that no state or local government, governmental agency, or other instrumentality of government may discriminate upon the basis of a disability where the individual is otherwise qualified to receive a benefit or service or to participate in a program. (42 U.S.C. §§ 12131, 12132.) It is considered discrimination under the ADA for a governmental organization to fail to provide physical access for disabled individuals to its buildings and facilities, public transportation services, and other services.

State and local governments must provide access to their facilities and services. There are no exceptions to this rule. However, a state or local government does not necessarily have to make every facility accessible. If alterations would threaten the historic nature of a facility, fundamentally alter the nature of a service or program, or present an undue financial or administrative burden, then other methods of compliance may be used. A state or local government may satisfy this requirement in several ways by:

- making structural modifications;
- reassigning services to accessible sites;
- making home visits;
- using accessible rolling stock;
- using other methods that provide access.

(28 C.F.R. § 35.150 (b).)

If one feels that they are being discriminated against by a state or public entity, one may file a complaint, with the United States Department of Justice. The U.S. Attorney General will either investigate the complaint or will refer one's complaint to an appropriate government agency. If the complaint cannot be resolved, then the U.S. Attorney General may file a civil action to force the state or public agency to comply. One may also file their own lawsuit, and one will be

entitled to attorney's fees if one prevails. (42 U.S.C. § 12133; 28 C.F.R. § 35.170 et seq..)

California also provides complaint and enforcement procedures through the Department of General Services, the California Attorney General, district attorneys, and city attorneys.

B. Discrimination By Private Parties

The ADA further provides that no individual shall be discriminated against on the basis of disability by any person who owns, leases or operates a place of public accommodation. A person with a disability is entitled to full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any place of public accommodation. (42 U.S.C. § 12182.) The term "public accommodation" refers to any business or establishment open to the public. For example, restaurants, movie theaters, hotels, shops, amusement parks, hospitals, and bowling alleys are all considered public accommodations.

A place of public accommodation is required to facilitate access by:

- (1) modifying policies, practices, or procedures,
- (2) providing auxiliary aids and services, and

The duties listed above may be avoided if a place of public accommodation can show that the performance of these duties would result in an undue burden (significant difficulty or expense), or would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations being offered. (28 C.F.R. § 36.301 et seq..)

Examples of steps which are appropriately taken to remove architectural barriers include: (28 C.F.R. § 36.304.)

- installing ramps and curb cuts;
- repositioning shelves; telephones; bathroom dispensers or furniture;
- adding raised markings on elevator control buttons;
- installing flashing alarm lights;
- widening doors;
- installing offset hinges;
- eliminating turnstiles or providing alternative accessible paths;
- installing accessible door hardware and grab bars in toilet stalls;
- rearranging toilet partitions to increase maneuvering space;
- insulating lavatory pipes under sinks to prevent burns;
- installing raised toilet seats and full length bathroom mirrors;
- creating designated accessible parking spaces;
- installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- removing high pile, low density carpeting;
- installing vehicle hand controls.

All new facilities must be designed so that they are readily accessible and usable by disabled people. If a private party makes alterations to a facility, then the area altered must be made accessible. Whenever a facility is altered so that an area containing a primary function is affected, the alteration must also be made in such a manner that the path to the bathrooms, telephone, and drinking fountains serving the altered area are readily accessible. However, exceptions to the rule exist where the alterations to the path of travel, telephones, bathrooms or drinking fountains would be disproportionate in cost and scope to the planned alterations. (42 U.S.C. § 12183.) A public accommodation is required to maintain in operable condition the facilities and equipment required to be readily accessible to and useable by disabled persons. (28 C.F.R. § 36.211.)

If one feels that they have been discriminated against by a place of public accommodation, then you may file a complaint with the U.S. Department of Justice. The U.S. Attorney General will investigate the complaint and may file a civil action to force the private entity to comply. One may also file a lawsuit to halt a violation on one's own and will be entitled to attorney's fees if one prevails. (42 U.S.C. §§ 12188, 2000a-3(a); 28 C.F.R. § 36.501 et seq..)

One may also use the procedures available under California law by filing a complaint with the building department of one's town or city, or by filing a complaint with a district attorney, city attorney, the Department of Rehabilitation, or the California Attorney General.

Public Awareness

The California Department of Rehabilitation is responsible for educating the public and working with the state government to encourage compliance with access standards. (Cal. Gov. Code, § 4455.)

Disabled Community Involvement

The Department of Rehabilitation may ask disabled individuals familiar with access laws to inspect the plans for new state and school district buildings to see if they meet the minimum access requirements. If an individual thinks a building is out of compliance, he or she may notify the Department of Rehabilitation, which contacts the Division of the State Architect to confirm the violation and develop a plan to correct the violation. (Cal. Gov. Code, § 4453.5.)

Specific Accessibility Standards and Regulations

In addition to the general access statutes discussed above, California and federal regulations provide a comprehensive set of requirements covering almost all important areas of accessibility for persons with physical and sensory disabilities. California's regulations are found in Title 24 of the California Code of Regulations and are designed to comply with the requirements of the ADA. A copy of Title 24 may be acquired through the Division of the State Architect -13/ or may be found in your local law library in the California Building Standards Code. In addition, your city or county building department will have a copy on file and helpful guides

may also be purchased from private publishers. (Cal. Gov. Code, § 4450 et seq.; Cal. Health & Saf. Code, § 19955 et seq..)

These regulations, some of which are discussed below, describe specific accessibility requirements which apply to buildings and facilities covered by the access statutes. Exceptions may be granted to many of the requirements, but only if compliance would pose an unreasonable hardship. Even when unreasonable hardship is demonstrated, some form of "equivalent facilitation" must usually be provided to make the facility usable by disabled persons.

In addition to these regulations, California has enacted specific statutes directed at providing access to various types of facilities. For example, stadiums, public parks and gas stations are all addressed by specific laws.

The reader is urged to remember that the regulations discussed below are not a complete list.

1. Restrooms, Drinking Fountains and Public Telephones Must Be Accessible

Buildings open to the public must have signs posted which indicate the location of restroom facilities accessible to disabled persons. Signs on restroom doors must be in the shape of a circle for women's restrooms, a triangle for men's restrooms, and a triangle interposed upon a circle for unisex restrooms. (Cal. Code Regs., tit. 24, pt. 2, § 3105(A) (b) et seq..)

Toilet facilities must have sufficiently wide doorways and must have grab bars. Restroom components, such as waste paper baskets and sinks, must be accessible. Where bathing facilities are provided for the public, clients, or employees, at least one such facility (and not less than one percent of all facilities) must be accessible. A certain number of lockers must also be accessible. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (b) 2.)

Water fountains must be accessible and must be placed so that they do not pose a danger to visually-impaired persons. If it would pose an unreasonable hardship to move a fountain out of the path of travel, then the ground must be textured so as to alert visually-impaired people to its presence. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (d).)

All public telephones in buildings covered under the statutes must be accessible and at least 25 % must be equipped for use by hearing-impaired individuals. If a bank of public telephones is provided, at least one must be so equipped. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (d)2.)

