

# Education funding, FUNDEB and the right to education: public education of quality and with public management

***Financiamento da educação, FUNDEB e direito à educação: educação pública de qualidade social e com gestão pública***  
***Financiamiento de la educación, FUNDEB y el derecho a la educación: educación pública de calidad social y con gestión pública***

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**LUIZ FERNANDES DOURADO**

ORCID: <https://orcid.org/0000-0001-5212-6607>

Federal University of Goiás

National Association of Policy and Administration of Education

National Popular Education Forum

Goiânia, GO, Brasil

**WALISSON MAURÍCIO PINHO DE ARAÚJO**

ORCID: <https://orcid.org/0000-0002-9200-7757>

Federal University of Goiás

National Popular Education Forum

Brasília, DF, Brasil

**Abstract:** *This article aims to discuss the relationship between financing and the right to education, with special emphasis on the financing of elementary education, through the analysis of the approval and regulation process of the permanent FUNDEB, an accounting fund. In this context, when analyzing the complexity of this agenda, the clashes within the scope of education policies and management in Brazil are located, especially around the approval of the permanent Fundeb and the advances and limits placed on its regulation and effective materialization, aiming at guaranteeing the basic public education of social quality, and with the public, free and democratic management.*

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**Keywords:** *Right to Education, Basic Education, Financing, Fundeb, Policies and management of education.*

**Resumo:** Este artigo se propõe a discutir a relação entre o financiamento e o direito à educação, com especial destaque para o financiamento da educação básica, por meio da análise do processo de aprovação e regulamentação do FUNDEB permanente, fundo de natureza contábil. Neste contexto, ao analisar a complexidade desta agenda situa-se os embates no âmbito das políticas e gestão da educação no Brasil, sobretudo em torno da aprovação do Fundeb permanente e dos avanços e limites interpostos à sua regulamentação e efetiva materialização visando a garantia de educação básica de qualidade social, pública e com gestão pública, gratuita e democrática.

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**Palavras-chave:** Direito à Educação, Educação Básica, Financiamento, Fundeb, Políticas e gestão da educação.

**Resumen:** *Este artículo propone discutir la relación entre el financiamiento y el derecho a la educación, con especial énfasis en el financiamiento de la educación básica, a través del análisis del proceso de aprobación y regulación del FUNDEB permanente, un fondo contable. En ese contexto, al analizar la complejidad de esa agenda, se ubican los conflictos en el ámbito de las políticas y la gestión de la educación en Brasil, especialmente en torno a la aprobación del Fundeb permanente y los avances y límites puestos a su regulación y materialización efectiva para garantizar educación de calidad social, pública y con gestión pública, libre y democrática.*

**Palabras clave:** *Derecho a la Educación, Educación Básica, Financiamiento, Fundeb, Políticas y gestión de la educación.*

## INTRODUCTION

The discussion on the right to education leads us to the analysis of broader processes, involving the political, economic, and fiscal agenda, as well as the policies, management, and financing of education. In this context, the dispute processes of conceptions and narratives, as well as the processes of regulation and materialization of policies and their interface with the use of public funds, resulting from the historical tension between the public and private spheres. Dourado alerts that the “(...) the clash between the public and the private, in the educational field, reveals the persistence of patrimonial forces in education, thus favoring various modalities of privatization of the public [...]”<sup>1</sup> (DOURADO, 2007, p.925).

The reality of Brazilian education, therefore, is historically permeated by public and private conflict. In elementary education, despite the majority of enrollments being carried out by the public sector, there are several types and dynamics of interpenetration between the public and private spheres. In this context, the appropriation of terms and concepts and their resignifications regarding the financing, organization, and management of education, are marked by polysemy, where universality is subsumed, by the emphasis given or circumscribed, to the concepts of efficiency, effectiveness, to the detriment of social fulfillment in the sense of guaranteeing the right to education and its financing.

From a historical perspective, the discussions on connecting resources to education and strengthening funding for the area are, therefore, not recent. In such a context, a better assertion than that of Cury (2007) on the relationship between

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1 Original text in Portuguese: “[...] embate entre o público e o privado, no campo educacional, revela a persistência de forças patrimoniais na educação, favorecendo, dessa forma, várias modalidades de privatização do público [...].”

the State and funding policies in education is, therefore, an aphorism, almost a “heading” for this section: “Effectively, public policies without resources become declaratory and potentially innocuous” (2007, p. 834)<sup>2</sup>.

Without loss to discussions marked by processes of centralization and decentralization, disputes about accountability for the provision of school education, linking resources and definition of federative responsibilities, from Colony Brazil to the Old Republic, about the issue of financing education in Brazil, Cury (2007), Monlevade (2001), Rocha Lima and Didonet (2006), Martins (2011), Dourado, Marques, and Vieira (2022), among others, highlight, among the relevant historical movements for understanding the defense of perennial financing with earmarked resources, the centrality of the process that resulted in the *Manifesto dos Pioneiros da Educação Nova* (1932) and its influence on discussions concerning the binding of resources to education, especially from the 1930s onwards.

The Federal Constitution of 1934, in its article 156, states: “The Union and the Municipalities will apply never less than ten percent, and the States and the Federal District never less than twenty percent, of the income resulting from taxes, in the maintenance and the development of education systems. (Cury, 2007. p. 834)<sup>3</sup>.”

