

Education Development Arrangements: from the public-private partnership to the dispute for the public educational fund¹

Arranjos de Desenvolvimento da Educação: da parceria público-privada à disputa pelo fundo público educacional

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ABSTRACT

In this article, considering the redefinition of the role of the State and the re-dimensioning of the relations between the public and the private spheres from the 1990s onwards, we aim to approach the new regulation form of the collaboration regime between federated entities and the proposal of Education Development Arrangements (EDAs). For this reason, the Bill No. 5.182/19 (BRASIL, 2019) is presented in order to explain the new dispute strategies of the public fund for education. Along the analysis, we describe the qualification of entities in the third sector, public investment in basic education in Brazil, the transfer mechanisms of public resources to private initiative with or without profit purposes, and the particularity of the EDAs proposal. The methodology was based on quantitative research, documentary and legislative analysis, as well as qualitative research. The study revealed that the institutionalization and encouragement of EDAs correspond to a process of construction of educational policies for basic education, linked to private interests with or without profit motives.

Keywords: State reform. Education Development Arrangements (EDAs). Public fund. Public-private partnership. Third sector entities.

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RESUMO

Neste artigo, considerando a redefinição do papel do Estado e o redimensionamento das relações entre o público e o privado, a partir dos anos de 1990, objetivamos abordar a nova forma de regimento do regime de colaboração entre os entes federados envolvendo a proposição de Arranjos de Desenvolvimento da Educação (ADEs). Para tanto, será apresentado o Projeto de Lei nº 5.182/19 (BRASIL, 2019), a fim de explicitar as novas estratégias de disputas do fundo público para a educação. Na análise, descrevemos a qualificação das entidades do terceiro setor, o investimento público na Educação Básica no Brasil, os mecanismos de transferência de recursos públicos para a iniciativa privada com ou sem fins de lucro e a particularidade da proposta dos ADEs. A metodologia utilizada se baseou tanto na pesquisa quantitativa, na análise documental e legislativa, como na pesquisa qualitativa. O estudo revelou que a institucionalização e o estímulo aos ADEs correspondem a um processo de construção de políticas educacionais para a Educação Básica, articulado aos interesses privados com ou sem fins de lucro.

Palavras-chave: Reforma do Estado. Arranjos de Desenvolvimento da Educação (ADEs). Fundo público. Parceria público-privada. Entidades do terceiro setor.

Introduction

This article analyzes the Education Development Arrangements (EDAs), purpose presented by the enterprise's movement *Todos Pela Educação*, approved and ruled by the Resolution of the National Education Council/Basic Education Chamber (CNE/CEB) n. 1, 23rd January 2012, written by the Council for National Education (BRASIL, 2012b). The proposal of the EDAs re-elaborate the collaboration regime – not institutionalized –, aiming to establish a new format of horizontal collaboration among municipalities in what concerns the organization of the education system, in partnership with foundations and enterprises' associations that work for the educational system.

The regulation process of this “new” collaborative format (ARGOLLO; MOTTA, 2015) is inserted in the context of the Brazilian state reform which have been in progress since the 1990s. The reform project, described by the State Apparatus Master Plan [Plano Diretor do Aparelho do Estado] (BRASIL, 1995), has given space for administrative and organizational changes in the public administration, becoming real the establishment of new strategies of articulation

between the public and the private spheres. Many normative instruments, such as constitutional amendments, complementary laws, decrees etc. have been approved in the perspective of a wider relation between State and civil society – this last is understood here as private non-profit entities or foundational associations. This relation ends up modifying the basic administration characteristics, authorizing other forms of public-private partnerships. Administrative contracts, cooperation agreements, and managements contracts are some of the examples.

We may thus consider that the private sector has been a great point of influence not only for the elaboration, but also for the execution of public policies, such as the EDAs. It is observed that the EDAs format stimulates a change in the notion of cooperative federalism and balance itself that is, according to the article 211 of the Federal Constitution of 1988 (BRASIL, 2012a [1988]), defined by the allocation of responsibilities, the decentralization of the political and administrative organization besides the agreements among the federated entities. However, it is not foreseen the articulation with private entities that has inserted new values and market practices within the educational structure lately.

The collaboration regime supposes a financing policy by the Union, involving new strategies shrouded by disputes for the education public fund. For this reason, this article is divided into four sections. Firstly, it will be presented the main legislation concerning the public-private relation in the education field, especially the articulation among the third sector associations. The second part will approach the mechanisms that turn possible the transfer of public resources towards the third sector. The third section, in its turn, will present some empirical data about the public investment in basic education between 2003 and 2019, highlighting the amount disbursed and comparing, in parallel, the direct transfer of the Union's resources for municipalities and non-profit private institutions. The fourth section, focused on the Bill nº 5.182 of 2019 (BRASIL, 2019) that rules the EDAs, will establish a hypothesis that these arrangements involve new strategies of action for the Social Organizations and Civil Society Organizations in the battle for the public fund.