2. Entrances Must Be Accessible

All new entrances must be designed so as to be accessible to disabled individuals. If creating accessibility in an existing building would create an unreasonable hardship, then there must be at least one entrance accessible to disabled people. (Cal. Code Regs., tit. 24, pt. 2, § 3301 (h).) Both doors of double

doors designated as a public entrance must be kept unlocked during normal business hours. (Cal. Health & Saf. Code, § 13011.)

Stadiums, Grandstands, Sports Facilities, Auditoriums, Theaters, and Related Entertainment Facilities Must Be Accessible

Any entertainment facility approved for construction after January 1, 1985 must provide seating or accommodations for disabled people in a variety of locations to allow for a range of admission prices. Both private and public entertainment centers are covered by this law, including theaters, concert halls, and stadiums. (Cal. Health & Saf. Code, § 19952.)

A district attorney, city' attorney, or the California Attorney General can bring an action to halt a violation. In addition, if you believe that you have been denied access required by this law, you can bring an action in court and may be awarded attorney's fees if you prevail. (Cal. Health & Saf. Code, §§ 19953 and 19954.)

In stadiums and other sports facilities, spectator seating, the customer side of ticket booths, participation areas, clubrooms and locker rooms must all satisfy accessibility requirements. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)(3) et seq..)

In auditoriums and theaters, seating and toilet facilities for disabled persons must be accessible from the lobby or from a primary entrance. Seating spaces must be available for both wheelchair-users and semi-ambulant individuals. All such seating must comply with fire and panic safety requirements. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b) 2A (i) and (iv).)

Stages and orchestra pits must be accessible to physically disabled persons, and ticket booths and refreshment stands must be accessible on both the customer and employee sides. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)2 B.)

3. Curbs and Sidewalks Must Be Accessible

Any curb or sidewalk intended for public use must be accessible, regardless of where it is located. (Cal. Health & Saf. Code, § 19956.5; Cal. Gov. Code § 4450.) The curb or sidewalk must be easily accessible by means of ramps or other devices. To ensure that the ramp is easily accessible, no one may park within three feet of any sidewalk access ramp which is next to a crosswalk and is designated by either a sign or by red paint. (Cal. Veh. Code, § 22522.)

A major concern for individuals with disabilities who use wheelchairs is the availability of curb ramps. Alterations to the curb, sidewalk, or street require the removal of barriers or the construction of ramps or other devices to aid accessibility. If the government, or a private entity, builds a new street or sidewalk, then it must be made so as to be accessible to disabled individuals if it is to be used by the public. Whenever a local government resurfaces a street, the

government has made an alteration and is therefore required to alter the curb to provide ramps or slopes at the intersections if they do not already exist.

4. Historical Buildings

Historical buildings may be subject to case-by-case review when alterations are planned, rather than a strict application of disabled access standard access regulations. Alternative building regulations have been developed for use when an historical building is restored or relocated. (Cal. Health & Saf. Code, § 18954; Cal. Code Regs., tit. 24, pt. 8.)

There is a disparity between federal and state law regarding the lip on the curb ramp (state law requires a 1/2" lip; federal law requires no lip) and the use of truncated domes on the curb ramp to warn the visually-impaired of the existence of the ramp (state law requires it; federal law does not). At present, for certain federally-funded street projects which mandate that federal law override state law (usually intersections at state highways), you should check with your local building department, the Division of the State Architect or the ADA Hotline for advice on accessibility requirements. Title 24 is being interpreted by the Division of the State Architect consistent with federal case law interpreting the ADA to require for the provision of accessible curb ramps when streets are resurfaced. However, if the government has made only minor repairs to the street, then the curbs probably will not have to be altered.

5. Gas Stations

Gas stations must provide disabled people with refueling service at the self-service price. Individuals must display a disabled person's identification from the Department of Motor Vehicles in order to receive this benefit. Self-service stations and convenience stores which never provide full service are exempt from this requirement, but pay stations at such businesses must still be accessible. In addition to other remedies available, a gas station owner or employee who disregards this law commits an infraction and may be fined \$25. A disabled individual may file a complaint with the Director of the Department of Rehabilitation, and the California Attorney General, a district attorney, or a city attorney may bring an action to halt a violation. (Cal. Bus. & Prof. Code, § 13412.)

6. Signs and Identification

The International Symbol of Accessibility must be displayed at accessible building entrances and in the lobbies of buildings which have been remodeled to provide accessible sanitary facilities. (Cal. Code Regs., tit. 24, pt. 2, §§ 3105A (e)(8) and 3106A (c).)

7. Clear Floor or Ground Space

Building design must allow for the clear movement and maneuvering of wheelchairs. (Cal. Code Regs., tit. 24, pt. 2, § 3103A et seq..) Objects protruding from walls (for example, telephones) may not obstruct the movement of wheelchairs. Building design must also take into consideration the needs of visually-impaired individuals. For example, objects protruding from walls in public buildings, public accommodations, commercial buildings and publicly-funded

housing, which have leading edges between 27" and 80" above the finished floor, may only protrude 4" from the wall into passageways. This helps ensure that a visually-impaired individual will avoid hazards undetectable by standard cane technique. (Cal. Code Regs., tit. 24, pt. 2, §§ 3105A (k) and 3105A (k) 2.)

8. Office Buildings and Personal and Public Service Facilities

Facilities covered by these regulations include all those used by the public as customers, clients, or visitors, or facilities which may be places of employment. Included are all types of business and professional offices, including insurance, real estate and attorneys' offices, all types of sales establishments, and all personal and public service facilities, including banks, Laundromats, hospitals, police stations, courtrooms, fire stations, and automated teller machines. (Cal. Code Regs., tit. 24, pt. 2, §§ 3103A)

In business and professional offices, areas to be made accessible include client and visitor areas, toilet facilities, conference rooms, and employee work areas. In sales establishments, sales and display areas must be accessible, as well as employee work areas and some check-out stations. Where fitting or dressing rooms are provided, at least one must be accessible. Finally, client and visitor areas and employee work areas must be accessible in personal and public service facilities.!'-' Factories and warehouses must also comply with broad accessibility requirements. (Cal. Code Regs., tit. 24., pt. 2, § 3103A (c) 3, et seq..)

9. Educational and Library Facilities

In educational facilities, laboratory rooms must provide a certain number of work stations usable by physically disabled students, and study carrels and teaching facility cubicles must be accessible. General use areas in libraries must be accessible, and open book stacks must allow wheelchair access to the aisle. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (d), et seq..)

10. Hotels, Motels, and Publicly-Funded Living Accommodations

A certain number of guest rooms in private lodging facilities must be accessible, including sanitary facilities. Public rooms and recreational facilities in private lodging must also comply with certain accessibility requirements. Some publicly-funded living accommodations must meet accessibility requirements (Cal. Code Regs., tit. 24, pt. 2, § 3103A (h)), although arguably they must be publicly-funded and open to the general public. (*Berkeley Center for Independent Living v. Coyle* (1996) 42 Ca1.App.4th 874.)

11. Courtrooms

Hearing-impaired individuals may request the use of assistive listening systems or computer-aided transcription equipment to assist their participation in any civil or criminal court proceeding. Each county is required to have at least one portable listening device for use by the courts. In any civil or criminal proceeding

where a hearing-impaired individual is a participant, the court proceeding shall not be allowed to commence until the requested listening assistance equipment has been provided. In addition, jury boxes, judges' benches, witness stands, jury rooms and other court facilities must be made accessible in all new or remodeled facilities. (Cal. Civ. Code, § 54.8; Cal. Evid. Code, § 754; Cal. Code Regs., tit. 24, § 3103 (A)(c) 2F (iv).)

