

## LEGAL FRAMEWORKS OF SPECIAL AND INCLUSIVE EDUCATION

### MARCO LEGAL DA EDUCAÇÃO ESPECIAL E INCLUSIVA

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**ABSTRACT:** The main objective of this paper is to bring the child to the center of the agenda of discussions involving this context, the "three institutions of the citizen": Family, School and Church, even she - the child - does not figure as a priority on the public policy agenda of the three spheres of power (federal, states and municipalities). And also the kindergarten to the economy, culture, history, politics, health and environment, placing the care and education of early childhood as a strategic point for human and social development. This is our challenge!

**keywords:** Child Education. Brazilian legislation. Public policy.

**RESUMO:** O objetivo principal desse artigo é trazer a criança para o centro da pauta das discussões, envolvendo nesse contexto, as "três instituições do cidadão": a Família, a Escola e a Igreja, mesmo que ela - a criança -, ainda não figure como prioridade na agenda das políticas públicas das três esferas do poder (União, Estados e Municípios). E também a Educação Infantil à economia, cultura, história, política, saúde e meio-ambiente, situando a educação e o cuidado da primeira infância como ponto estratégico para o desenvolvimento humano e social. Este é o nosso grande desafio!

**Palavras Chaves:** Educação Infantil. Legislação brasileira. Políticas públicas.

### 1. INTRODUCTION

This article aims to address the Brazilian legislation dealing with early childhood education - that is, the care of children from zero to six years in day care centers and preschools - subjective public law guaranteed by the Federal Constitution of 1988. We will

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also address the effectiveness of this legislation in the face of the challenges faced over the years by education in Brazil, concluding, on the need or not for a broad reform in this legislative aspect.

Starting our work, we will make a journey through the Constitutional History of Brazil, starting with the "Imperial Charter", from 1824, to the present day under the protection of the "Citizen Charter", 1988, with the objective of verifying how education has been treated at the constitutional level, that is, whether Brazilian educational policy meets the true needs of the citizen.

## TWO OF THEM, EDUCATION IN BRAZILIAN CONSTITUTIONS

The "Political Constitution of the Empire of Brazil", of March 25, 1824, known as the "Imperial Charter" and the "Constitution of the Republic of the United States of Brazil", of February 24, 1891, known as the "Republican Charter of 1891", did not specifically address the theme of education. The "Imperial Charter" had as its main objective to consolidate and maintain the independence of Brazil, due to the resistance opposed by the Kingdom of Portugal and the segments of Portuguese society here that did not conform to losing dominion over Colonial Brazil". Similarly, the "Republican Charter of 1891" did not deal specifically with education that was only explained at the constitutional level from the "Constitution of the Republic of the United States of Brazil", of July 16, 1934, followed by the other constitutions, which took place in the current "Constitution of the Federative Republic of Brazil", of October 5, 1988, also known as "Citizen Constitution", because it has as focus of its actions - the citizen.

In addition, the current Federal Constitution has elevated education to the basic status of the Federative Republic of Brazil in Article 1, item III, available on the "dignity of the human person" and, through Article 3, item III, which provides for the fundamental objective to be achieved by the Federative Republic of Brazil: "to eradicate poverty and marginalization and reduce social and regional inequalities". The "Citizen Constitution" went further than article 6 that "Social rights are education, health, work, leisure, security, social security, protection of motherhood and childhood, care for the destituted, in the form of the law".

Portanto, that the "Citizen Constitution" was bolder than its predecessors by raising education to the level of fundamental law, fundamental objective and social right of the

Federative Republic of Brazil, thus following the modern trend of the current Democratic Nations whose policies were centered on the well-being and dignity of the human person.

## TWO-ONE. EARLY CHILDHOOD EDUCATION IN THE CURRENT CONSTITUTION

The Federal Constitution created the mandatory care in daycare and preschool for children from zero to six years of age in article 208, item IV. In Brazil, Early Childhood Education - that is, the care of children from zero to six years in daycare centers and preschools - is a right guaranteed by the Federal Constitution of 1988. From the approval of the Law of Guidelines and Bases of National Education, in 1996, Early Childhood Education is now defined as the first stage of Basic Education. The current Constitution recognized, for the first time, Early Childhood Education as a child's right, family choice and state duty. Since then, Early Childhood Education in Brazil is no longer linked only to the social assistance policy and is then part of the national education policy. Since then, early childhood education and care have been treated as priority government issues.

