

Right to Quality Education: an analysis of the regulatory frameworks

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ABSTRACT – Right to Quality Education: an analysis of the regulatory frameworks. The article aims to analyze the normative frameworks that deal with the right to quality education and educational quality in Brazil. The study is based on bibliographical analysis and legal documents that deal with the topics. As results, we evidence that the term right to quality education is presented in a dissociated way in Brazilian legislation, whether as a right to education and as quality of education, as well as that there is a lack of analytical references to guide what would constitute the guarantee of the right to education. quality in Brazil.

Keywords: Right to Quality Education. Quality of Education. Normative Frameworks.

RESUMO – Direito à Educação de Qualidade: uma análise dos marcos normativos. O artigo tem por objetivo analisar os marcos normativos que tratam do direito à educação de qualidade e da qualidade educacional no Brasil. O estudo está fundamentado na análise bibliográfica e de documentos legais que versam sobre os temas. Como resultados, evidenciamos que o termo direito à educação de qualidade se apresenta de forma dissociada na legislação brasileira, quer seja como direito à educação e como qualidade da educação, assim como que faltam referenciais analíticos para nortear no que constituiria a garantia do direito à educação de qualidade no Brasil.

Palavras-chave: Direito à Educação de Qualidade. Qualidade da Educação. Marcos Normativos.

Introduction

Discussions about guaranteeing the right to education, as well as the right to quality education, gained prominence in Brazil with the publication of the Federal Constitution in 1988, when education began to be treated as a social right and the principle¹ of guaranteeing the standard of quality was introduced.

However, when we conducted a historical incursion, it was possible to identify that since the 5th century, educational actions have been linked to the church². In the Middle Ages, parents who wished to send their children to school had to look for schools that prepared future clerics (Barbosa, 2007). Over the years, "by order of the Pope and the Council, the church began to open its schools to other children as well" (Barbosa, 2007, p. 165), however, categories of schools were created to serve specific audiences and objectives, with some aimed at training future preachers and others for the rural population.

Dissatisfied with the ideals and actions of the Catholic Church, Martin Luther, a monk of the Order of Saint Augustine, was largely responsible for the Protestant Reformation of the 16th century. In the field of education, despite not breaking with religious precepts, his actions sought to defend the "reform of secondary and university education and the creation of elementary education schools that reach the entire population" (Barbosa, 2007, p. 165). Still, he became known for appealing to parents to send their children to schools and for advocating that "the responsibility for school education, a right-duty of all, should be transferred from the Church to the State, more specifically to municipal authorities" (Barbosa, 2007, p. 175).

Luther was, in the view of some authors (Barbosa, 2007; Cambi, 1999), one of the great advocates of a school for all, with mandatory attendance and under the responsibility of non-religious authorities. These principles of gratuity, obligation, secularity, and universality will be revisited in the French Revolution of the 18th century (Barbosa, 2007).

Nevertheless, the right to education was only recognized as a social right in the 20th century. The result of claims and union movements "*it is about the rights that give real content to formal rights and that guarantee access to means of livelihood and social welfare*" (Feldfeber, 2014, p. 141). In the list of human rights, the right to education was recognized with the publication of the Universal Declaration of Human Rights in 1948.

In general, in "each phase of human history, we realize that education had (and has) a purpose and an aim" (Ribeiro; Klemann; Ribeiro, 2017, p. 129), thus, in Brazil, the right to education went through several moments until reaching the precepts currently in place. Naturally, in the face of social evolution, texts are updated and we can ask ourselves: where are we going? What are the challenges to ensuring the right to education and the right to quality education, since they are included in the list of fundamental rights and guarantees?

Fundamental rights "initially, assume the character of negative rights that imply a restriction on State action to, later, assume an active stance, requiring positive actions from the State" (Maliska, 2001, p. 42). When it comes to the right to education, historically, tacit acceptance was not enough; written laws and concrete actions were necessary for it to be implemented, that is, brought to practical reality.

A recurring theme on the global and national agendas, the importance of the right to education, is an undeniable fact. However, in contemporary society, it is necessary to broaden its focus, whether it is thinking about the right to educational quality (Ximenes, 2014a). Under the prerogative of contributing to this debate, this article aims to analyze the normative frameworks that address the right to quality education and educational quality in Brazil.

As technical and methodological procedures, we made use of bibliographic and documentary research. For the bibliographic research, we based our study on the works of Barbosa (2007), Cury (2001, 2014), Dourado, Oliveira, and Santos (2007), Dourado and Oliveira (2009), Maliska (2001), Silva (2009), and Ximenes (2014a, 2014b), as they allow for an analysis of the different meanings attributed to the concept of quality over the years, as well as references that guide the guarantee of the right to quality education. Documentary research, in turn, was based on the analysis of constitutional provisions, namely Brazil (1824, 1891, 1934, 1937, 1946, 1967, 1988) and of normative documents (laws, acts, decrees, resolutions, and opinions) published post-1988 constitution, which inform and regulate the guarantee of the right to education and educational quality in the Brazilian context.