12. Elevators

Elevators must be designed so as to accommodate wheelchairs. Elevators must stop within one-half inch of the building floor level, and elevator floor buttons must be within reach of a wheelchair user. Passenger elevators must be located near a major path of travel. All new elevators must have braille and raised arabic numbers next to the buttons designating each floor. Existing elevators must also satisfy this requirement, unless an unreasonable hardship would result. The number of the floor

There is an exception for floors above the first floor where no elevator service is provided in buildings under three stories tall and less than 3000 square feet per story. Excluded from this exemption are sanitary facilities, which still must be accessible to the disabled. (Health & Saf. Code, §§ 19955.5 and 19956.5; Cal. Code Regs., tit. 24, pt. 2 §§ 3105A (c) and 5102, et seq.) must appear both in braille and in raised arabic numbers on the outside of the elevator door. All entrances to each building covered under this law must be accessible to disabled people. (Cal. Code Regs., tit. 24, pt. 2, § 5103, et seq.)

13. Miscellaneous

- If emergency warning systems are required, they must warn hearing-impaired persons by the use of flashing lights. (Cal. Code Regs., tit. 24, pt. 2, § 3104A (e).)
- Mobile home parks are prohibited from applying any restrictions on pets to guide dogs, signal dogs, or service dogs. (Cal. Civil Code, § 798.33.)
- Public swimming pools must be accessible to disabled persons. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)(3)(c) (iv).)
- Highway rest areas must provide at least one accessible sanitary facility, picnic area, drinking fountain, parking space, and information guide. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (g)(2).)

ANALYSIS OF QUESTION #149

A review of the “Design Code for the Accessibility of People with Disabilities to Urban Roads and Buildings,” published by Huaxia Publishing House indicates that the PRC has made an effort to carefully describe the measurements and dimensions of facilities that are required to make a facility accessible. The Code, however, does not have any component that addresses incentives for municipalities to follow the code. The barrier-free regulations of the USA are much more detailed and stringent and provide for strong penalties to municipalities that do not follow the codes. This report’s author observes that even though China’s Code informs construction personnel of how to ensure that newly built facilities are accessible, this Code is not uniformly followed. For example, two universities in Beijing have several new buildings that were opened in 1999. One university’s new buildings are accessible and follow the barrier-free Code. However, the other university’s new buildings have made no attempt to be accessible.

Further, this report’s author interviewed three Architectural Construction doctoral candidates on May 18, 2001 at major China University. Each of these students was unaware of China’s Accessibility Codes.

SUGGESTIONS FOR QUESTION #149

- The PRC needs to work with the international community to develop more exactly defined handicapped accessibility codes.
- China needs to enforce its current building codes.
- China needs to establish an accessibility building committee in each municipality to oversee the accessibility standards of new buildings. (most cities in the USA have such committees and in San Francisco, for example) this committee is named the “Handicapped Accessibility Appeal Board.”)
- Post-secondary institutions in China that offer training in building construction should be reminded, officially, that they have an obligation to teach students about handicapped accessibility building codes and standards.

Administrative and Judicial Relief Right

QUESTION 151.

“What are the reliefs for the disabled when their legal rights and interests are infringed?”

ANSWER FOUND IN THE HANDBOOK

The Protection of the Disabled Law article 49: Where the lawful rights and interests of disabled persons are violated, the offended persons or their agents shall have the right to appeal to the competent authorities for disposition, or institute lawsuits at people's court in accordance with the law. Article 50 says: Where government functionaries neglect their duties, in violation of the law, and infringe upon the lawful rights and interests of disabled persons, the units to which they belong or their higher authorities shall instruct such persons to correct their wrong doings or subject them to administrative sanctions. Article 51 says: Whoever infringes upon the lawful rights and interests of a disabled person and causes property or other losses or damage shall compensate for the losses of damage according to law or bear other civil liabilities. Article 52 says: Whoever infringes upon the right of person or other lawful rights of disabled persons by taking advantages of their disabilities and constitutes a crime shall be given a heavier punishment in accordance with the relevant provisions of the Criminal Law. Whoever, by violence or other means, publicly insults disabled persons, shall, if the circumstances are serious, be investigated for criminal responsibility in accordance with the provisions of Article 145 of the Criminal Law, and, if the circumstances are less serious, be subject to punishment in accordance with the provisions of Article 22 of the Regulations on Administrative Penalties for Public Security. Whoever maltreats disabled persons shall be punished in accordance with the provisions of Article 22 of the Regulations on Administrative Penalties

For Public Security; and, if the circumstances are flagrant, he shall be investigated for criminal responsibility in accordance with the provisions of Article 182 of the Criminal Law. Whoever refuses to perform his duty of fostering a disabled person who is unable to live independently, shall, if the circumstances are flagrant, or if he abandons such a disabled person, be investigated for criminal responsibility in accordance with the provisions of Article 183 of the Criminal Law. Whoever has illicit sexual relations with a disabled person who is unable to account for her own conduct due to mental retardation or mental disorder shall be deemed to have committed rape and shall be investigated for

Criminal responsibility in accordance with the provisions of Article 139 of the Criminal Law.

USA ANSWER

(Excerpts from *About Disabilities*, 2nd Edition, by John Wilde, Ph.D.)

Enforcement
Title I Employment Provisions
of the ADA

The federal government's Equal Employment Opportunity Commission (EEOC) is charged with the responsibility of receiving complaints of violations of the ADA's Title I. Individuals wishing to file a complaint or charge that they were discriminated should contact their nearest EEOC office. To locate the nearest office call (800) 669-4000 (voice) or 1 (800) 800-3302 (TDD). It is important to remember that a complaint must be filed within 180 days of the alleged incident of discrimination.

It is possible that, after reviewing merits of the entire complaint, that the EEOC will issue a "Right to Sue" letter to the complaining party. If one is allowed to sue, possible remedies currently available include:

1. Injunctive and equitable relief (which might include hiring, reinstatement, promotion, back pay, restored benefits, reasonable accommodations, attorney's fees, expert witness fees and court costs).
2. Punitive damages for willful or reckless intentional discrimination.

For additional information about ADA requirements affecting employment contact:

Equal Employment Opportunity Commission
 1801 L Street, NW
 Washington, DC 20507
 (202) 663-4900 (Voice), 800-800-3302 (TDD)

For more specific information about ADA requirements affecting public accommodations and state and local government services contact:

Department of Justice
 Office on the Americans with Disabilities Act
 Civil Rights Division
 P.O. Box 66738
 Washington, DC 20035-6118
 (800) 514-0301 (Voice)

(202) 514-0383 (TDD)

For more specific information about requirements for accessible design in construction and alterations contact:

Architecture Transportation Barriers
Compliance Board
1331 F Street, NW
Suite 1000
Washington, DC 20004-1111
800-872-2253
800-993-2822(TDD)

For more specific information about ADA requirements affecting transportation contact:

Department of Transportation
400 Seventh Street, SW
Washington, DC 20590
(202) 366-9305
(202) 755-7687 (TDD)

For more specific information about ADA requirements or telecommunications contact:

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554
(202) 418-0190
(202) 418-2555 (TDD)

Enforcement of Title II of the ADA

The ADA is a civil rights law. Therefore, in assisting states and local governments to comply with the provisions of this law written to protect the rights of people with disabilities, the federal government has established enforcement guidelines.

