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ARTICLE

ADVANCING AND SETTING BACK THE GUARANTEE OF THE RIGHT TO BASIC EDUCATION IN BRAZIL¹

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ABSTRACT: This article analyzes the effects of the changes led by the Law of Guidelines and Bases of National Education (LDBEN/1996) during its effectiveness. Initially, we address the relationship between the formal requirement of schooling and the idea of promoting educational equality in the country. Then, with methodological support of Content Analysis, we specifically focus on the devices that modified Title V of LDBEN/1996, related to the levels and modalities of education and teaching, seeking to capture possible repercussions from the perspective of coping or reproducing children's educational inequalities. In the conclusions, we highlight the LDBEN provisions favorable to the march for the guarantee of the right to basic education, as well as those that represent an evident setback to this claim. Faced with this reality, we defend the discernment about what is effectively inferred from the law, in order to mobilize its progressive contributions in the fight for public education in the current context of the country.

Keywords: LDBEN/1996, right to basic education, the levels and modalities of education, Federal Government political guideline.

MARCHA E CONTRAMARCHA NA GARANTIA DO DIREITO À EDUCAÇÃO BÁSICA NO BRASIL

RESUMO: O presente artigo tem como objetivo analisar os efeitos das alterações realizadas na Lei de Diretrizes e Bases da Educação Nacional (LDBEN/1996) ao longo do período de sua vigência. O estudo foi subsidiado por uma pesquisa documental, tendo como fontes o texto da LDBEN/1996 e os dispositivos legais que determinaram as alterações nesta Lei da Educação. Aborda-se, inicialmente, a relação entre a obrigatoriedade formal da escolarização e o ideário de promoção da igualdade educacional no país. Em seguida, com respaldo metodológico na Análise de Conteúdo, apreciam-se especificamente

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os dispositivos que modificam o Título V da LDBEN/1996, atinentes aos níveis e às modalidades de educação e ensino, buscando captar possíveis repercussões na perspectiva do enfrentamento ou da reprodução das desigualdades educacionais. Nas conclusões realçam-se tanto os dispositivos da LDBEN que são favoráveis à marcha pela garantia do direito à educação básica quanto aqueles que representam evidente retrocesso em relação a esse pleito. Em face desse dado da realidade, defende-se o discernimento sobre o que efetivamente se infere da lei, no sentido de mobilizar os seus contributos progressistas na luta em defesa da educação pública na atual conjuntura do país.

Palavras-Chave: LDBEN/1996. Direito à Educação Básica. Níveis e Modalidades de Ensino. Orientação Política do Governo Federal.

MARCHA Y CONTRAMARCHA EN LA GARANTÍA DEL DERECHO A LA EDUCACIÓN BÁSICA EN BRASIL

RESUMEN: Este artículo tiene como objetivo analizar los efectos de los cambios realizados en la Ley de Directrices y Bases de la Educación Nacional (LDBEN/1996) durante el período de vigencia. Inicialmente se aborda la relación entre la exigencia formal de escolarización y la idea de promover la equidad educativa en el país. Luego, con apoyo metodológico en Análisis de Contenido, apreciamos específicamente los dispositivos que modificaron el Título V de LDBEN/1996, relacionados con los niveles y modalidades de educación y docencia, buscando captar posibles repercusiones desde la perspectiva de afrontamiento o reproducción de las desigualdades educacionales. En las conclusiones se destacan tanto las disposiciones del LDBEN que son favorables a la marcha por la garantía del derecho a la educación básica como las que representan un evidente retroceso en relación con este reclamo. Frente a esta realidad, defendemos el discernimiento sobre lo que efectivamente se infiere de la ley, para movilizar sus aportes progresistas en la lucha en defensa de la educación pública en la coyuntura actual del país.

Palabras clave: LDBEN/1996, derecho a la educación básica, niveles y modalidades de enseñanza, orientación política del Gobierno Federal.

INTRODUCTION

The commitment to ensuring basic education, necessarily made up of teaching stages, was signed with Law 9,394/1996, which establishes the Guidelines and Bases of National Education – LDBEN/1996-*Lei de Diretrizes e Bases da Educação Nacional* (BRASIL/1996a). For Saviani (2016, p.233), the advent of basic education in the Education Law “is an important achievement to move towards a truly national system of comprehensive and universalized education, that is, capable of ensure full schooling for the entire population of the country”.

The *base*, etymological origin of the word “*basic*”, presupposes something inherent and indispensable to school education. In fact, “basic education is a more than innovative concept for a country that, for centuries, denied its citizens, in an elitist and selective way, the right to knowledge through the systematic action of school organization” (CURY, 2008. p.294). Our first LDBEN on 12/20/1961 met the historic claim of establishing the guidelines and bases for the organization of national education. However, it dealt with a text that adopted a centralizing logic to the management of education, going against the expectation of managerial decentralization that had been idealized, at the beginning of the processing of this law, for the relations between the education systems established in the country. As a result, the guarantee of mandatory basic formation, which required collaborative and decentralized articulation of federal entities, was not implemented.

With the Coup d'état that imposed the dictatorship on the Brazilian people (1964-1985), partial reforms were made to the original text of this first LDBEN, highlighting the offer of higher education, Law nº 5.540/1968, as well as new nomenclatures for Elementary, Middle and High School, which were converted into primary education and secondary education, as provided for in Law 5692/1971.

These specific changes by the dictatorial government to the Education Law did not correspond to the desire for structural and broad changes to school education in Brazil, envisioned together with the struggle for the re-democratization of the State and society, notably sharpened in the late 1970s and beginning of the 1980s.

In this context, the demand to completely modify the framework of national education was increasingly imposed, which implied changing the legislation in force. The opportunity arose with the installation of a civil government (the so-called New Republic) and the elaboration of the new Federal Constitution (SAVIANI, 2016, p.42).

With the enactment of the Federal Constitution of 1988, especially Chapter III - On Education, Culture, and Sports, the resumption of the ideals of basic education has been advocated as a right of citizens and as a duty to be fulfilled by the State.