Some elements about the regulation between public and private spheres: from the Social Organizations to the Civil Society Organizations

When we analyze the ordinary legislation about the public-private relations in education, it is important to verge that this kind of regulation is also

a constitutive part of the Brazilian state reform forged in the 1990s, resulting in the re-configuration of the role of the state in what concerns the education promotion and the insertion of this new structure based on the non-state public sector. This sector starts to be edified through the so-called *third sector entities*, known as partners of the public power, also being ruled by ordinary laws that establish the Social Organization (BRASIL, 1990), the Civil Society Organization of Public Interest [Organização da Sociedade Civil de Interesse Público] (BRASIL, 1999) and the Civil Society Organization [Organização da Sociedade Civil], created by the Regulatory Framework for the Third Sector [Marco Regulatório do Terceiro Setor] (BRASIL, 2015a).

These special legal qualities ensure some advantages. These qualities start to enjoy benefits of administrative and tributary order. These organizations enjoy, when they promote activities of public interest, several benefits that must be deeply comprehended, particularly regarding the transfer of resources, goods and public services, according to the national legislation dedicated to social organizations. In the article 12, the present law declares that financial resources and public goods which make feasible an “administration contract” may be put in charge of social organizations (BRASIL, 1998).

As stated by the law n. 9.790, of March 23, 1999 (BRASIL, 1999), articles 9 and 10, the partnership term establishes that the agreement firm by the public power and the Civil Society Organization of Public Interest, destined to the construction of cooperation accords between the parts, is addressed to the increment and execution of activities of public interest, determined by the article 10, paragraph 02 and following items. According to Di Pietro (1999, p. 201, translated by the authors), “[...] there is no doubt that social organizations are constituted as an instrument of privatization used by the government to decrease the role of the public administration apparatus”.

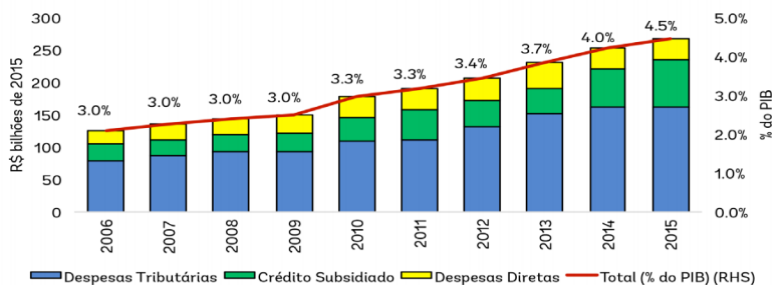
In 2014, the Regulatory Framework for the Third Sector [Marco Regulatório do Terceiro Setor] was approved, having as the main objective the rule the partnerships firm between the public power and non-profit private entities, defined as Social Civil Organizations [Organizações da Sociedade Civil]. It is important to highlight that the public-private relation is based on the enterprise’s logics, such as competitiveness and productivity. Nonetheless, in order to institutionalize this apparatus in the public school’s structure, a “normative framework” was necessary to legitimize and provide equal mechanisms that open the path to the access towards the educational public fund, as it is exposed by the Bill n. 5.182 of 2019 (BRASIL, 2019), which describes the Education Development Arrangements (EDAs). In the following section we analyze some transfer forms of public resources to the private sector regarding the educational field.

Mechanisms of public resources transfer for the private initiative

Aiming to demonstrate the hypothesis that the EDAs are configured as a new strategy after the public fund, it is initially worth mentioning that the Federal Constitution (BRASIL, 2012a [1988]) provides the possibility of renunciation to the taxation by the federal entities (Union, states and municipalities) (BRASIL, 2012a [1988], article 150, § 6º). According to Santos Filho (2016, p. 24), “[...] the tax breaks are exactly addressed to granting benefits, to the development of certain private initiative activities, especially those associated to the public utility, or even to the own tax prohibition imposed on the tax entity”.

Based on the data provided by the National treasury over the incentives and subsidies granted annually by the Brazilian federal government, the World Bank prediction (2018) about the main challenges for the Brazilian economic and social development, such as fiscal imbalance, highlights: “today about 6,2% of the GDP is spent with tax incentives of several types, 4,3% are addressed to tax exemptions and 1,9% to tax subsidies and subsidized credit”. It is also said that “three quarter of these tax subsidies and tax exemption give direct benefits to the private sector enterprises” (WORLD BANK, 2018, p. 13). The direct resources transfers to private enterprises is illustrated by the World Bank in the following graphic:

GRAPHIC 1 – “BOLSA EMPRESÁRIO”: TAX EXEMPTIONS, SUBSIDIZED CREDIT AND DIRECT TRANSFERS BENEFIT THE PRIVATE SECTOR



SOURCE: World Bank (2018, p. 13).