1. Identification of an ADA Coordinator. All state and local governments with 50 or more employees must designate at least one employee to coordinate the federal government's efforts to comply with the ADA. This employee must keep management apprised of disability rights issues, ensure that any complaints alleging failure to comply are investigated, and

provide grievance procedures for resolution of complaints about noncompliance with the ADA.

2. Establishment of a specialized section within the Department of Justice to review ADA complaints:

United States Department of Justice
Coordination and Review Section
Civil Rights Division
P.O. Box 66118
Washington, DC 20035-6118

3. The Department of Justice (DOJ) has the authority to investigate complaints, attempt to informally resolve complaints, and if resolution is not achieved, issue to the complainant and the state or local government a "Letter of Findings." If the "Letter of Findings" identifies noncompliance, the government agency is required to notify the Department of Justice and indicate how it intends to work toward measures that ensure voluntary compliance. After voluntary compliance is secured, an agreement of compliance is written. If compliance is refused, the Department of Justice may file a lawsuit against the state or local government agency.
4. A complainant may file a private lawsuit against a state or local government for failure to comply with the ADA.

Enforcement of Title III of the ADA

Title III of the ADA is a civil rights law intended to assist people with disabilities fully use public accommodations. The federal government has established these enforcement guidelines:

1. An individual may file a written complaint with the Department of Justice (DOJ) if he/she feels that rights have been violated. Complaints may be sent to:

United States Department of Justice
Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, DC 20035-6738

2. An individual may file a private lawsuit which can result in a court order to comply with the law and attorney's fees paid for by the defendant.
3. The Attorney General may bring a lawsuit against a public accommodation for allegedly violating the rights of a person with a disability and can result in not only

injunctive relief as specified in private law suits, but can also result in the entity receiving a fine as well as being required to pay compensatory damages to the individual.

Enforcement of Title IV of the ADA

An individual wishing to file a complaint about violations of Title IV or to obtain further information may contact the Federal Communications Commission (FCC) at:

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554
(202) 632-7260
(202) 632-6999 /TDD

Individuals wishing to receive information about California's Relay Service should contact

California Relay Service
1-800-735-2929/TDD
1-800-735-2922/Voice

If one feels that he/she has been discriminated against by private or public entities providing transportation services, then the following options are available.

First, under the ADA, one always has the right to bring a private lawsuit against the offending party, whether it be a government agency or a private entity. If a person decides to bring a lawsuit there is no requirement that he or she exhaust administrative remedies first. One may bring suit at any time - even if already involved in the administrative complaint process.

Second, one may also file a complaint with the United States Attorney General, who can force a violator of the ADA to comply with the law. If appropriate, the Attorney General will bring a lawsuit to force compliance on the complaining person's behalf.

Third, one may file a complaint with the Department of Transportation's Office of Civil Rights, which will investigate the complaint and take the appropriate action. If the Department of Transportation deems it appropriate, it will refer the case to the Attorney General for enforcement in court. (49 C.F.R. §§ 27 (F), 37.11 and 127 et seq.; 28 C.F.R. § 36.502; and 49 C.F.R. § 37.11.).

ANALYSIS OF QUESTION #151

Both the USA and the PRC do have laws to allow for relief in dealing with infractions on disability laws. One major difference between China's disability laws and the laws of the USA is that in the USA there are no special laws that protect the disabled from crimes. However, many states have special "Hate Crimes" that consider any criminal offense against certain groups, including the disabled, as a more serious crime worthy of a more serious punishment. In 2001 the US Congress passed The Local Law Enforcement Enhancement Act which lists OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY as examples of "Hate Crimes" and where the federal criminal punishment will be enhanced.

It is observed that the PRC does not list the special sections of each department that would handle offenses in employment, accessibility, transportation, and communication, that might be responsible for handling and resolving complaints. Whereas, the ADA not only specifically details the contact point, but also provides the address, telephone number and the method for filing a complaint. The USA has an extensive communication system as mandated by Title IV of the ADA. China has not at this point developed such technology that mandates telecommunication devices for the deaf (TTD) and Relay systems that enable the deaf to communicate with the non-hearing impaired on the phone.

SUGGESTIONS FOR QUESTION #151

In addition to current crimes against the disabled as defined by China, the PRC should add "discrimination" as one more offense. Discrimination in not allowing students with disabilities to enter the college of their choice, discrimination against qualified disabled individuals who seek employment, etc. Many more offenses are discriminatory in nature and present a much more difficult problem for the disabled. The CDPF should promote efforts in China that establish standards for measuring discrimination against the disabled. Laws need to be enacted in the PRC that punish government departments or private enterprises that illegally fail or refuse to provide services to persons with a disability.

QUESTION 155.

“What are the material rules which are to protect the disabled person’s legal right on litigation in our country?”

ANSWER FOUND IN THE HANDBOOK

[1]. Civil litigation: “Civil Procedure Law of the People’s Republic of China”

Article 57 says: Any person with no capacity to engage in litigation shall have his guardians as agents *ad litem* to represent him in a lawsuit. If the agent’s *ad litem* try to shift their responsibilities as agents *ad litem* on to one another, the people’s court shall appoint one of them to represent the principal in litigation.

Article 170 says: An application for determining a citizen as incompetent or with limited capacity for civil conduct shall be filed by the citizen’s nearby relatives or any other interested party with the basic people’s court in the locality where the citizen has his domicile.

The applications shall clearly state the facts and grounds on which the citizen’s incompetence or limited capacity for civil conduct is claimed.

Article 171 says: After accepting such an application, the people’s court shall, when necessary, have an expert evaluation on the citizen whose incompetence or limited capacity for civil conduct is claimed; if the applicant has already provided an evaluation conclusion, the people’s court shall examine the conclusion.

Article 172 says: When the people’s court handles a case for determining a citizen as incompetent or with limited capacity for civil conduct, a near relative of the citizen shall be the agent *ad litem*, however, except the applicant. If the near relatives shift the responsibility onto one another, the people’s court shall appoint one of them as an agent *ad litem* for the citizen. If the citizen’s state health permits, the people’s court shall also question the citizen. If the people’s court is convinced, after trial, then the application is based on facts, it shall make a judgment determining the citizen as incompetent or with limited capacity for civil conduct; if the court finds that the application is not based on facts, it shall make a judgment to reject it.

Article 173 says: If, upon the application of a person who has been determined as incompetent or with limited capacity for civil conduct or of his guardian, the people’s court verifies that the causes of that person’s incompetence or limited capacity for civil conduct has been eliminated, it shall make a new judgment and annul the previous one.