The Federal Constitution (enacted) of 1946 takes up, to a large extent, principles of the 1934 Constitution, such as the binding of taxes to the financing of education as a right for all, the distinction between public and private networks, and free and mandatory elementary education. It restores in federative terms the autonomy of the states in the organization of the education systems.<sup>4</sup> (2007, p. 836)

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2 CURY, Carlos R. J. Estado e políticas de financiamento em educação. Educ. Soc. [online]. 2007, v. 28, n.100, pp.831-855. ISSN 1678-4626. Available in: <https://doi.org/10.1590/S0101-73302007000300010>. Access in 12 oct. 2020. Original text in Portuguese: “Com efeito, políticas públicas sem recursos se tornam declaratórias e potencialmente inócuas.

3 Original text in Portuguese: “A Constituição Federal de 1934, em seu artigo 156, assevera: “A União e os Municípios aplicarão nunca menos de dez por cento, e os Estados e o Distrito Federal nunca menos de vinte por cento, da renda resultante dos impostos, na manutenção e no desenvolvimento dos sistemas educativos”.

4 Original text in Portuguese: “A Constituição Federal (promulgada) de 1946 retoma, em boa parte, princípios da Constituição de 1934, como a vinculação de impostos para o financiamento da educação como direito de todos, a distinção entre a rede pública e a privada, a gratuidade e a obrigatoriedade do ensino primário. Repõe em termos federativos a autonomia dos estados na organização dos sistemas de ensino.”

In the civil-military coup of 1964, the linking of resources to education ceased to exist at the federal level. As can be seen, the (de)democratization movements<sup>5</sup> of society have important consequences on educational funding and in the linking of resources to finance the law. After comings and goings with the constitutional binding of Resources and their withdrawal, the CF enshrines this provision.

This historical process seems to have been more organic in relation to an ideology for national education (Manifesto), with a project, plan, and financing concept. For us, it was better coordinated and relatively stabilized with the 1988 Constitution, and the struggles of social movements mobilized for more rights and the country's re-democratization. In this context of the discussion of the new Constitution, the growing actions in terms of the socialization of politics and re-democratization and in favor of the universalization of quality public schools throughout the '80s and '90s stand out, the Brazilian Education Conferences (CBE) and the National Education Congresses (CONED), essential spaces for articulation for educators, in addition to the organization of the Education Forum in the Constituent Assembly in Defense of Public Education (FORUM) and the National Forum in Defense of Public Schools (FNDEP). Such organizations were constituted in the light of such ideas and, later, around the LDB, movements that accumulated propositions related to public education, the SNE, and its bodies, and the PNE.

This historic process gains another important landmark, with the approval of Constitutional Amendment No 14 of 12 September 1996, which created the Fund for the Maintenance and Development of Elementary Education and the Appreciation of Teaching (Fundef). Later, with greater projection and scope, with a fund model covering all basic education and modalities that were previously secondary, through the enactment of Constitutional Amendment n° 53 of December 19, 2006, created the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals (Fundeb).

This financing consolidation agenda anchored in the logic of accounting funds had, as an important inflection point, the creation of Fundef, formed by resources from the three federative spheres to provide funding for public basic education. However, this was limited to elementary education and had limited

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5 In summary: *“deliberations that go in the opposite direction to the process of building a secular and republican public education. These are policies that converge with the intentions of the most reactionary sectors of the National Congress and also of those that historically attack public schools to promote their privatization, managerialism, and militarization, including concerning basic education”*, to use the concept of Catarina de Almeida Santos and Leda Scheibe. The discussion can be found in the journal *Retratos da Escola / Escola de Formação da Confederação Nacional dos Trabalhadores em Educação (Esforce)* – v. 12, n. 23, July/Oct. 2018. – Brasília: CNTE, 2007-Semestral. Available in: <[https://cnte.org.br/images/stories/retratos\\_da\\_escola/retratos\\_da\\_escola\\_23\\_2018.pdf](https://cnte.org.br/images/stories/retratos_da_escola/retratos_da_escola_23_2018.pdf)>. Access on 12 Oct. 2020.

(and non-progressive) participation by the Federal Union in complementary contributions to guarantee minimum values per student.

Fundeb, Fundef's successor, in addition to (a) covering all basic education, its stages, and modalities, (b) added more taxes to the Fundeb basket (IPVA, ITCMD, and ITR), with an increase in the percentage collected (from 15% to 20%) and, also, (c) set at least 10% of the total amount to complement the Union, constitutionalizing this minimum obligation. The complementation of the Union was one of the important themes in the debate on fund policy and was improved in the transition from Fundef to Fundeb, with the establishment of higher levels and the capacity of the central power (10% percent of the total of the resources linked to the fund of an accounting nature), which represents a great and undeniable advance.

This aspect expresses another important step towards the search for greater federative balance, which must consider charges to entities, linked to a greater relative commitment to solidarity financing among the states, federal districts, and municipalities. Therefore, it signals progressive and significant sharing of responsibilities and financial resources. Such signs give rise to political will and conditions for the effective materialization of the federative balance, through the resizing of the complementation of the Union, as well as, in a structural way, of the consolidation of political and tax reform.

The debate about a financing model from the perspective of consolidating the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals (Fundeb)<sup>6</sup> is, therefore, a strategic element for the consolidation of federative cooperation in education and the institution's agenda of the National Education System (SNE)<sup>7</sup> and, therefore, to guarantee the right to education. Those who defend a much better public education, with the expansion of the Union's participation and the horizon of quality assurance for all schools, support strong and permanent Fundeb, with concepts of cost-student quality, professional valorization, and public management anchored to the necessary agenda of the institution of the SNE<sup>8</sup>.

