

Research Report on  
the Right to Education  
**for**  
Transgender People  
in China  
— **Key Findings** —



# Forewords

The right to education is a fundamental right of citizens in all countries. Educational institutions play an essential role in shaping the attitudes of individuals and society. At the same time, education is a vital basis for all individuals to obtain social opportunities and resources.

In China, the right to education and quality education for trans people and the right to be respected in the learning environment still lack comprehensive and effective protection. Therefore, it is a vital human rights issue to effectively address the challenges faced by transgender people, especially transgender children and adolescents, in terms of provision of equal protection of their right to education in law and practice.

The Research Report on the Right to Education for Transgender People in China provides an important foundation for the explicit and specific integration of the right to education of trans people into the protection framework of Chinese laws and policies. The cases that this report collects through field research indicate the practical challenges that transgender people face in the full enjoyment of the right to education. The report also highlights a detailed analysis of the state obligations under the international law on the right to education, and the corresponding laws, regulations or policy measures in China. Based on thorough research and analysis, the report provides specific recommendations and good practice for the stakeholders in all areas of responsibility, including education departments and school authorities in enhancing the protection of the right to education for transgender people.

Trans people, especially transgender children and adolescents, are a very complex group of people that are easily marginalized and most vulnerable to discrimination. Transgender people's vulnerability and specific needs in the enjoyment of the right to education should be carefully assessed and protected. At present, China is in the process of revising the Law on Protection of Minors and should take this opportunity to explicitly incorporate the right to education of transgender minors into the protection framework of the law.

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# Chapter 1

## Introduction

### 1) Basic Concepts and Significance of Subject

#### ① Gender and gender identity

Gender can be divided into six different categories: genetic gender, chromosomal gender, gonadal gender, genital gender, sex, and gender. Among them, genetic gender, chromosomal gender, gonadal gender, and genital gender can be collectively called “sex”, which are inherent, biological or physiological gender. Gender, distinguished from the “physical gender” marked by human’s biological characteristics, refers to the social identity and expectations constructed by society and culture. In society, a person’s gender expression is the key element of how that person’s gender is recognized. For example, traits traditionally cited as masculinity includes: rationality, determination, courage, strength, etc. And sensibility, softness, vulnerability, and sensitivity are considered as the traits of femininity.

Gender identity is an inherent identity that refers to a person self-perception of being a man, a woman, or a third gender person. Gender identity, that is, personal conception of oneself as male or female, it refers to a person who believes in which gender role he or she or they (i.e. a pronoun preferred by gender-non-conforming people) should be in the society and expects that this gender role can be respected by the others. Gender identity is the core construction and character of a person's “self-cognition”. Studies have shown that one’s gender identity or psychological gender is formed under the combined conditions of gene regulation, genetic factors, and family education and role identification, however, no research has confirmed which of these factors plays a decisive role.

#### ② Transgender Identify

Transgender is an umbrella term for persons whose gender identity does not conform to that typically associated with the sex to which they were assigned at birth, or whose gender expression or behavior differ from the social norms that assigned the gender. “Trans” is sometimes used as shorthand for “transgender”. How to define transgender from the medical perspective affects the perception and social attitudes towards transgender people. Transgender has long been considered as a mental illness. With the increasing awareness and understanding of transgender, people start to question whether transgender should be classified as a mental disorder. In 2013, the American Psychiatric Association published the fifth edition of DSM, in which

“Gender Identity Disorder” was replaced by “Gender Dysphoria”. The American Association believes that this replacement can contribute to reducing the stigma and discrimination against transgender patients. In June 2018, the World Health Organization announced the completion of ICD-11 (International Classification of Diseases-11) and released an official version online. A major change in ICD-11 is the move of “Gender Incongruence” from the Mental Health Chapter to a newly created chapter of Sexual Health<sup>1</sup>, and all categories related to transgender identity have been removed from ICD’s Mental and Behavioral section. This means WHO no longer considers people identifying as transgender or gender-non-confirming people have mental disorders. The new ICD version will be finalized at the World Health Assembly in May 2019 and will into force on the 1st January 2022, and will be used by various member states.

### ③ Transgender Identity in Chinese Context

In China, transgender identity is still considered a mental illness. The 3rd version of the Chinese Classification of Mental Disorders (CCMD-3) categories “Gender Identity Disorder” under the concept of mental disorders. At the same time, the CCMD-3 also lists “Sexual Orientation Disturbance” as a mental disorder category, which means that those who were “in conflict with” their sexual orientation has a mental disorder.

Based on the CCMD-3, the current regulations regarding gender affirmation surgery require psychiatric or psychological treatment for at least one year in order to apply for sex reassignment surgeries, resulting in unwanted “conversion therapy” being imposed on transgender people. A 2017 survey report on transgender people’s issues released by Beijing LGBT Center reveals that 11.9% out of 1,640 transgender respondents had been coerced to receive “conversion therapy” by their parents or guardians.

In terms of legal gender recognition, transgender people have the right to access sex reassignment surgery (available only to people over twenty years of age), and to change their gender marker on identity documents including citizenship ID cards and household registrations in China after undergoing surgery.

It is estimated that there are between 1000 to 2000 people in Mainland China have undergone sex reassignment surgery, and approximately between 100,000 and 400,000 people are considering to do this operation.

### ④ Transgender People’s Right to Education

Transgender people is one of the most marginalized and vulnerable group of people in society. Transgender individuals are easier to be targeted when it comes to discrimination and violence, because of their gender expression. In terms of the right to education, when transgender persons expose their gender identity in an unfriendly school environment, they are more likely to subject to various forms of violations, such as discrimination, school violence and bullying, unequal treatments, and inequality of opportunities in the campus.

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<sup>1</sup> Sexual Health chapter is created for ICD 11 to give place to conditions related to sexual health but do not necessarily fit to the other chapters in ICD.

Education plays a vital role in shaping successful people. Society as a whole also benefits as a result of education. The right to education, in short term, means everyone has the opportunity and freedom to access to education and related treatment and protection. The right to education is a basic human right and an indispensable means of realizing other human rights. The citizens' enjoyment of a wide range of civil and political rights, such as freedom of information, freedom of expression, freedom of opportunity and association, voting and election or equal access to public services, cannot be realized without the fulfillment of their right to education. The economic, social and cultural rights can only be realized after receiving the minimum level of education.

The right to education is a fundamental human right. No matter which gender of the school-age children, they have the rights to receive education at education institutions. Education institutions (schools) are the only important places for the growth and development of minors other than the family. The school environment, condition, and design of school facilities, educational materials, and teachers, all these factors, whether inclusive or not, play equally important and interrelated roles in the adolescents' gender identity formation, gender awareness, and gender conception.

## **2) Research method**

### **① Document analysis**

The research report employed the methodology of legal document analysis. It collected, combed and analyzed all Chinese legislation and public policies, arbitration awards, and court decisions concerning the legal recognition of transgender gender identity and issues of the right to education, as well as international conventions, extraterritorial laws, and jurisprudence regarding the right to education for transgender persons. Meanwhile, the research also compiled and analyzed a large number of domestic and foreign scholars' research on the protection of transgender rights in the school environment. Based on the analysis and understanding of the mentioned laws, policies and research, the report summarizes the responsibilities of each stakeholder in the protection of transgender people's right to education.

### **② Comparative study**

This report compares and analyzes relevant Chinese and foreign legal systems, judicial precedents, and protection mechanisms. Based on the initial research results and the information collected in the field study, it compares the legislation and policies from various jurisdictions in terms of protection of transgender people's right to education, and comes up with recommendations for countermeasures.



### ③ Focus group interview

This report uses focus group interview as the main research method, the locations chosen for the focus group discussion include Guangzhou, Wuhan, Shanghai, Beijing, and Shenyang. The sampling sites selected for the field visiting because they are situated in the southern, central, and northern part of China, with better development levels in terms of economics and social inclusion, and also because they are cities occupied with densely and diverse population, and a large number of migrants, thus attract a lot of transgender people living in these places. Though this study only chose five cities for the fieldwork, interviewees participated in the focus group discussion come from the places included but not limited to Guangzhou, Wuhan, Shanghai, Beijing, Shenyang, Nanchang, Chengdu these big cities, and also covered some small and medium-sized cities, such as Kaiyuan, Benxi and Xiangtan.