Considering the presented, the text begins with the treatment of the theme of the right to quality education in the Brazilian Federal Constitutions, starting with the first Constitution of 1824 up to the current provisions of the Constitution of the Federative Republic of Brazil of 1988. After presenting an analysis of the normative frameworks, post-Federal Constitution of 1988, which address the right to quality education and educational quality in Brazil.

Right to Quality Education in Federal Constitutions (1934-1988)

In this subsection, we present the constitutional provisions³ that mention education as a right, seeking a relationship with elements, precepts that refer to the right to quality education.

The right to education was already present in the Constitutions prior to the current Federal Constitution of 1988. However, "reality did not always correspond to the provisions set out in the texts of the legal system" (Cury, 2014, p. 21), since "educational citizenship was far from what one might expect from a country that wanted to be civilized." (Cury, 2014, p. 21). Legal texts are linked to the country's history and, although it is possible to identify the exclusionary nature of some constitutional texts, great advances have been recorded throughout our history.

Such advances can be perceived when we analyze the Brazilian Federal Constitutions, some granted, that is, imposed by the rulers and others enacted, of the "seven Constitutions, four were enacted by constituent assemblies, two were imposed — one by D. Pedro I and another by Getúlio Vargas — and one approved by Congress at the demand of the military regime" (Agência Senado, 2023).

Regarding education as a right, the 1824 Constitution of the Brazilian Empire, whose national context is marked by the power of the oligarchies and the maintenance of bourgeois interests, established in art. 179, XXXII the right "to primary and free education for all citizens" (Brasil, 1824), with education being the responsibility of the family and the Church. In the 1824 Federal Constitution, "primary education was considered a civil and political right of the new nation" (Cury, 2014, p. 25).

Cury (2014, p. 26) recorded that during the validity of this Constitution "Brazil experienced its first general education law, dated October 15, 1827, signed by Emperor Pedro I, regulating primary education." The aforementioned law mandates the creation of schools in all the cities, towns, and most populous places of the Empire, and thus the primary schools emerged in the country. Maliska (2001, p. 22) recorded that the "right to education in the Brazilian Imperial Constitution was, therefore, timidly presented and strongly characterized by the participation of the Catholic Church in the process of educating the people." Another aspect that deserves to be highlighted is the centralization of education [...]", markedly by the determinations of the Crown.

With the 1824 Federal Constitution, "at least one principle was established: the gratuity of primary education" (Brasil, 1824). The gratuity of education, universalization, and access depended on greater application of resources and specific legislation on the subject. It is worth mentioning that the more substantial taxes were allocated to higher education, while lower-value taxes were allocated to primary education (Cury, 2014). The analysis of this legislation allowed us to highlight that there are not enough elements that reflect a concern for quality education.

It is important to note that the Additional Act to the Constitution of the Empire was incorporated in the year 1834, which aimed to promote the decentralization of education and delegate to the provinces the collection of taxes intended for education. Several criticisms were recorded, among which the need to establish concurrent jurisdiction between the province and the Emperor's determinations.

Subsequently, with the second Brazilian Constitution of 1891, after the Proclamation of the Republic on November 15, we began a period of Federal Republic, characterized by granting autonomy and decentralization to the States. In the national context, we moved from an Empire of Brazil to a Republic of Brazil and from parliamentarism to presidentialism. The period is also marked by the "expansion of industry, the movement of people from rural areas to urban centers, and the emergence of inflation" (Agência Senado, 2023).

Regarding education, we did not find any title intended for education, not even related to quality education. Still, the Federal Constitution of 1891 does not explicitly mention the competence of the Union or any other federative entity for basic education. In its art. 35, established as the competence of the National Congress, but not exclusively:

- 1st) to ensure the protection of the Constitution and the laws and to provide for federal needs;
- 2nd) to encourage in the country the development of literature, arts, and sciences, as well as immigration, agriculture, industry, and commerce, without privileges that hinder the action of local governments;
- 3rd) create higher and secondary education institutions in the States;
- 4th) provide secondary education in the Federal District (Brasil, 1891).

The Constitution of 1891 maintained educational federalism and left it to the States to declare or not the gratuity and obligation (Cury, 2001, 2014). Legally, the States would have autonomy to finance primary education and create secondary and higher education institutions (Cury, 2014). The legislation also made explicit the separation between the Church and the State and determined, in its art. 72, § 6, which "the education provided in public institutions will be secular" (Brasil, 1891).