Article 235 says: Under any of the following circumstances, the people’s court shall order conclusion of an execution: [1] the applicant has withdrawn his

application; 5] the citizen subject to execution is too badly off to repay his debts, has no source of income, and loses his ability to work as well; [2]. Criminal litigation: Criminal Procedure Law of the People's Republic of China Article 34 says: If the defendant is blind, deaf or mute, or he is a minor, and thus has not entrusted anyone to be his defender, the people's court shall designate a lawyer that is obligated to provide legal aid to serve as a defender. Article 48 says: Physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves shall not be qualified as witnesses.

Article 94 says: During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record.

USA ANSWER

In the USA students with disabilities have several legal rights in pursuing litigation should they or their parents experience dissatisfaction with the education they receive. California has one of the most progressive and easily understood systems to protect the rights of disabled school children.

(Excerpts from Legal Rights of Persons with Disabilities published by the California Department of Justice, July, 1998)

Administrative & Judicial Review

1. Administrative Review

a. Parental Rights To Administrative Review

The parents of a disabled child have a right to administrative review whenever they are dissatisfied with a school district decision concerning their child. (Cal. Ed. Code, § 56500 et seq..) For example, the parents of a disabled child have a right to administrative review whenever they object to:

- the kinds of tests used by the school district to evaluate the child;
- the conclusions reached by the persons doing the evaluation of the child;
- the type of special education offered or denied the child and/or the related services offered or denied the child;
- the specific placement proposed for the child; or
- the denial of the parents' procedural rights (their rights to fair notice of all school district decisions concerning their child in their own language, their rights to participate in planning their child's education, etc.).

b. School District's Rights To Administrative Review

The school district also has the right to request administrative review. The school district can request administrative review whenever there is a disagreement between it and the parents.

c. Filing A Complaint And Holding A Mediation Conference

Administrative review begins when a complaint is filed with the Superintendent of Public Instruction. However, either party may request a voluntary mediation conference at any time. The mediation conference will be held within 15 days of the filing of a request for mediation with the superintendent. In a mediation conference, a disagreement is resolved only when both parties agree. If the parties cannot resolve all their disagreements, then the dispute must be resolved at an administrative hearing. (Cal. Ed. Code, §§ 56500.3 and 56503.)

d. Parents Have The Right To Inspect All Their Child's Records

The parents of a disabled child have the right to inspect and make copies of any and all records maintained by the school district concerning their child. The school district must make the records available for inspection and copying within five days of the Parents' request to see them. The school district must also give the parents an opportunity to inspect and copy their child's records before a meeting of the IEP team, a mediation conference, or an administrative hearing. The school district may ask the parents to pay the costs of the copying of the records, but if the parents cannot afford the costs of copying, then the school district must give them free copies. (Cal. Ed. Code, § 56504; 34 C.F.R. §§ 300.502 and 300.566.)

e. Administrative Hearing

Any party may choose to present its evidence and argument through a lawyer. The Superintendent of Public Instruction must give the parents information on any free or low-cost representation available in the area whenever the parents request the information or file a complaint. If either party intends to use the services of an attorney at the administrative hearing, then they must inform the other party at least ten days before the hearing, or the hearing may be postponed. Parents must pay for their own attorney, but a court may award attorney's fees to prevailing parents. (Cal. Ed. Code, §§ 56502 and 56507; 20 U.S. § 1415 (e)(4)(B); and *McSomebodies v. Burlingame Elementary School Dist.* (9th Cir. 1989) 897 F. 2d 974.)

f . The Child's Placement Remains The Same During Administrative Review

The filing of a complaint preserves things as they are. If the dispute between the parents and the school district concerns the assessment or placement of the child, the assessment or placement cannot be carried out during the administrative review. If the dispute between the parents and the school district concerns the type of special education or related services needed by the child, the child's program must remain the same until the dispute is resolved. If the child was not in school at all, he or she must be allowed to enroll in a regular public school program during the administrative review. However, the parents and the school district can negotiate a temporary agreement about special education, related services, or placement. (20 U. S. C. § 1415 (e)(3).)

Parents have the final responsibility for the protection and education of their children. Although parents must send their children to school, parents need not leave their children in a school where they are denied the education they have a right to or the services they need. If the school district refuses to provide needed special education, needed related services, or an appropriate placement, then the parents can send their child to a school that does provide the appropriate education, services, or placement. The parents will be reimbursed for the cost of sending their child to the alternative school. However, if the hearing officer or the courts ultimately decide in favor of the school district, then the parents must pay for the school they choose. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, cert. den. 115 S.Ct. 428.)

2. Judicial Review

a. General

Any party dissatisfied with the hearing officer's decision can file a lawsuit. The lawsuit can be filed in either federal district court or California superior court. Generally, a parent or child must exhaust the administrative remedies available before filing a lawsuit. In other words, a parent must file a complaint with the Superintendent of Public Instruction and use the hearing process before filing a lawsuit in federal or state court. (*Smith v. Robinson* (1984) 468 U.S. 992.) In some cases a court will hear the suit without use of the administrative process, but this is generally only allowed where the hearing would be futile (as where a child with a similar problem was already denied relief) or where the school district has failed in its statutory duty to inform the parents of the complaint procedures. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.)

b. The Child's Placement During Judicial Review

If the hearing officer decides in favor of the parents of a disabled child, then the school district must immediately obey the hearing officer's order. Only a judge the school district to disregard the hearing officer's decision.

Federal law gives parents the right to insist that their child remain wherever he or she was before the dispute arose, during both administrative and judicial review. This means that the school district may not change a child's status, program, services or placement over the parents' objections, even if the hearing officer decides in favor of the school district, unless a court issues an order to the contrary. (20 U.S.C. § 1415 (e)(3).)

If the hearing officer decides in favor of the school district and denies a child a type of program, service, or placement that the parents think the child needs, the parents can ask the judge for a preliminary injunction ordering the school district to provide what is needed. The parents can also arrange privately for the child to receive the educational program, services, or placement that he or she needs. If the parents ultimately prove that the hearing officer's decision was wrong, and that their child does need what the parents provided privately, the school district

will be required to repay the parents their costs. (*Doe v. Brookline School Committee* (1st Cir. 1983) 722 F.2d 910.) Of course, if the judge ultimately decides that the hearing officer was right, then the parents must pay for the privately arranged program, services, or placement themselves.

c. Court Proceedings

The trial judge makes an independent decision on the basis of both the hearing officer's decision and any additional evidence which is presented.

d. Available Remedies

The judge has the power to order "all appropriate relief. " The judge can order the school district to provide a disabled child with a particular type of program, service or placement. The judge can authorize the school district to do an evaluation of a child. The judge can authorize the school district to place a disabled child in a particular program or school. Usually, "appropriate relief" means an order that applies to the future behavior of the school district and the parents. It may also mean ordering the school district to reimburse the parents the amount they have spent obtaining for their child a needed educational program or related service during the administrative and judicial review'

e. Counsel

Any party, including the school district, has a right to use a lawyer during the lawsuit. A Court may award parents attorney's fees if they are the prevailing party. (Cal. Ed. Code, § 56307.) The Superintendent of Public Instruction must provide parents with a list of persons who provide free or low-cost representation. (Cal. Ed. Code, § 56502 (c); 20 U.S.C. § 1415 (e)(4)(B).)