Although the placements of the World Bank about the possible future directions of the reforms may be questionable, we cannot disregard this data, elaborated by the Brazilian Finances Ministry, which presents the significant

number of public resources addressed to private groups, particularly if we consider the state apparatus reform started in the 1990s and the interests over the granting tax benefits to the private sector. Therefore, another aspect to be considered is the fiscal imbalance caused by the state's action in favor to the capitalist dynamic.

The action of the State has been redefined lately. As a result of that, it is evident the strengthening of private interests on the expense of public interests (SGUISSARDI, 2014). Some researches about the government's budget spending, conducted within the basic public educational field, let us notice the amount of public resources transferred to the municipalities, besides the amount of money transferred to the private initiative. Adrião and Domiciano (2018), basing their analysis on the statement of revenues linked to the Maintenance and Development of Education², show that the enlargement of the transfer volume of the federal resources destined to the private sector, according to the following table (n. 01).

TABLE 1 – MAINTENANCE AND DEVELOPMENT OF EDUCATION TOTAL EXPENSES AND PERCENTAGE ADDRESSED TO THE PRIVATE SECTOR OF THE FEDERAL GOVERNMENT

Ano de exercício	Gasto total em MDE*	Gasto direcionado ao setor privado**	Gasto direcionado aos municípios	Percentual do gasto total em MDE destinado ao setor privado	Percentual do gasto total em MDE destinado aos municípios
2002	10.797.567	2.906.968	1.754.501	26,92%	16,25%
2006	14.801.195	3.213.959	2.345.004	21,71%	15,84%
2010	14.824.678	2.686.112	627.689	18,12%	4,23%
2014	35.639.626	8.514.455	5.508.955	23,89%	15,46%

SOURCE: Adrião and Domiciano (2018).

All along their analysis, the authors question about the destination of the public resources of the federal government to the private sector as a part of a

2 “It is considered as expenses with Maintenance and Development of Education, for the purpose of calculating the constitutional limit with the Maintenance and Development of Education, the expenses focused on the achievement of the basic objectives of the educational institutions in all the levels, regarding those who are dedicated to: a) the remuneration and the personal betterment of teachers and all the professionals involved in education; b) the acquisition, maintenance, construction and conservation of installation and equipment used for teaching; c) the use and maintenance of goods and services involving the teaching practice; d) edification of statistic data base, studies and researches focused on the improvement of the teaching quality; e) the promotion of necessary intermediate activities for the functioning of the teaching system; f) scholarships for public and private institutions' students; g) costing of credit operations destined to Maintenance and Development of Education; h) acquisition of didactic-school material and maintenance of school transport programs” (BRASIL, 2017, translated by the authors).

process that indicates the clear transformation of the public basic school into a business field. From this understanding, we aim to turn visible the indicators of public investments in the basic Brazilian education, based on the data system about the federal government's budget – SIGA Brasil, created by the Federal Senate (BRASIL, 2020a). We use this source because of the unavailability of current data about Maintenance and Development of Education expenses by the federal government. Furthermore, it indicates some data collected from the Basic Education Census concerning the number of school enrollments (BRASIL, 2020b).

The public investment in Brazilian basic education

Through the trajectory of public investments in education in Brazil, many surveys have revealed the expressive increase in resources dedicated to the basic school system. According to Reis (2015, p. 183), the Citizens' Panel on the Union Budget (SIGA Brasil) [Painel do Cidadão sobre o Orçamento da União], between 2003 and 2014, “[...] there was an increase in the under-function expenses related to the basic education when compared to the Union's expenses in all functions. This boost has been specially verified from 2007 onwards”. If we look at the percentage, the author describes that:

In 2003, the resources destined to the basic education represented, in percentage terms, 0,38% of the Union's expenses (all the functions), and in 2014 they started to be at a level of 1,26%, an increase of 231,58%. From a financial perspective, the expense of the Union with basic education rises from R\$ 6,302 billion, in 2003, to R\$ 28,771 billion in 2014, an increase of 356,52% (REIS, 2015, p. 183, translated by the authors).

When he approaches the evolution of the federal expenses, Mendes (2015), based on the same data base, shows that the education system runs as the field which has had the greatest amounts of investments. As stated by him, “[...] in 2004 the transfers addressed to the sector represented 4% of the net treasury revenue, going to 9,3% in 2014. An increment nothing negligible of 130%” (MENDES, 2015, p. 01, translated by the authors). The table 2, elaborated by the author, indicates all these numbers.