The field study was taking place during the period from April to June 2018. A total of 32 transgender people participated in group discussion and interviews. Among the participants, two were self-identified female-to-male transgender, three self-identified as third gender or gender-non-conforming persons, and the rest twenty-seven were individuals who identified themselves as male-to-female transgender persons. Among all the 32 participants, the youngest one is 16 years' old who is now studying in high school and the eldest is 40-years-old. The minimum level of education received by the interviewees is a primary school, and the highest degree is a master's degree. It is important to highlight that, among all the participants, 8 people are still in school when they were interviewed, and that include 3 high school students, 4 undergraduates, and 1 postgraduate.

People participated in the focus group research in an anonymous and voluntary manner. All participants registered through the Internet or WeChat platform and then attend in the face-to-face discussion on the field sites they chose. Each interview lasts for approximately 90 minutes to 4 hours, with an average of 5-8 attendees per interview. At the beginning of each focus group story, the researcher briefly introduced the purpose and guideline of the focus group discussion and assisted the interviewees to introduce themselves to each other. Then the researcher proposed some questions to warm up the discussion such as "How were your feelings in school and what did you experience? Is the school a good place for your education?", "What are some of the positive aspects of studying on that schools or universities?". During the discussion, the researcher asked questions based on the feedback at the time and facilitated the interviewees to share their personal experiences in school in an objective and detailed way.

Based on the information collected from these interviews in the field, we learn more about the environment faced by transgender people during all their entire education process, we learn about their psychological changes from childhood to adult, and the prejudice and indifference they suffered in the family and education institutions, and etc. Therefore, through this research report, we advocate strengthening of the protection for the right to education of transgender people in terms of law and education system.

### **3) Research objectives**

The goal of this report is to objectively present the current situation of the right to education for transgender people in China through the data and information collected in the field. Through the analysis and dissection of these data, we learn more about the real life situation experienced by transgender people, and the existing laws and policies on the protection of education right of trans people in China. The laws and policies assessed in this report include legislation and policies that explicitly regulate and guarantee the right to education, gender identity and protection of human rights. This report considers relevant legal norms and other official documents, including specific legal and policy provisions and accompanying implementation regulations, administrative rulings, judicial decisions, evidence proving that existing laws and policies are flawed, and their cumulative impacts on the access of equal education for trans individuals in China.

The objective of this report is to clarify the absence of specific laws or regulations protecting transgender people's right in the field of education and to inform the reform of existing laws and policies, to call for the improvement of the management policy of educational institutions, thus to improve the quality of educators, and to improve the education environment for transgender people. Therefore, the report seeks to comprehensively improve the living environment of transgender people and encourage the development of an education environment and society that is equal, acceptable, respectful, understanding and diverse.

# Chapter 2

## Domestic Legal Protection for Transgender People's Right to Education

The right to education is a fundamental human right, also it is a fundamental right of citizens which is explicitly enshrined in the *Constitution of the People's Republic of China*. The right to education is especially important for transgender people, a group of people who are usually misunderstood and not accepted by society and the family, and suffer from social stigma and unfair treatments. The full enjoyment of the right to education articulated in international human rights covenants can benefit transgender people, such as enhance their capacity and skills, and escape poverty, and enable them with a free mind to be able to think freely, and contribute to expand their participation in social life, thus have a more enjoyable life.

### 1) China's Legal Framework on Ensuring the Right to Education for Transgender Persons

The international conventions ratified by China articulate the right to education. China as a signatory has the obligation to convert these international conventions into domestic legislation, and to fulfill its obligations to protect the right to education enshrined in the international conventions. At the same time, China's domestic law guarantees the right to education enshrined in the *Constitution of China*. The right to education is also clearly set out in the laws, such as *Law of the People's Republic of China on Education*, the *Compulsory Education Law of the People's Republic of China*, the *Higher Education Law*, the *Vocation Education Law*, and the *Teachers Law*. Besides, the protection of education right is supplemented by the *Law on the Protection of Minors*, the *Law on the Protection of Rights and Interests of Women*, the *Implementation Rules for the Compulsory Education Law of the People's Republic of China* and the *Provisions on Preventing and Administering School Bullying in Tianjin*, and etc. these laws, administrative regulations and local regulations also provide the supplements to protect the right to education for all the citizens.

There are no specific provisions on the right to education for transgender in the existing laws of China, though the general provisions on the right to education can apply to transgender people.

#### ① The Constitution

Article 46 of the *Constitution of China* clearly stipulates that citizens have the right to education. Article 33 stipulates that citizens are equal in the law and that the state respects and protects human rights.

## ② Laws and regulations

i. Article 9 of the *Education Law of the People's Republic of China* articulates the right to education of citizens and clarifies that citizens have equal right to access to education in accordance with the law. The fifth chapter lists the relevant rights had by the education receivers: First, participating in different activities conducted in accordance with educational program or teaching/learning syllabus; using educational or teaching/learning facilities, equipment or books and materials; Second, obtaining scholarship, loan for education and stipend according to relevant state regulations Third, obtaining fair assessment in terms of academic achievements and behavior; being conferred correspondent credentials of learning and academic degree upon fulfillment of prescribed school work; Fourth, bringing a complaint with relevant department in case of refusal to accept a disciplinary action of the school; bringing a complaint or a suit according to law if the right of personal safety or property has been infringed upon by the school or the teacher; Fifth, other rights and interests as are provided for by law and regulations.

ii. Both the *Education Law of the People's Republic of China* and the *Law of the People's Republic of China on the Protection of Minors* stipulate the right to access to compulsory education for minors and the obligations of the state, society, schools, and families to provide education to minors.

iii. The *Law of the People's Republic of China on Vocational Education*, the *Higher Education Law of the People's Republic of China*, and the *Law of the People's Republic of China on Private Education* all articulate that citizens enjoy the right to education at the non-compulsory education stage. The *Teachers Law of the People's Republic of China* and the *Implementation Rules for the Compulsory Education Law of the People's Republic of China* set out the obligation of teachers to provide care for all students, respect the personality of students, and promote students' comprehensive development in terms of morality, intelligence, and physique, forbid the corporal punishment or other acts that insult human dignity.

iv. The *Education Law of the People's Republic of China*, the *Compulsory Education Law of the People's Republic of China* and the *Implementation Rules for the Compulsory Education Law of the People's Republic of China* clearly stipulate the provision of protection, funding and create conditions to women, families with economic difficulties, ethnic minorities, persons with disabilities and those minors commit crimes to access to education.

## 2) Advantages and Defects of China's Legal Protection for Transgender People's Right to Education

In comparison with the international conventions and related international documents ratified by China, we can find the advantages, characteristics, and shortcomings in China's laws and regulations in terms of the protection of the right to education for transgender people.

## ① **Insufficient Explicit Protection for Transgender Individuals In Spite of the Emphasis on the Universality of the Right to Education for All**

Both the international conventions ratified by China and the legislation in China emphasize the principle of universality and equality of the right to education. In China, there has formed a relatively complete multi-level legal framework for guaranteeing the equal rights of citizens to education.

From the above analysis of the international conventions ratified by China, we can see that the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention on the Elimination of all Form of Discrimination Against Women* have made detailed provisions on the right to education. Although the conventions themselves do not explicitly put forward the right to education for transgender people, the universality of human rights is reflected in the convention's articulation of the right to education. For example, the *International Covenant on Economic, Social and Cultural Rights* emphasizes that "everyone has the right to education". The *Convention on the Rights of the Child* repeatedly emphasizes the right to education for "everyone" and "all children". Transgender is naturally included in these instruments. In the general recommendation No. 28 of the Committee on the Elimination of Discrimination against Women the principle of "equality between men and women" or "gender equality" is defined as that all human beings, regardless of their gender, have the freedom to develop their abilities, engage in their profession and make free choices, and are not subject to any stereotypes, rigid gender roles and prejudices. As can be seen from this definition, the concept of gender equality in the *Convention on the Elimination of all Form of Discrimination Against Women* de facto covers the protection of equality between men and women and the protection of sex and gender minorities from arbitrary, unfair and/or unfair treatment.

In term of the domestic legislation in China, the right to education is a fundamental right of Chinese citizens protected by the *Constitution of China*. In order to improve the national education level, China has formulated a nine-year compulsory education policy and enacted the *Education Law of the People's Republic of China* and the *Compulsory Education Law of the People's Republic of China*. Universality of the right to education and the concept of equality are embodied in these laws, as they stipulate that citizens in China, regardless of gender, race, ethnicity, economic, social and political statues, etc. equally enjoy the right without distinction, and all the children of compulsory school age have the right to education and access to education facilities and activities, and the state, society, government, schools, parents and other guardians are obliged to respect, protect and fulfill the minors' right to education, and every citizen has the right to receive non-compulsory education such as vocational education and higher education in accordance with the Chinese law.