The defense of Fundeb thus became one of the most central agendas of the entities and representatives gathered at the National Conferences on Education (Conae), articulated by the National Education Forum (FNE) and, more recently,

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6 Regarding Fundeb, especially the CAQ, see, among others, the authors: FERNANDES, M. D. E., & BASSI, M. E. (2022), PINTO (2022). About the Fundeb and the valorization of teachers, see GOUVEIA (2022).

7 Concerning SNE and movements aiming at its institutionalization, see: DOURADO, ARAÚJO (2021); DOURADO; ARAÚJO (2018); DOURADO (2017);

8 Regarding the movements for the institutionalization of the SNE, advances in the processing of the matter in the Chamber of Deputies and, on April 9, 2022, the unanimous approval, by the Federal Senate, of PLP 235/2019 that established the SNE.

by the Popular National Conference on Education (Conape), articulated by the Popular National Education Forum (Fnpe), formed after the layoff of entities and government interference over the FNE, consolidated and formalized in 2017, after the impediment of the democratically elected president, Dilma Rousseff, in May 2016.

This challenge is also made susceptible by (1) the continued consequences of impeachment without a crime of responsibility<sup>9</sup>; (2) for the holding of elections under suspicion that resulted in the election of Jair Bolsonaro; (3) for nothing less than a Pandemic and; (4) the fiscal austerity agenda and the adoption of additional economic measures to the Expenditure Ceiling, de-indexing, untying and exoneration promoted by the Minister of Economy Paulo Guedes<sup>10</sup>. In the educational area, the lack of attention to the PNE 2014/2024, budget cuts, and policy and program changes resulted in effective setbacks.

This scenario of historical accumulation is important to be highlighted again in order to understand the course that leads to the second half of 2020 and a race against time to guarantee the continuity of Fundeb, so that the education financing model does not collapse from 2021.

And with the imminent completion of Fundeb, on December 31, 2020, these processes of mobilization of society (of which Conape and the conferences and mobilizations make part), added to the broader public concern with this pillar of educational funding, the debate about its perennialization was strengthened. It is, however, in the context of an emergency public health scenario of international importance resulting from the coronavirus (Covid-19) that the debates and clashes take place, with the power of the reduced time pressure. This scenario also imposed important barriers to the social debate, however, the processing of the matter in the National Congress resulted, with decisive mobilization of society, in the promulgation of Constitutional Amendment No. 108 of August 26, 2020 (EC No. 108/2020), with financial effects from January 1, 2021.

Notice: with the promulgation of the Constitutional Amendment, Fundeb was maintained, representing a “battle” won in defense of a perennial financing model in the context of a broader “war” in defense of public financing for social policies. This battle in favor of fairer financing has been strongly constrained since

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9 The National Education Forum, on April 1, 2016, approved its 39th Public Note, “In Defense of Public Education, Democracy and the Rule of Law: Impeachment without a crime of responsibility is a coup and will entail a risk to the enshrinement of social rights”. Assertively, the FNE had projected the scenario of setbacks and dismantling, as analyzed by Dourado and Araujo (2018). See more in: *Revista Retratos da Escola*, Brasília, v. 12, n. 23, p. 207-226, Jul./Oct. 2018. Available in: <<http://www.esforce.org.br>> 207. Access on: 12 Oct., 2020.

10 More on this can be seen, for example, in “Plano de Guedes corta despesas, mas pode afetar áreas como saúde e educação”. See more at <https://economia.uol.com.br/noticias/redacao/2019/11/03/agenda-ddd-3d-paulo-guedes-desindexar-desvincular-desobrigar.htm?cmpid=copiaecola>. Access on: 12 Oct., 2020.

the enactment of Constitutional Amendment No. 95, of December 15, 2016, also known as the “PEC of expending ceiling”<sup>11</sup> which is added to other austerity measures with strong repercussions on education and, on Fundeb.

## CONTEXTUAL SIGNS ON FUNDING AND RECENT POLITICAL-SOCIAL AND LEGISLATIVE DEBATES

*The processing of PEC 15/15 and the enactment of Constitutional Amendment n° 108: a record of the process.*

Constitutional Amendment No. 53, of the current Fundeb, is in force for 14 (fourteen) years in the country. Therefore, its effects would cease on December 31, 2020. For this reason, on April 7, 2015, the Amendment Proposal was presented Constitutional Amendment (PEC) 15, by the former Federal Deputy of the PSC-MG, Raquel Muniz, thus starting the process in the 55th legislature (2015-2019). Once the Special Commission was created to issue an opinion on the PEC, the process began that year. This procedure advances over the next legislature. In addition to this proposition, in 2019, the Proposed Amendments to the Constitution Nos. 33 and 65, 2019 were presented in the Federal Senate, with a similar intention.

In the Chamber of Deputies, the debate on the content of the matter is effectively processed in the 56th Legislature, notably between 2019 and 2020. About 30 public hearings were held in the previous legislature, to which more than a dozen in the current parliament are added, in addition to technical meetings and regional and state seminars, rich in the production of mobilizations and content debate. Deadlines for submitting amendments to PEC 15/2015 are open, and five revisions were formalized to the Special Committee.

Amendment	Amendment Type	Submission Date	Author
EMC 1/2019	Amendment in the Commission	03/06/2019	Tabata Amaral, Felipe Rigoni, and others.
EMC 2/2019	Amendment in the Commission	03/06/2019	Tabata Amaral, Felipe Rigoni, and others.
EMC 3/2019	Amendment in the Commission	05/06/2019	Tiago Mitraud, Marcelo Calero, and others.
EMC 4/2019	Amendment in the Commission	06/06/2019	Felipe Rigoni, Adriana Ventura, and others.
EMC 5/2019	Amendment in the Commission	06/06/2019	Waldenor Pereira, Professora Rosa Neide, and others.