TABLE 2 – FEDERAL GOVERNMENT EXPENSES (2004-2014)

	2004	2006	2008	2010	2011	2012	2013	2014	Variação 2004-14
Abono Salarial e Seguro Desemprego	2,7	3,3	3,5	3,8	4,2	4,4	4,5	5,3	96%
LOAS e RMV	2,1	2,6	2,7	2,9	3,0	3,3	3,4	3,8	78%
Bolsa Família	1,4	1,3	1,8	1,7	2,0	2,3	2,4	2,6	90%
Benefícios Previdenciários	35,7	36,7	34,2	32,7	34,4	35,9	36,0	38,9	9%
Saúde	9,1	8,6	8,2	7,9	8,4	8,8	8,4	9,3	2%
Educação	4,0	4,2	4,6	5,9	6,6	7,6	7,8	9,3	130%
Pessoal (exceto saúde e educação)	22,2	22,3	21,4	20,3	20,6	19,8	18,8	19,7	-11%
Investimento (exceto saúde e educação)	2,1	2,8	3,9	4,7	4,1	3,8	3,7	4,3	107%
Memo: Receita Líquida (R\$ bilhões) valor nominal	352	451	584	779	818	881	991	1.014	

SOURCE: Mendes (2015, p. 01).

This same source also evidences the participation of the education system in the effective budget of the Union between 2015 and 2019, in accordance with the real expense indexed by the Broad National Consumer Price Index [Índice Nacional de Preços ao Consumidor Amplo - IPCA] available on table 3.

TABLE 3 – EDUCATION PARTICIPATION IN THE UNION’S EFFECTIVE BUDGET – AMOUNT PAID (2015-2019)

Year	Education – amount paid (in real)	% of the Union’s Effective Budget
2015	121, bi	6,09
2016	123,9 bi	6,09
2017	122,2 bi	5,97
2018	109,8 bi	5,19
2019	106,9 bi	5,06
Δ 2015/2019	-14,1 bi	-1,03
Δ %2015/2019	-11,35%	

SOURCE: Elaborated by the authors, based on the data (2015-2019) published by the Federal Senate (BRASIL, 2020a)

The numbers reveal that the resources addressed to the education field increased in 2016. However, from 2017 onwards, there has been a decrease – in special if we consider the decrease in the tax collection and the approval of the Constitutional Amendment (EC) n. 95, of 15th December 2016 (BRASIL, 2016). As defined by this amendment, a new tax regime is instituted, freezing the public expenses for more than 20 years, together with the permission of only the inflationary losses. Considering the amount paid (R\$ 1,00), compared to the time between 2015 and 2019, there is a negative variation of R\$ 14 billion and R\$ 100 million. In other words, there is a decrease of 11,35% and a negative tendency towards this perspective.

The table 4 shows a comparative model related to the direct transfers³ of the Union's effective budget, the social security system and the tax sphere concerning the municipal education system and non-profit private institutions.

TABLE 4 – DIRECT TRANSFERS FROM THE UNION TO THE EDUCATION SYSTEM

Year	Direct application	Direct transfers from the Union to municipalities	Direct Transfers from the Union to Non-profit private institutions
2015	79,9 bi	18,9 bi	2,0 bi
2016	81,3 bi	18,7 bi	1,4 bi
2017	80,9 bi	16,4 bi	640,6 mi
2018	74,5 bi	18 bi	668 mi
2019	72 bi	16,9 bi	522 mi
Δ 2015/2019	-7,9 bi	- 2 bi	- 1.478 bi
Δ %2015/2019	9, 9 % aprox.	- 10,6 % aprox.	- 26,1 aprox.

SOURCE: Elaborated by the authors, based on the Citizen's Panel: SIGA Brasil (BRASIL, 2020a)

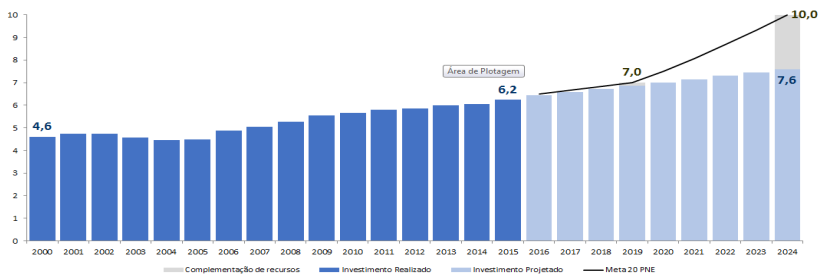
NOTE: Amount paid in real and indexed by the IPCA until April * (Data updated until 17th Mai 2020).

Considering the transfers effectuated between 2015 and 2019, the data shows that the transfers had increased from 2015 to 2016. Nonetheless, it is notorious that, from 2017 onwards, there was a change and the direct transfers to the municipalities started to decrease, especially those addressed to non-profit private institutions which do not have a direct link with the public administration. It is important, moreover, to say that “[...] the main two legal structures present in the Brazilian law that allow the receipt of public resources by non-profit private institutions are the Social Civil Organizations and the Civil Society Organization of Public Interest (NATIONAL CONFEDERATION OF EDUCATIONAL WORKERS, 2017, p. 41, translated by the authors).