### 2.2 Early childhood education in infraconstitutional legislation

Science shows that the period from pregnancy to the sixth year of life, particularly from 0 to 3 years of age, is the most important in preparing the bases of skills and abilities in the course of all human life. In this respect, the extraordinary advances of neuroscience have allowed us to understand a little better how the human brain develops.

It was done by the "High/Scope Perry Preschool Project" in Michigan, USA, which accompanied children from low-income families from the time they participated in the preschool project, aged 3 or 4, to the age of 27. The longitudinal evaluation showed that the group that received preschool care obtained, in the long term, higher levels of education and income, and lower rates of arrest and delinquency. Remember, "Educate children so you don't have to punish adults." Brazil, nowadays, is quite often discussed the possible solutions to the lack of security of society, however, no relevance is given to Early Childhood Education as a factor of decrease in the rates of delinquency at all levels that plagues Brazilian society.

We also have advanced legislation in the area of education, introduced by the Federal Constitution of 1988: the "Statute of children and adolescents (ECA)" - Law No. 8,069 of July 13, 1990, and the "Law of Guidelines and Bases of National Education (LDB)" - Law No.

9,394 of December 20, 1996" . In addition to this specific national legislation we have access to international research and national studies that point to the benefits of public investment in early childhood.

### **2.3 Child and Adolescent Statute (ECA)- Law No. 8,069 of July 13, 1990.**

With the advent of Law No. 8,069/90 - Statute of Children and Adolescents (ECA), municipalities began to have responsibility for the rights of childhood and adolescence, through the creation of the Municipal Council, the Municipal Fund and the Guardianship Council. In article 227, the Federal Constitution enshrines a recommendation in defense of the child at the disposal that it is the duty of the family, society and the State to guarantee the child, with absolute priority, among others, the right to education. This pedagogical perspective begins to see the child as a social, historical being, belonging to a certain social and cultural class.

As for the obligation of parents or guardians, Article 55 lists within the commandments contained in Article 22 the obligation to enroll their children or pupils in the regular school system. Failure to comply with this rule implies the application of the protection measure mentioned in Article 129, item V ("obligation to enroll the child or pupil and monitor their school attendance and achievement ") and the commission of the offense capitulated in Article 246 of the Brazilian Penal Code ( Intellectual abandonment. " Art. 246. Leave, without just cause, to provide the primary education of child of school age: Penalty - detention, from 15 (fifteen) days to 1 (one) month, or fine" ), only in relation to parents.

### **2.4 Law on Guidelines and Bases of Education (LDB)- Law No. 9,394 of December 26, 1996.**

On December 26, 1996, the infraconstitutional legislature, in view of the commitment of the constituent legislator of 1988, regarding the citizen's right to education, dressed in the Federal Constitution in Articles 205 to 214, issued Law No. 9,394/96 - Law of Guidelines and Bases of Education (LDB).

In this sense, item IV provides public school education with free care in daycare centers and preschools to children from zero to six years of age and. Provided for article 30 of this Law, Early Childhood Education does not properly integrate the fundamental domain of education, because in Early Childhood Education the evaluation will be done

through monitoring and recording its development, without the objective of promotion, even for access to elementary school.

According to the National Education Program (PNE) of 2001, the articulation with the family aims, more than anything else, to the mutual knowledge of education processes, values, expectations, in such a way that family and school education complement each other and enrich themselves, producing coherent, broader and deeper learning. The result of this exchange has an effect on the child's self-esteem and development.

It is of fundamental importance that the institution of Early Childhood Education respect and value the culture of the different families involved in the educational process. Taking into account that the family is the first space of coexistence of the human being, it is a fundamental reference point for the small child, where ethical values are learned and incorporated, where experiences are experienced loaded with affective meanings, representations, judgments and expectations (which are met or frustrated).

If they work together, sharing longings, achievements and difficulties, family and school will successfully fulfill the task of training human beings who are confident, tolerant, supportive and respectful of the rights and dignity of all - in short, citizens!

#### 2.4 National Education Plan (PNE)

With regard to Early Childhood Education, the PNE (**National Education Plan**) points out several qualitative goals. First, it requires that infrastructure standards be developed within one year for the proper functioning of Early Childhood Education institutions. These standards should also guide new operating permits. The Plan defines that the municipal executive must assume responsibility for the monitoring, control and supervision of daycare centers and preschools.