China's laws on the protection of the right to education is established under the concept of equality. They not only expressively impose that citizens have the right to education on an equal footing, but also emphasize and provide special protect to some vulnerable groups such as women, the disabled, and ethnic minorities. However, the relevant laws and regulations do not explicitly mention the equal right to education of sex and

gender minorities. And that China's legal policies are created based on the binary gender framework, also transgender people have been suffering from misunderstanding and discrimination for a long time. Therefore, despite the universal right to education articulated in legal policy includes protection for transgender people, there are still many obstacles to the exercise and realization of the right to education for transgender people, what's more, their rights are often impeded and there is barely fair and timely redress for those violations. To address these issues, it is necessary to provide inclusive and explicit protection for transgender people on their right to education in laws and regulations. The state, the society and schools are obliged to provide each individual, regardless of gender identity and gender expression, with the equal opportunities of accessing education, friendly and inclusive school environment, and fair treatments.

## ② The Lack of Provisions on Gender Equality Education

China's existing laws and policies play more emphasis on universal compulsory education and equal access to education. There is no explicit stipulation in the laws that requests to include diverse gender equality in education.

In term of the domestic legislation in China, the right to education is a fundamental right of its citizens protected by the Constitution of China. In order to improve population education, China has issued a nine-year compulsory education policy and enacted the Education Law of the People's Republic of China and the Compulsory Education Law of the People's Republic of China. The universality of the right to education embodies the concept of equality behind it, all citizens in China, regardless of gender, ethnicity, economic conditions, and political appearance, etc. equally enjoy the right without distinction. China's law also stipulates that all the children of compulsory school age have the right to education and access to education facilities and activities, and the state, society, government, schools, parents and other guardians are obliged to respect, protect and fulfill the minors' right to education. And every citizen has the right to receive non-compulsory education such as vocational education and higher education in accordance with the Chinese law.

## ③ Insufficient Legal Provisions Underlining the Availability and Adaptability of Education

It would be a long journey for transgender people to be fully recognized and accepted by the whole society. During this period of time, transgender students have been inevitably suffering from various kinds of discrimination and other unfair treatment in the process of receiving an education. The government and the school must not only guarantee that transgender minors and students are treated equally but also guarantee the availability and adaptability of education, thus to ensure that transgender people can enjoy the educational resources in a safe, equal and comfortable manner. For example, the duty bearers should ensure that reasonable accommodation, bathroom and convenience are provided to transgender people based on

their needs and status. However, there are no legislative regulations in this area in China yet and there is still a gap to make education available, accessible, acceptable and adaptable, the 4-As standards that set out in the general recommendation No. 13 of the International Covenant on Economic, Social and Cultural Rights.

# **Chapter 3**

## **The Issues and Challenges Faced by Chinese Transgender Populations in Terms of Fully Enjoyment of the Right to Education and The Relevant Recommendations**

The right to education is the basic right of citizens, which covers the right of equal access to education and educational resources, the right of personal dignity not to be violated in education, and the right to receive a nationally recognized certificate upon completion of education. In fact, the right to education is deeply associated with the “the right to survival and development” and “the right to personal dignity”. Only when citizens receive education equally and successfully, and learn all aspects of science, culture and labor skills, etc., their ability to survive and develop in a society will be improved. Moreover, education builds the foundation for the development of one’s personal dignity and self-respect, through education, people are imparted with the necessary working skills, the ability of logical thinking and rational analyzing. In this society which respects knowledge, a person’s right to education being violated means one’s personal dignity is not well protected.

However, due to the absence of inclusive laws and policies in China, and the gender prejudice of educators and peer students, the rights of transgender students are not well protected during the education process. The obstacles and problems faced by transgender people in the realization of their right to education are mainly reflected in the following aspects:

### **1) Equal Opportunities to Access Education**

The term "equal educational opportunities" mainly refers to that educational institutions at all levels shall ensure equal treatment of students in the aspects of admission, interview, enrollment, curriculum arrangement, academic evaluation, reward and punishment, suspension, dropout, graduation, and etc. There should not be any unreasonable and discriminative treatments towards students on the basis of their gender identity, gender expression, and sexual orientation.



## ① The Possibility of Transgender Individuals Being Rejected by Universities

Since China implements compulsory education policies at the primary and secondary levels, the right of transgender people to equal access to school is largely protected at these levels of education. However, there exists a high possibility that transgender people being refused to admit in private schools and graduate schools because of their gender expression.

In the cases where the students are examined by “written exam + interview” in the process of admission, the result of the written exam is relatively objective but the recruiters’ personal preference often affects the interview results. The school recruiters can't be released from the suspicion of gender discrimination if they don't have a good understanding of gender concept or can't make objective and neutral evaluations of transgender people. The gender binary or stereotyped gender impression of the school interviewers are likely to affect the interview results of transgender students and lead to the failure of their admission. For the transgender people who have not undergone the sex reassignment surgery but had been receiving hormone treatments, because their gender marker on ID cards and admission information are inconsistent with their gender expression, thus it may increase the possibility of rejection from the admission to the graduate schools.

## ② Situation of Transgender People Being Suspended or Expelled from Schools

According to a NGO survey report in China, some of the transgender students have been asked to drop out of school or suspend their studies by the school authorities or their parents, and some of them themselves have considered dropping out or suspending their studies. After further analysis of the data in the report, it was found that, comparing to transgender men, transgender women interviewees, in general, face more difficulties to complete their education degree. Similarly, transgender men have relatively higher education backgrounds and levels than the transgender women.

There are four main reasons for transgender people to suspend and quit school:

- i. The suspension or expulsion from school as a direct result of the student’s gender expression. In practice, it is a rare case for this type of direct discrimination. And in our fieldwork interviews, no one reported to has this kind of experience.
- ii. The schools make disciplinary decision like suspension or discourage transgender students from attending school because of their wrongdoings that violate school code of conduct such as fighting, smoking, drinking

and etc. Due to the unfriendly social, school or family environment, transgender minors and students are likely to suffer from severe depression, which might trigger them to involve in inappropriate behaviors and wrongdoings, such as fighting, smoking, drinking and even violent actions. In our interviews, some participants reported that they had been in conflict with the bullies after being bullied, although they were not suspended or forced to quit school, they were disciplined together with the bullies by the school authorities as a punishment for the misconducts.

iii. Transgender students voluntarily ask for suspension or drop out of school because of school bullying and violence, or the extremely unfriendly campus environment. For example, a transgender woman in the focus group interview carried out in Shanghai reported that she had been repeatedly experiencing school bullying and violence, worse still she received limited support and helps from the educators in the face of school bullying, and that led to the tremendous physical and mental abuse and also made her unable to concentrate on studying, eventually she was forced to choose to “take a break” from school to avoid the exposure to this unfriendly school environment and bully. Another transgender woman interviewee who attended the focus group discussion in Beijing said that she couldn’t complete secondary school education for the reason that she had been mocked and humiliated by her classmates and even teachers on the basis of her gender expression, and also because of the misunderstanding and absence of support from her family, as a result, she started to hate studying and then quitted school. In addition to these two cases, two other interviewees also indicated that they had considered dropping out from school because of the unfriendly environment and treatments.

iv. Imperfections in education-related policies, such as restrictions on the revision of academic qualifications and academic credentials, which has made some transgender students nothing to choose, and can only reduce their investment in education costs by taking the initiative to suspend or drop out of school. (See section 5 of this chapter, “Modification of Gender Marks in Student Status, Education Certificates, and Professional Qualification Certificates”).

The phenomenon of transgender students being suspended or expelled from school is more often seen in the junior and senior high school, where the students are minors and the school has more control over the students, especially in high schools. Because high schools are not in the nine-year compulsory education system, they have the right to expel students. However, the school’s practice is often to persuade the student to withdraw from school. The author has reviewed the regulations of several local high schools, and observed that the conditions for expelling a student from school can be summed up as: violation of criminal laws; repeatedly denying the school rules; accumulated absenteeism reaching a certain length of time; seriously disturbing social order. Although the general school rules do not explicitly discriminate against transgender students, if the transgender students do not wear school uniforms that are attached to their biological gender, do not obey the school’s arrangements for the dormitory and afraid to go to class because of bullying, all these behaviors can be counted as satisfying the condition for expelling.