Effectively, the second and current LDBEN/1996, the object of this study, establishes that basic education is formed by Early Childhood Education and primary and secondary education (Art. 21, Item I). The new organization of national education that came to be integrated by these basic teaching stages is in line with the claim historically defended in favor of expanding compulsory schooling throughout the national territory.

Saviani (2016, p.233) points out that

However, it is necessary to pay attention that the concept of basic education adopted implies not only a reorganization of elementary education, but a determined effort to universalize secondary education in the perspective of a unified school, capable of articulating the diversity of experiences and situations around the objective of forming fully developed human beings and, therefore, in a position to assume the direction of society or to control those who manage it.

If basic education was essentially conceived as a composition of three stages, we believe that, in addition to the relevance of the stages highlighted by Saviani (elementary and secondary), it is also essential to make a *determined effort to universalize* the first stage of basic formation, Early Childhood Education. Objectively, in the original text of LDBEN/1996, only elementary school was a mandatory and free stage of basic education. Thus, the State's duty to provide both early childhood education and secondary education was, with the enactment of the law, blatantly relegated to the background. This small spectrum of coverage of what was understood by compulsory education is one of the main reasons that ended up conferring a minimalist status on LDBEN/1996 (SAVIANI, 2016).

It is pertinent to consider that “national policies need to be understood as the product of a nexus of influences” (BALL, 2001, p. 102-103). We can observe that the field of influences that has fostered public policies for education in Brazil, including the elaboration and alteration of legislation concerning this area, emphatically reflects this author's assertion. The option for a “minimalist LDB” was compatible with the “minimal State”, an idea recognized as central to the then dominant political orientation” (SAVIANI, 2016, p.221. Emphasis added).

In 2021, LDBEN/1996 completed 25 years and it has been significantly reformed. Thus, in addition to the content inscribed in the sanctioned law based on the political orientation assumed by the Fernando Henrique Cardoso governments (1995-1998; 1999-2002), it becomes essential to analyze the considerable volume of changes made over the years of validity of the Education Act, under the political guidance of different governments. Objectively, 64 of the 92 articles of this law have already been modified by December 2020. Of the amended articles, 27 are part of Title V, dedicated to the levels and modalities of education and teaching, the focus of our study.

We conceived the guarantee of the right to basic education as an essential condition for advancing the promotion of educational equality throughout the Brazilian territory. Thus, the need for changes in Title V of the LDBEN was evidenced from the moment this law was sanctioned, given the small task that was attributed to the State regarding its duty with the mandatory educational offer. It turns out that the legal provisions proposed for reformulating the LDBEN are, notably, the result of disputed educational projects (BRZEZINSKI, 2018). For this very reason, the analysis of the changes made to the Education Law “implies perspectives that intersect, apprehending the advances achieved and, paradoxically, placing limits and setbacks that permeated the agenda for the materialization of the LDB” (DOURADO, 2018, p.8).

This study was subsidized by documentary research, having the text of LDBEN/1996 and the legal devices that determined the alterations in this law in the course of its 25 years of validity as sources. The analytical work of the data was carried out through Content Analysis. This perspective aimed to understand what was explicitly recorded in the analyzed documents, as well as to produce inferences, constituting an intermediate phase between the description of the text's characteristics and the interpretation (BARDIN, 2007). From the inferences produced and the theoretical support consulted on the subject, we present our interpretations and considerations about the object under study.

For didactic purposes, we subdivided the appreciation of the chapter of the law dedicated to basic education. Initially, we will deal with the injunctions of the general provisions for the national provision of basic education. Then, we will investigate the devices related to the constitutive stages of education (Early Childhood Education, elementary school, and high school). Finally, we will address the structural elements related to the education and teaching modalities that integrate school training in the country. The discussion developed in the body of this article has the perspective of subsidizing social subjects for a more consistent and committed action with the process of democratization and materialization of the right to education, in the sense of “requiring, with incisive insistence, the commitments declared in the text of the law” (SEVERINO, 2018, p.67).

The fact is that the *materialization of public policies*, including the implementation of educational legislation, requires the proper involvement of the social subjects who claim them. It is a *political commitment* to be jointly assumed by the government, the family, and society. It is essentially the contribution of this action that gives the instituted legal apparatus the potential to guarantee the right to basic education and confront educational inequalities.

THE RIGHT TO BASIC EDUCATION IN THE AMENDMENTS OF LDBEN/1996

Severino (2018, p.59) states that “law was born in human civilization as a way of organizing relationships between men, to guarantee a minimum of symmetry in these relationships, ensuring justice, that is, that a minimum of equity reigned in them”. Based on this understanding, basic education is understood as a fundamental human right, therefore, “it means a universalist cut proper to an expanded citizenship and eager for encounters and reunions with a civil, social, political and cultural democracy” (CURY, 2008. p.294).

We must agree that the guarantee of a minimum of educational equity in a country requires a national agreement on what should be established as basic in the school. In agreement with Cury (2008), we highlight what must be obligatorily considered in the education process, concerning the attributes of citizenship education. Thus, “this role is as such because education is immanent to be in itself a pillar of citizenship and it is even more so because basic education was destined to bring together the three stages that constitute it: Early Childhood Education, primary and secondary education” (Idem, p. 294).

The chapter dedicated to basic education in the LDBEN has undergone successive modifications, demanding an analysis of what is close to and what is far from a school formation under the pillar of citizenship.

The *general provisions* for basic education essentially contemplate the following aspects: purposes of basic education; legal alternatives for organizing the provision of this level of education (annual classification, semester periods, cycles, regular alternation of study periods, non-serial groups, age grouping, competence, or even a different form of organization); common rules for organizing the primary and secondary stages of basic education (workload, forms of school progression, attendance control); and curriculum of basic school education.

