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## Analysing legislation on Inclusive Education beyond essentialism and culturalism : Specificities, overlaps and gaps in Four Confucian Heritage Regions (CHRs)

Yuan, Mei

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## **Abstract**

Breaking with discriminatory views and segregated education for children with disabilities, so-called Confucian Heritage Regions (CHRs) have been moving towards inclusive education. Considering that reinforcing legislative foundations is of foremost importance for its fulfillment, the study examines legislation on the education of children with disabilities in four neighbouring CHRs: Mainland China, Japan, South Korea and Taiwan of China. The core principles that frame such legislation were analyzed and cross-compared. The findings shows that, despite the common Confucian heritage that is attributed to them – which is often said to influence the way disability is perceived and dealt with – the four Regions treat inclusion somewhat differently in terms of legislation. While Taiwanese and South Korean legislations clearly espouse aspects of US and international principles of inclusive education, Mainland China's legislation stipulates the least clear procedures for identification and recommendation, and the fewest services in comparison with the other three Regions. Japan's legislation did not abide entirely by any such principles but there are signs that other strategies for inclusive education are included. As a consequence, the article calls for the careful treatment of CHRs beyond an essentialist and somewhat simplistic perspective that could reduce them to a 'Confucian' monolith when it comes to legislation on inclusive education.

**Keywords:** inclusion, special education, education legislation, Confucian Heritage Regions, inclusive education

## **Introduction**

Over a billion people in the world have some form of disability<sup>1</sup> (World Bank, 2019). Noteworthy, a non-negligible one in ten lives in regions with a so-called Confucian Heritage (CH) (United Nations ESCAP, 2016). Through the label of CH one often lumps together regions located in East Asia, that share what is referred to as *Confucianism*<sup>2</sup>, “the loosely organized tradition of spiritual and ethical teachings associated with the Chinese sage Confucius” (Chaibong, 2005, p. 27). CHRs include the Chinese mainland (henceforth referred to as Mainland China), Japan, South Korea, and China’s Taiwan region (Taiwan hereafter) as well as Hong Kong, Malaysia, Singapore, Thailand and Vietnam. Discussing and comparing Confucian Heritage Regions (CHR) with other parts of the world, have been a constant in e.g. comparative and international education (see La Londe & Verger, 2020). However, although separate papers are available on most CHRs and their approach to the central issue of inclusive education (e.g. Qu, 2019 about Mainland China; Chen, 2020 about Taiwan), very few systematic and comparative studies of the topic in different CHRs have been published (e.g. Hauwadhanasuk et al., 2018 about China, Thailand and Turkey).

Education for All is often enacted through inclusive education in different countries, and multifaceted legislation and policies, leading to e.g. placement in general education classrooms and transformation of curricula, have been implemented to support it (Xu et al., 2018). In this paper, we focus on and compare four neighbouring CHRs (Japan, Mainland China South Korea and Taiwan), with a focus on inclusion in relation to children with disabilities. These four CHRs have been discussed extensively in global research, education decision-making and media, for their success in the Programme

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<sup>1</sup> The notion of disability is understood at this stage, to include a wide range of physical characteristics, intellectual attributes, abilities, and severity level (e.g. Schaefer, 2019). We will discuss the way it is defined in the four different contexts in following sections.

<sup>2</sup> One should also bear in mind that e.g. Buddhism represents another influence on CHRs. Communism has also had a strong influence on e.g. Mainland China.

for International Student Assessment (PISA), which takes into account issues of equality, social justice and inclusion. However these studies say very little about the Regions' performance in terms of e.g. inclusive education (see country notes for PISA 2018 at <https://www.oecd.org/pisa/publications/>).

It is generally believed that the four CHRs in question share common attitudes towards persons with disabilities because of their Confucian background (McLoughlin, Zhou, & Clark, 2005). However, as a “political ideal”, inclusive education goes hand in hand with the purpose, content and organization of specific educational, political and economic contexts (Magnússon et al., 2019), which can overlap and/or differ.

Examining laws and regulations in the four CHRs, our interest lays in the following questions: How different and similar are laws and regulations about inclusive education across the four CHRs? What do they tell us about the way inclusive education is conceived of in these contexts and, potentially, about how it is ‘done’? What seems to have influenced their core conceptions of inclusive education? Our focus is on policy documents rather than practices and realities in institutions of education (a further paper on the latter will be published at a later stage). It is essential to note here that we are aware that the way *legislation* about inclusive education is understood and/or formulated vs. how it is implemented might differ in the four CHRs.