Frame: summary of amendments presented to PEC 15/2015.

11 Amends the Transitional Constitutional Provisions Act, to institute the New Tax Regime and makes other provisions. Available in: [http://www.planalto.gov.br/ccivil\\_03/constituicao/emendas/emc/emc95.htm](http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc95.htm).

Amendment No. 1 intends to establish an additional contribution from the Union, equivalent to a minimum of 10% of the complementation, for the federated entities that reach significant evolution in educational processes and results.

Amendment No. 2 provides for a supplement by the Union of at least 15% of the total contributed to the Fund.

Amendment No. 3 proposes to use the Fund's resources to finance public education in for-profit or non-profit private institutions.

Amendment No. 4 proposes the structured standardization of information relating to expenditure by executing agencies in the use of FUNDEB funds.

Amendment No. 5 represents a "global amendment" to the text, dealing with aspects such as social participation, guidelines for funding with an emphasis on valuing education professionals and educational planning, inclusion in Fundeb's basket of resources from involvement in the result or of financial compensation for mineral exploration, including oil and natural gas, 30% (thirty percent) of a minimum supplement of the Union to the fund, a real annual increase in the national professional salary floor for the teaching profession and institution of the national professional salary floor for the other categories of education professionals, among other topics.

That is: the amendments, formally presented, demarcated positions on the salary floor, the possibility of vouchers with resources from the Fund, and the size of the Union's participation in complementing the Fund, confirming the disputes of conceptions of education and the greed about the fund public. However, the rapporteur also chose to consider all the accumulated in meetings, hearings, seminars, and amendments, as well as in the form of content formalized by letters and official letters from parliamentarians and entities, for example. It is worth mentioning that there was a clear indication of the option for public education when Amendment No. 3, which aimed to finance for-profit institutions in all elementary education, was inadmissible.

The approval of PEC 15/15 was only possible due to the strong mobilization of national entities in the educational field, the expressive majority mobilized in the National Popular Education Forum (Fnpe)<sup>12</sup> with the leadership of the National Confederation of Education Workers (Cnte), National Campaign for the Right to Education, and National Association for Research in Education

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12 The Popular National Education Forum (FNPE) was created in 2017. It is an articulation of national educational entities and social movements in defense of education and maintains a permanent dialogue with forums by the states after the dismantling of the National Education Forum (FNE) in the Temer government. It is composed of over 45 (forty-five) national entities in the educational field. It is organized around an Executive Coordination and 3 (three) commissions, working on mobilizations for public education in all its scope and to pressure the federal government and other governments for the implementation of national, state, district, and municipal education plans, in addition to having the task of facilitating the organization of the National Popular Conference on Education.



Financing (Fineduca). The entities of education professionals, students, researchers, social movements, and forums created the political-institutional environment to face the barriers and smoke screens generated by the Bolsonaro government to make it difficult for the matter to advance.

We should notice the leadership of the President of the Chamber, Rodrigo Maia (president from July 14, 2016, to February 1, 2021, responsible for guiding the legislative issues), in articulation with deputies who composed the Special Committee, namely: Professor Dorinha Seabra Rezende (DEM-TO, rapporteur), Bacelar (PODE-BA, president), Idilvan Alencar (PDT/CE, 1st Vice-President), Danilo Cabral (PSB-PE, 2nd Vice-President), Professor Rosa Neide (PT/MT, 3rd Vice-President). Amid the pandemic, these parliamentarians decisively helped in the negotiation process and advanced, together with party leaders and other deputies, the Fundeb process.

It is also important to highlight that another essential element to boost the discussions on Fundeb was the construction of the understanding between the Chamber of Deputies and the Federal Senate. Deputies and Senators, with their respective consultancies and legislative advisors, were jointly building a report and substitute that, approved in the Chamber, quickly and without major changes, could also be approved in the reviewing house, the Federal Senate, preventing the proposal would pass from one house to another, indefinitely. This understanding and the common working process was undoubtedly another essential element for the approval of the Constitutional Amendment. At that moment, an important process of articulation in the National Congress was constituted to guarantee advances in the permanent Fundeb.

Regarding the involvement of the Federal Government in the debate in question, it was mainly guided by omission, indifference, and inability to contribute, throughout the three administrations<sup>13</sup> of the Ministry of Education (MEC) in the legislative debates. A mark of this absence was ratified by numerous parliamentarians, including the Fundeb Rapporteur herself, Professor Dorinha Seabra Rezende, who, on one of the occasions, expressed herself in the sense of the lack of dialogue on the part of the government<sup>14</sup>.

This attitude of negligence toward the fundamental issue of educational funding is linked to the submission of the “leadership” of the Ministry of Education (MEC) to the economic and conservative agenda of the government, led

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13 The direction of the MEC in the first two years of the Bolsonaro government was configured as follows: Ricardo Vélez Rodríguez (January 1, 2019 – April 8, 2019); Abraham Weintraub (April 9, 2019 - June 19, 2020); vacant position (June 20, 2020 - July 16, 2020) and Milton Ribeiro (from July 16, 2020).

14 *Falta de interlocução com Weintraub atrasou debate sobre Fundeb, diz deputada*. CNN, 20 July 2020, online edition. Available in: < <https://www.cnnbrasil.com.br/politica/2020/07/20/falta-de-interlocucao-com-weintraub-atrasou-debate-sobre-fundeb-diz-deputada>>. Access on 3 Oct. 2020.

by Guedes, fundamentally oriented to deepening the constraints on the public fund destined to social policies, in line with the “Expanding Ceiling” and the reduction of the role of the State in the provision of social rights, including education. It is also essential to highlight the various movements of private appropriation of the public fund signaled in the period and, also, the intentions, always present, of the government in the sense of making possible the constitutional separations and/or joining of constitutional floors, as in the case of the minimum expending of the health with education.