From these aspects concerning the general provisions of basic education, changes were made to the law regarding the workload, the curriculum, and the reaffirmation of the offer of rural education. The first amendment concerns the progressive expansion of the minimum annual workload in secondary education to 1,400 hours, with education systems having to offer, within a maximum period of five years, at least 1,000 hours of workload per year (LDBEN/1996, Art. 24). At first, it can be considered that this

new device is favorable to the consolidation of the offer of full-time education for secondary education, which corresponds to one of the fundamental demands in defense of a broad and consistent basic education. However,

progressively expanding the workload of Secondary Education to 1,400 hours a year, transforming this stage of Basic Education into full-time Teaching, is a somewhat generic rule, as there is no way to define the time of progression. This is not a definitive rule, as it is something difficult to implement in the reality of Brazilian high schools, public and private, at a given time. Therefore, Law n° 13,415 (BRASIL, 2017) opens the possibility of establishing a long, progressive, indeterminate time for its effectiveness in practice, which, however, may never be materialized (HERNANDES, 2020, p.582).

We should consider that the expectation of advancement generated by the first reading of this new configuration of the minimum workload for secondary education is cooled in the face of the unpredictability regarding the materialization of what is contained in the norm. The education systems are solely responsible for guaranteeing the expected progressiveness of training time, without the government necessarily collaborating for this purpose. Thus, the diminished condition of the education systems belonging to the poorest federative entities of the federation being able to advance at the same pace of offering full-time education, compared to the federative units that have resources compatible with this demand. This fact reveals the low potential for confronting educational inequality, purposely assumed by the secondary education reform imposed by Law n° 13.415/2017 (BRASIL, 2017), under the political guidance of the Michel Miguel Elias Temer Lulia government (2016-2018).

The relevant fact that summarizes the second block of modifications in the general dispositions of basic education is the centrality that the curricular dimension gains by the determination of different laws that produced alterations in LDBEN/1996. One specific modification that was made to the law regarding the curriculum deserves particular attention in the analysis. It is about the reconfiguration of the offer of foreign languages in basic school education. This matter is regulated by § 5 of Art. 26, which reads as follows: “In the elementary school curriculum, from the sixth year onwards, English will be offered”.

In the original version of this device, revoked only in 2016, it was established that “the diversified part of the curriculum will include, obligatorily, from the fifth grade, the teaching of at least one modern foreign language, the choice of which will be up to charge of the school community, within the possibilities of the institution”. The difference between the previous wording and the one currently in force is precisely in respect for the autonomy of the school since this choice *was left to the school community, within the possibilities of the institution*. The fact is that with the advent of the Secondary Education Reform Law (Law No. 13,415/2017), the offer of modern languages other than English was explicitly and purposely removed.

This determinism of the exclusive offer of English in basic education, to the detriment of other modern languages, is part of a broader offensive against the historically claimed curricular conception for basic education. Just like Ferreira (2017), who treated the set of changes imposed by the Michel Temer government, through Law n° 13.415/2017, *as a counter-reform of secondary education*, Ramos and Frigotto (2017) endorse this understanding, emphasizing that such counter-reform is part of the *Coup d'Etat of August 31, 2016*.

It is important to point out that the meaning of the expression counter-reform in secondary education is supported by historical facts that demonstrate the opposite of the political orientation of the

Michel Temer Government to the curricular perspective that was gaining concreteness in the guidelines and bases of national education. In the years before the enactment of Law n° 13.415/2017, important legal provisions were incorporated into the Brazilian curriculum policy. It is fair to remember, emblematically, Law n° 10.639/2003 (BRASIL, 2003), proposed by federal deputy Esther Grossi (PT/RS). This law provides for the mandatory inclusion of the theme “Afro-Brazilian History and Culture” in the official curriculum of the school system. With its approval, from 2003 onwards, LDBEN/1996 now has Art.26-A, fully incorporating the summary of this aforementioned law.

The relevance of Law 10.639/2003 and its indispensable contribution to the march for the appreciation of Afro-Brazilian history and culture in the education process, as well as the challenges that this formally conquered advance poses for educational policy, were exemplarily addressed in a study developed and published by Gomes and Jesus (2013). These authors highlight the pedagogical practices of working with ethnic-racial relations at school from the perspective of the law under consideration. In essence, what can be inferred from the results of that study, as well as from other equally relevant ones (PEREIRA, 2008; COSTA, 2014; PAULA; GUIMARÃES, 2014), are the challenges and theoretical-practical developments of the reception of the law on the school, especially when taking into account that this is a proposition that is expected to reverberate in all curricular components, not just in the disciplines of History and Arts.

It is also necessary to recognize the inclusion of music as a mandatory content of basic formation, an achievement resulting from Law n° 11.769/2008 (BRASIL, 2008a), as well as the updating of this matter, through Law n° 13.278/2016 (BRASIL, 2016), by establishing that “the visual arts, dance, music, and theater are the languages that will constitute the curricular component dealt with in § 2 of Art. 26”. The effects of Law n° 13.006/2014 (BRASIL, 2014a) are added to this list of instruments that strengthen the curricular dimension emphasized here, by establishing that “the exhibition of nationally produced films will constitute a complementary curricular component integrated with the school’s pedagogical proposal, being its obligatory exhibition for at least 2 hours a month” (At. 26, § 8).

The inclusion of content related to human rights and the prevention of all forms of violence against children and adolescents (Art. 26, § 9) also deserves due recognition, to be experienced as cross-cutting themes in school curricula. This is a determination of Law n° 13.010/2014 (BRASIL, 2014b), which, among other effects, has driven the production and distribution of adequate teaching material, as provided for by this law. The fact is that this growing increase and diversification of the curriculum contrasts with the reductionist perspective that the secondary education reform imposed on the curriculum organization, such as the restriction on the supply of modern foreign languages.