In what follows, we first provide a short critical review of Confucianism in relation to disabilities and some background knowledge about the ways disabilities are defined in the CHRs. We also justify the use of the six fundamental legal principles formulated by the *Individuals with Disabilities Education Act* (IDEA) (1990/2004) as a template to guide our analysis of the legislations. The data analysis relies on laws and regulations concerning 1. the identification and service recommendation process, 2. the provision of special education and related services, 3. funding allocation and 4. service overseeing in the four regions.

## Definitions and perceptions of disabilities in the CHRs

As asserted in the introduction, the four regions under review have been highly influenced by different waves of (differing) Confucian educational thoughts and practices over the centuries (Kim, 2009). When working on CHRs, we need to remember that Confucianism has changed, developed multiple facets and adapted to new political systems and demands over the centuries (Cheng, 2007). It was even rejected and criticised during different historical periods in some of the CHRs under review (Yao, 2011: 4). Cheng (2007) argues that there is not one form of Confucianism but a wide range of *Confucianisms* around the world. This means that comparing inclusive education legislation must be done beyond essentialist, see stereotypical, claims about Confucianism (Narayan, 2009).

Discourses about the links between Confucianism and disabilities are somewhat ambivalent. According to Nakaruma (2006: 35), disabilities have been considered as a sign of a punishment from the Heavens in Confucian societies, which meant in the past that children with disabilities could be terminated (Shuihudi Qinmu Zhujian Collation Team, 1990). It is important to note, however, that Confucius himself (551–479 BC) projected what could be considered as the earliest inclusive and humanitarian attitudes toward people with disabilities (Tan, 2017). The kernel of Confucianism is *benevolence* (ren, 仁), maintaining that a person should love and care for others. When Confucius was revered as the climax of Chinese civilization during the West Zhou Dynasty (1134–771 BC), special institutions – which would probably not be considered as ‘inclusive’ today – were set up specifically for people with disabilities. For instance, in the Palace of Raising the Ill, those “who were deaf, blind, mute, and crippled and could not care for themselves” were served in the Palace for life.

Today, attitudes towards children and adults with disabilities appear to be both favourable and problematic in CHRs. As such, when one examines the ways disabilities are defined in legislations in

the CHRs today, one notices variations. While the definition of disability reflects a medical and individualist view of disability in Mainland China, which considers disability as a medical (deficit) problem, a more social view of disability is identifiable in Japan, South Korea and Taiwan (Kim et al., 2019; Shakespeare, 2010). Besides, Campbell & Uren (2011) and Zhang & Rosen (2018) found that, although positive legislative and administrative policies guarantee equal rights in e.g. China and that attitudes towards people with disabilities are changing, negative attitudes and impacts on inclusive education are still very much present. How much Confucianism (and its plural declensions) has an influence on these phenomena remains unclear and somewhat essentialist (Zhang & Rosen, 2018).

It is important to bear in mind that educational policies concerning inclusive education have circulated around the world and been highly influenced by both the ‘West’ and international organizations. Documents such as the *Individuals with Disabilities Education Act* (IDEA) (United States of America, 1990, reauthorized in 2004 and based on a revision of the *Education for All Handicapped Children Act* (EAFHC) of 1975) and the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) (2006) have clearly influenced the CHRs in different ways.

In what follows, and in order to avoid a somewhat essentialist caveat about e.g. Confucianism, we propose to use the 1990 *Individuals with Disabilities Education Act* (IDEA, with its 2004 Re-authorization) as a template to observe the position of inclusive education in the legislation of the four CHRs. The IDEA is obviously not a neutral ‘template’ as it was developed for a different socio-political context (US education), and the resources available for implementing IDEA might differ immensely from the reality of CHRs. What is more the IDEA does not define inclusive education as such but highlights right-based special education. Yet many of the ideals behind IDEA are shared by both the CHRs and the USA (e.g. access, elimination of discrimination, equality). All in all we retained these paradigm-changing Acts because of their longevity (IDEA was signed into law 25 years ago); the

positive impact that it has had on some aspects of inclusive education in the US and elsewhere (Keeffe-Martin, 2001); the systematic and strong research that has been done on the Acts; and the publication of an annual review report on the implementation of IDEA at national and state levels by the Secretary of the U.S. Department of Education to Congress (see Katsiyannis et al., 2001; Blanck, 2020). These demonstrate what could be considered as a history of determination and effort to deal with children with disabilities that seems to be unique in the world.