On the eve of the plenary vote (July 20, 2020) the Bolsonaro government even tried to disrupt the vote and air the defense of the transfer of part of Fundeb resources to private schools and the so-called “*Programa Renda Brasil*”<sup>15</sup>, alleged substitute of the *Programa Bolsa Família*.

Themes involved in the discussion of Fundeb’s Constitutional Amendment are constantly “constrained” throughout the process of its correlated infra-constitutional regulation: payment of education professionals combined with the maintenance of the National Professional Salary Floor adjustment procedure; regulation of student quality cost; allocation of public resources to private schools; “substitution” and “dispute” between sources destined to the maintenance of education (funding of basic education versus higher education, use of resources from supplementary programs or financial assistance versus financing of complementation by the Union, etc). The clash between the public and private spheres is vigorously reinforced, in a complex scenario of privatization and financialization and signaling of new arrangements and forms of governance aimed at strengthening the adoption of public-private partnerships.

Thus, the approval of a new Proposal for a Constitutional Amendment related to Fundeb, although it is a necessity and represents an advance, will not be enough if it is subject to a regulation that drains public resources destined for private schools, that attacks the teaching profession, that does not promote the rule of the National Education System and the materialization of the Student Quality Cost concept, among other aspects. It is also subjected to the consequences of other PECs, with the PEC of the Federative Pact.

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15 *Governo quer R\$ 6 bilhões do Fundeb para bancar ‘voucher-creche’ no setor privado*. Folha de São Paulo. 20 July, 2020. Available in: <<https://www1.folha.uol.com.br/educacao/2020/07/governo-quer-r-6-bilhoes-do-fundeb-para-bancar-voucher-creche-no-setor-privado.shtml>>. Access on 18 Oct, 2020.

At least four structural aspects can be highlighted as important advances in the approval of Constitutional Amendment No. 108, in 2020: the insertion of Fundeb in the permanent body of the constitutional text, perpetuating its inscription; maintaining the allocation of an important and relevant portion of the fund's resources (proportion not less than 70%) for the payment of education professionals; the gradual expansion of the Union's complementation, with the conformation of 23% of the total resources; in addition to the consecration of the Student Quality Cost (CAQ) concept, as a reference for a quality standard to guide financing.

Fundeb, made a permanent policy in the text of the Federal Constitution, removes the tension about the periodic possibility (14 years) of its renewal or extinction. In addition, it is important to note that, among the expenses of the Union, the complementation of Fundeb resources has a minimum and, thus, it can be increased, progressively, without being constrained and impacted by the effects of the spending ceiling. In other words: in a context of restriction, austerity, and attacks on the public funding of public education, the resources allocated progressively and permanently to Fundeb, outside the ceiling, represent a vital encouragement and booster of educational funding as a whole. Furthermore, they reinforce the idea of certain stability in the flow of resources and more stable planning, fundamental needs for an effective state policy.

Maintaining a valuation policy as Fundeb's main objective is also an achievement to be highlighted. When there is a reality in which most of the necessary (and insufficient) resources are destined for the remuneration of education professionals, with the National Professional Wage Floor as a reference, the attempt to establish a lowered ceiling for this purpose represents, in the scenario, an attack on education and, especially, on the teaching profession, since teachers are the main instruments for quality improvement. As recorded in the report presented at the time of the vote<sup>16</sup>, in Brazil, teachers have an annual national minimum wage equivalent to US\$ 14,775, lower than the starting salary presented by Mexico, Costa Rica, Chile, and Colombia, and below the OECD average (US\$ 34,540).

Therefore, the winning wording, contrary to the Bolsonaro government's proposal, of a minimum sub-tying of 70% of the Fund's resources to the payment of education professionals represents another important victory. This achievement

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16 Available in: [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?sessionid=74C8F588A92ACF8DDE6DF205C3F8B55B,proposicoesWebExterno2?codteor=1915120&filename=Tramitacao-PEC+15/2015](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?sessionid=74C8F588A92ACF8DDE6DF205C3F8B55B,proposicoesWebExterno2?codteor=1915120&filename=Tramitacao-PEC+15/2015).

is added to another important complementary measure, which is the prohibition of the allocation of resources linked to the maintenance and development of education to the payment of retirements and pensions (§ 7 of art. 212 in the winning wording).

If we consider that the investment per student in Brazil is lower than the average per student practiced in the countries of the Organization for Economic Cooperation and Development (OECD), the ratification of the CAQ in the constitutional body also represents another important achievement. It is a matter of confirming the set of minimum standards established in educational legislation and whose funding must be calculated based on the guarantee of inputs and processes essential to the teaching-learning process, guaranteeing, for example, that every school has potable water, sanitation, adequate infrastructure, libraries, well-trained and paid professionals, among other fundamental components.

Upon completion of the final wording in the National Congress, essentially maintaining the content approved in the wording of the Plenary in the Chamber of Deputies on July 21, 2020, the new text of Fundeb inscribed the gradual increase of the complementation of the Union of the current 10% of the total of the resources provided for 23% (art. 212-A, item 5). The increase from the minimum 10% of federal complementation (maximum in recent years) to 23% represents an increase from BRL 17.5 billion in 2021 to BRL 39.3 billion in 2026, according to estimates by the Budget and Inspection Consultancy Finance of the Chamber of Deputies<sup>17</sup>, which represents an important advance in serving more education systems.