The latest modifications concerning the general provisions of basic education are inscribed in Art. 28 of the LDBEN. It is important to recognize here the important initiative of the executive branch, exercised at the time by President Dilma Vana Rousseff. This is Law 12,960/2014 (BRASIL, 2014c), which produced the following inclusion in the Education Law:

the closure of rural, indigenous, and quilombola schools will be preceded by a statement from the regulatory body of the respective education system, which will consider the justification presented by the Department of Education, the analysis of the diagnosis of the impact of the action and the statement from the school community.

The incorporation of this legal requirement for the closure of rural schools is strictly consistent with the direction of the march toward the guarantee of the broad right to basic education. A

pertinent and consistent analysis of this matter is found in a dossier of the Kiri-kerê magazine (2020). Among the published studies, the contribution to the debate that is shared by Santos and Garcia (2020) stands out, when they develop the theme “the closure of rural schools in Brazil: from the social totality to the materialization of neoliberal guidelines”. The authors conclude that the closure of rural schools is based on a project of society by and for the ruling class, in which the State is an accomplice through its political arrangements. On the contrary, a rural school is defended based on a harmonious and fair relationship with the Earth as a place of knowledge, production, and human sociability. It is precisely this defense of the rural school that is inferred from the contribution of Law nº 12.960/2014 to LDBEN/1996, specifically to its Art. 28.

Early Childhood Education

This section received very few changes throughout the term of the LDBEN, all resulting from Law 12,796/2013. Despite the advent of the BNCC to establish references for the essential learning to be developed throughout basic education for the changes related to the section on early childhood education in the LDBEN/1996, nothing was incorporated, unlike the section dedicated to secondary education, which had changes specifically aimed at restructuring the curriculum policy for this stage of basic education.

Having been maintained as the first stage of basic education, early childhood education aims at the integral development of the child, up to the age of 5, in its physical, psychological, intellectual, and social aspects, complementing the action of the family and the community. In the previous version of Art. 29, this stage extended up to 6 years old. Art. 30 contains another change also related to the age group, this time to specify the age range of the dissociable sub-stages in which early childhood education should be offered. The first of these, the nursery, or equivalent entities, remains unchanged, being intended for children up to 3 years old. The second, the preschool, was changed, starting to be offered to children from 4 to 5 years old.

There is also a modification for including the rule that now regulates the provision of the initial stage of school. Among the common rules for organizing early childhood education, added to Art. 31 of LDBEN/1996, the first of them was extracted from the former caput of this article, having been partially converted into the current wording of Item I. This item establishes that the evaluation, at this stage of teaching, must be carried out “through monitoring and record of children's development, without the objective of promoting, even for access to elementary education”, which represented a great advance (FURTADO; PAIVA, 2016).

Therefore,

in addition to the fact that the law has saved the right to start basic education at the ideal age, the child, up to 5 years old, has also been assured a school path free of eventual failures, since the effect of the learning assessment, in this age group, should not generate retention in the school career (MACHADO; ANDRADE, 2021, p.53).

The following two rules give early childhood education the same norms valid for the other teaching stages. Effectively, early childhood education is now offered with a minimum annual workload of 800 hours, distributed over a minimum of 200 days of educational work (Section II); child care for at least 4 hours a day for part-time shifts, and 7 hours for full-time shifts (Section III);

As for the attendance control to be carried out by the preschool education institution, unlike the elementary and high school stages, which require 75% attendance, early childhood education is required to attend at least 60% of the total hours (Item IV). The fifth rule requires the issuance of documentation that allows attesting to the child's development and learning processes (Section V).

The paper organized by Zoia, Pasqualotto, and Cossetin (2019), entitled “Childhood Education: in defense of a humanizing education in times of struggles and resistance”, contains a set of studies with relevant reflections on the achievements concerning the guarantee of the right to early childhood education in the country as well as the challenges in the current historical context. Regarding the repercussions of Law 12,796/2013 on the provision of early childhood education, the study by Zanotto, Zen, and Machado (2019), which is part of the aforementioned work, recognizes the extreme importance of everyone's access to education but also considers that “the expansion of the obligation, which could be a step forward, ends up being affected, since it provides for access, but does not create conditions for the permanence and for the effectiveness of teaching and learning with quality” (Idem, p.25).

The reality is that the advance in the legal requirement of a minimum annual workload, a minimum of days and hours of educational work, as well as attendance control to be carried out by the institution of preschool education, demands the confrontation of persistent basic problems along the historical trajectory of this level of school that involve “the formation of teachers, the provision of adequate structural conditions to be with young children, the provision of diversified materials for the development of activities, among others” (LIRA; DREWINSKI; SAPELLI, 2016, p.94-95).

These demands reinforce how much legal progress must be accompanied by public policies that assert formally instituted rights, particularly in the early childhood education stage since overcoming the challenges pointed out by the aforementioned authors is an urgent agenda. In effect, we understand, as well as the authors, that “the extension of compulsory education must be accompanied by public funding so that early childhood education is offered in institutions with adequate structure and faculty conditions and with a specific pedagogical proposal for this age group” (Idem, p.95).

We must recognize that the changes made in LDBEN/1996 are essentially favorable to advances in guaranteeing the right to early childhood education. One of the contributions of Law n° 12.796/2013 to the Education Law was precisely the proclamation of the guarantee of compulsory and *free basic education, starting, unprecedentedly, at the age of 4*. Therefore, it incorporates preschool as an undeniable right in school education since those responsible for the child were responsible for enrolling their sons and daughters, just as the State was charged with the duty of offering this stage of compulsory schooling.

Elementary School

Elementary education was originally chosen by the legislature as the only mandatory stage of education in the country. Even though there is no longer a requirement for compulsory completion of a stage of basic education, the achievement of mandatory education from 4 to 17 years old, currently in force, was preceded by a process of extending the mandatory duration of this teaching stage, moving from the legal provision (LDBEN/1996, Art. 32) that established the minimum duration of eight years for its experience, to the wording given by Law n° 11.114/2005 (BRASIL, 2005a), authored by senator Ricardo Santos (PSDB/ES), who made it mandatory to start this stage from 6 years old.