In the year 1926, a new wording was given to art. 72, via Constitutional Amendment (CA), the goal was to ensure means to "guarantee to Brazilians and foreigners residing in the country the inviolability of rights concerning freedom, individual security, and property" (Brasil, 1926), that is, it focused on maintaining the privileges of the nobility "to the detriment of creating policies that would ensure the implementation of free public elementary education, essential for the education of the majority of the population." (Teixeira, 2008, p. 151).

The Constitutional Amendment of September 3, 1926 also inserted in art. 34, the exclusive competence of the National Congress to "legislate on the municipal organization of the Federal District, as well as on the police, higher education, and other services that in the Capital are reserved for the Union Government" (Brasil, 1926), leaving the Union with interests focused on higher education. Studies conducted by Cury (2001) record that the 1926 CA revealed two important points: a) clarification of the role of the Union regarding basic education; b) conception of education as a social right. These are milestones that will later be recorded in the 1934 FC.

It was only from the 1926 Constitutional Amendment that the right to education began to be treated as a social right. Before, due to liberal precepts and hegemony, social discussions and interests were not included in constitutional texts, with the interests of the elite prevailing, as the texts were much more concerned with property, that is, with the protection of the bourgeoisie's assets. It is worth noting that

social movements that occurred in the 1920s contributed to many demands beginning to be included in legislative projects and inserted into the constitutional context.

In the 1930s, Brazil had its third Constitution approved, dated July 16, 1934,

[...] bears the Getulist mark of social guidelines and adopts the following measures: greater power to the federal government; mandatory and secret voting from the age of 18, with voting rights for women, but maintaining the prohibition of voting for beggars and illiterates; creation of the Electoral Justice and Labor Justice; creation of labor laws, instituting an eight-hour workday, weekly rest, and paid vacations; writ of security and popular action (Agência Senado, 2023).

It was from the 1934 Constitution that education began to have a special focus among the constitutional precepts. The document brings the "insertion of new titles in the Constitutional text, such as those related to the economic and social order, family, education, and culture, in short, the positivization of social rights" (Maliska, 2001, p. 24), it is a great advance, as it presents a specific chapter for education and culture. Still, it established as the exclusive competence of the Union to outline the guidelines of national education and in the art. 149 that "education is the right of everyone [...]" (Brasil, 1934). In this way, the 34 FC is an important milestone in national education, by stating that education is a right for all.

The FC also foresaw as a competence of the National Education Council the elaboration of the National Education Plan (PNE), to be defined according to the guidelines of the art. 150, being another milestone for national education. In the art. 151, dictates that States and the Federal District must "organize and maintain educational systems in their respective territories, respecting the guidelines established by the Union" (Brasil, 1934) and according to Cury (2014, p. 31), "the 1934 Constitution brought great advances such as free and compulsory primary education, the national education plan, and the institutionalization of education councils."

These are milestones that, later on, consolidate into a symmetry in the other constitutional texts. Another important milestone arising from the 1934 Federal Constitution is the provision expressed in art. 156, that 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 development of educational systems" (Brasil, 1934).

Maliska (2001, p. 26) also mentions the advances that can be found in the 1934 Federal Constitution, as "for the first time, in a national Constitutional text, the right to education was elevated to the category of a public subjective right" and as a subjective right, it is something that can be demanded by the citizen, through petitions to the Judiciary, holder of jurisdiction, for compliance by the State. From

then on, it is possible to demand from the public authorities the rights that are being consolidated in the constitutional texts.

However, with the *Estado Novo*, Getúlio Vargas "dissolved Congress and granted the country, without any prior consultation, the Constitutional Charter of the *Estado Novo*, of fascist inspiration, with the suppression of political parties and concentration of power in the hands of the supreme head of the Executive" (Agência Senado, 2023). All political parties were extinguished, in addition to the extinction of the Electoral Justice, which proves to be a true gap in our history, since, in most dictatorships, at least one political party is maintained.

In the field of education, the Constitution of 1937 mentioned, in the precepts about the National Organization, that:

Art. 15. It is the exclusive competence of the Union:

[...]

IX - establish the foundations and determine the frameworks of national education, outlining the guidelines that must be followed for the physical, intellectual, and moral formation of children and youth;

Art. 16. It is the exclusive competence of the Union to legislate on the following matters:

[...]

XXIV - national education guidelines; (Brasil, 1937).

As a characteristic that had already been present in previous constitutions, the Union maintained the competence to outline the guidelines of national education and a chapter for Education and Culture, as provided in article 128, which states that it is "the duty of the State to contribute, directly and indirectly, to the encouragement and development of both, by favoring or founding artistic, scientific, and educational institutions" (Brasil, 1937).