It will be **10%** (art. 212-A, item 5, point “a”), distributed in the current model, with the annual value per student (VAAF) fundamentally reaching states in the North and Northeast regions (9 states, namely Alagoas, Amazonas, Bahia, Ceará, Maranhão, Pará, Paraíba, Pernambuco, and Piauí). In other words, it preserves resources already received by poor states and faces interstate inequality with an additional 13% (10.5% and 2.5%)

Another **10.5%** (art. 212-A, item 5, point “b”), will be distributed based on the new network modeling, called Total Student Value (VAAT), which should consider the total resources from states and municipalities destined for education, in order to produce equalizing effects. That is, cities with low revenue from states with better collections are reached by a portion of the Union complementation. This expansion is based on an increase of 2 (two) percentage points, in the first year until reaching 10.5% in the sixth year (according to § 1 of article 60 of the

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17 TANNO, Claudio Riyudí. Câmara dos Deputados. Consultoria de Orçamento e Fiscalização Financeira. Estudo Técnico número 22/2020 - PEC 15/2015 Fundeb: Texto Aprovado na Câmara dos Deputados, novo Mecanismo redistributivo, Resultados Esperados, Avaliação e Proposta de Regulamentação. Available in: < [https://www2.camara.leg.br/orcamento-da-uniao/estudos/2020/ETn22\\_2020PEC15\\_2015FUNDEBAprovado\\_Cmara.pdf](https://www2.camara.leg.br/orcamento-da-uniao/estudos/2020/ETn22_2020PEC15_2015FUNDEBAprovado_Cmara.pdf)>. Access on 17 Oct. 2020.

Transitional Constitutional Provisions Act). Of this total of 10.5%, parliamentary negotiations guided the allocation of 50% to early childhood education (§ 3 of article 212-A), a measure with the potential to collaborate in expanding day care services, for example.

Another 2.5% (art. 212-A, item 5, point “c”) must be distributed to public networks that, “comply with the conditions for improving management provided for by law, achieve the evolution of indicators to be defined, and improvement of learning with reduction of inequalities, under the terms of the national system of evaluation of basic education” (according to the wording of the aforementioned constitutional provision), the so-called meritocracy policy, to be detailed also at an infra-constitutional level.

This conformation could be significant in expanding the redistributive effect based on the VAAT complementation, as it will affect municipalities in states that are not currently covered.

In 2021, the Union’s complementation should be at least 12%, reaching 23% in 2026 (15% in 2022, 17% in 2023, 19% in 2024, and 21% in 2025, according to the schedule provided in § 1 of art. 60 of the Transitional Constitutional Provisions Act), considering that the criteria for distributing the complementation of the Union and funds will be reviewed in the sixth year of validity and, from this first review, periodically, every 10 (ten) years, as registered in art. 60-A.

In summary, three sub-links were ratified: 70%, at least, to the payment of education professionals; at least 15% of the VAAT top-up for capital expenditures, and; 50% of VAAT complementation resources for early childhood education.

Furthermore, ratifying the pertinent goals of the national education plan as references and federative bodies and bodies for monitoring and social management, and for the participation of society (art. 193) are other relevant advances. Likewise, the provision for the regulation of the National System of Basic Education Assessment (Sinaeb, provided for in article 11 of Law No. 13,005 of 2014, of the PNE) and, also, by a complementary law, the regulation of the SNE (which ratifies that the minimum quality standard will consider the adequate supply conditions and will have the CAQ as a reference, agreed in a collaboration regime as provided in a complementary law, according to the sole paragraph of article 23 of the Constitution) is relevant. These dimensions may represent other vital legacies of the ongoing debate on Fundeb. In this sense (about the SNE) there are advanced proposals, both in the Chamber of Deputies<sup>18</sup> and the Senate<sup>19</sup>.

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18 Complementary Bill, PLP 216/2019, by Deputy Professor Rosa Neide, attached to PLP 25/2019, by Deputy Professor Dorinha.

19 Complementary Bill No. 235, of 2019, drafted by Senator Flávio Arns (Rede-PR).

## TRANSITORY CONSIDERATIONS: THEMES, CONTROVERSIES, AND PERSPECTIVES

After approving Constitutional Amendment No. 108/2020 with important achievements, mainly due to the negative scenario, it should be noted that the positive effects, for the most part, required regulation by federal law.

The new Constitutional Amendment No. 108 is followed by two regulatory laws for Fundeb: Law No. 14,113, of December 25, 2020 (which regulates the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals [Fundeb], which article 212-A of the Federal Constitution deals with; revokes provisions of Law No. 11,494, of June 20, 2007) and Law No. 14,276, of December 27, 2021, which amends Law No. 14,113/2020.

Another structuring element is important to revisit when discussing infra-constitutional regulations: the de-indexation, untying, and release plan sponsored by the economic team with expressions in other formalized Constitutional Amendment Proposals, with important and harmful impacts on the Fundeb. The Proposed Amendments to the Constitution (PECs), number 186 (Emergency, converted into Constitutional Amendment No. 109, of March 15, 2021, which removed the most controversial topics from the agenda), 187 (Review of Funds), and 188 (Federative Pact), all from 2019. These promote a major attack on the social policies established in the Brazilian Constitution of 1988, by revoking funds, proposing an end to the linking of financial resources to health and education (making mandatory expenditures cease to be), independently, and installing a perverse dispute between the areas of health and education, among other setbacks. There is also the Proposed Constitutional Amendment No. 32/2020, the so-called “Administrative Reform”. In summary, it is a set of proposals for amendments to the Constitutional Charter that, whose contents advance, confirm the total lack of priority of the Government with educational policies, producing important constraints in guaranteeing the right to education.