By focusing our attention on elements found in IDEA, rather than operating an analysis of legislation based on potentially essentialist and flawed views of Confucianism, we might be able to see the influence of ideas about inclusive education that have been circulating around the world (IDEA has been discussed in many other countries), while noting contextual specificities whenever necessary.

### **Examining Inclusive Education: The six fundamental legal principles as core principles**

Educational legislation has a profound impact on inclusive education for students with disabilities (Kisanji, 1998; Turnbull, Rutherford, & Fielder, 1984). The seminal legislation of the Education for All Handicapped Children Act (EAFHC) (USA, 1975), boosted the conception of inclusive education in the US and then worldwide, and was renamed the Individuals with Disabilities Education Act (IDEA) in 1990 and reauthorized in 2004. This federal program authorizes state and local aid for special education and other services for children with disabilities.

In what follows, we summarize the six fundamental legal principles<sup>3</sup> championed in the EAFHC, and inherited by IDEA. We will use these principles to comb through the identified legislation from the four CHRs. By so doing, our paper proposes some form of dialogue on inclusive education. As a reminder, the word *dialogue* in English comes from the Greek *dialogos*, from *dia* which refers to

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<sup>3</sup> <https://sites.ed.gov/idea/statuteregulations/>

movement (‘through’) and *legein*, to speak. By using the IDEA as a template, and through the *movements back and forth* (DIA of *dialogue*) between this Act and Legislation from the four CHRs, we will be able to identify specificities, overlaps and gaps between different socio-political contexts.

In general, a **zero reject policy** ensures that all children have the right to free state education, regardless of disability status. The policy defends the basic equal rights of children with disabilities in education. If children with disabilities are evaluated through a non-discriminatory procedure, relevant educational institutions shall not refuse to accept them for any reason. This principle also applies to the situation where regular children are disadvantaged and require special education services.

**Non-discriminatory evaluations** require the use of diverse evaluation and assessment tools that are linguistically and culturally non-discriminatory and administered multiple times for accuracy. It is a process of identifying a child’s barriers, identifying educational needs, making educational placement decisions, formulating an Individualized Education program (IEP) and periodically reassessing it with unbiased assessment methods. Specific indicators include: assessment methods and processes without cultural or racial prejudice, the use of students’ native languages or a clear way of communication, the use of effective assessment tools, a variety of assessment methods, assessment teams composed of multi-professionals and parents, and the need for more than one criterion. Educational placement decisions must follow the principles of free and appropriate state education and the least restrictive environment.

**Free Appropriate Public Education (FAPE)** must ensure that education is individualized and caters to the unique strengths, needs and preferences of children with disabilities, regardless of their disability status. As to what is “appropriate” education, the standards vary with the times. At present, the formulation and implementation of detailed IEPs, the provision of challenging general courses and the progress of students are important indicators. Free and appropriate state education means that schools



provide services that meet the special needs of children, but do not need to maximize the potential of children.

**The least restrictive environment (LRE)** maintains that children with disabilities must be included in general education settings to the greatest extent possible. The least restrictive environment is based on the assumption that children with disabilities benefit most from education with regular children. They are to be sent to special classes or schools only if the nature or extent of their disability is so serious that students cannot benefit from general education classes or school. This principle is the concrete embodiment of inclusive education.

The last two principles, **due process** and **parents' and students' participation**, are to safeguard the rights of children with disabilities and their parents. Due process ensures a formal mechanism through which parents can address concerns and complaints, while parental and student participation concerns parents and students participating in decision-making processes, including the identification of disability, service planning and implementation, and assessment.

The framework of six principles has been used in the analysis of laws and regulations in non-Western countries and is considered as an effective approach to legislative comparisons across countries (see Meral & Turnbull, 2014 for examples). These six principles provide a coordinated system for analysing laws and regulations governing the education of children with disabilities. By referring to this framework, our study employs content analysis to decode relevant laws and regulations in the four CHRs.