3 “Part of the federal tax collection is directly transferred to states and municipalities through the State's Participation Fund [Fundo de Participação dos Estados] (FPE) and the Municipality Participation Fund [Fundo de Participação dos Municípios] (FPM), that were created in the tax reform of 1965/68. According to Prado (2006), these funds were valued in the Constitution of 1988, increasing the percentage of the Income Tax [Imposto de renda] (IR) and the Taxes over Industrialized Products [Imposto sobre Produtos Industrializados] (IPI) that represented 5% in 1968, going to 21,5% (FPE) and 22,5% (FPM) (PRADO, 2006)” (NATIONAL CONFEDERATION OF EDUCATIONAL WORKERS, 2017, p. 88).

The graphic 2, based on data elaborated by the National Institute of Researches and Studies Anísio Teixeira [Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira - INEP], presents a projection regarding the direct public investment in education, during the period of 2000 and 2015, in relation with the Gross Domestic Product (GDP) per capita. The percentage showed by the INEP is updated according to the values published by the Brazilian Institute of Geography and Statistics [Instituto Brasileiro de Geografia e Estatística- IBGE] in March 2017.

GRAPHIC 2 – PUBLIC INVESTMENT IN RELATION TO THE BRAZILIAN GDP, ACCOMPLISHED, PROJECTED AND COMPLEMENTED BY THE UNION (2000-2024)



FONTE: Brasil (2015b).

As it is exposed in the graphic 2, the resources addressed by the Union to the education field prove that there was an increase from 2000 to 2015. From 4,6%, in 2000, to 6,2% of the GDP, in 2015, with a projection of 10%, in 2024, according to the Goal 20 [Meta 20] of the National Plan for Education [Plano Nacional de Educação] (BRASIL, 2015a). Howbeit, there is a gap in this official text that does not link the 10% of the GDP for public education, opening a path for the concession of public resources to private institutions.

Having this official data as a base, we can affirm that, if, on the one hand, it is identifiable an increase in the direct public investment in education, on the other, the same period, it is possible to observe an enlargement of the transfer of public funds to the private sector, for-profit and also non-profit entities, for them to accomplish educational services in basic education (NATIONAL CONFEDERATION OF EDUCATIONAL, 2017; ADRIÃO; DOMICIANO, 2018). Another important data is that, in the discussion, we have to establish relations between the purchase of the so-called “educational systems” sold by private enterprises to municipalities.

Regarding this tendency, the destination of public resources to the private sector – either for-profit or non-profit institutions – it is important to point out some data concerning the enrollments in basic educations. The data about the total enrollment in regular basic education, available on the Statistics Synopses of School Census [Sinopses Estatísticas do Censo Escolar] demonstrates that in 2019 “47,9 million enrollments were registered at 180,6 thousand basic public schools in Brazil”, the municipal schools “being the main responsible for the offer of initial years on elementary school (67,6% of the enrollments) [...] whereas in the final years there is a balance between municipalities’ schools (42,8%) and state’s schools (41,5%)” (BRASIL, 2020b, p. 5-6).

TABLE 5 – NUMBER OF BASIC EDUCATION SCHOOL IN RELATION TO THE ADMINISTRATIVE DEPENDENCE IN BRAZIL (2015-2019)

ANO	DEPENDÊNCIA ADMINISTRATIVA					
	Total	Pública	Federal	Estadual	Municipal	Privada
2015	48.796.512	39.738.780	376.230	16.548.708	22.813.842	9.057.732
2016	48.817.479	39.834.378	392.565	16.595.631	22.846.182	8.983.101
2017	48.608.093	39.721.032	396.482	16.222.814	23.101.736	8.887.061
2018	48.455.867	39.460.618	411.078	15.946.416	23.103.124	8.995.249
2019	47.874.246	38.739.461	404.807	15.307.033	23.027.621	9.134.785

SOURCE: Brasil (2020b, p. 19)

These numbers reveal that most basic school enrollments are under the responsibility of the municipalities, the most fragile federal in terms of financial and administrative competence. According to Adrião and Domiciano (2018), the municipalities are:

[...] less equipped technically and financially for this task, but they have directly lived the pressure of the society to assure the effectuation of the right to education. It is important to remember that the municipalities, as the other federal entities, have been subordinated since 2001 to the Law of Fiscal Responsibility [Lei de Responsabilidade Fiscal] (LRF) that fixes the government’s expenses with personal expenses in 60%, stimulating the transfer of a great part of educational activities for the private sector [...] (translated by the authors) (ADRIÃO; DOMICIANO, 2018, p. 5).

According to these authors, “[...] these constraints explain, in part, the generalization of policies and programs based on the private sector, for-profit

or non-profit, as a “solution” for the offer and administration of the education system in a subnational level” (ADRIÃO; DOMICIANO, 2018, p. 05, translated by the authors).