It is important to note that, in the 1937 Constitution, education is the duty of parents. Under the terms of article 125, "The comprehensive education of the offspring is the first duty and natural right of the parents." The State will not be a stranger to this duty, collaborating, in a main or subsidiary way, to facilitate its execution or to fill the deficiencies and gaps of private education" (Brasil, 1937). Still, in article 130, it was stated that "primary education is compulsory and free, establishing that education should be free and compulsory." Gratuity, however, does not exclude the duty of solidarity from the less fortunate towards the more needy; [...]" (Brasil, 1937).

The constitutional text presents some exclusionary aspects in relation to education, as it highlights that technical education was intended "for the less privileged classes" and this type of education did not allow access to higher education (which was only completely revoked in 1961, by the Law 4.024) (Carreira; Pinto, 2007, p. 19). In Maliska's view (2001, p. 29), the 1937 FC is exclusionary because the education model was centered "on the existence of secondary schools with the mission of preparing the ruling elite, and professional schools intended for those who would be led" (Maliska, 2001, p. 29).

Subsequently, with the re-democratization of the Brazilian State and the promulgation of the 1946 Federal Constitution, the Constitution maintained the Union's competence to legislate on the guidelines and bases of national education, not excluding the competence of the States to legislate in a supplementary or complementary manner (Maliska, 2001). The 1946 Constitution established a special title, *Title VI*, with provisions *On Family, Education, and Culture*.

We highlight some milestones of the 1946 Federal Constitution regarding education, namely: a) the principle of human solidarity, provided for in "Art. 166 - Education is the right of everyone and will be provided at home and at school. It should be inspired by the principles of freedom and the ideals of human solidarity" (Ximenes, 2014a, p. 416); b) guarantee of resources for education, in accordance with the terms of the art. 169; c) Compulsory and free primary education, under the terms of art. 168, I and II (Brasil, 1946); d) The art. 168, II, mentioned that "official education beyond primary school will be for those who prove lack or insufficiency of resources" (Brasil, 1969).

We noticed that the Constitutions of 1937 and 1946 do not explicitly mention provisions that allow for relating the role of the State in ensuring quality education, or a concern of the State in affirming constitutional aspects related to the quality of education.

We can say that, up to this moment, the greatest advances present in the constitutions are related to everyone's right to education, free and compulsory education, the responsibility of the Union to establish the guidelines of national education, and the concern with the application of tax percentages allocated to education. In other words, there is a concern to include the right to education in the constitutional text, but not with the guarantee of quality education.

Next, Brazil was marked by a period of Military Regime, established in the year 1964. But, only in the year 1967, we had a new Constitution, known as the Constitution of the Military Regime and by the Institutional Acts (AI 1 to AI 5), as a way to expand the legitimacy of authoritarian powers.

Regarding education, the period is marked by the strengthening of the Union, which was given the competence to establish the National Education Plan and legislate on guidelines and bases of national education, without excluding the supplementary competence of the States. Article 168 mentioned that "education is the right of all and will be provided at home and at school; ensuring equal opportunity, it must be inspired by the principle of national unity and the ideals of freedom and human solidarity" (Brasil, 1967). It is important to note that during this period, education is compulsory and free from ages seven to fourteen.

During the military period, likewise, it is not possible to identify principles in the constitutional text aimed at the quality of education. The analysis of the constitutional text allowed us to identify that the precepts are aimed at education as a right, but not expressly constitutionally as quality education.

In the 1980s, Brazil was marked by a period of redemocratization and political opening, in the face of the "crisis in the recognition of the regime's legitimacy (due to the economic crisis); the election of opposition governors in 1982; and the largest mass demonstration in Brazil: the campaigns for Diretas" (Brasil, 2014a) with our State going through the period of the Constituent Assembly, which culminated in the promulgation of the Constitution of the Federative Republic of Brazil, on October 5, 1988, which became known as the Citizen Constitution, due to numerous constitutional principles and guarantees conferred by the constitutional text.

In education, despite the clash of interests, mainly between advocates of private education and public schools, the final text of the 1988 Federal Constitution (Machado; Andrade, 2021) reflected the negotiation of interests and succeeded as it was marked by the guarantee of social rights, especially the social right to education. In the structure of the 1988 Constitution, it is possible to identify that education is part of Title II, of Fundamental Rights and Guarantees, inserting it as a social right, under the terms of art. 6th Federal Constitution.

In addition to inserting education as a social right, the 1988 Federal Constitution established, in its art. 205, that education is "the right of all and the duty of the State and the family, will be promoted and encouraged with the collaboration of society, in order to provide the exercise of citizenship" (Brasil, 1988), among the constitutional principles that are the basis for teaching, art. 206, VII, brings the "guarantee of quality standard" (Brasil, 1988).