It is the same as denied admission for transgender students, transgender students who are suspended and expelled are also deprived of education opportunities. After admitting a student to a school, the school is obliged to provide and create a friendly campus environment for the student to protect the student's rights to be respected in the study environment. The school should respect every student, regardless of the student's gender and gender expression. At the same time, the school should respect the integrity of all students' participation in school life.

### ③ Legal policy regulation in China

i. Article 9 of China's "Education Law" stipulates: "Citizens of the People's Republic of China have the right and obligation to receive education. Citizens have equal access to education regardless of ethnic, ethnicity, gender, occupation, property status and religious, etc.". Article 43 stipulates: "Educatee shall have the following rights: (1) to participate in various activities arranged in the education and teaching plans and to use educational and teaching facilities, equipment, books and materials; (2) to obtain scholarships, student loan and financial help in accordance with relevant state regulations. (3) to obtain a fair evaluation on study result and behavior, obtain the corresponding academic certificate and degree certificate after completing the prescribed academic work; (4) to appeal to the relevant departments about dissatisfaction with the punishment given by the school, and to lodge a complaint or take judicial proceeding according to the law in case of the school or teacher infringe on the personal rights and property rights; (5) other rights as stipulated by laws and regulations.

ii. Article 4 of the "Compulsory Education Law" stipulates: "Children and adolescents of the right age who have the nationality of the People's Republic of China shall have the right to accept compulsory education on an equal basis, regardless of gender, ethnic, ethnicity, family property status or religious, and the obligation to receive compulsory education."

iii. Article 3 of the "Law on the Protection of Minors" stipulates: "Minors have the right to life, development, protection and participation, etc. The state gives special and priority protection according to the characteristics of the physical and mental development of minors and protects minors that their legal rights and interests are not violated. Minors enjoy the right to education, and the state, society, schools and families respect and protect the right to education of minors. Minors regardless of gender, ethnic, ethnicity, family property status, religious, etc., have the rights equally according to law." Article 18 stipulates: "Schools should respect the right of minor students to education, take care and love students, and students who have shortcomings in character and have difficulties in study should be patiently educated, helped, and must not be discriminated, it must not drop out minor student in violation of laws and state regulations."

The legal provisions mentioned above on the right to equal access to education can undoubtedly serve as a basis for ensuring equal opportunity of education for transgender people. However, we also found that there

is no clear provision for the equality in education in the “Higher Education Law” of China. Although the first paragraph of Article 37 of the “Education Law” stipulates that “the educatee has equal rights in accordance with the law in terms of enrollment, further studies and employment, etc.”, the second paragraph of the article immediately emphasizes that “schools and relevant administrative departments shall follow the relevant regulations of the state to guarantee women's equal rights in terms of enrollment, further studies, employment, degree conferment and study abroad.” It can be seen that China's current law is still based on the gender duality framework, it is emphasizing equality between men and women and guaranteeing equal rights for women and men, it is still lack the concept of multiple genders and paying attention to transgender student rights. The specific policy aspects of gender equality in college enrollment are similar, for example, in 2006, the Ministry of Education clearly stated in its “Regulations on Enrollment of Ordinary Colleges and Universities” that “the higher education institutions cannot stipulate the proportion in the admission of boys and girls without the approval of the Ministry of Education”, which shows that it also emphasizes equality between men and women.

It is suable as a basic right, if a university explicitly makes a decision to treat “male and female gender” differently in the recruitment, the person involved can put the university as a defendant to start an administrative law suit to defend his or her rights. However, since the object of protection under the law and policy is “male and female”, which means this provision does not include transgender people as protection objects. And, when a college makes a non-admission decision, it generally does not claim that “refuses to enroll because the student is transgender”, but for other reasons such as “not enough interview scores” or “academic ability not qualified” and etc., which seem reasonable but are actually covers for the discrimination against transgender people. For such an implicit discrimination, due to that China’s relevant legislations are over-principled, and lack the definition of discrimination, and also because the transfer of burden of proof in cases of discrimination, it is extremely difficult for transgender people to be able to defend their rights once they are rejected by the school.

#### ④ Legal policy suggestion

- i. Drawing on foreign legislative experiences, formulate a special anti-discrimination law which prohibit discrimination based on gender, gender identity, gender expression, and sexual orientation, etc. in work and education, to ensure equal access to education for transgender people.
- ii. Supervise the education administrative department to issue relevant administrative regulations and provide more detailed regulations for educational institutions in recruiting, interviewing, suspending and dropping out of school, and protecting groups including transgender people from discrimination.
- iii. Recommend educational institutions at all levels to understand and implement China's laws and regulations for prohibiting gender discrimination and guarantee equal access to education, and implement

them through rules and regulations to further improve and standardize the schools in terms of enrollment, admission, academic evaluation, rewards and punishments. Specifically include:

- Prohibit the usage of languages or images of gender discrimination in advertisements for the school.
- Except for special regulations of the state, the admission information cannot indicate that only one gender can apply or one gender is preferred, and the gender ratio is specified or the admission requirements for a certain gender group are raised.
- Prohibit the rejection of the application of certain gender group.
- Prohibit the limitation of opportunities of the written exam, interview or second exam for a certain gender group.
- Train the teachers and the admission officers on gender equality and gender issues to ensure fairness in recruitment.
- In the enrollment papers and interviews, only ask for information directly related to academic requirements such as: education level, academic performance and the relevant professional qualifications, etc.
- Offer the equal interview opportunities to candidates who with the conditions for enrollment and ask the same or similar questions to each candidate.
- Formulate interview teams and this interview team members should achieve a gender balance as much as possible.
- The interview team should evaluate each candidate's ability with a uniform standard and verify that they correspond to the standards, and to ensure the fairness of the process and a systematic and fair evaluation of the applicant.
- The interview record should be kept complete for inspection.
- There should be open and fair standards for students' academic evaluation, and student papers should be kept complete for inspection.
- Different gender groups should be treated equally in rewards and punishments, as well as in decisions such as suspend and drop out of school. The relevant regulations, procedures and practices for rewards and punishments should be fair. The expelling decisions should be based on a record of student's bad performance or misconduct.
- Establish a dispute resolution mechanism to address educational inequality issues and ensure that students understand the process.

## 2) School violence and bullying

### ① What is school violence and bullying?

Behaviors which happen on campus, on the way to the school or the way back from the school, during education activities organized by the school, conducted by teachers, classmates or outsiders, in forms of deliberate usage of language, physical strength, and equipment, etc. and achieve certain degree of aggressions against the student on the physical, psychological, reputation and rights are school violence.

Norwegian scholar Dan Olweus defines the school bullying as: a student is exposed to one or more student-led negative behaviors for a long time and repeatedly, and the bullying is not an accidental event but a long-term and multiple incident.

In 1996 the 49th World Health Assembly for the first time raised violence as a public health threat that seriously jeopardized health. Campus violence as a special type of violence is highly likely to cause damage, death, mental injury, developmental disorders or deprivation of rights.

### ② School violence encountered by transgender

Through the case analysis of the focus groups, we conclude that the school violence suffered by the transgender people is mostly in the following forms:

i. Verbal attack (including sarcasm, mock, nickname, contempt, jealousy and insult, etc.)

Guangzhou Focus Group, Participant A (code): "... Someone in the class has been bullied and has been discriminated by the students, and be called a 'sissy'... in Junior high school there is a big rejection for a sissy or a tomboy, 'tomboy or sissy' are also often bullied... junior high school teachers also gave me a nickname and made things difficult for me, the students follow ...".

ii. "Be forced to come out (their sexual orientation and gender identity are told to others without their consent)"

Wuhan Focus Group, Participant B (code), 21 years old, undergraduate student: "... I was very upset at that time and went to psychological counseling in school, and the teacher told the counselor and secretary... Then my parents came and took me home and forced me to take a rest for a month. My father also knew about this."

iii. "Be treated indifferently or deliberately isolated"

Wuhan Focus Group, Participant C (code): "...for them (transgender and homosexual) there are more emotional abuse. You see that they are often activities in a small circle, they have very little communication with others, they are being alienated, they don't play with him, they feel like they are not they same type of people...".

iv. "Be forced to change their look or behave"

Wuhan Focus Group, Participant B (code), 21 years old, biological gender as male, gender identified as female, undergraduate student: "...I usually don't show up differently from other boys, I hide deeply and perform much like a 'very straight man', although I already knew that I was transgender in junior high school, but I became a 'very straight man', so that I wouldn't be bothered by not knowing how to disguise myself..."

v. "Sexual harassment by teachers/classmates (unpleasant or sexual words and behaviors such as dirty jokes and physical touches, etc.)" Even some transgender people are dismissed by the school because of their gender identity.