Among the most recent policies of fiscal “austerity”, we can cite the approval of the EC n. 95, 15th December 2016 (BRASIL, 2016), which institutes a New Fiscal Regime [Novo Regime Fiscal] (NRF), establishing the public expenses freeze for more than 20 years in what concerns the primary expenses. This measure only allows the reposition of inflationary losses. If on the one hand it restricts the social rights investments, especially in education because:

[...] it compromises the achievements of the Educational National Plan, particularly regarding the percentage of 10% of the GDP for education (AMARAL, 2016), but it also puts in risk the social rights established by the Federal Constitution. In the case of public education, there is the risk of the constitutional bidding of a tax percentage by the federal entities for the maintenance and development of teaching, that in the case of the Union, is of 18% (SANTOS FILHO, 2016, p. 244).

On the other hand, it might encourage the tendency of a private market expansion in municipalities administration (NATIONAL CONFEDERATION OF EDUCATIONAL, 2017), via public-private partnerships. Another tendency is that “the changes approved in the Constitutional Amendment 95/2016 will profoundly adjust the public budget and the forms how the disputes and negotiations for the public fund take place” (NATIONAL CONFEDERATION OF EDUCATIONAL, 2017, p. 83). Regarding the known fragility of the municipalities, Abicalil (2013) indicates another point that deserves to be analyzed. According to him:

[...] differently from the Union and the states, which have an obligation to maintain their own institutions of basic and higher education, in a different way, the municipal competencies present the maintenance of programs, opening readings for a range of possibilities of organization of the public educational offer in early childhood education and primary education. The Constitutional Amendment n. 3, from 2006, took care to insert the Union’s cooperation, but did not change the distinction between maintaining programs and maintaining educational institutions. The text surreptitiously recognizes that there are municipalities in such precarious conditions that they would not necessarily form their own network, in line with the principle of federative coordination and cooperation and

collaboration between education systems (ABICALIL, 2013, p. 821, emphasis in original, translated by the authors).

In this sense, the new regimes of collaboration involving a horizontal cooperation between municipalities and private associations, as well as the path towards their regulation, are topics that must be increasingly debated.

Therefore, it is important to say here that, amidst the regulation, the arrangements were elaborated as a national policy whose objective concerns the support to the cooperation and also the articulation among the federal competences through a territorial administration of education. Notwithstanding, even if it creates a “new” model of collaborative competence (ARGOLLO; MOTTA, 2015) – that is, involving the coordinated action of the municipalities in partnership with institutions and foundations associated to private enterprises, the purpose emerges within a context where it is noticeable an important increase of the municipalities’ attributions and educational services. Moreover, there were several alterations in the celebration of partnerships and state’s budget partnership with the social society organizations. These objective conditions create an encouraging environment for public-private partnerships that stimulates different strategies of the private market expansion (CARVALHO, 2019) and new strategies in the battle for the education public fund.

Arrangements for an Education Development: the bill n. 5.182/2019 and strategies of the third sector entities for the receipt of financial assistance from the Union

Since 2019 many institutions have made the commitment to support the municipal education secretariats of different places in the country with the implementation of a new cooperation model, particularly the EDAs, what has indicated the materiality of a project that has as the main objective the edification of a cooperation model through a network integration among different municipalities. As a result of that, there is also the involvement of new relations between the public and the private spheres (CARVALHO, 2018).

It is important to remember here that this new model of competences is inserted within the context of new forms of achieving cooperation among the federal entities, what includes the “transversal contribution of institutes and foundations” (CRUZ, 2012, p. 147; translated by the authors), attached

to private organizations and enterprises. In general, it is understood that these arrangements, following an influential perspective over the education national system, would be an instrument for the public administration to straighten and create a new collaboration regime whose finality would be the improvement of the social quality of Brazilian education.

Although the article 2, paragraph 1, of the Resolution n. 1 written by the National Council of Education (22th January 2012) defines that “this form of collaboration might be opened to the participation of private institutions and non-governmental organization, under the regime of agreements of cooperation terms, without this representing the public resources transfer towards these institutions and organizations” (BRASIL, 2012b, p. 2, translated by the authors), we consider that, this new form of private-and-public collaboration, beyond an instrument for an horizontal territorial collaboration firm by the federal entities, creates a new strategy for public fund’s dispute. Likewise, it also includes philanthropical institutions and private organizations as “public interest” organizations concerning education’s investment.