## **Method**

### **Selection of Laws and Regulations**

The authors specialize in special needs education and speak fluent English and Chinese. Another two specialized colleagues from Japan and South Korea provided guidance in the selection process. The

selection and inclusion of laws and regulations were done by a group of five researchers in two stages:

1. Through reading the literature (database of Academic search complete about the four CHRs, country reports such as e.g. Kim, 2012 about South Korea) and 2. searching for legal documents in the four CHRs (governmental reports and official documents from e.g. Beijing Federation for People with Disabilities and the Korean National Institute for Special Education). Constitutions, laws, ordinances, and regulations concerning persons with disabilities were collected, translated into English, and thoroughly reviewed. Since the study at the present stage only focuses on legal principles regarding education of persons with disabilities, three types of laws or ordinances were included: 1. fundamental law on rights of persons with disabilities, 2. basic law on education, and 3. specific law of special education. Legal documents on such particular issues as employment and disabilities were not included since our focus is on inclusive education. The following documents were retained for the four CHRs:

- Three pieces of legislation were singled out in Mainland China: 1. The educational rights of, and services for, children with disabilities are stipulated in the Law on the Protection of Persons with Disabilities (LPPD) (National People's Congress of the People's Republic of China [PRC], 2008), 2. the Compulsory Education Law (CEL) (National People's Congress of the PRC, 2018) and 3. Persons with Disabilities Education Ordinance (PDEO) (State Council of the PRC, 2017).
- Different from the other regions, the prescriptions of education of persons with disabilities are dispersed in a number of legislation in Japan. Three fundamental legal documents were identified: 1. Basic Act for Persons with Disabilities (ABPD) (Japan National Diet, 2011), 2. the Basic Act on Education (BAE) (Japan MEXT, 2006), 3. the School Education Law (SEL) (Japan National Diet, 2007). Besides, the Enforcement Ordinance of the School Education Law (EOSEL) (Japan MEXT, 2007), and the Law to Support People with Developmental Disabilities (2004) were also reviewed.

- Three key laws were chosen for South Korea: 1. The Welfare Law for Persons with Disabilities (Ministry of Health and Welfare Republic of Korea, 1999), 2. the 2019 Act on Special Education for People with Disabilities (ASEPD) (Ministry of Government Legislation Republic of Korea, 2019), revised after the Special Education Promotion Act for the Handicapped (SEPA) in 1977, and 3. the Enforcement Decree of Special Education Law (EDSEL) (Ministry of Government Legislation Republic of Korea, 2017).
- Three major laws to protect the educational rights of persons with special needs in Taiwan were selected for this study: 1. the Persons with Disabilities Rights Protection Act (Legislative Yuan Taiwan China, 2007), amended from the 1997 Physically and Mentally Disabled Citizens Protection Act (PMDCPA), 2. the Special Education Act (SEA) (Legislative Yuan Taiwan China, 2014) and 3. the Enforcement Rules of Special Education Act (ERSEA) (2013) (Legislative Yuan Taiwan China, 2013).

The study adopts a summative content analysis method to analyze these documents. According to Hsieh & Shannon (2005), this approach is based on counting and comparisons e.g. of content and is complemented by the contextualisation of the data.

## **Data Analysis**

The data were analyzed through an iterative inductive-and-deductive process, whereby data analysis drives further research design and data collection (Hubert, 1995: 114). The process worked as follows: By drawing on the six principles, two experts in the field of special education analyzed the aforementioned legislative documents on education and special education. The same document was coded separately by each researcher. Each segment of the document was coded first, and the codes were

recorded in a spreadsheet. Then the experts got together, discussed and revised their codes, and reached consensus about specific codes. Lastly, one expert proceeded to code the remaining documents. The following table shows an example of coding and categorising of the data as agreed upon by the experts.

<b>Code</b>	<b>IDEA Category</b>	<b>Examples of Data Segment</b>
parents in IEP team	parental and student participation	“Exclusion from participation of care givers, such as participation in individualized education support team” (SELDO, Article 4)
parents as commissioned members	parental and student participation	“parents of or care givers for persons eligible for special education who work or have worked in the field of special education” are members of the Central Special Education Management Committee (EDSELDO, Article 4)
right to appropriate education for all	free appropriate public education	“all persons with disabilities and gifted people have the right to receive appropriate education” (SEA, Article 1)

**Table 1 – example of coding and categorising**

**Findings**

## **Core Inclusive Education Principles**

In this section, we start by exploring the Principles integrated in legislation by the four CHRs. We use the Principles from the Individuals with Disabilities Education Act (IDEA, 1990/2004) as a template for analysing the core inclusive education principles in the four regions' legislation. As a reminder, we argue that this provides us with a template for comparing perspectives on inclusive education in the four CHRs.