Guangzhou Focus Group, Participant D (code), 16 years old, biological gender as female, gender identified as male, high school student: "...At that time there was a man in the other class who often came over and asked, 'Are you male or female?', then he touched everywhere of mine, then he asks others and ask the teacher, others tell him that I am a woman, then he said I am a 'tomboy'..."

Some transgender people who are bullied by classmates will make a violent counterattack, and the school considers those incidents as school violence and gives the same punishment to the bully and the bullied. Some of the bullied transgender students have been mocked or dismissed by the teachers for a long time, their mental state has gone from bad to worse and become to depression, and some transgender people who are bullied have been forced to transfer or drop out from school because they cannot endure the unfriendly study environment.

And, none of the respondents indicated that the schools they attended had clear rules for school bullying based on gender identity and gender expression.

### ③ Legal policy regulation in China

China still lacks the special legislation to prevent campus violence and bullying at the national level. However, there are some related regulations in some legal policies, some cities or providences like Tianjin have also issued local regulations.

i. Article 29 of the "Compulsory Education Law of the People's Republic of China" stipulates that teachers should treat students equally in education and teaching, pay attention to individual differences of students, teach students in accordance with their aptitude and promote the full development of students. Teachers should respect the personality of students, must not discriminate against students, and must not impose corporal punishment, disguised corporal punishment or other acts of insulting human dignity on students, and must not infringe on the legitimate rights and interests of students.

ii. Article 5 of the "Law on the Protection of Minors" stipulates: "The following principles shall be followed in protecting the minors: (1) respect the personal dignity of minors; (2) adapt to the rules and characteristics of the physical and mental development of minors; (3) combine education and protection. Article 21 stipulates: "The faculties and staffs of schools, kindergartens and nurseries shall respect the personal dignity of minors and shall not impose corporal punishment, disguised corporal punishment or other insults on the dignity of minors". In addition, Article 6 emphasizes that any organization or individual has the right to dissuade, stop or report to the relevant department for violations of the lawful rights and interests of minors.

iii. Article 8 of the "Teacher Law" requires that teachers should "obey the Constitution, laws and professional ethics to be a good teacher", "care and love all students, respect the personality of students, and promote the comprehensive development of students in terms of morality, intelligence, physically, etc." Stop acts that are harmful to students or other violations of the legitimate rights and interests of students, and criticize and resist the phenomenon that is harmful to the growth of students." Article 37 stipulates that if a teacher "physically punishes a student, does not change his education", "bad behavior, insults students and has a bad influence", "administration or dismissal is given by the school, other educational institution or education administrative department" "If the circumstances are serious and constitute a crime, criminal responsibility shall be investigated according to law."

iv. Article 22 of the "Detailed Rules for the Implementation of the Compulsory Education Law" stipulates: "The implementation of the education and teaching work of compulsory education schools shall be adapted to the needs of the physical and mental development of all students. Schools and teachers shall not impose corporal punishment, disguised corporal punishment or other insults on the students' personal dignity. The children and adolescents who are deficient in behavior and have difficulty in study should be assisted and not be discriminated."

v. Article 38 of the "Tort Law of the People's Republic of China" stipulates: "If a person without civil capacity suffers personal injury during the study in a kindergarten, school or other educational institution, the kindergarten, school or other educational institution shall take the responsibility, but if they can prove that they have fulfilled the education and management responsibilities, they will not be held responsible." Article 39 stipulates: "A person who restrict civil capacity are studying in schools or other educational institutions and



they are physically injured during the study, the schools or other educational institutions have not done their responsibilities for education or management shall be responsible."

vi. In the "Criminal Law of the People's Republic of China", the regulations of the crimes of intentional homicide, intentional assault, serious negligence, insult, forced defamation, robbery, extortion, gathering of people to disturb social order, crime of seeking trouble and illegal detention are also related to some of the behaviors of school violence and school bullying.

vii. The "Ten Guidelines for Professional Behavior of Kindergarten Teachers ", "Ten Guidelines for Professional Behaviors of Primary and Secondary School Teachers " and "Ten Guidelines for Professional Behaviors of College Teachers" (issued on November 8, 2018) from the Ministry of Education require "care and love children. Care for children's health, guarantee their happy growth; prohibit the corporal punishment and disguised punishment of children, no discrimination and insult to children, prohibit to obscene, mistreat and harm the children, "take care and love students. Strict and compassionate, be tireless in teaching, sincerely take care of students, strictly require students, to be students' good teachers and friends; no discrimination, insulting, no abuse or injury to students", "adhere to words and deeds. As a teacher, give the example, behave in a civilized manner, be decent and self-respecting; do not have any improper relationship with students and strictly prohibited to obscene or sexual harassment." For those who have serious abuses students such as mistreatment, defamation and sexual harassment, etc., once they have been verified, they must revoke their honors and titles, recover the relevant bonuses, revoke the qualifications of teachers according to the rules, remove the posts of teachers and out the ranks of teachers, and also enter the informations into the National Teacher Management Information System, no school may appoint this person to engage in teaching, research and management. The suspected illegal crimes shall be promptly transferred to the judicial organizations for handling according to law. It is necessary to strictly implement the main responsibility of the school, establish a mechanism for investigating the teachers' behavior, and to those fail to supervise the violation of teachers' behavior, refuse to dispose of it, delay procrastination or evade dereliction of duty which are caused adverse effects or serious consequences, the authority is seriously strengthen administrative accountability.

viii. "Several Provisions on Preventing and Controlling Campus Bullying in Tianjin" (November 21, 2018), which provides a special and clear definition of "campus bullying", which provides a legal premise for the resolution of school bullying and also reduces the controversy identified by "campus bullying" when dealing with such issues.

ix. The Guangdong Provincial Department of Education and other 13 departments jointly issued the "Implementation Measures for Strengthening the Comprehensive Management of Bullying for Primary and Secondary School Students (Trial)" (November 12, 2018): The administrative department of education may entrust a third-part assessment agencies and experts to schools for the jurisdiction of student bullying

conducts with special investigations and assessments and pays the fees. The school may entrust a third-part evaluation agency and experts to conduct special investigations and assessments on the school's bullying situation. It may entrust the social workers, social psychologists and other professional organizations to provide the case tracking services for primary and secondary school students and their families after the bullying incident and pay the fees.

x. At the end of June 2018, the implementation plans for comprehensive bullying of primary and middle school students in districts such as Dongcheng, Haidian, Fengtai, Shijingshan, Tongzhou and Yanqing in Beijing have been released. Some districts have also announced the prevention and control of bullying in primary and secondary schools in the district. Among them, "establishing a psychological file for students", "If a bullying incident occurs, each school should verbally report to the Education Commission Office, the Municipal Education Commission Office, the Moral Education Department, and the Security Department within 10 minutes, submit detailed writing papers within 2 hours and report anytime about the progress" and other regulations.

xi. Article 7 of the Supreme People's Court's "Interpretation of Several Issues Concerning the Application of Law in the Trial of Personal Injury Compensation Cases": "The schools, kindergartens or other educational institutions that have the obligation to educate, manage and protect minors in accordance with the law, if they fail of performance within the scope of their duties causes the minor to suffer personal injury or the minor causes personal injury to the person, they shall take the responsibilities for compensation corresponding to their fault. If the third part infringes the minor who suffers personal injury, he shall be liable for compensation. If the educational institution has fault, it shall take the corresponding supplementary liability."

#### ④ Legal policy suggestion

In the field of education in China still lack specific legal norms in school violence and bullying prevention. There is a lack of specific legislation at the national level. The existing laws and policies are too principled and they are only directed at teachers' insults, abuses, slander, harassment and discrimination against students, but there is a lack of regulations on school bullying among students. In reality, school bullying cases occur from time to time and transgender students are more likely to become targets of bullying, discrimination and harassment in school. In particular, one of the school violence and bullying incidents is a school faculty member or student, the other is a student, and the student includes a large number of minors, in order to address the particularity of such subjects, it is necessary to make special provisions in educational legislation.