The current version of Art. 32, resulting from the wording given by Law n° 11.274/2006 (BRASIL, 2006), authored by Deputy Raquel Teixeira (PSDB/GO), asks for this progressive expansion, by establishing that compulsory fundamental education now lasts 9 years, free in public school, to be started at the age of 6, with the objective of basic citizen formation.

As in the section on early childhood education, the section dedicated to elementary education in the Education Law has not been altered to comply with the curriculum policy established through the BNCC. To Art. 32, which already contains devices related to this matter, two paragraphs were added that seeks to qualify the curricular dimension of fundamental education, in the case of an insertion that precedes the advent of the BNCC. Under Law 11,525/2007 (BRASIL, 2007a), authored by Senator Patrícia Saboya Gomes (S/Partido/CE), the elementary school curriculum now includes, obligatorily, content that deals with the rights of children and adolescents, having as a guideline the Child and Adolescent Statute, observing the production and distribution of adequate didactic material (LDBEN/1996, Art. 32, § 5°).

The other addition complied with the provisions of Law 12,472/2011 (BRASIL, 2011), which, 11 years after its proposal by Senator Luzia Toledo (PSDB/ES), became § 6 of the current LDBEN, to establish that the study on national symbols is now included as a cross-cutting theme in elementary school curricula.

Less than two months after the LDBEN was sanctioned, federal deputy Nelson Marchezan (PSDB/RS) presented, on 02/19/1997, a project that resulted in Law n° 9.475/1997 (BRASIL, 1997a), being the first law that brought changes to the Education Law. Until then, the changes had resulted from decrees and provisional measures issued by the executive branch, exercised by President Fernando Henrique Cardoso.

Law 9,475/1997 gave new wording to Art. 33 of the LDBEN. Until its amendment, this article advocated that religious education was optional, constituted a discipline in the normal hours of public elementary schools, and was offered *free of charge to public coffers*. Items I and II of the original version of Art. 33 established that religious teaching had a *confessional* character, according to the religious option of the student or his guardian, taught by teachers or religious counselors prepared and accredited by the respective churches or religious entities; or *interconfessional*, resulting from an agreement between the various religious entities, which would be responsible for drawing up the respective program.

The modified version of Art. 33, currently in force, states that “religious education, with optional registration, is an integral part of the citizen's basic education and constitutes a discipline in the normal hours of public elementary schools, ensuring respect for Brazil's religious cultural diversity, prohibited any form of proselytism”.

The optional condition of enrolment is maintained but there is the insertion of an excerpt that formally conceives religious education as an “*integral part of the citizen's basic education*”. From this, it can be deduced that, despite granting the faculty to decide whether or not to accept the experience of this teaching and discipline in the elementary school stage, the law suggests that the abdication of the religious dimension also leaves the basic formation of the citizen incomplete.

The inclusions of paragraphs 1 and 2 that were integrated into Art. 33 set the tone for the character and extent instilled in the State's action in this matter. According to § 1 of Art. 33, “the education systems will regulate the procedures for defining the contents of religious teaching and will establish the norms for the qualification and admission of teachers”. Paragraph 2 provides that “the

education systems will listen to a civil entity, constituted by the different religious denominations, for the definition of the contents of religious education”.

There is an evident emphasis on the performance of education systems regarding the regulation of contents related to the religious dimension that, *listening* to religious denominations, must be incorporated into the school process in the elementary school stage. Another equally important aspect to be highlighted is that, unlike what was established in the previous version of the law that religious teaching should be “given by teachers or religious counselors prepared and accredited by the respective churches or religious entities”, under the terms of the § 1 of Art. 33 the LDBEN, it is also the education system that must establish the norms for the qualification and admission of teachers who will teach religious education in the country.

When weaving his analysis of this change in the law, Saviani (2016) formulates an epistemological note that appropriately synthesizes the essence of the changes in the LDBEN regarding the provision of religious education. According to the author

the reason for this change was pressure from the Catholic Church, which, in addition to guaranteeing the inclusion of religious education as a compulsory subject in the elementary school curricula, already guaranteed by the Constitution, also intended that this teaching be remunerated from public coffers. The aforementioned law enabled us to meet this claim by excluding the expression “without charge to the public coffers” that appeared in Art. 33 of the text was approved on December 20, 1996 (SAVIANI, 2016, p.255. Emphasis added).

This concise synthesis, extracted from Saviani's (2016) broad and in-depth analysis of the LDBEN's trajectory, shows what is essentially inferred from the interests that moved this first modification made to the Education Law, after seven months of its effectiveness. This is exactly a resumption of the historical dispute over public funds to finance education, with the return to the scene of the Catholic Church's interlocutors. Since always, and once again, they distinguished in the LDBEN's processing process, had demonstrated great impetus in its crusade to maintain religious education as a basic formative dimension of the citizen but with the financial co-guardianship of the State. In this sense, this change in the law constitutes a countermovement in the process of secularization of the State, so often questioned by agents moved by anti-republican interests.

High school

This stage of basic education was significantly altered under Law n° 13,415/2017 in which we have already commented previously on its authorship and context of its proposal and sanction in the Michel Temer government. With the advent of this law, secondary education received inclusions of an article and a set of paragraphs and items that, formally, radically modified its offer and perspectives of its experience.

With the inclusion of Art. 35-A advocates one of the main changes made in the teaching stage focused on this section of the law: the institution of a National Common Curricular Base (BNCC- *Base Nacional Comum Curricular*) that should define rights and learning objectives of secondary education, according to the guidelines of the National Council of Education, in four areas of knowledge that were also included by the aforementioned law: languages and their technologies (Section I); mathematics and its technologies (Section II); natural sciences and their technologies (Item III); applied human and social sciences (Item IV).