Among the four regions, South Korea and Taiwan have passed special education laws that clearly rest upon the six tenets from IDEA,; *zero reject, non-discriminatory evaluation, free appropriate public education, least restrictive environment, due process and parental and student involvement*. As stated earlier, these all represent core principles to promote inclusive education. Mainland China has pinpointed the importance of promoting inclusive education in its regulations, but it does not explicitly stand by all of IDEA principles. Japan does not state any principles for inclusive education in its laws, however. The following analysis relies on the six fundamental principles (see Meral & Turnbull, 2014).

### ***Zero Reject***

There are variations in terms of zero reject amongst the four CHRs, which appear to be in line, amongst others, with their definitions of disabilities, with China adhering to an individual/medical approach and the three other countries to a more social one.

The 2017 revised PDEO in Mainland China affirms the educational rights of all persons with disabilities and prioritizes inclusive education. It stipulates that China should guarantee equal access to education to all persons with disabilities (Hauwadhanasuk et al., 2018). Nonetheless, several provisions

in the regulation run counter to the spirit of zero reject. First, it is stipulated that children with disabilities shall not be refused by schools or institutions if laws or regulations deem them eligible for education:

### **Excerpt 1**

For persons with disabilities who meet the requirements of laws and regulations to apply for admission, shall not be refused enrolment (Article 7)

This means that certain categories of children can be defined as “uneducable” according to this provision. Second, a school is permitted to ask a student to transfer to other general or special education schools if the school considers that the student has difficulty adapting to the school (article 18, paragraph 1). This stipulation runs the risk of having schools cut off students’ educational services and liberty. Third, disabilities such as learning disabilities, autism and ADHD, are not legally affirmed in Mainland China, thus children with such disabilities are not entitled to legal services (Stein, 2010).

In Japan, laws on education of children with disabilities also fails to specify the zero-rejection principle. Japan stipulates that all citizens are entitled to equal access to education based on their abilities. This kind of statement is actually self-contradictory, and it reflects the notion of ableism – treating children based on their abilities, “the devaluation of disability” according to Hehir (2002). As mentioned in Article 1 of the Basic Act, revised in line with the philosophy of the CRPD, measures for persons with disabilities need to be implemented to realize a society of coexistence in which no citizens are segregated according to whether or not they have a disability. These measures are meant to lead to all citizens mutually respecting their personalities and individuality on the basis of the philosophy that all citizens, regardless of whether or not they have a disability, should be respected as irreplaceable individuals equally enjoying fundamental human rights (Article 1).

In contrast, South Korea and Taiwan embrace zero reject very clearly. In South Korea, ASEPD (2019) specifies that schools shall not refuse children with disabilities regardless of the type or severity of disabilities:

### **Excerpt 2**

When a person eligible for special education desires to enter a school, the head of a school at each education level or the head of a university[...] shall not discriminate against him/her in the educational opportunity, such as the refusal of an application for admission thereinto or of the admission of a passer in an admission screening test, for reasons of his/her disability.

In Taiwan, breaking away from the old law restricting regular schooling to the most “teachable” of students with disabilities, SEA (2014) stipulates clearly that schools shall not reject children, regardless of their gender, age, ability/ disability, ethnic group, religion, ideology, social status or any other conditions. Thus all schools on different levels have a legal responsibility to accept children with disabilities.

### ***Non-discriminatory Evaluation***

Mainland China does not ensure non-discriminatory evaluation of children with disabilities. First, it lacks legalized procedures for identification, assessment and placement (Qu, 2019). PDEO posits that an expert committee shall be organized at the county level, and shall be commissioned by the local department of education to carry out evaluation. As for details of the nature of the committee, staffing, evaluation process, tools, methods and evaluation standards, there are no provisions. Second, PDEO

does not ensure that every child with a disability has an opportunity for non-biased evaluation. Without assessing children's educational needs first, appropriate education is void. Third, PDEO stipulates four types of educational placement for children with disabilities (e.g. "those who can adapt to regular school life and accept general education go to nearby regular schools for compulsory education", Article 20), which is simply for convenience on the basis of children's abilities and school resources. This is not consistent with the non-discriminatory principle that purports to have every child receive an appropriate education in the least restrictive environment.