When we approach new forms of disputes for the public fund, we state that the purposes described in these arrangements overlap the approval of some mechanisms that might assure the institutional support of the State before the cooperation amidst the federal entities and private institutions. In special, we point out here the Fund for the Maintenance and Development of Basic School and Valuing the Teaching Practice [Fundo de Manutenção e Desenvolvimento da Educação Básica e Valorização do Magistério] (FUNDEB), law n. 11.494, 20th June 2007, which establishes that the complementary portion by the Union “will be fixed annually by the Financing Intergovernmental Commission for Basic Quality Education [Comissão Intergovernamental de Financiamento para a Educação Básica de Qualidade]”, limited to the percentage of “until 10%”, might “be distributed for the funds through programs to support the quality of basic education” (BRASIL, 2007, Article 7, translated by the authors). In his sole paragraph, item I, of the same article article affirms that, for the distribution of complementary resources, it will be considered: “[...] the presentation of either collaboration projects firm by the State and the municipalities or municipal agreements with private institutions” (BRASIL, 2007, p. 3). According to the Ministry of Education, on the National Fund for Education Development [Fundo Nacional de Desenvolvimento da Educação] (FNDE), in 2018 the complementation provided by the Union is R\$ 14 billion.

[...] considering the period between 2016, 2017 and 2018, the FUNDEB complementation increased R\$ 1,5 billion – from R\$ 12,54 billion in

2016 to R\$ 13,9 billion in 2017 and R\$ 14,05 billion in 2018. As stated by the law, the complementation paid by the Union must be 10% of the state's incomes each year. The calculation memory of the predicted value exposed in the Annual Budget Law of 2018 [Lei Orçamentária Annual de 2018] considered the state's income projected by the 2017 projection, considering the amount collected until June and the constant federal expenses of PLOA 2018, an amount of R\$ 140,5 billion – resources of FUNDEB (BRASIL, 2018, p. 1, translated by the authors).

For the year of 2019, the total projection of the incomes available for the FUNDEB was “R\$ 156, 3 billion”:

143,4 billion correspond to the total contributions offered by states, the federal district and municipalities, and R\$ 14,2 billion correspond to the complementary resources offered by the Union to the fund [...]. This prevision represents an increase of R\$ 7,1 billion o 4,8% for 2019 in relation to the estimated income of 2018. The resources for 2018 were estimated by the Interministerial Ordinance 6/2018, published on 27th December, that evaluates the total income of the fund in 2018, R\$ 148,2 billion, being R\$ 136,9 billion paid by states, the federal district and municipalities, and R\$ 13,6 billion by complementary resources of the Union (NATIONAL CONFEDERATION OF EDUCATIONAL, 2019, translated by the authors).

In the article 7, item 7, of the Education National Plan it is declared that: “the enforcement of the collaboration regime among the municipalities will be accomplished through the adoption of Education Development Arrangements” (BRASIL, 2014, p. 03). Therefore, it is previewed that these arrangements might be an instrument to put into practice the collaboration regime. The Bill n. 5.182, recently presented in the House of Representatives on 24th December 2019 (BRASIL, 2019), written by the deputy Luísa Canziani of the Democratic Labor Party of Paraná (PDT/PR), was supported by the *Frente Parlamentar Mista de Educação*⁴, that searches to resume the Bill n. 2.417, of 2011, written

4 According to the *Instituto Positivo* (2019, p. 8, emphasis in original, translated by the authors): “In April 2019, parliamentarians of the House of Representatives and the Federal Senate, associated with civil society organizations, in order to create the Mixed Parliamentary Front for Education [Frente Parlamentar Mista da Educação], headed by the federal deputy Teacher Dorinha Seabra. It is a supraparty group whose objective is to debate and promote actions for the development

by the deputy Alex Canziani of the Brazilian Labor Party of Paraná (PTB-PR), seeking to institutionalize of the Education Development Arrangements (EDAs). For that, the Bill prescribes in his article 4:

The formalization of an Education Development Arrangement will be done through the signature of an agreement of cooperation among the federal entities besides the signature of a partnership term with one same non-profit civil society entity that will act as an articulation and promotion intermediary for the coordinated actions of EDA (BRASIL, 2019, article 4, translated by the authors).

This proposition, also, envisages creating “[...] conditions for the municipalities involved in an EDA, in function of their coordinated actions, to receive priority technical assistance and financial aid from the Union, provided in the Federal Constitution” (BRASIL, 2019, p. 05, translated by the authors). For the EDAs to be qualified to participate of the federal government’s aid programs in regarding the coordinated actions, the Bill purposes to change the Law n. 13.019, 31st July 2014, regarding the Regulatory Framework for Civil Society Organizations [Marco Regulatório das Organizações da Sociedade Civil – MROSC] to consider as accredited the civil society entities that are part of these arrangements. In the terms of the Bill:

Article 6. The article 30 of the Law 13.019, 31st July 2014, becomes effective with the following sole paragraph: “Article 30. Sole paragraph. It is considered as accredited, for the effects exposed in the item VI of the ‘caput’, the civil society entities that, as partners, act as articulation and promotion intermediaries for the coordinated actions of Education Development Arrangements (EDA), established in the terms of the specific legislature” (BRASIL, 2019, p. 3, translated by the authors).