Despite the caput of Art. 35-A contains a textual articulation between the proposal of the BNCC and the achievement of areas of knowledge in the curricular organization of secondary education, what is evident in the paragraphs of this article is the emphasis on what is up to each education system to define and implement such as *the diversified part of the curricula*, § 1º; *the number of hours allocated to comply with the BNCC*, § 5; and *the contents, methodologies and forms of procedural and formative evaluation*, § 8.

An explanation of curricular components selectively conceived as mandatory or optional in the three years of high school is “*the teaching of the Portuguese language and mathematics*” (§ 3), implying that one wants to adopt the logic of living each subject per se. We observe that to refer to the mandatory components, the expression “the teaching of” [Portuguese language and mathematics] is used, while for the components that do not achieve such status, the expression “studies and practices of” [*physical education, art, sociology, and philosophy*], § 2; or simply “the study of” [*English language*], § 4. The possibility of offering other modern foreign languages appears even more discredited, since that same § 4 of Art. 35-A is complemented with the section that says: “They may (education systems) offer other foreign languages, on an optional basis, preferably Spanish.

Thus, the idea given to the organization of areas of knowledge “as a means to carry out a pedagogical practice that results in the development of skills and competences, taking interdisciplinarity and contextualization as a principle, without, however, defining them” (MENDES, 2020, p. 483), is not carried out in the article under consideration.

In this way, it becomes pertinent to endorse a preliminary question also contained in the study published by Mendes (2020). The author specifically asks the following question: what is *new* in the areas of knowledge in the new high school? We can at least partially answer this question, recognizing that the main novelty is the inclusion of areas of knowledge in the body of LDBEN/1996, which was not yet included, despite its mention in infrarenal norms.

In fact, from how the areas of knowledge are mentioned in the LDBEN, it seems that this expression already has a fully consolidated meaning in other norms, which is why it can be inferred that the Education Law only reserves the formalization of which areas must compose the curriculum. In general, the expectation hovering over the achievement of areas of knowledge converges with the idea of promoting the articulation of what is common between the disciplines of the curriculum. The fact is that, according to Mendes (2020), in the analysis of the documents that underlie the “new secondary education”, the areas of knowledge are not linked to the idea of “a relationship between particularity and totality that forms a unit”, but “denote a dilution of specificity in favor of generalization, in a mistaken perspective on interdisciplinarity” (Idem, p.488).

Therefore, there is very little to record in response to the question about what is new in the areas of knowledge in the new high school. Therefore, we conclude, based on the studies that were directly or indirectly interested in this question (PFEIFFER; GRIGOLETTO, 2018; FERRETTI, 2018; KUENZER, 2017), that the most appropriate answer for the moment was formulated by Mendes (2020) when he records the following assertion at the end of his study:

It is believed that what is new would be the uncertainties about curricular configurations, as this depends on the interest and interpretations in the state systems, and the certainty that young people in Brazilian public secondary education will have usurped their constitutional rights of equality in educational training (Idem, p.488).

This assertion by the author, with emphasis on the uncertainties of the real curricular configurations that will be implemented by the education systems but also on the certainty that young people with the right to secondary education are at the imminent risk of an unequal experience at this stage of basic training, has a direct connection with the debate on the publicized training itineraries, a topic that we will analyze next.

To carry out the main promise propagandized by the Federal Government, in the period of conversion of Provisional Measure 746/2016 into the *High School Reform Law*, Art. 36 of the LDBEN received a new wording, taking effect with the following terms: “The high school curriculum will be composed of the BNCC and training itineraries, which should be organized by offering different curricular arrangements, according to their relevance to the local context and the possibility of education systems.”

Another highlight of the nature of the reform imposed on secondary education concerns the technical and professional emphasis that is purposely adopted by the legislator. It is possible to verify this assertion by reading especially three of the twelve paragraphs included in Art. 36. according to the provisions of paragraph 6, at the discretion of the education systems, the offer of training with a technical and professional emphasis will consider “the inclusion of practical work experiences in the productive sector or simulation environments, establishing partnerships and using, when applicable, the instruments established by the legislation on professional learning” (Item I); and “the possibility of granting intermediate qualification certificates for work, when training is structured and organized in stages with terminality” (Section II).

Paragraph 7 of Art. 36 also makes more flexible the possibilities of offering experimental courses related to technical and professional formation, in areas that are not included in the National Catalog of Technical Courses, provided that the education system processes its proposal within the scope of its respective State Council of Education. Paragraph 8 of this article specifies that “the offer of technical and professional training, carried out in the institution or partnership with other institutions, must be previously approved by the State Council of Education, homologated by the State Secretary of Education and certified by the education systems”.

With the mention of these additions to Art. 36, we want to emphasize that the High School Reform Law, while highlighting one of the qualities recognized in the educational literature regarding education systems, which is their autonomy to propose, implement and evaluate their educational policies, also formalizes and even instigates a training perspective that is closely connected and committed to the private-mercantile sector. In addition, with the inclusion of § 9 in the article in question, “the educational institutions will issue a certificate with national validity, which will enable the high school graduate to continue studies at a higher level or in other courses or training for which completion of high school is a mandatory stage”.

At the same time that it is worth noting the flexibility regarding the possibilities of organizing the secondary education proposal in each federative unit, it is also worth noting the due recognition that the law gives to the State Council of Education, which is a fundamental instance of the state system of Education. Under the terms of the law, through this body, possible proposals for experimental courses related to technical and professional training must be submitted, in areas that are not included in the National Catalog of Technical Courses, for example. This means that, in addition to the pertinent and necessary criticism that has been made of the form and content of secondary education reform, it is also necessary to assert the historically defended progressive ideals for this stage of education through the

democratic exercise of the decision-making power of society by occupying its rightful place in the education councils, as the current version of the LDBEN also supports.

Finally, we return to one of the elements that received great emphasis throughout the advertisements that helped build a media discourse that was interestedly favorable to the reform of secondary education. Each student can build their training course. Between the promise made by the defenders of the reform and the text that makes it effective legislation throughout the country, there are indispensable considerations. Paragraph 5 of Art. 36 provides that education systems, subject to the availability of vacancies in the network, allow the student completing high school to attend one more training itinerary referred to in the caput.