Japan's procedures for the assessment and placement of children with disabilities are detailed and thorough, but they do not conform to the spirit of non-discrimination assessment. From a procedural point of view, according to laws and regulations such as the Implementation Order of SEL of 2007 and the Education Measures for Students in Need of Special Treatment in Education of 1999, the identification, assessment and placement of children with disabilities are the responsibility of the Education Steering Committee of Prefectures and Municipalities. The Committee pays attention to the participation of multi-professionals and parents' representatives to ensure that every child with a disability shall be evaluated.

In South Korea, the assessment and placement rules for children with disabilities follow the principle of non-discrimination assessment. According to its special education law and the enforcement regulations formulated by government at all levels, central government, municipal government and county district government, respectively, set up special education management committees with the participation of various professionals and parents' representatives to coordinate special education matters of government at all levels. For example in Article 14, paragraph 3 of the Special Education Law, it is stipulated:



### **Excerpt 3**

When the care giver or the head of a school at each education level finds infants and students who have or are suspected of having a disability specified by any subparagraph of Article 15 (1), he/she shall request the head of each district office of education or a superintendent of education to diagnose or evaluate them: Provided, That if the head of a school at each education level requests diagnosis or evaluation, he/she shall obtain the prior consent from their care giver.

Each local education department establishes a special education support center that organizes the Committee to undertake specific matters, such as assessment, and officials in charge of the municipal or district education department shall make appropriate education placement and service decisions according to the Committee's review reports.

Similarly, the evaluation and placement procedures for children with disabilities in Taiwan conform to the principle of non-discriminatory evaluation. According to SEA and the Methods for the Identification of Students with Physical and Mental Disabilities and Excellent Endowment, the identification, evaluation and placement of special education students shall be the responsibility of special education student identification and schooling counselling committees, set up by the education administrative departments at county and city levels. The committee has a diverse composition, including professionals and parents' representatives, which, based on various data, evaluates comprehensively and screens the educational needs of children with disabilities, then makes appropriate educational placement and service suggestions. Article 6 explains:

### **Excerpt 8**

Competent authorities at all levels shall recruit scholars, experts, education administrators, school administrators or teachers, parent representatives, professionals, representatives of relevant agencies (institutions) and organizations to handle special education student identification, placement and counseling matters; The methods and autonomous laws governing the handling of identification, placement, counseling matters and operation methods shall be formulated by competent authorities at all levels.

Here again, one notices a gap between two sets of CHR: China/Japan and South Korea/Taiwan. While they all provide some form of evaluation of students with disabilities, it appears that South Korea and Taiwan lay more emphasis on non-discriminatory forms of evaluation (e.g. including different education actors) than the former.

### ***Free Appropriate Public Education***

Free Appropriate Public Education ensures that education is individualized and caters to the unique strengths, needs and preferences of children with disabilities, regardless of their disability status.

In Mainland China, LPPD, CEL and PDEO all stipulate that children with disabilities shall receive a nine-year compulsory state education, but the principle of *appropriate education* is not upheld. The appropriate education of children with disabilities necessitates the provision of comprehensive educational and related services. PDEO does not specify what special and related education services consist of and where, how, when and whom is to provide such services. Such services shall be the key component of a student's IEP, which is at the heart of inclusive education. PDEO recommends that "special education schools or classes shall, when necessary, formulate and implement the IEP" to meet the needs of students with disabilities.

In Japan, SEL specifies that children with disabilities shall be provided with free special needs education and related services. EOSEL (2007) requires that local committees design and implement individualized education support plans (similar to IEPs) for students with disabilities. Although special needs education schools shall implement such plans, general education schools are not required to do so. Most importantly, the traditional practice of placing children with moderate to severe disabilities in segregated special needs education schools or classes renders education appropriate to all students impossible.

In South Korea, ASEPD puts an emphasis on providing appropriate free state education for persons with disabilities between zero and twenty-two years of age. The service contents and requirements are detailed. Every child with disabilities must have an IEP, which shall be carried out by an individualized education support team with five to ten members. Relevant services stipulated in the law include providing necessary materials and equipment for children with disabilities, setting up facilities with accessibility, employing education rehabilitation specialists (such as a physiotherapist and a speech therapist), and providing transfer services from primary school to middle school, from school to society etc.