The legislative work of the "Anti-campus bullying law" should start. Aim at raising the whole society's awareness of campus bullying. It clearly defines the propaganda and education obligations of the government, schools and relevant social organizations, and regards the achievements in education and

governance of the government and schools as their exam. The important content of the work assessment of relevant departments in the anti-bully legislation, the definition of the school bullying, the handling procedures and the responsibilities of the relevant personnel must be specific, detailed and operative.

At the same time, the special identity of transgender people makes it easier to become the main object of school bullying. Verbal attacks using nicknames of “tomboy” and “sissy” and the isolation and exclusion in the use of toilets and dormitories in campus happens all the time. Only by specifically include transgender people in protecting objects can effectively eliminate school bullying and school violence, so that transgender people can have weapons that truly protect their rights and interests.

The “Anti-campus bullying law” legislation should clarify the school's duties and responsibilities and notification system for school bullying, discrimination and harassment. School staff should not forge, alter, annihilate or conceal evidence of school bullying or sexual harassment. Schools should be obliged to actively promote school bullying and harassment prevention education to enhance the faculty and staff's respect for others and their own sexual or physical autonomy, regularly hold educational advocacy activities on campus bullying prevention and control every year and evaluate their effectiveness in implementation; Inform the regulations on the prevention and control of bullying, discrimination, and harassment in the school, and add it into the faculty employment's contract and student's handbook; Encourage the victims or prosecutors of the school bullying or harassment to apply for investigation or report as soon as possible in order to facilitate the investigation.

Legislation should also provide privacy protection and psychological counseling. In order to avoid secondary harm to the victim, the law demands special emphasis on avoiding repeated inquiries. At the same time, according to the characteristics of campus bullying and harassment, it is emphasized to protect the rights of victims the law demands such as the protection of privacy rights; In order to avoid the second injury caused by the repeated inquiries, it is necessary to avoid repeated inquiries and to provide psychological counseling for victims; Meanwhile, the perpetrator of the injury may also be students, even minors, so there should also be emphasis on the protection of the privacy of the perpetrators and the psychological counseling and gender equality courses for the perpetrators.

### **3) Sex and gender equality education**

Citizens have equal access to education and education resources, and the school should provide the education on the equality, the tolerance, the human rights education and gender education, pay attention to fully develop children's personality. If the principle of gender equality is not implemented in education, students of gender minorities will not be able to get the capabilities which they deserve, and their substantive equality and harmonious development cannot be achieved.

## ① General situation of sex and gender education in campus of China

Sexual and gender education in China is very weak and it is often not included in the mainstream curriculum system. In the existing sex education, it often focuses on abstinence of sex and premarital sex, it is rarely mentioning sexual health and also lacking a gender-diverse and gender-equal perspective. This makes people's understanding of sexual and gender minorities are very limited and does not help to reduce stigma and discrimination against these groups.

In the primary and secondary schools, very few schools are established in gender-related courses. In 2017, the sex education textbook "Love the Life - Primary School Sexual Health Education Reader" published by Beijing Normal University Press was forced to withdraw because "the proper boundary is too big", but the "proper boundary" discussed in this textbook was that the names of male's and female's organs are directly referred and accompanied with genital related images. This book that called "the only set of primary school education materials in China that did not have problems" by sexual and gender scholars Fang Gang just sent to the school, and it was forced to get back from the primary school students because of the parents and the crowds. Some people do not consider the sex education as science and use their own values to decide problems. Some of their unconscious sex education may leave the impression that "sex is dirty" and it is easy to hind children's correct sexual concepts.

In August 2016 and September 2017, Shanghai Education Publishing House published two books, "Little Man" and "Girls in Flowers", which are suitable for the fourth and fifth grades of elementary school education, they boasted themselves as the first systematic gender education. But in fact, these two textbooks connive the stereotype formation of gender. For example, "Little Men" is mainly devoted to helping boys understand some of the gender confusion they need to face during their growth, it is aiming to enhance the boy's courage. When gender education in primary and secondary schools are so differentiated and isolated, it is necessary to say that such gender education excludes the transgender groups.

In practice, teachers at all levels lack of the gender knowledge and gender equality awareness, and some teachers even have more serious gender bias and gender discrimination. This education reinforces the discrimination on sexual orientation and traditional dual gender perspectives, it is depriving transgender students from the full and equal access to education and participation in society. Numbers of respondents in the focus group responded to the status of their sexual education and their needs in school:

Guangzhou Focus Group, Participant E (code), gender identified as female, undergraduate degree: "... (high school) physiology and hygiene class will even be occupied... For example, today is the physical health class and this class may be took up by a mathematics teacher or a physics teacher, and sometimes they even prefer let you go to the physical education class this class."

Guangzhou Focus Group, Participant D (code), 16 years old, gender identified as male, high school student: "We don't have this kind of physiology class in our school, it happens in the biology class when at a certain moment it mentioned the human body and the teacher will talk a little. But when you talk about human biology, everyone is very interested, especially the boys and girls are hooting and I think the class atmosphere is very active. Everyone will listen it very seriously and definitely hope to understand, but there is no such special class in our school and the biology teacher talks."

Beijing Focus Group, Participant F (code), gender identified as male, 21 years old, undergraduate student: "Didn't have the physiology class but the organ class has been passed because of exams in high school. There is no sexual orientation and the menstruation. But it's better than nothing, because it's better than never knowing.... I used to choose a systematic gender class in the university."

Shenyang Focus Group, Participant G (code), gender identified as female, 31 years old, college degree, "... no multi-sexuality, mainly about the difference between boys and girls...I think it would be better if there is gender diversity education. "

## ② Legal policy regulation in China

There are basically no provisions for sexual and gender equality education in China's existing laws and regulations. The main emphasis in China's current laws and policies is on universal compulsory education and equal access to education, although educational legislation also involves educational purposes and core content, for example, the General Principles of China's Education Law stipulates that "the state insists on the guidance of Marxism-Leninism, Mao Zedong Thought and the theory of building socialism with Chinese characteristics, and follows the basic principles established by the Constitution to develop socialist education", "Make enhance morality and foster talents, strengthen the education of socialist core values for educators and enhance the social responsibility, innovation and practical ability of the educated. The state conducts education on the patriotism, the collectivism, and the socialism with Chinese characteristics among the educated, and carries out education on the ideals, the morality, the discipline, the rule of law, national defense and national unity", but in the law, the education required in the relevant international conventions ratified by China should emphasize human rights, equality, breaking gender stereotypes, and fully develop students' individuality and dignity.

At the present time, China's provisions on sexual and gender education are only reflected in the "Guidelines for Health Education in Primary and Secondary Schools". The "Guidelines" stipulates that primary school students in grades 1–2 should understand the basic knowledge of life gestation and growth, and know "where do I come from"; In grades 3-4 have an initial understanding of the functions of the main organs of children and adolescents, and learn to protect themselves. In grades 5-6, they will learn about the growth

and development of adolescence, including the differences between men and women, the menarche and significance of girls, and significance of first spermatorrhea of boys. Students in grades 7-9 need to understand AIDS-related knowledge and reject unsafe sex; In grades 10-12 understand AIDS prevention knowledge and methods, and avoid premarital sex.

### ③ Legal policy suggestion

i. The content of equal education should be increased in legislation

China's laws and policies should also be guided by the principles and provisions of the "International Covenant on Economic, Social and Cultural Rights", the "Convention on the Rights of the Child" and the "Convention on the Elimination of all Form of Discrimination Against Women", and draw on the experience of foreign legislation to increase the content of gender equality education. For example, in the preparation of teaching materials, it is necessary to provide detailed advices for all levels of education, including teachers' training, the courses, textbooks and materials without gender stereotypes; From the pre-school education, promote the equality and the cooperation among different gender groups, respect each other and share responsibility. In terms of curriculum provision, the human rights education programme is need to be developed, to integrate gender equality into all levels of education, in particular to encourage the higher education institutions, especially in the university and in the law research, the social and political courses to include the contents of human rights in relevant United Nations conventions; Support the academic institutions' research on gender and multi-gender issues and apply research results to the development of the courses, which is including in the university courses, textbooks, teaching materials and teacher training; The equality provides the leadership training and opportunities for all gender groups and encourage them to play a leadership role during their student days and as adults in civil society.

ii. Introduce policies to strengthen sexual and gender education in schools at all levels

- Gender education

In the primary education, the schools should give students a comprehensive gender knowledge. Multi-gender, gender identity and gender expression should also be included in the content of gender education. In the elementary and the junior high school, schools should guide students to correctly understand their own and others' gender identities and their gender expressions, to convey the correct gender concepts, to abandon traditional gender stereotypes, to increase the students' tolerance and accept students' gender diversities.