Furthermore, in the process of debating Fundeb’s Proposal for a Constitutional Amendment, the government did not place itself in a position to contribute to the debate around more robust and equitable funding for national education, which was not so different in the process of its infraconstitutional regulation. However, there was an element that elaborated the danger of this still absent regulatory position. The Government would have the possibility of resorting to a Provisional Measure at the same time that it delayed regulation by the Bill, which would represent a limiting factor for the debate and a serious threat of imposition of setbacks in several of the points and themes of conflict from the processing of PEC 15/15: a provisional measure becomes effective on the date of its edition

if there is no provision in another direction. It is in the regulation that, among other aspects related to the weighting factors, what will be maintained and what will be new will be defined. As highlighted, however, the legislative initiative prevailed, through different bills, conforming to ordinary laws, resulting from mobilizations and different correlations of force in society and the National Congress.

Attention to the allocation of the form of distribution of the 2.5% (Art. 212-A, item V, point “c”) still deserves great care. It requires a lot of struggle so the logic of meritocracy and competition does not effectively take the final model. In the same perspective, the state regulation on the destination of the Municipal Quota of ICMS deserves a lot of attention (Art. 158). The distribution of at least 10 (ten) percentage points must be based on indicators of improvement in learning outcomes and increased equity, considering the socioeconomic level of the students. It is, therefore, an open field of dispute. In this field, the conception of the National Basic Education System (Sinaeb), far beyond the performance in exams, must be the horizon of the political debate: it must consider multiple dimensions, in the perspective of guaranteeing the universalization of school attendance, through quality and democratic education, valuing education professionals and overcoming educational inequalities.

Maintaining the sense of the debate and the centrality of Constitutional Amendment No. 108/2020 in relation to the allocation of resources to public schools, with public management, and guaranteeing the appreciation of education professionals, with a floor for the set of workers is, perhaps, the greatest challenge, yet still strongly preserved. It can be said that the central points contained in Constitutional Amendment 108/2020 and in the projects presented so far in compliance with Fundeb’s regulations to be in force from January 2021 converge towards the defense of a public school.

One day after the enactment of Constitutional Amendment No. 108/2020, Bill 4372/2020 was presented<sup>20</sup>, in the Chamber of Deputies, regarding the regulation of Fundeb. Its authors and co-authors were: Professor Dorinha Seabra Rezende (DEM/TO), Tabata Amaral (PDT/SP), Danilo Cabral (PSB/PE), Idilvan Alencar (PDT/CE), Raul Henry (MDB/PE), Bacelar (PODE/BA), Mariana Carvalho (PSDB/RO), and Professor Israel Batista (PV/DF). In the Federal Senate, on September 9, Bill 4,519/2020 was presented by Senator Randolfe Rodrigues (Rede-AP). These are propositions that are mostly compatible with the spirit of guaranteeing quality supply, in public institutions, of Constitutional Amendment No. 108.

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20 Regulates the Fund for Maintenance and Development of Basic Education and Valorisation of Education Professionals - FUNDEB, dealt with in art. 212-A of the Federal Constitution, and gives other provisions. Available in: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2261121>.

The successive regulations relating to Fundeb confirmed the clashes between public and private in the educational field.

Law No. 14,113/2020 originates from Bill No. 4372/2020, presented on August 27, 2020. It is reiterated one day after the enactment of the new Constitutional Amendment on permanent Fundeb. To a large extent, the tensions in the debate on the Constitutional Amendment are reflected in the discussions and propositions of infra-constitutional regulation, as examples: the inclusion of enrollments and transfer of public resources from Fundeb to the “*Sistema S*”, the counting of registrations and transfer of Fundeb resources for private schools and payment prospects for professionals in the technical, administrative and outsourced areas within the 70%, which must be allocated to education professionals in effective exercise, notably teachers.

The extent of the use of public resources by philanthropic, community, and faith-based institutions (in daycare centers, preschools, special education, and alternation) was also a subject of dissent in the following proceedings.

In this first phase of approval in the Chamber of Deputies, the damage had been great. That is why the Federal Senate, once again due to the critical mobilization of society, corrected the text of the Chamber about the aspects mentioned above, in line with the constitutional precepts and, notably, in defense of public education and education professionals, ensuring allocation of resources to the public school. This phase barred privatizations in the regulatory text.

The text of Law No. 14,276/2021 (originating in Bill No. 3418/2021) amends Law No. 14,113, mentioned above, proposing changes that imply the extension of transition periods, the theme of weighting between the different stages and modalities. In this particular, both the initial regulation (2020) and its update (2021) indicate the expansion of the definitions related to the indicators referring to the new weights, which will be built from the calculation methodology developed by the National Institute of Educational Studies and Research Anísio Teixeira (Inep) and approved by the Intergovernmental Commission for Financing for Quality Basic Education.

It is also a point of dispute the expansion, once again, of the concept of education professionals (beyond the definitions of article 61 of the Law of Directives and Bases of National Education), in this case, opening room for the inclusion and calculation of other professionals (more once with a strong presence of mobilization of social workers and psychologists), which suggests great controversies and possibilities of judicialization. It was explained that, with the share of 30% (thirty percent) not linked to education professionals, holders of a



higher education degree in the area of psychology or social work can be reimbursed, provided that they are members of multi-professional teams that serve the students, under the terms of Law No. 13,935 of December 11, 2019.