Workings of Government

Title II of the Americans with Disabilities Act requires that city governments ensure that communications with individuals with disabilities are as effective as communications with others. Thus, city governments must provide appropriate auxiliary aids and services for people with disabilities (e.g., qualified interpreters, notetakers, computer-aided transcription services, assistive listening systems, written materials, audio recordings, computer disks, large print, and Brailled materials) to ensure that individuals with disabilities will be able to participate in the range of city services and programs (e.g. testifying in court proceedings) . City governments must give primary consideration to the type of auxiliary aid or service that an individual with a disability requests. The final decision is the government's.

A sign language interpreter at a public meeting may be needed to provide effective communication for people who are deaf.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication

involved and the needs of the individual. For example, sign language interpreters are not required for all interactions with people who are deaf or hard of hearing. Employees can often communicate effectively with individuals who are deaf or hard of hearing through standard written materials and exchange of written notes. For simple transactions like paying bills or filing applications, these methods may be sufficient. For more complex or extensive communications, however, such as court hearings, public meetings, and interrogation by police officers, interpreters or assistive listening systems are likely to be necessary.

City governments should ensure that auxiliary aids and services are also provided for individuals who are blind or have low vision. Alternate formats, such as Brailled or large print materials, qualified readers, computer disks, or audio recordings are examples of appropriate auxiliary aids.

City governments are not required to take any actions that will result in a fundamental alteration or in undue financial and administrative burdens. 28 C.F.R. §§ 35.160-35.164.

Under the ADA, city governments are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification. For example, a municipal ordinance banning animals from city health clinics may need to be modified to allow a blind individual who uses a service animal to bring the animal to a mental health counseling session. 28 C.F.R. § 35.130(b)(7).

ANALYSIS OF QUESTION #155

Both the USA and the PRC have extensive laws that permit the disabled to participate in legal proceedings. However, the PRC does not 1) identify a procedure detailing how a child in special education can protect his/her rights to an education and 2) specify how local governments are to ensure the full participation of the disabled in all aspects of government.

SUGGESTIONS FOR QUESTION #155

The PRC needs to require local governments to conduct daily business in such a manner as to allow the disabled full participation by

- providing auxiliary aids for those who need accommodations (e.g., sign language interpreters, books on tape or Brailled, guide (“seeing eye”) dogs allowed in all meetings.
- Conducting meetings in accessible places (ramps for wheelchairs, doorways of at least 33 inches with, bathrooms with accessible facilities, tables and desks and chairs of varying heights to accommodate different postural needs, etc.

Local school districts need to ensure that children with disabilities have the same access as non-disabled children. However, the disabled child may need to have extra safeguards in the provision of special education services.

- The child with a disability enrolled in China’s schools should have a procedure to follow when he/she feels that the placement is incorrect or the teaching methodology is wrong.
- There needs to be a procedure for parents to follow when they are dissatisfied with a decision that has been made to enroll their child in special education and how to appeal any decision made by school authorities.
- There needs to be a procedure to follow when parents want to have access to their child’s records. Parents need to have the right to see if their child is making progress.

Section III

Author's Conclusion

One can observe that in most societies, including the USA and China, people with disabilities, must overcome many blocks: social, economic, political and psychological.

Social. Very often the person who is "different" experiences a degree of social ostracism. Most societies do not know what to do with individuals who do not "fit in." Many people, because of their disability, describe feelings of isolation and alienation. They feel alone and, indeed, are often rejected by others.

Economic. Many people with disabilities view themselves as being economically disadvantaged. There are now 52 million people in the USA with disabilities. Yet, the United States Labor Department says that people with disabilities are the first to lose their jobs, make less money and are greatly under employed. In China this same situation exists.

Political. People with disabilities are perceived as not belonging to a "voting block" and therefore without much political influence. Both in China and the USA local and national legislation impacting the economic welfare of people with disabilities is often passed without adequate consumer input.

Psychological. Truly, one of the main obstacles for people with disabilities is society's rejection and forced isolation. These obstacles do plenty of damage. Persons with a disability have very little choice. Either they must learn to accept their limitations and make a commitment to becoming an active member of society, or possibly face a life of loneliness, despair and alienation.

Discrimination may play the most damaging role in the life of people with disabilities. Discrimination is demonstrated by treating someone differently than the majority or by preventing someone from doing something everyone else can do. In all societies, everyday, somewhere, discrimination happens in schools, the workplace, the federal government, restaurants, stores and even in churches. Discrimination can be deliberate or unintentional.

Discrimination not only exists in China; it is more pervasive than most are aware. Despite employment rights gains promoted by the CDPF and the enactment of protective laws by the Protection of the Disabled Law, daily ravages of insensitive and mindless acts of disability discrimination are beyond comprehension.

By way of illustration one need only look at events observed everyday in China to get a sense of the problem. How many of these acts of discrimination are noticed by disabled and non-disabled people?

Attending Meetings and Conferences

For people with mobility impairments it is critical that meeting and conference rooms and facilities be accessible. Yet, in China, rarely do meeting announcements include an indication as to whether or not the events are accessible. Equally rare are event invitations that contain a request for participants to indicate their special needs for accessibility accommodations (e.g., Need a sign language interpreter, special menu, a room with a ramp, fragrance-free atmosphere?)

Riding the Bus

Not everyone who is blind can take a taxi everywhere or depend on friends for getting around. Many rely on public transportation. In China, a person using a wheelchair can not get on the bus and many people who are elderly and infirm can not board busses that have no means of lowering the entrances to street height.

Crossing the Street

Wheelchair users and people with visual impairments are among those who depend upon obstacle-free paths of travel. Yet, it is too common to see vehicles in China either partially or fully block sidewalk curb cuts that exit, thus causing potential harm. It becomes necessary for those with mobility impairments to seek an alternative and possibly dangerous route to get across the street.

Finding Housing

People with disabilities who are wheelchair users, or have respiratory or other mobility limitations, must have accessible housing. Yet, it is rare to see newly constructed apartments and houses in China with ramps, elevators, and bathrooms with accessible plumbing fixtures and kitchens with accessible appliances.

Yes, discrimination against the disabled in China exists and there is much to do yet.

In the USA, those unfamiliar with the passage of the Civil Rights Act of 1964 are probably a little awed to know that there was a time in the United States when people had to fight to end officially sanctioned segregation. There were entire parts of our nation, and plenty of schools and hospitals where segregation by race was mandated by law. People were racially segregated on busses and trains and even in hotels. Water fountains were legally designated, "For Colored

Only." The United States went through much turmoil before such practices were changed.

With the passage of the Civil Rights Act of 1964, such racially motivated laws were eliminated forever. However, while this landmark Act made no mention of disability as one of the categories protected by civil rights legislation, it did provide the impetus for future legislation protecting the rights of people with disabilities. Soon people who were wheelchair users could no longer be denied access to a public building. A person with a severe hearing or vision disability could no longer be denied entrance to an institution of higher learning.

The Rehabilitation Act of 1973 is generally considered the first "civil rights" legislation for people with disabilities. The PRC might want to consider this Act as a model for future legislation as it was aimed directly at governmental agencies, and also public and private entities receiving federal financial support. It was the first law on a national level calling for non-discrimination of people with disabilities. Here are examples of what that law enforced:

Programmatic Access in Employment and Education

1. Testing of employees, trainees and students must be non-discriminatory. Reasonable accommodations might include extra time, distraction-free environment, enlarged print, tests read to test taker, etc.
2. Application materials must be provided in alternate formats (e.g., on tape, in Braille, enlarged print).
3. Financial aid materials provided in alternative formats.
4. Announcements of extra curricular activities must be made in alternative formats.
5. Classroom lectures and training classes must allow and provide assistive note taking devices, interpreters, readers, taped texts, assistive listening devices, etc.