Still, the art. 208, §1, established that "access to compulsory and free education is a subjective public right" (Brasil, 1988). And, as a subjective public right, it allows citizens to seek, through legal actions, the enforcement of the State's role, not only in providing access to (mandatory and free) education, but also in ensuring quality education. In addition to requiring access to education, it also enables the demand for quality, by providing the citizen "not only any existence, but to be able to enjoy and participate actively as a citizen, having their rights guaranteed and fulfilling their social duties" (Maia; Avante, 2013, p. 146).

When we seek the concept of subjective public law, it is possible to identify that it is

[...] a capacity recognized to the individual due to their special position as a member of the community, which materializes in the power to set legal norms in motion in the individual interest. In other words, the subjective public right grants the individual the possibility of transforming the general and abstract norm contained in a given legal order into something they own. The way to do it is by activating the legal norms (objective law) and transforming them into your right (subjective law) (Duarte, 2004, p. 113).

Although it is treated as a subjective public right, we emphasize that the quality standard is likewise a subjective right, which must be materialized, that is, brought to concreteness, moving from the sphere

of legal provision to reaching each student in basic education through concrete actions by the Public Power. Only the normative treatment, establishing education as a social right, a guarantee of quality standards, and a subjective public right, does not ensure its social effectiveness.

The established principle is not objectively realized, requiring a set of assumptions and actions to effectively be realized as a right to quality education, as a constitutional principle and fundamental right that "goes beyond the immediate dimensions related to the availability of places and accessibility to elementary education schools" (Ximenes, 2014a, p. 212).

Being education a right for everyone, "allows its holder to legally compel the State to execute what it must" (Duarte, 2004, p. 113), that is, for the State to provide quality education. It seems that the forecast as a subjective public right is assertive, given the Brazilian heterogeneity, allowing it to be possible, throughout the national territory, to demand, in a judicial manner, the provision of quality education.

The realization of the right to quality education, in addition to the constitutional provision as a principle, a foundational basis for the standards to be adopted by the three Powers, provided for in art. 2nd of the Federal Constitution, must involve:

[...] norms that protect the right to education (the right to access quality schools without discrimination), but also norms that convey human rights in education (that is, respect for human rights in the educational process) and through education (in this case, identifying education as a priority means of disseminating fundamental human rights) (Ximenes, 2014a, p. 212).

On this path, the State must, according to Dourado, Oliveira, and Santos (2007, p. 25), promote the guarantee of "quality, which includes equal conditions for access, permanence, and school performance," however, the implementation of the principle of quality, provided for in art. 206, VII of the Federal Constitution. Cury (2014, p. 43) recorded that the FC "established principles, guidelines, rules, linked resources, and plans, in order to give substance to this right." By specifying this right, it listed ways to achieve them, such as "free and compulsory with quality and legal protection [...]", relating possibilities for the citizen to resort to the Judiciary to enforce their rights, whether they are objectively provided for in the legislation or in the form of subjective rights.

As a way to synthesize the historical path in favor of guaranteeing the right to education, the following table presents a summary of the main Brazilian Federal Constitutions, as well as the existence or not of a specific chapter on education and:

Chart 1 – Treatment of the right to education and the quality of education in the Brazilian Federal Constitutions

Year of the Constitution	Title	Description	Specific title for education	Quality of education theme treatment
1824	Political Constitution of the Empire of Brazil	Drafted by a Council of State and granted by Emperor D. Pedro I, on March 25, 1824.	No	No
1891	Constitution of the Republic of the United States of Brazil	Drafted through a Constituent Congress and granted on February 24, 1891	No	No
1934	Constitution of the Republic of the United States of Brazil	Drafted through a National Constituent Assembly and promulgated on July 16, 1934	Yes. Inserted in Title V Of the Family, Education, and Culture	No
1937	Constitution of the United States of Brazil	Decreed on November 10, 1937	Yes. Inserted in the title OF EDUCATION AND CULTURE	No
1946	Constitution of the United States of Brazil	Drafted through the Constituent Assembly and promulgated on September 18, 1946	Yes. Inserted in the TITLE VI Of the Family, Education, and Culture	No
1967	Constitution of the Federative Republic of Brazil of 1967	The National Congress decreed and promulgated on January 24, 1967	Yes. Inserted in the Title IV Of the Family, Education, and Culture	No
1988	Constitution of the Federative Republic of Brazil	Drafted by the National Constituent Assembly and enacted on October 5, 1988	Yes. CHAPTER III OF EDUCATION, CULTURE AND SPORTS Section I OF EDUCATION	Yes. Mention of the principle of the right to quality education

Source: Elaborated by the authors, based on information available at:
www.planalto.gov.br.