Similarly, Taiwan emphasizes providing free, appropriate and high-quality education and related services according to the characteristics and needs of children with disabilities. Article 9 from SEA stipulates:

**Excerpt 9**

Governments at all levels shall prepare budgets for special education liberally, which shall not be less than 3% of the budget of the competent education authority in the central government; and not less than 5% of the budget of the education authority in local governments. When

preparing budgets, local governments should give priority to education for physical and mental disabilities. In order to balance the development of local disability education, the central government should subsidize local personnel and business funds to handle disability education as needed.

SEA also states that schools are responsible for designing IEPs covering ten fields to ensure that children with disabilities receive comprehensive services. IEP team members shall include school administrators and teachers as well as professionals in other fields and parents of children with disabilities. IEPs shall be developed within a month from the beginning of the school year and be examined every year. Curriculum adaptation, modification and developmental, remedial and supportive services also need to be delineated.

Although there are signs of Free Appropriate Public Education being provided in the four CHRs, South Korea and Taiwan appear to be more explicitly committed to this principle of inclusive education for children with disabilities.

### ***Least Restrictive Environment***

The principle of a least restrictive environment for the education of children with disabilities is not enacted in laws in Mainland China. PDEO recommends that children with disabilities shall first consider nearby general education schools. However, the Regulation also allows special classes to be set up if children with disabilities are numerous in a school. This can lead to the creation of a segregated environment, running contrary to the principle of inclusive education. Beyond this, children with disabilities in general education schools lack necessary related services and support, so that the environment is restrictive in essence.

When the Basic Act for Persons with Disabilities was amended in August 2011, a provision was added stating that “necessary and reasonable accommodation shall be made” to remove social barriers” (Article 4). However Japan still gives priority to segregated special education. According to SEL, particular special needs education schools are for students with particular types of disabilities. In addition, Japan also stipulates that all children with disabilities shall be provided with ability-appropriate education. This requirement implies that children are allocated to, instead of being entitled to, educational opportunities and environments based on their ability. It implies the education of children with disabilities in a special educational environment.

South Korea and Taiwan have clearly affirmed the least restrictive environment principle in their special education laws and regulations. In South Korea, ASEPD stipulates that children with disabilities are not restricted by the type and severity of disabilities, and should receive appropriate education in general education schools. In Article 22, paragraph 1, it is also stated that

**Excerpt 10**

The head of a school at each education level shall organize an individualized education support team consisting of care givers, special education teachers, regular education teachers, teachers in charge of education for future career and vocation, and persons in charge of special education-related services, etc. in order to provide the education suitable for the educational needs of persons eligible for special education.

In a similar vein, Taiwan mentions in SEA that special education and related services and facilities shall conform to the standards of adaptability, accessibility and inclusion. Its law fully supports inclusive education.

### ***Due Process***

Compared with its 1994 version, the newly revised PDEO in Mainland China gives parents and children a right to appeal. PDEO stipulates that parents can apply to the education department at the county level when they have a dispute over enrolment and transferring to other schools. This change has enhanced the procedural safeguards for parents of children with disabilities. Article 21 details the mediating role of the Disability Education Expert Committee at county level:

#### **Excerpt 11**

The education administrative department of the county-level people's government that receives the application shall entrust the Disability Education Expert Committee to evaluate the physical condition, ability to receive education and adaptability to school life of disabled children and adolescents, and put forward suggestions for enrollment and transfer.

In Japan, if parents disagree with any decisions made by committees on school placements of their children, they have the right to appeal via EOSEL. Although parents have the right to appeal education placements, the final placement is still dominated by special needs education schools that cannot guarantee children's right to inclusive education.

South Korea stipulates that if students with disabilities, their parents or headmasters disagree with evaluation results or decisions on services and placement, they have the right to appeal to a local or national special education committee. The education department in charge shall make a new decision within 30 days. If they are not satisfied with the result, the applicant can appeal again within 60 days.

SEA in Taiwan also states that if parents have disputes over assessments, placements and other related issues, they can appeal to the committee. The committee will review and make relevant suggestions according to the needs of parents.

For this aspect of the Core Inclusive Education Principles the four Regions appear to fair similarly, although practices might vary across and within these Regions.