In the case of transgender in the gender education, there should be an attitude: that even if human existing knowledge may still not fully understand transgender phenomena, but fully respect for the

pluralism itself is a symbol of social democracy and progress. Everyone has the right to choose their own way of life, even choose their own gender and gender-related performance methods. The choice of a few people should not be discriminated and attacked, but also should be fully respected by the society.

#### - Popularize the sexual knowledge

Middle school students are mostly in the adolescence, and sexual knowledge during this period is crucial to the physical and mental development of students. However, in the focus group interviews, we found that the physical health classes in most of the middle schools are neglected in now days, and the physiological health knowledge has not been effectively taught. At this stage, the school should properly assume the obligation of popularizing sexual knowledge to the gradually mature adolescent students, how to correctly treat their sexual development, how to deal with their sexual impulses, especially for transgender students, how to correctly solve themselves the differences in physical gender and gender identity inside are the important issues that will affect students.

According to the interview respondents, some transgender people have taken some illegitimate inhibition behaviors during the physiological development stage. For example, transgender women bind their own lower body with tape, transgender men wear inappropriate corsets and take hormone drugs for animals and even do castration surgery by themselves. For transgender people, the middle school stage is the key period for establishing the gender and also the best age to intervene in gender by hormones and surgery. Schools should be more popularize the gender transform knowledge for transgender people.

#### - Sexual safety education

In the junior high school, the college and high school, schools should focus on sexual safety education for students. Sexual safety knowledge of men with men, women and women and heterosexual all should be equally valued. Schools should set up special courses to educate and guide students on how to conduct sexual acts, how to take safe measures to address sexual needs and how to detect and treat sexually transmitted diseases in a timely manner.

## 4) Campus facilities and activities

### ① School uniform, dormitory, toilet and bathroom

The strict uniform management system in China's primary and secondary schools, and the school uniform design followed the traditional gender impression, especially the summer uniform: boys are short sleeves and shorts, girls are short-sleeved skirts. Many schools require students to wear uniforms in school. This is extremely detrimental to transgender people, this kind of biological gender based school uniform system

violates the freedom of transgender people to express their own gender. In the interview, we learned that some transgender people apply to the school to wear uniforms that they agree with their gender (such as transgender women wears women's uniforms, transgender men wears men's uniforms), although some people get permission from the school, but this also means that these transgenders were forced to come out because the uniforms were not in line with their physical gender.

The designs of dormitories, toilets and bathrooms in schools are generally based on the gender of men and women, very few educational institutions have established third-gender toilets or gender-friendly toilets. An interviewee has been using the school's barrier-free toilets for disabled people throughout his or her school life. Based on feedback from all interviewees, transgender students can only be assigned to dormitories that match their physical gender and access to public toilets and public baths that match their physical gender, which not only brings physical and psychological harms to transgender students, the discomfort is also a silent violation of the privacy of transgender students.

## ② Mental health counseling

In our interview, there were interviewees who responded about the school's mental health counseling and psychological counseling: "The school's psychology teacher is a physical education teacher", "Now the psychological teacher teaches politics", and the interviewees responded to their school psychology teacher's take this behavior to the transgender male classmates: "He heard that 'he' is a woman, and then he would like to check what is the situation of 'him', then he observes the performance of 'him' every day, listen to the voice of 'him' and ask the teacher, after the questions he found out that she was really a woman, then he said directly in the class, why do you dress like this as a girl? Do you think this affects the social atmosphere?" "Now there are some psychology teachers in the school, students just graduated from psychology majors do it, but many of them are going to teach political classes, ideological and moral classes. Even if this psychology teacher has the opportunity to give lectures about the gender and psychological in the school, he actually himself does not understand very well."

It can be seen that in the high school and university, the psychological counseling of the educational institutions in China has not yet reached the level of attention deserves. The psychological counseling teachers in the high school are ineffective, there are no proper psychological counseling courses and coping programs for adolescent students. Some psychological counseling teachers themselves have a strong gender stereotype and they are not only unfriendly to transgender students but may also be offensive. The gender counseling institutions of educational institutions and the political and offices are generally subordinate related, some schools stipulate that when students have psychological problems to reflect to the psychological teachers, and the psychological teachers are obliged to report to the school administration. Such a regulation is actually a violation of student privacy.



### ③ Legal policy regulation in China

Article 43 of the “Education Law” stipulates that the educateds shall have the right to participate in various educational activities such as educational and teaching facilities, equipment and books. However, Article 39 of this law only stipulates that the state, society, schools and other educational institutions shall implement education and provide assistance and convenience according to the physical and mental characteristics and needs of the disabled.

Article 3 of the “Law on the Protection of Minors” stipulates that minors have the right to subsistence, development, protection and participation. The state gives special and priority protection according to the characteristics of the physical and mental development of minors and protects minors from their legal rights are not infringed.

However, for the characteristics and needs of transgender students, in campus facilities and activities there are no provisions for the realization of the right to subsistence, development, protection and participation as well as psychological counseling to transgender students.

### ④ Legal policy suggestion

i. Break the dual gender framework in legal policy, examine China's existing legal norms from a gender perspective and revise discriminatory legal provisions. For example, amend the “Convention on the Elimination of all Form of Discrimination Against Women” to the “Gender Equality Law”, and add the concept of gender pluralism and gender equality to make Chinese laws not only guarantee men and women gender equality and women's rights, but also incorporate the rights of sexual and gender minorities into the legal field of vision.

ii. Introduce the “toilet revolution” that is currently being implemented in China to the campus, and incorporate a “gender perspective” to establish “gender friendly toilets” or “no gender toilets” in schools. For the arrangement of the dormitory, the school should ensure full communication with transgender students and other relevant students to understand the wishes of transgender students and try to provide help and convenience.

iii. Add the professional counselors to schools at all levels and multi-gender training is provided for counselors.

## 5) Gender mark modification in student status, education certificate and vocational qualification certificate

## ① Existing problem of gender mark modification in student status, education certificate and vocational qualification certificate

China's laws and policies clearly stipulate that transgenders can modify the gender mark on the identity document after completing the sex reassignment surgery, but there are no clear policy requirements for the amendment for the gender mark in other identity documents such as school registration, education certificate, diploma and qualification certificate. Although the Ministry of Education has enacted two regulations that clarify the procedures and requirements for the change of personal information registered in the school system and the national education system, but in practice due to lack of understanding of the situation faced by transgender people, In the implementation of these two policies transgender people encountered difficulties and obstacles in the process of modifying the gender marking of academic qualifications and student status. A questionnaire survey conducted by Beijing LGBT Center in 2017 shows that 36% of transgender respondents face challenges in applying for changes to the names and gender markers in diplomas and education certificates and 12% of which indicate that the school itself refused their requests.

In the focus group survey, the vast majority of respondents expressed concerns about the revision of gender markers in educational certificates, and these concerns made it necessary for a small number of respondents to respond in some "special" ways. For example, one interviewee said: "...The only concern now is about things like student status and education certificate. Because now I am graduated and have a work, this is the reason I apply for a doctoral degree, in order to brush my academic qualifications...". And, the difficulty of modifying gender markers in degree qualifications creates obstacles for transgender people to achieve equal employment rights, and at the same time it may lead to violations of their privacy rights. Some interviewees indicated that they changed the gender mark on the ID card soon after completing the sex reassignment surgery, but the "education certificate is still not changeable", so they get into trouble on all sides when they were looking for a job. Another interviewee said, "...but it is also ok if you don't change it, you can't say that the academic qualifications are all invalid. But when looking for a job and showing a variety of documents to prove that the boy is now a girl...which means be forced to come out."