In view of the related provisions, we find that the right to quality education is the result of historical evolutions and legal provisions that, in the same way, have remained linked to the history of our country. In general, the following aspects characterize the right to quality education: a) fundamental human right, according to the structure of the 1988 Constitution, incorporating the right to education in art. 6th among social rights and under Title II, Fundamental Rights and Guarantees, Chapter II, Social Rights; b) insertion of the principle of quality standard guarantee, under the terms of art. 205, VII of the Federal Constitution; c) when elevated to the category of principle, it must be marked by the action of all those involved in education, whether it be the legislator, the judiciary, the actions of the head of the executive, the director, teacher, in short, all those involved, so that each Brazilian student can receive quality education; d) inserted as a principle, it must

guide all Brazilian legislation, under penalty of, if not fulfilled, corrupting the structure of Brazilian education; e) in the face of a subjective right, it allows actions to be taken to the judiciary in order to guarantee the standard of quality.

A brief review of the constitutional provisions shows that the guarantee of quality standards is a fundamental right. We thus proceed to identify the other infraconstitutional normative frameworks that address the topics.

Right to Quality Education and Educational Quality: normative frameworks (post-Federal Constitution of 1988)

The quality of education can be considered a *slogan* in the educational field, as it is one of the "terms endowed with a certain positive aura used excessively so that they end up wearing out and being emptied of all critical content [...]" (Shiroma; Santos, 2014, p. 27). Such a finding can be easily perceived, as it has become increasingly common in educational demands to use the slogan of quality, without explaining its meaning (Contreras, 2002).

In Brazil, discussions about the quality of education gain prominence with the Manifesto of the Pioneers of Education, who advocated for a "new education, of 'socially useful quality'" (Weber, 2016, p. 15), essentially centered on the right of everyone to be educated. Although his ideas gave wings and influenced the constitutional text of 1934 and marked the beginning of the "[...] Brazilian concern with education and the quality of teaching" (Weber, 2016, p. 15), they were not enough to foster the discussion about the quality of education at that time.

Over the years, other movements⁴ have influenced discussions about the quality of education. However, in Brazil, it was only with the promulgation of the 1988 Constitution of the Federative Republic that quality was recognized as a principle. The mention of the quality of education can also be found in the Law of Guidelines and Bases of Education, Law No. 9,394/1996, which mentions, in art. 3rd, that education will be provided based on various principles, among them the guarantee of quality standards. Nevertheless, this article does not mention what quality standards would be.

The prerogative of quality standards is resumed in article 4 of the Law of Guidelines and Bases (LDB), which mentions that it is the duty of the State to guarantee:

IX – minimum quality standards for education, defined as the minimum variety and quantity, per student, of essential inputs for the development of the teaching-learning process appropriate to the age and specific needs of each student, including through the provision of suitable furniture, equipment, and teaching materials [...] (Text provided by Law No. 14,333, of 2022) (Brasil, 1996).

It is important to highlight that, although the legal document defines what the minimum quality standards would be, information on which inputs would be considered indispensable for the teaching-

learning process is still vague. It seems that the LDB leaves it open for the inputs to be defined by the education systems and networks.

In the year 2001, the PNE, Law No. 10.172/2001. The PNE has among its objectives and priorities the improvement of the quality of education at all levels, as advocated by the FC. For Dourado et al. (2016, p. 125), it was expected with the PNE "to advance in the definition and implementation of goals that would ensure greater quality to school education in general and to basic education in particular." Notwithstanding, the nine presidential vetoes, notably in the items dealing with education funding, compromised the fulfillment of the priorities outlined in the document and, consequently, the promotion of improvements in the quality of education.

Regarding the concept of quality, the 2001 PNE does not delve into specifying this concept or defining quality parameters, but it hints that the priorities listed in the document make it possible to "offer an education compatible, in scope and quality, with that of developed countries" (Brasil, 2001, p. 6). By establishing priorities, guidelines, objectives, and goals, the PNE indirectly brings to light a series of standards/conditions necessary for education to be of quality in Brazil and that must be pursued by the federated entities and schools.

Continuing the analysis of the regulations that address educational quality, in 2007, the Education Development Plan (PDE) was launched, an executive plan that includes more than 40 programs aimed at basic education, higher education, professional education, and literacy (Brasil, 2007b). Alves and Silva (2009, p. 116) mention that "the guidelines of the PDE, in general terms, reaffirm the educational policy of the Brazilian State implemented from the 1990s onwards with regard to the management, evaluation, and financing model."