In addition, the update on the regulation proposes that the movement of Fundeb's resources is not exclusive to "public" banks, such as *Banco do Brasil* and *Caixa Econômica Federal*. Another aspect that explains the tensions between public and private and the greed over the public fund is the inclusion of enrollments of the so-called autonomous social services in the calculation, which tends to stimulate even more partnerships of state governments with the "*Sistema S*", which should occur at the expense of investment in public institutions, undoubtedly.

A positive aspect of the update was the express authorization for those resources coming from Fundeb, to reach a minimum of 70% (seventy percent) of the total annual resources of the Funds destined to the payment, in each education system, of the remuneration of the professionals of the basic education in effective work, may be applied for salary readjustment in the form of bonus, allowance, salary increase, salary update or correction. It ratifies the right to apportion the FUNDEB surplus to education professionals, an important claim.

The agenda designed by the National Education Plan (PNE) provides for a Fundeb that should be aimed at the progressive and sustained improvement of Brazilian public schools, with public management, and appreciation of the set of education professionals, being the strategic element of an effective SNE. Fund policy is an inseparable part of this plan and urgently needs to be regulated. The absence of a National Education System, in the proper sense and with binding norms of cooperation and federative arenas, results, until today, in important weaknesses in the organization of our national education. Another step was taken with the approval of Fundeb. It is necessary to give others, strengthening legal instruments that account for federative cooperation and solidarity in education, always with a progressive increase in the Union's participation in technical and financial cooperation, to achieve quality standards valid for all.

At least four structural aspects can be highlighted as significant advances in the approval of Constitutional Amendment No. 108, in 2020 and subsequent regulations: the insertion of Fundeb in the permanent body of the constitutional text, perpetuating its inscription; maintaining the allocation of an important and relevant portion of the fund's resources (proportion not less than 70%) for the payment of education professionals; the gradual expansion of the Union's complementation, with a horizon of conformation of 23% of the total resources; in addition to the consecration of the Student Quality Cost (CAQ) concept, as a quality standard reference to guide financing.

Therefore, the winning wording, contrary to the Bolsonaro government's proposal, of a minimum sub-tying of 70% of the Fund's resources to the payment of education professionals, represents another important victory. This achievement is added to another important complementary measure, which is the prohibition of the allocation of resources linked to the maintenance and development of education to the payment of retirements and pensions (§ 7 of art. 212). Regarding education professionals and the tensions that remain there, it is worth mentioning the manifestation of the CNTE according to which it would file a direct action of unconstitutionality against Law n. 14,276, especially in relation to the number of professionals included in the 70% sub-link of FUNDEB<sup>21</sup>.

Upon completion of the final wording in the National Congress, fundamentally maintaining the content approved in the wording of the Plenary in the Chamber of Deputies on July 21, 2020, the new Fundeb text inscribed the gradual increase in the complementation of the Union of the current 10% of the total of resources provided for 23% (art. 212-A, item V). The increase from the minimum 10% of federal complementation (maximum in recent years) to 23% represents an increase from BRL 17.5 billion in 2021 to BRL 39.3 billion in 2026, according to estimates by the Budget and Inspection Consultancy Finance of the Chamber of Deputies<sup>22</sup>, which represents an important point of progress in serving more education systems.

As we have seen, the government did not place itself in a position to contribute to the debate around more robust and equitable national education funding in debating the Proposal for a Constitutional Amendment by Fundeb. And it is not so different in the process of its infraconstitutional regulation that has occurred so far.

Thus, although the approval of a new Proposal for a Constitutional Amendment related to Fundeb is a necessity and represents an advance, it is not enough if it is subject to a regulation that drains public resources destined for private schools, that attacks the teaching profession, that does not promote the regulation of the National Education System and the materialization of the Student Quality Cost concept, among other aspects. It is also subjected to the consequences of other PECs, with the PEC of the Federative Pact.

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21 Available in: <https://www.cnte.org.br/index.php/menu/comunicacao/posts/notas-publicas/74523-nova-lei-ratifica-o-direito-ao-rateio-das-sobras-do-fundeb-para-os-profissionais-da-educacao>.

22 TANNO, Claudio Riyudi. Câmara dos Deputados. Consultoria de Orçamento e Fiscalização Financeira. Estudo Técnico número 22/2020 - PEC 15/2015 Fundeb: Texto Aprovado na Câmara dos Deputados, novo Mecanismo redistributivo, Resultados Esperados, Avaliação e Proposta de Regulamentação. Available in: < [https://www2.camara.leg.br/orcamento-da-uniao/estudos/2020/ETn22\\_2020PEC15\\_2015FUNDEBAprovado\\_Cmara.pdf](https://www2.camara.leg.br/orcamento-da-uniao/estudos/2020/ETn22_2020PEC15_2015FUNDEBAprovado_Cmara.pdf)>. Access on 17 Oct., de 2020.

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Regulamenta o Fundo de Manutenção e Desenvolvimento da Educação Básica e de Valorização dos Profissionais da Educação - FUNDEB, de que trata o art. 212-A da Constituição Federal; e dá outras providências. Available in: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2261121>

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**Luiz Fernandes Dourado**

Full professor and Emeritus at the Federal University of Goiás (UFG). Doctor in Education, director of the National Association of Policy and Administration of Education (ANPAE). Member of the Executive Coordination of the National Popular Education Forum (FNPE).

E-mail: luizdourado1@gmail.com

**Walisson Maurício Pinho de Araújo**

Master in Education from the Federal University of Goiás (UFG), executive coordinator of the Executive Coordination of the National Popular Education Forum (FNPE), Chief of Staff of Federal Deputy Professor Rosa Neide.

E-mail: walissonmauricio@gmail.com

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