## ② Legal policy regulation in China

i. Article 99 of the "General Principles of the Civil Law of the People's Republic of China" (1986) stipulates: "Citizens have the right to the name, have the right to decide, use and change their names in accordance with regulations, and prohibit others from interfering, embezzling or counterfeiting."

ii. The Ministry of Public Security has issued two regulations to provide guidance to local public security authorities on the management of gender mark changes. According to the Ministry of Public Security's

“Reply on the Issues Concerning the Change of Gender Registration after Citizens' Denaturation (Jongji [2008] No. 478) and the "Reply from the Ministry of Public Security on Issues Concerning the Change of Gender Registration of Citizens after the Implementation of Transsexual Surgery" (Gongzhi [2002] ] 131), the transgender after the surgery need these submissions to change the gender mark to the Public Security Bureau:

- The written report of the applicant;
- "Household Register", "Resident Identification Card" (may need to be obtained from the applicant's original place of residence or native family);
- The gender identification certificate issued by the domestic tertiary hospital ( the most advanced hospital) and the notarial certificate issued by the notary department, or the certificate issued by the judicial appraisal department;
- The offices, organizations, schools, enterprises and other units that the person belongs to, this person must have a certificate that the organization allows to change.

iii. Article 17 of the “Interim Measures for the Electronic Registration of New Students of General Institutions of Higher Education” stipulates that after the registration of academic qualifications and the provision of online enquiries, the school shall not change the contents of the certificates and registration information and will not accept the change of students’ information. If the registration information is incorrect, it must be reviewed and confirmed by the provincial education administrative department before the modification. Article 19 stipulates: If a student modifies or changes his or her identity information in school, the student shall provide legal proof, the school or the provincial education administrative department shall review and confirm the change, and the “Online Verification Report” reserves the information before the change. If the information modified or changed of the student supporting fraudulent materials it will be inadmissible for use. After the academic registration and online inquiry, the school should not change the certificate content and registration information, and will not accept the students’ information change. If the registration information is incorrect, it must be reviewed and confirmed by the provincial education administrative department before modification.

iv. Article 34 of the “Provisions on the Administration of Students in Regular Institutions of Higher Education” stipulates that: The schools shall fill in the academic certificates, degree certificates and other studies in strict accordance with the types of schools and forms of study determined at the time of enrollment, as well as the personal information reported at the time of enrollment. Students who change their name, date of birth and other personal information in school shall have reasonable and sufficient reasons and provide relevant supporting documents with statutory effect. If the school conducts a review and requires, to assist in the verification the provincial education administrative department and relevant departments shall cooperate.

The schools have no right to change their academic qualifications and gender on their degree certificates, because the Ministry of Education does not make explicit provisions that allow the schools to change. Many transgender people have encountered tremendous obstacles in seeking changes in their academic qualifications and gender markers after completing sex reassignment surgery. This has made it difficult for many transgender people to verify their gender conversion in their current or future jobs, as it is difficult to prove that although the identity card after the conversion of gender is different from the gender of the diploma, the diploma holder is the same with the fact of the individual.

### ③ **Success stories and countermeasures**

In April 2018, with the help of lawyers and community workers, Miss L successfully modified the gender and photo on her academic credentials. In the one-on-one semi-structured interview, the author learned that Miss L is a male trans-female transgender. She applied to the school and the municipal education committee where she graduated to apply for the revision of the gender on the academic certificate, but they rejected her. With the help of a lawyer, Miss L submitted the application to the Ministry of Education and successfully revised the information. After analyzing the successful experience of Miss L, the author summarizes the following points to facilitate transgender people to change their academic qualifications.

- i. Prepare useful related materials including: A. Copies of ID cards before and after gender change, B. Copy of ID card number change certificate, C. Copy of household registration before and after gender change, D. Surgical or diagnostic certificate and a copy of the relevant notarial certificate, E. The copy of the undergraduate, master and doctor degree certificate and other materials.
- ii. Find the departments and leaders who have real authority. First is the school's student status management department (such as the Academic Affairs Office and Student Office), another one is school's administrative department for higher education and degree management office, and submit the application materials after finding these departments.
- iii. There must be evidence awareness in the whole process, and it is necessary to pay attention to the well-preserved evidence in terms of the logical order of time. There are mainly EMS express orders, mailing materials and application forms for photographing, telephone recording, written reply, and meeting recording video or witness testimony, etc.

The author has learned that, so far including Miss L, although there have been several successful cases of transgender people applied and successfully had revision of the gender mark on the student status and education certificate, the successful modification of the applicant depends largely on that school's attitude. Even if some transgender people applied the above methods to modify their gender mark, they still suffered

a rejection for the modification. The lack of a well-defined system and regulations for transgender students for their academic qualifications has made it difficult to obtain educational/professional certificates and diplomas with their gender identity.

#### ④ **Legal policy suggestion**

The education department should clearly define the corresponding policies for the revision of important information such as gender markers and names on the student status, academic credentials and other professional qualification certificates of transgender groups, and provide them with sufficient facilities to realize the right to education and privacy.

## 4 Conclusion and recommendation

Deep-rooted hatred attitudes for transgender is often associated with a lack of adequate legal protection which is related to discrimination on sexual orientation and gender identity. The human rights of transgender people of all ages around the world have been extremely violated. They are discriminated in the labour market, in schools and hospitals, and even abused and abandoned by their families. They are targets of personal attacks such as assault, sexual assault, torture and mutilation. Since the 90s of 20th century, the UN human rights Council have repeatedly expressed concerns about these issues and related human rights violations. These councils include: the institutions established to monitor compliance by every States with international human rights treaties, special rapporteurs appointed by the Human Rights Council to investigate and report urgent human rights challenges, and other independent experts. The former UN Secretary-General issued a landmark speech on the equality of lesbian, gay, bisexual and transgender people in New York in December 2010, calling for the decriminalization of homosexual acts worldwide and other measures to combat the violence and discrimination to homosexual, bisexual and transgender people. The former Secretary-General pointed out: "As a men and women with the conscience , we generally oppose discrimination. In particular, we oppose discrimination based on sexual orientation and gender identity. ... When cultural attitudes conflict with universal human rights, Human rights must go first."

Protecting transgender equality from violence and discrimination does not require re-establishing specific rights for them or establishing new human rights standards. The international human rights law which is based on the "Universal Declaration of Human Rights" and subsequent international human rights treaties have long established the legal obligation of every States to protect the human rights of lesbian, gay, bisexual and transgender people. Everyone, regardless of gender, gender identity, gender expression and sexual orientation, have the right to life, security and privacy, freedom from torture, arbitrary arrest and imprisonment, the right to non-discrimination, and the right to have protection to expression, association and peaceful assembly. The core legal obligations of every States to protect the human rights of lesbian, gay, bisexual and transgender people include the following points: protecting individuals from homophobic and transgender violence. Prevent torture and cruel, inhuman and degrading treatment. Abolish the law criminalizing homosexual acts. Discrimination based on sexual orientation and gender identity is prohibited. Guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual and transgender people.

In schools, transgender people are easily bullied by discrimination. According to the previous section of this article, in the field of international human rights law, the protection of the right to education of transgender people should be mainly the state's obligations in international treaties:

(1) The State shall enact laws and regulations in accordance with international human rights conventions and 4A standards (Availability, Accessibility, Acceptability, Adaptability), propose the implement of international human rights conventions and relevant international documents, starts from the most pressing issues in the process of receiving education and guarantees their right to education. For example, the state may introduce special laws for transgender people, stipulate their rights and obligations to participate in society, and may also modify the rights and obligations of such groups under the special provisions of the "Education Law of the People's Republic of China".

(2) The State strengthens links with the international community and other countries and regions to promote the full right to education for transgender people, and the OHCHR is committed to working with the States, national human rights institutions and civil society to implement and take further steps to protect people from violence and discrimination in gender identity. The planned activities include: through the dialogue with the government and non-publicly raising doubts to governments and make recommendations on reforms. Monitor the various forms that affect violations of transgender people in human right and record them in public reports. Participate in such activities, learn this kind of report documents, and formulate corresponding laws and regulations to prevent campus bullying caused by transgender discrimination.

(3) The state should strive to speak more in the international community, participate in public propaganda and other necessary measures, through speeches and statements, newspaper review articles, video news and distribution of other materials to strengthen public rights protection for transgender people, and cooperate with the United Nations to work together to publish a variety of public information and conduct a series of related educational activities aimed at rebel against the violence to the transsexuals or transgender people, and to strengthen the promotion of gender normalization in the country.

(4) Provide support to special procedures mandate holders for confidential government communications. When the UN special procedures conducts various forms of investigation on the true state of the right to education of transgender people in China, the State should give full cooperation to help the international community understand the problems of transgender people in the process of education and seek for the improvement of the right to education of this group on a global scale.

(5) Implement international human rights treaties and relevant domestic laws into specific administrative regulations and policies, including school rules and regulations. Demonstrate the accessibility, convenience and the acceptability of transgender education in school facilities and school management.

(6) Schools can add the human rights content to the curriculum, so that teachers and students can understand and accept that the world is colorful and that gender is also diverse. Transgender people are not physically or mentally problematic, and they all have the right to live normally and they fully have the right to education and receive formal educati