The triad of management, evaluation, and financing is affirmed as the SAEB data begin to support the transfer of financial resources/financial support to the federated entities and to promote technical support by the Ministry of Education to the education systems (Brasil, 2007b). These elements "[...] create a chain of accountability for the quality of education that encompasses both the managers, from the school principal to the Minister of Education, and the political class, from the mayor to the President of the Republic" (Brasil, 2007b, p. 25).

Regarding the quality of education, the PDE mentions the term numerous times. Notwithstanding, the notion of elevated quality is directly related to the results of the Prova Brasil and the IDEB. This notion is reaffirmed in Decree 6,094, signed at the time of the launch of the PDE. It provides for the implementation of the Goals Plan Commitment All for Education, whose commitment, under the terms of art. 1st, it is the "conjugation of efforts of the Union, States, Federal District and Municipalities, acting in a regime of collaboration, of families and the community, for the benefit of improving the quality of basic education" (Brasil, 2007a).

The Decree establishes 28 guidelines, with a view to improving the quality of basic education by the states, municipalities, and the

Federal District, with the collaboration of the Union, through voluntary adherence. Although it establishes guidelines for improving the quality of education, quality becomes directly linked to the results of the IDEB, as we can observe in Article 3 of Decree No. 6.094/2007.

Art. 3rd The quality of basic education will be objectively assessed based on the IDEB, calculated and periodically published by INEP, using data on school performance combined with student performance, as recorded in the school census and the Basic Education Assessment System – SAEB, which consists of the National Basic Education Assessment – ANEB and the National School Performance Assessment (Prova Brasil) (Brasil, 2007a).

It is worth mentioning that the adherence of federative entities to the commitment implied, at the time, "in assuming the responsibility to improve the quality of education," which is "expressed by meeting the goal of IDEB evolution" (Brasil, 2007a). As a form of compensation, the Union offered technical and financial support, especially for municipalities with low Ideb scores.

Still, in the year 2007, Law No. 11,494, which regulates the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals (Fundeb). According to the booklet published by the Ministry of Education, Fundeb is about

[...] a special fund, formed by 27 funds (26 state and 1 from the Federal District) that are basically composed of contributions from the States and Municipalities. The Union complements the resources of the Funds when they do not reach a value capable of guaranteeing a minimum quality basic education (FNDE, 2021).

Fundeb came in replacement of the Fund for Maintenance and Development of Education and Valorization of Teaching (Fundef), established by Constitutional Amendment No. September 14, 1996, and regulated by Law No. 9,424, from December 24 of the same year.

Both Fundef and Fundeb bring to light the prerogative that the Union, the States, the Federal District, and the Municipalities must ensure in the financing of education the improvement of the quality of teaching, as well as the guarantee of a minimum standard of quality of teaching (Carreira; Pinto, 2007). Notwithstanding, there is no effective concern in defining, especially in the Fundeb Law, what inputs would correspond to the minimum quality standards, the Law is limited to establishing criteria for the distribution of financial resources.

Continuing the analysis of the regulatory frameworks that address and/or mention educational quality, in the year 2010 via Resolution No. On July 13, 2010, the National Curriculum Guidelines for Basic Education (DCNEB) were approved, aiming to guide the construction of school curricula.

The document presents two aspects regarding the quality of education that deserve attention. The first deals with the mention, in Opinion 07/2010, of the expression right to quality education. According to the counselors, one of the key ideas of the Opinion is

II – the role of the State in guaranteeing the right to quality education, considering that education, as an inalienable right of all citizens, is a primary condition for the full exercise of rights: human rights, both social and economic rights as well as civil and political rights; [...] (Brasil, 2010, p. 9).

In addition to recognizing the right to education, the Opinion presents an advancement compared to other documents, which is recognizing the role of the State in ensuring the right to quality education. It is worth mentioning that it is not just any quality, the Opinion, the Resolution, and the text of the DCNEB assume that it is a socially referenced quality project or of social quality.

In this way, the conception of social quality is the second aspect that deserves attention in the curricular guidelines. Talking about social quality implies understanding that "[...] education is a process of socializing the culture of life, in which knowledge and values are built, maintained, and transformed." Socializing culture includes ensuring the presence of learning subjects in school" (Brasil, 2010, p. 20). On this path, social quality "is an achievement to be built in a negotiated way, as it means something that materializes from the quality of the relationship between all the subjects who act directly and indirectly in it" (Brasil, 2010, p. 20).

Ensure access and successful retention of students in school, reduce dropout rates, retention, and age/year/grade distortion, provide adequate funding, as well as understand the interests of the school community, have a Political-Pedagogical Project built and embraced by the community, and value education professionals are some of the aspects that, according to the guidelines, should be observed in a socially referenced quality project.