The present Bill is in process in the House of Representatives under the Ordinary Regime [Regime de Tramitação Ordinária] (article 151, III, RICD), being subject to conclusive appreciation by the Commissions (article 21, III). The last legislative action was its attachment to the Bill n. 2417/2011, on 11th

of education. Among the issues approached by the ten commissions that are part of the Front, there are the Federal Arrangements, coordinated by the federal deputy Luiza Canziani who proposed the Bill n. 5182/19 whose objective is the institutionalization of the Education Development Arrangements”.

December 2019. However, the purpose reveals the intention to include the civil society entities of “public interest” as partners:

Article 3. An Education Development Arrangement (EDA) will promote coordinated actions of public institutions responsible for education firmed by the federal entities involved and other institutions, being them public of private, headquartered in their jurisdiction, with interest to promote the betterment of education in this territory (BRASIL, 2019, p. 01-02, translated by the authors).

As it is established by the article, paragraph 2, item IV:

The [non-profit] civil society entity which the caput of the present article might be in charge of technical assistance and receive financial assistance resources from the Union, aiming to implement coordinated actions firmed by the entities involved in an EDA, following the article 05. They can, for that, firm the partnership term, the cooperation term, the funding term, the cooperation agreement, partnerships, contracts, any kind of agreement, receive funds, contributions, social or economic grants from other entities or the government, once they follow what is described in the third paragraph (BRASIL, 2019, p. 3).

The purpose of institutionalization of the collaboration regime calls its attention for the attempt to enable non-profit civil society entities, when they act as intermediaries for coordinated actions of the EDAs, to receive financial assistance and grants from the Union. Considering that many of these contracts are linked to private enterprises of the private educational services market, the possibility of a partnership among federal entities and the private sector seems to reinforce the hypothesis that the effort of the business sector to create other alternatives to have access to the direct public resources is true.

Conclusion

This article, based on the Bill n. 5.181/2019 (BRASIL, 2019), analyzed the current legal purpose of a collaboration regime among federal entities

through the EDAs, which are grounded in the public-private relation, in order to explicate new social arrangements over the dispute for a public fund for education in Brazil. The analysis shows that non-state public institutions have been largely stimulated, since the 1990s, through the regimentation of the third sector entities. As a result of that, many possibilities for the insertion of these entities in the promotion of public education were created.

It was possible here to understand that, from distinct sources related to the destination of the Union's resources for the educational field (ADRIÃO; DOMINICIANO, 2018; BRASIL, 2015b, 2020b) that the Brazilian State has enlarged its investments in basic education for the last decades. We can stand out, however, that this enlargement was accompanied by the transfer of public resources towards non-profit private institutions. As it was identified in the official data, these transfers were higher than those addressed to the public administration of the federal entities – according to the expenses for Maintenance and Development of Teaching – between 2002 and 2012 (ADRIÃO; DOMICIANO, 2018). This action reveals that the public sphere has been transformed into a privileged *locus*, not only in what concerns social demands – through the effectuation of social rights – but also regarding the maintenance of the private sector's interests, via public financial programs.

Since 2017, there has been a sharp decline of public investments to the educational field. It was mostly imposed by the approval of the EC 95/16 that institutes a new tax regime to limit for 20 years (until 2036) the public investments in education and health. This financial restriction, associated to the municipalities' administrative and financial fragility, stimulates the search for cooperation among Brazilian federal entities.

Nonetheless, considering that the EDAs are focused on the consolidation of partnerships between public institutions and foundations associated to private enterprises that work systematically with public educations, the data let us question their actions as an adequate strategy to promote coordinated actions.

The civil society entities actions do not seem to be the most appropriated path to follow once the educational system becomes a more favorable field for these entities to have influence over policies. It marks then the enterprises' logic, influencing not only the definition of educational objectives and administrations procedures, especially those linked to the progression of indicators and measurement of quantifiable learning results as a condition for achieving quality, but also the appropriation of the public fund. We can also remark that the purposes provided by the Regulatory Framework for the Third Sector [Marco Regulatório do Terceiro Setor], as suggested by the Bill n. 5.182/2019 (BRASIL, 2019), in case approved, might become an opportunity for the non-profit private sector to receive public resources.

In conclusion, it worth mentioning that the State is a dispute field for private-mercantile and public institutions interests (SGUISSARDI, 2014). Consequently, it is possible to notice that public-private relations in education, on the one hand, are associated to the demands for expansion of capitalism, is constitutive part of the structure of the national State and the constitution of the public sphere, together with the interests of hegemonic social groups and the capitalist dynamics. On the other hand, we verify the need to straighten the conscience and the organization of the sector that would be represented (unions, confederations and social subjects) in the battle for the protection of the public education, socially referenced, for everyone.

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