At first glance, this paragraph seems to consolidate the broad right to choose routes, as propagated by the Michel Temer government. However, it is worth considering that “the Law is not explicit regarding the number of training itineraries that each federative entity can include” (FERRETTI, 2018, p.29). Actually,

each entity will not be obliged to offer the five itineraries but must include at least one. In other words, the state public networks will have to make choices between the itineraries to offer, something that was, in some way, sanctioned by the National Council of Secretaries of Education (Consed), one of the active entities in the formulation of MP 746, as well as in its transformation into Law 13,415 (Idem).

According to the author's assertion, what is effectively contained in the law is the possibility for the education system, at its discretion, to offer one more itinerary, in addition to the five areas explained in the caput of Art. 36. Even in the face of this evident absence of choices for students, § 12 of Art. 36 establishes that “schools should guide students in the process of choosing areas of knowledge or professional activity”. On this matter, we agree with Ferretti (2018, p.29), when he considers that

this article assumes that the choice of one or more itineraries is defined by the student, but the previous assumption must be considered, that is, that the definition of curricular arrangements to be defined by a given federative entity is its prerogative, not of the student, as proclaimed by official propaganda. Students will make, at most, choices between the training itineraries stipulated by the public education system of the aforementioned federative entity.

Ferretti (2018) goes to the heart of the matter by instigating attention regarding the real impossibility of the student choosing the itinerary that suits him. By imposing a certain itinerary, the education system will also exclude other possible itineraries, opting for the one that matches the private-mercantile interests that eventually move the executive on duty. This is the conclusion reached by our author when he considers that

The possibility should not be ruled out, given the country's current economic and political context, that the aforementioned flexibility of training itineraries by the states is limited, insofar as, following the spirit of the Law, the State Councils of Education of each entity may be, in a way, pressured to offer, as a priority, or in greater numbers, training itineraries more in tune with the perspective of economic interests, namely, those referring to the areas of Natural Sciences, Mathematics and Languages, and Professional Education, aligning them with the expectation of improvement in the rates obtained by young Brazilians in international assessments such as PISA (FERRETTI, 2018, p.29).

The fact is that, with the determination of only one itinerary, even so despite the students' own choices, there are favorable conditions for the deepening of educational inequalities, since those social subjects who can always, pay for their varied formation itineraries will continue to do so. Those who will only be able to experience the itinerary imposed by the system will not have any right to expand itineraries, since this is already the rule of the game in progress.

As important as the repercussions arising from the changes made in the stages are the changes made in the modalities of basic education, the focus of the approach is in the sequence of this article.

High School Technical Professional Education

This modality of teaching basic education was completely changed in LDBEN under Law n° 11.741/2008 (BRASIL, 2008c), proposed by the Executive Power, exercised at the time by President Luiz Inácio Lula da Silva, in the first year of his second term (2007-2010). These are additions to the following articles: 36-A; 36-B; 36-C; and 36-D. When compared, in the same scientific article that Ferreira (2017) titled “counter-reform of secondary education in the context of the new order and progress”, to appropriately refer to the expected effects of Law n° 13.415/2017, this author refers to Law No. 11.741/2008 with the following terms:

The enactment of this law can be considered an advance in educational policies and a response to the struggle of many teachers for the establishment of a State policy for the integrated offer of technical courses with an emphasis on the school process of workers combined with a professional qualification (FERREIRA, 2017, p. 299).

This assertion by the author contains an epistemological note that, in our view, expresses the due recognition that Law n° 11.741/2008 deserves, above all for having broken with the logic of disintegrated formation, that is, basic education separated from professional education, which had been imposed through Decree n° 2.208/1997 (BRASIL, 1997b), enacted by the Executive Power, exercised at the time by President Fernando Henrique Cardoso. Effectively, Law No. 11,741/2008 incorporates the content and spirit of Decree 5,154/2004 (BRASIL, 2004) which had been enacted by the President by Lula, to revoke the aforementioned Decree 2,208/1997.

With the inclusion of Art.36-A, the Education Law now recommends that “high school, once the student's general education is met, will be able to prepare him for the exercise of technical professions”. The sole paragraph of this article introduces the possibility of developing general preparation for work, as well as a professional qualification, in secondary education establishments or cooperation with institutions specialized in professional education (BRASIL, 2008c).

Art. 36-B disciplined how secondary-level technical professional education can be developed and can be articulated with secondary education, or subsequent, courses aimed at those who have already completed this stage of basic education. Another addition arising from this article was the obligation that this teaching modality observes the objectives and definitions contained in the national curriculum guidelines established by the National Council of Education, as well as the complementary norms of the respective education systems, and also the requirements of each teaching institution, in terms of its pedagogical project (BRASIL, 2008c).

In Art. 36-C, there are the formal possibilities to carry out the articulated the technical professional education alternative, provided for in Art. 36-B:

- I - integrated, offered only to those who have already completed elementary school, the course is planned in such a way as to lead the student to a high school technical professional qualification, at the same educational institution, with a single enrollment for each student;
- II - concurrently, offered to those who enter high school or are already enrolled in it, with separate enrollments for each course, and the following may occur:
 - a) at the same educational institution, taking advantage of the available educational opportunities;
 - b) in different educational institutions, taking advantage of the educational opportunities available
 - c) in different educational institutions, through inter-complementarity agreements, aiming at the planning and development of a unified pedagogical project.

Finally, Art. 36-D establishes that the diplomas of secondary-level technical professional education courses, when registered, will have national validity and will enable the continuation of studies in higher education. When structured and organized in stages with terminality, these courses make it possible to obtain qualification certificates for work after completion, with the use of each stage that characterizes a qualification for work (BRASIL, 2008c).