Demanding collaboration between the education, health and care sectors, as well as between the three levels of government, in the care of children from 0 to 6 years of age. And it determines the effective inclusion of day care centers in the national system of educational statistics. Another important goal is to ensure that, in all municipalities, in addition to other municipal resources, 10% (of the 25%) of the funds for the maintenance and development of education are applied, as a priority, in Early Childhood Education.

The PNE (promulgated in January 2001) establishes the goal of meeting, within five years (2006), 60% of children from 4 to 6 years and 30% of children from 0 to 3 years of age. In 2011, this rate should reach 80% and 50%, respectively. According to the 1999 National

Household Sample Survey (PNAD) of 1999, only 9.2% of children aged 0 to 3 years and 52.1% of children aged 4 to 6 years attended Early Childhood Education institutions.

The current trend of growth of care at the age of attending daycare is the accelerated one between the stages of basic education. However, it is below the required goal of 50% of children aged 0 to 3 years in school by 2020. For the group between 0 and 3 years, the challenge is large and will require effort certainly greater than the currently performed.

Between 2005 and 2009, school attendance in this age group rose from 13.4% to 18.4%, with an average growth of about 8.5% per year. The maintenance of this rate would lead to a care of 44.5% of children from 0 to 3 in 2020, that is, it is necessary to raise the number of places in daycare centers at a speed above that currently practiced. It is necessary that the service grows at a rate of 9.7% per year to reach the stipulated goal.

## 2.6 Training of Early Childhood Education Professionals

From the finding that early childhood experiences are determinant for the development of the human being, the role of the professional of day care centers and preschools undergoes profound reformulations and, as a result, the requirements related to their formation begin to be rethought.

In 1996, the LDB established that the training of teachers, the Law determines, in Article 62, that to act in basic education it is necessary to have a higher education level in universities or higher education institutes, assuming as minimum training for the exercise of teaching in Early Childhood Education, as well as in the first four grades of elementary school, mid-level, in normal mode. It also provides that within ten years only qualified teachers will be admitted at a higher level or in-service.

In 1998, the MEC published the National Curriculum Framework for Early Childhood Education (RCNEI). This material is another contribution to the teacher of Early Childhood Education. It is a set of reflections, whose objective is to serve as a subsidy for the construction of curricular proposals, but which should not be understood as a manual to be followed.

The RCNEI is composed of themes grouped into three volumes. The first brings reflections on Brazilian day care centers and preschools, childhood and the professionalization of educators. The second deals with the processes of constructing the identity and autonomy of children. The third brings texts on the axes and themes that can be worked on in Early Childhood Education.

The Referential, consistent with the definitions of the LDB, reinforces that day care centers should not simply be child care spaces and that preschools do not merely prepare for literacy. On the contrary, care and learning must be integrated from the beginning.

## CONCLUSION

Despite the great challenges that we still have to overcome, we are experiencing a very opportune historical moment for reflection and action for children. Increasingly, early childhood education and care - Early Childhood Education - are treated as priority issues of government, international organizations, civil society organizations and a growing number of countries around the world.

From the above, we have seen that the current Federal Constitution and the Brazilian infraconstitutional legislation are lavish in the aspect related to education, and in particular, Early Childhood Education. However, it is necessary that society mobilizes itself more and more in order to make this the structure more effective, allowing, finally, that education is a true and effective instrument of justice and social inclusion.

The changes that have occurred over the years in our society alter the way children have lived their childhood. Today, children are increasingly entering school life. Many researchers in the field of education and psychology have stressed the importance of the initial years of life in the formation of the human being. Knowing that these initial years affected the cognitive, affective, social and even physical development of the child.

Based on these considerations, it is of paramount importance to have a quality education that contributes positively to the use of subsequent years of school life. In view of this, early childhood education rethought its role in the face of such issues and expanded its concept of working with young children.

Thus, it will be essential to reevaluate educational trends to generate more and more stability and commitment to the teaching of Early Childhood Education. Only through quality education can we achieve the much-dreamed social justice, an objective present in the Constitutions of all countries today. It is worth remembering one of the teachings of the great philosopher Socrates (470 or 469 BC - 399 BC), who when asked by one of his disciples about what should contain the ideal Constitution of a people, replied that "the ideal Constitution is one capable of making his people virtuous and happy." Therefore, only through education will the people be "virtuous and happy." May we always remember this: **"Educate the children not to punish the adults tomorrow"**

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