### ***Parental and Student Participation***

For this last aspect of the Core Inclusive Education Principles, PDEO in Mainland China shows a relatively weak principle of parents' and students' participation. It only states that parents or guardians can give their opinions in the process of drawing up IEPs for children with disabilities when necessary. According to SEL and relevant administrative orders, Japan provides protection of parents' and students' rights to know and make decisions about education, valuing the importance of parents' and students' participation in educational decision-making. Similarly, both South Korea and Taiwan encourage parents and children with disabilities to participate in making their education decisions. According to SEA, parents in Taiwan show different degrees of participation. For instance, parent representatives are required to participate in child identification and placement committees set up by the authorities at all levels. At the level of school management, the school parent committee shall invite parents of children with disabilities to serve as members. In the process of identification of impairment of children's physical and mental disabilities, placement meetings, IEPs and other key occasions, parents shall have the right to take part in and make decisions. Parents also have the rights to invite specialists to attend. Thus, parents and students have the right to have their voice heard in their children's education decisions.

### **Discussion and Conclusion**

This paper examined the legislations of four CHR's about inclusive practices in education, using the IDEA as a template to compare and contrast them.

The analysis shows first and foremost that examining regions that are said to share a common cultural heritage ('Confucianism') does require treading with caution. The analysis confirms that treating CHR's as a 'Confucian' monolith, that would perceive, understand and deal with disabilities the same way, in a globalised world with multiple influences and interactions, especially in policy and education, is problematic (Park, 2011). Our analysis demonstrates that the status of legislation on the education of children with disabilities has developed somehow in different ways in the CHR's and that, considering the complexities of Confucianism over the centuries – and its multifaceted interpretations in the 'West' and Confucian Heritage Regions – it is difficult to tell if it has any influence at all in terms of Legislations. Our message to colleagues and educators working on and with so-called Confucian heritage individuals and/or contexts, is to unthink and rethink these aspects in order to avoid falling into the trap of essentialism and culturalism – reducing billions of people to a single worldview and using a one-sided and 'exclusive' explanatory system (Cheng, 2007). The importance of global, financial and political elements should not be undermined.

The use of the six fundamental legal principles as a template to examine the four contexts was rewarding in identifying the specificities, overlaps and gaps of local legislations but also to see how and if these are in line with more global contexts. While some Regions were clearly influenced by the US and international organisations (cases of South Korea, Taiwan – marginally: Japan), others appear to deal with inclusive education in a quieter way if one examines their legislation through the lens of IDEA. There are signs, however, that they have developed/are developing alternative ways of thinking about inclusive education.



Practical implications for practitioners and/or policy-makers are drawn here from the results :

1. Mainland China does not seem to be so clear and/or (maybe) consistent about inclusive education. This might relate to her entering the realm of inclusion much later than these Regions. In their article comparing Chinese and South Korean Inclusive education provision, based on historical perspectives – amongst others – Kim et al. (2019) remind us that American missionaries first ‘exported’ the idea of special education into Korea in the late 1800s and that the Special Education Promotion Act was already enacted in 1978. On the contrary, missionaries to China never really had a clear influence on the inclusion of children with disabilities in education and it took almost 10 years later than South Korea to provide for inclusive education in the 1986 Compulsory Education Law. An awareness of such (past and present) influences (or lack of) are primordial in examining inclusive education in different contexts.
2. When comparing and contrasting different economies, we also recommend paying attention to e.g. the language that is used in legislation (*how things are named*). The IDEA is derived from the American context and may orientate our analytical lens linguistically, making us ignore the use of local keywords and the potential varying connotations of terms. This might hide from our view particular ‘localized’ aspects of inclusion. For example the aspect of ‘appropriateness’ in the Principle of Free Appropriate Public Education was absent in e.g. Chinese Legislation. However, can we assume that such a fluid notion is understood and ‘stated’ the same in different socio-political contexts?
3. Reviewing and examining policies only, without looking into local implementations are not enough to get a real sense of the regions’ achievements. For example, although South Korea and Taiwan added learning disabilities as a special education category, modeled after the

IDEA (and EAFHC), few children with learning disabilities received services under this category until recently (Reynolds & Fletcher-Janzen, 2002). As such, one could argue that the presence of disability categories does not necessarily illustrate the current state of special education practice. ‘Pedagogical visits’ to the different CHRs which could allow conversations with practitioners, scholars and decision-makers locally could help unveil such contradictions and learn from them.

To conclude, despite their cultural, political and socioeconomic similarities and differences, the four regions unanimously emphasize inclusion as the future direction of serving children with disabilities. They all appear to have the basis to exchange varying and similar theories and practices on education legislation for children with disabilities, so as to better promote the development of inclusive education.

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