Architectural Access in Employment and Education

1. Entrances and exits to buildings must be accessible to those with physical limitations.
2. Meeting rooms must be accessible if requested.
3. Classrooms, meeting rooms and workplaces must provide accessible furniture.

4. Non-workplace or non-classroom areas and facilities that are routinely used by the public (includes water fountains, public toilets, showers, municipally owned sidewalks, cafeterias, service counters, courtrooms, offices, telephones, televisions, etc.,) must be accessible to people with disabilities.

The Role of Self-Advocacy

Another suggestion to the CDPF is to show people with disabilities how to self-advocate to end discrimination. People and institutions respond to people with disabilities who self-advocate to end discrimination. Self-advocating for people with disabilities usually commands respect and makes change happen at a faster rate. Everyone within the disability community has the power to self-advocate, whether it is the person with a disability, a family member, a significant other, a school, a business or even the media.

It is this author's opinion that a good definition of self-advocacy includes having a control over change. Self-advocacy means being able to control one's destiny by having the will and courage to make change and telling others what one needs for a better life.

Everyone uses self-advocacy to get their needs met. Even babies learn early that if they cry loud enough they will probably get what they want. While the quest for self-advocacy is most likely present in everyone within a society, very few would admit that they either seek to use or cultivate it, mostly because it appears to be selfish and have a "me versus them" connotation.

Still, history abounds with tales of how people and groups have started entire movements and trends that were, indeed, based upon self-advocacy. The most basic element of self-advocacy is influence.

In most societies, like the USA, changes in laws occur because of influence. Polls and surveys are taken. Votes are cast. Representatives are elected. Representatives are lobbied. Laws are created. Representatives are either elected or are not re-elected based upon their reactions to influence. Each event happens because of the collective power of influence.

The CDPF should be aware that in the USA, both the ADA and the Rehabilitation Act's Section 504 are good examples of laws that were enacted as a result of the exercise of self-advocacy. In the case of these two laws, it was both the self-advocacy of many people with disabilities and also their advocates exerting pressure, which translated into the influencing of those who made the laws - the legislators.

Recommended steps to take in becoming an effective self-advocate

People with disabilities in China should be the first to recognize that they need to know how to use their self-advocacy to affect change. In the final analysis, all

consumers within a society must have an understanding of their role in controlling their own destiny.

There are steps to take in the acquisition of self-advocacy and affecting change. As a means of bringing attention to a disability issue these steps may include:

1. Contacting Local and National Legislators
2. Writing Letters to Newspapers
3. Supporting Political Candidates
4. Writing Letters to Complain about Violation of Disability Laws
5. Participating in Public Demonstrations

Contacting Local and National Legislators

One way to create change in a democratic society is to seek to influence it. This includes influencing policy makers. In the United States policy makers who enact laws are elected officials. In China it is the National People's Congress. Elected officials of both nations should respond to the interests of their constituency - those who elected them to their office. When elected officials make decisions on laws, those decisions are generally made as a result of direct input from those they represent. This input is called "lobbying." People with vested interests routinely contact their elected officials to lobby them to create, oppose or change legislation. Sometimes these contacts are daily.

The extent of the push (self-advocacy) felt from constituents should be directly in proportion to the zealotry and speed of the elected official's efforts to work on a piece of legislation. The harder the push, the more likely the legislation will be passed.

In order to lobby effectively, though, the lobbyist should carefully do his/her homework. What follows are six suggestions for being a successful lobbyist in the USA and hopefully will be of assistance to the CDPF as it attempts to promote new and more helpful laws for the disabled.

(Taken from About Disabilities, 2nd Edition, by John Wilde, Ph.D.)

1. Register to vote. One's interaction with an elected official carries much more weight if you can say, "I'm a registered voter." If you can say that you are a "frequent voter" that helps, too. Just by telling an elected official that you participate in government lets him/her know that you should be taken seriously.

2. Meet with an elected official. Request your meeting in advance by making an appointment. In the event that you are attempting to meet with a legislator, it is likely that you will meet with his/her aide, instead. This happens often because many elected officials prefer to have their staff maintain community contacts in their office. Do not feel frustrated. In fact, the aide is sometimes more knowledgeable about your issue than the elected official. Remember, elected

officials usually choose their aides based upon their competence. A competent aide will make sure her/his boss hears what constituents are saying. Aides often meet regularly with their boss to share both information and advice.

Whether you meets either the representative or the aide, one of the most important things to do is treat that person with respect. Anger about an issue is OK. But, treat the aide just as one would like to be treated, if roles were to be reversed.

In the meeting be prepared with at least an outline in one should be prepared for what he/she intends to say. Be sure to state your name and the group or issues you represent. Give a brief summary of why you are interested in your issue and then quickly move into explaining what you want. It is vital that you give your reasons for taking your position on an issue.

Be prepared for questions. If the aide or representative asks you a question and you are unsure of a good answer, ask for time to do some research. Offer to give the answer at a later date. Importantly, after researching the question, respond in writing within two weeks. Both this promise to research the question and your rapid answer will not only protect your commitment to the issue, but will also further emphasize your sincerity.

After the meeting, write a follow-up note to the representative or aide thanking them for their time. This provides you with another chance to remind them of your issue.

3. Praise your targeted elected officials when they are doing a good job.

Oftentimes people write angry letters to their representatives or the newspapers to complain about something they do not like or oppose. While there is nothing wrong with that, it is also a good idea to build a relationship that will enable you to influence a number of issues. You can achieve this by calling your representative when you like an issue s/he is working on. Likewise, enlist the influence of the media. It is a good idea to establish a relationship with a reporter - letting him/her know you like their writings. If the reporter knows you, it is much easier to get attention when you are after publicity. This same suggestion is true when working with elected officials. Catch them being on your side and reward them!

4. Write. Write. Write. Letters to a policy maker are a strong influence. A letter should be confined to one page with the first sentence clearly stating what you want the official to do. Each succeeding sentence should identify your rationale. Be sure to include that you are a registered voter and that you vote frequently. While typed letters are preferred because of their ease in reading, handwritten (legible) letters may convey more of a personal attachment to an issue.

It is not a good idea to send a form letter because they do not seem to elicit the interests of the official or her/his staff. Form letters do not convey a commitment or passion about an issue and are usually discarded.

5. Avoid petitions. Petitions make one feel good about getting support for an issue, but officials do not pay much attention to them. The general belief is that petitions are often bogus, because when names and addresses are checked the signatories either do not exist or they have moved.

6. Testify at or attend public hearings. Before an act or bill is passed, testimony is taken from the public. Input is requested and people are urged to give opinions on the proposed law.

Writing Letters to Newspapers

Express your opinion and influence public opinion through a letter to the editor of your local newspaper. Most letters never make it into print, but the ones that do get published catch the editor's eye because they are well-written and probably because there are other letters on the same topic. Be aware that elected officials read these published letters and are influenced by public statements.