As a whole, the insertion of Articles 36 A, B, C, and D reaffirms the perspective of integrating secondary education with secondary technical professional education. It is fair to recognize that these provisions of the law are in favor of guaranteeing the right to an education of a polytechnic nature, to be necessarily constructed by the set of social subjects, in particular, by education professionals and other members of the school and local communities. The fact is that this legal apparatus constitutes an essential instrument so that this action claimed by the school segments can effectively gain concreteness.

Youth and Adult Education

This modality of teaching basic education was little reformulated over the years of the validity of the Education Law. There were only two changes. The first, carried out in compliance with Law nº 11.741/2008, included § 3 of Art. 37, to establish that the education of young people and adults should be articulated, preferably, with professional education, in the form of the regulation. This alteration follows the same integrating principle in which the aforementioned law was used to promote articulation within the scope of secondary technical professional education, as we appreciated in the immediately preceding section.

The second change was made in the caput of Art. 37, in our view, making it more consistent, since the original wording, which established that “youth and adult education will be aimed at those who did not have access or continuity of studies in fundamental and secondary education at the appropriate age”, has the complement properly integrated to that part of the article that was maintained, by establishing that the right to education of young people and adults “will constitute an instrument for education and lifelong learning.” It should be noted that this second change was due to the wording given by Law No. 13.632/2018 (BRASIL, 2018), authored by Federal Deputy Eduardo Barbosa (PSDB/MG).

Although short, these alterations corroborate the understanding that the promotion of education for young people and adults constitutes a fundamental political mechanism for the repair of educational inequalities. For this very reason, we endorse the understanding established by law, according to which the school of young people and adults must be conceived as a right to be guaranteed throughout

life. Thus, there is, on the horizon, the possibility of confronting the very restrictive notion that the law still adopts to delimit the age range considered as the proper, or ideal, age for the development of compulsory basic education.

FINAL CONSIDERATIONS

Throughout this article, we approach the movement of the march and countermarch in guaranteeing the right to basic education, based on the analysis of the alterations carried out in the LDBEN/1996. The study allowed us to identify remarkable heterogeneities in the processes of suppression, insertion, or modification of provisions of the Education Law, revealing both the intention of providing means of confronting persistent educational inequalities in the country and the purpose of reducing to the minimum possible the duty of the State with basic and obligatory school in the national territory.

Concerning the countermarch movement, it can be recognized, based on the data analyzed, that since the process of processing the law, changes have already been identified in the sense of removing the necessary changes from the original project to promote the confrontation of educational inequalities. When it was enacted, there was already a perception that a minimalist LDBEN had been reached. An example of this fact was the replacement of the section “National Education System” with the section entitled “Organization of National Education”. In addition to the nomenclature, this alteration had the purpose of withdrawing from the State the task of assuming education as a systemic responsibility, about the three entities of federated power, which means that educational assistance should be based on the principle of isonomy national level, saving the desired standard of teaching quality, including for students residing in places where the local government is unable to offer the desired standard of education. This is a claim that remains on the agenda, since the institutionalization of the National Education System, despite its recent inclusion in the text of the Federal Constitution, has not yet been effectively regulated.

Another amendment to the law, which also indicates a setback, was the resumption of offering religious education, which became an integral part of the citizen's basic education, but with optional enrollment. This was a request of the Catholic Church since the period in which the matter was discussed in the National Congress, without having achieved success in the final version of the law. It is, as analyzed in this study, the reaffirmation of interest in financing private education through public funds.

The effects of Law 13,415/2017, which, among other measures, establishes the *Policy to Encourage the Implementation of Full-Time High Schools*, known as “*High School Reform*”, can be conceived as the most prominent case among the examples of countermarch resulting from reforms in the text of LDBEN/1996. The very form of proposing this legal provision, that is, the use of the instrument of the provisional measure, when the government could have dealt with the matter through the normal ways of drafting laws, already corresponded to an act of retrogression, since this government initiative prohibited the debate with organized civil society, with the aggravating factor that, at that historical moment, studies and proposals for the reformulation of secondary education were already in progress, including within the scope of parliament. The consequence of this act is that all the accumulated treatment of the subject was disregarded, having been replaced by a secondary education proposed unilaterally by government representatives.

We consider that the marching movement towards overcoming educational inequalities is expressed in the new devices of LDBEN/1996 that start to demand from the State the guarantee of basic conditions for the access and permanence of students in the course of their school, highlighting, in this regard: the regulation of compulsory and free basic education from 4 to 17 years old; provision of school transport for students from the state and municipal networks; demand for a common national basis for the curricula of early childhood education, primary education, and secondary education; demand for manifestation by a normative body of the education system for the closure of rural, indigenous and quilombola schools.

The changes concerning the provision of mandatory basic education also included qualitative dimensions related to the official curriculum of the education network, starting to include the mandatory theme “History and Afro-Brazilian Culture”, in addition to ethnic-racial diversity among the principles of national education.

It is also pertinent to recognize the incorporations in the law favorable to the inclusion of involvement with basic education as one of the purposes of higher education; of the institutionalization and integration of the actions of technical professional education of secondary level, of the professional and technological EJA; as well as the promotion of initial and continuing training for teaching professionals, on a collaborative basis.

We conceive as a key point the legal duty imputed to the State regarding the free and mandatory provision of school education to citizens aged 4 to 17 years old, but also the full condition of demanding the extension of the fulfillment of this duty in the effective enrollment for children from 0 to 3 years old as well as for other citizens over the age of 17. This is a pertinent example for us to highlight the place that the family must have in defense of the right to education since the child, at this tender age, is not yet capable of doing so. Equally important is the understanding that full basic schooling is also a claimable right by young people and adults.

This is certainly one of the most important achievements resulting from the march in defense of the right to basic education and in favor of confronting educational inequalities. For this very reason, such achievements must be widely recognized, even becoming a cornerstone of contemporary struggles for the maintenance of social rights, with special attention to guaranteeing the same standard of educational quality throughout the national territory.

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CONFLICT OF INTEREST DECLARATION

The author declares that there is no conflict of interest with this article.