One's letter can be positive, negative, or informative in tone. It can be objective or emotional. Most importantly, it should be simple, short and rarely more than 300 words. Never use profanity. One might also consider letting others read their letter before submitting, just to get feedback on whether the reader will be able to understand your point of view.

Seven key elements you should make sure to include in one's self-advocacy letter:

1. Open the letter by telling why you are writing.
2. Tell why your letter/issue is important.
3. Praise or criticize what someone has said or done about your issue.
4. Tell why you believe what has happened (or will happen) is good or bad.
5. State your opinion about what should be done.
6. Make your specific recommendation (s).
7. Sign your letter and add your address and telephone number (unsigned letters are usually disregarded and thrown in the trash).

Writing Letters to Complain about Violation of Disability Laws

The disability movement has witnessed much attitudinal and legislative change in the past thirty years. But, there is still a long way to go. Egregious examples of establishments and institutions violating the rights of people with disabilities continue.

Admittedly, both the ADA and Section 504 of the Rehabilitation Act are examples of difficult to understand legislation. Employers and institutions of higher learning often find it difficult to understand, much less determine, if they are complying with "the law." The problem of what is a reasonable accommodation is further compounded by the fact that many cases involving alleged reasonable accommodation violations must be decided on a case-by-case basis. Sometimes a court of law makes an exact and factual analysis of the alleged violation.

Furthermore, even though most states and many cities have their own anti-discrimination statutes, the ADA and Section 504 may differ significantly from those laws.

When writing a letter of complaint regarding a disability law violation one should be aware that the people in most establishments are frequently confused or unfamiliar with disability accessibility laws. While this is unfortunate, it affords some opportunities. One may have to assume the role of teacher and as such you can be a source of knowledge and direction. That is not a bad thing in most instances.

Displaying anger in one's first letter, therefore, is not necessary. It is more important to inform the staff at the establishment of your observations (or the situation one experienced) and give a deadline for when one wishes to see the observed problem rectified. Usually, the law is on one's side if the accommodation request is reasonable.

Sometimes one may have to contact an establishment requesting that it fulfill one's accommodation request in the future. For example, an advertisement may appear in a local newspaper announcing a free seminar for those wishing to start a new business. In this case if one wishes to attend and needs an accommodation, one must make an accommodation request. When making an accommodation request, put it in writing.

1. Write a letter to the establishment and explain in general terms your disability and your functional limitations. Ask for a written response, specifying your date of the needed accommodation.
2. Keep copies of all correspondence.

If an establishment refuses to accommodate your disability request, write them a letter asking for their rationale. Your letter might include these 10 elements:

1. Identify yourself and your association with the establishment.
 - a. Membership holder
 - b. Frequent customer
 - c. Potential customer
 - d. Enrolled or potentially enrolled student
 - e. Employee
2. State the purpose of your letter.
3. Clearly describe the problem. State the facts. Explain the limitations caused by your disability and the special accommodations you need. (Do not state your feelings at this time.)
4. Offer the establishment suggestions for solving the problem. Offer options that would be reasonable. If you know of other establishments that have been successful in accommodating your disability you might include mentioning them by name. (Importantly, be specific and suggest how to correct the situation.)
5. If you have any credentials, add them to the letter's content (e.g., your membership in an organization, specialized training, etc.)
6. Ask for a written response (or phone call or e-mail).
7. Specify a date as to when you expect a reply to your letter.
8. Try to keep the tone of your letter friendly, but business-like. Refrain from making threats, but indicate what you intend to do should they not accommodate your disability. (**You** know what to do next!)
9. Type or use a word processor for added clarity and sophistication.
10. Sign your name and include your address and a daytime phone number.

Participating in Public Demonstrations and Rallies

In the USA there is strength in numbers . . . especially in large crowds standing outside of a politician's office. The decade of the 60s saw in the USA the emergence of large rallies to protest the war. Televised images hourly broadcast into millions of American homes showed protesters being handcuffed, clubbed, hosed, and sprayed with tear gas.

While the days of having to resort to such drastic measures to gain access to politicians' attention are hopefully gone forever, a valuable lesson was learned. There are times when one has to stand arm-in-arm with others in solidarity to make a point on an issue.

Obstacles to Self-advocacy

The Wrong Kind of Help

In the quest to be independent, and to be someone with self-advocacy, people with disabilities often must deal with unwanted sympathy and help. This can be problematic since most people in their efforts to help are unaware that they may be doing more harm than good.

The concept of help varies among cultures. Generally, when we talk about helping someone we think of care, sensitivity and warm interpersonal relationships. Most everyone values help in times of tragedy and turmoil. Help can be sustaining and can make the difference between feeling accepted and feeling rejected. Help can prevent further tragedy.

Help can also go wrong. Sometimes help can hurt. Sometimes help leads to loss of self-advocacy and to ill will. Help that is wrong can cause a relationship to disintegrate.

On a closing note, the helper should never underestimate the strength and vitality of the human spirit. Self-advocacy is possible for everyone. Indeed, it may be painful to watch and observe someone who appears to be suffering and in the midst of what is perceived to be tragedy. The reality is, however, that for some people, adversity is also an opportunity for growth. The phrase, "This will make you a better person," sums up in a trite way what, for many people, is true. Some who have experienced suffering, express that a seemingly disastrous event actually brought them a priceless wealth of knowledge and insights into life. Some even say they have gained profound awareness of themselves.

To the CDPF: Your role in Rehabilitation vs. the role of Helper

Rehabilitation, unlike help, is more goal-oriented toward independence. Rehabilitation represents a closely held set of ideals dictating that people with disabilities have a responsibility of working toward independence; the greater the independence, the greater the self-advocacy. Thus, independence is yet another aspect of self-advocacy.

Logically, rehabilitation service providers who engage in assisting people with disabilities become independent, begin with certain unyielding principles. These principles might include:

1. Everyone has dignity.
2. Everyone should be treated equally and have equal opportunities.
3. It is society's responsibility to maximize the potential of each of its members.
4. Everyone has the capacity to strive and grow toward positive change.
5. Everyone has the right to be free to make decisions about their life's management.

There is an old proverb that goes something like, "Give a man a fish and you feed his hunger; show him how to fish and he will never be hungry again." Giving the fish is like giving help. Showing the man how to fish is akin to the elements of rehabilitation.

Rehabilitation empowers the individual. This translates into the active push for people with disabilities to have control over their own lives. When a baby takes its first step without support and guidance, that step is not only a biological and physiological feat, it is also a symbolic expression of independence. That first step is a deliberate move towards gaining more self-advocacy.

Thus, for people with disabilities, it is imperative to work toward self-empowerment. The central focus should be the control of one's environment. As a young woman once said to her rehabilitation counselor, "Nothing can kill pride more quickly than depending on someone." It is critical that rehabilitation professionals maximize opportunities to encourage self-empowerment for each person with whom they work.

In conclusion, in 2008 Beijing will host the Olympics. Thousands of people who have never been to China will visit buildings and use services. Many of those visitors will have disabilities. It is incumbent upon the UNICEF and the CDPF to assist the P.R.C. in moving toward following up on the suggestions offered in this report that are aimed at making China more disability accessible.