In general, it is noticeable that the guidelines, in addition to mentioning the right to quality education, assume that a socially quality education "[...] is not limited to mathematical formulas, nor to results established a priori and to decontextualized linear measures" (Silva, 2009, p. 223), that is, it involves internal and external factors to the school.

Another document that mentions the term quality is the National Education Plan, approved in 2014 via Law No. 13.005/2014, the PNE has among its guidelines the improvement of the quality of education. Still, the document set a specific goal to address this issue, which is goal 7: "to promote the quality of basic education in all stages and modalities, with improvement in school flow and learning in order to achieve the following national averages for Ideb" 6.0 in the Initial Years of Elementary Education; 5.5 in the Final Years of Elementary Education; 5.3 in High School (Brasil, 2014b).

In addition to setting a goal, the document lists some strategies to promote the quality of education, among which it is worth highlighting the creation of the National System for the Evaluation of Basic Education, improvement of evaluation instruments, creation of evaluation instruments for the quality of special education, implementation

of pedagogical guidelines and the common national base, establishment of a national set of institutional evaluation indicators, achievement of sufficient learning levels by elementary and high school students, establishment of Minimum Quality Parameters for Basic Education Services, implementation of Student Quality Cost, approval of an Educational Responsibility Law (Brasil, 2014b), among others.

When analyzing the 2014 PNE, Ximenes (2014b, p. 1031) highlights that the document presents in its text distinct views, "at times, contradictory and potentially incompatible," since it assumes the quality of education as one of its goals, that is, as a state policy, but to some extent emphasizes the use of educational results, notably, the Ideb as a tool for measuring the quality of education.

In general, the PNE "reinforces the normative dimension of quality as it emphasizes the need to ensure basic educational inputs in all schools, in the terms in which the LDB defines the 'minimum standards of teaching quality' (Law No. 9.394/1996, art. 4th, IX)" (Ximenes, 2014b, p. 1032), that is, it brings to light the "regulation of the constitutional standard of quality as a new dimension of the struggle for the right to education in the country" (Ximenes, 2014, p. 1032).

When conducting a review of the PNE, Ximenes (2014b, p. 1032) highlights that the National Common Base, the Minimum Quality Parameters, the CAQ, and the Educational Responsibility Law constitute the "4 (four) agendas of juridification expressly articulated to the definition of the content of the right to quality basic education, in its practical (empirical) dimension" (Ximenes, 2014b, p. 1032). In this way, the approval of the PNE in 2014 inaugurated a new phase in the dimension of the right to education in Brazil, considering that by recognizing the constitutional standard of quality, it goes beyond issues related to access and permanence. However, it is important not to lose sight of the fact that there are different interests behind the definition of these agendas and that many of them are tied to the interests of capital.

In the year 2020, through Law No. 14,113, the New Fundeb was regulated. The distribution of Fundeb resources is carried out based on the number of students enrolled in the respective public basic education networks and is independent of the amount of taxes collected by each federated entity. The publication of this legislation brings a significant change to education, as the transfer of resources becomes permanent (Castioni; Cerqueira; Cardoso, 2021).

Regarding quality, the aforementioned Law emphasizes that it is the responsibility of the Ministry of Education to conduct technical studies aimed at defining the annual reference value per student that ensures a minimum standard of quality in education. Here is a reflection, since the legislation mentions that there will be a calculation of the average cost of the stages and modalities of basic education, but it does not explicitly state which inputs will be taken as a basis to ensure quality standards, improve learning, and reduce inequalities.

The Fundeb Law, still, in its art. 49, determines that the federative entities "must ensure in the financing of basic education, provided for in the

art. 212 of the Federal Constitution, the improvement of the quality of education, in order to guarantee a nationally defined minimum quality standard" (Brasil, 2020a, p. 24). An important aspect can be observed in the writing of this article, as it indicates the definition of a minimum national quality standard. The legal document also indicates that in the coming years there will be the publicization of a national minimum quality standard and that "the participation of the public and the educational community in the definition process will be ensured" (Brasil, 2020a, p. 24).

Another important point that deserves to be highlighted in relation to the aforementioned law refers to the supplementation of resources via Student Value Year Result (VAAR). This is the transfer of 2.5 percentage points to networks that promote improvements in management, especially in the way of providing the position of school principal; that improve their attendance, approval, and learning indicators; ensure the participation of at least 80% of students in assessments; have curricula aligned with the BNCC, that is, meet conditions that "associate quality of education and social development, reducing the disparity between socioeconomic groups" (FNDE, 2021, p. 17).

The transfer of resources based on educational indicators was also foreseen in the distribution of resources from the Tax on Operations Related to the Circulation of Goods and on the Provision of Interstate and Intermunicipal Transport and Communication Services (ICMS). According to Constitutional Amendment No. 108, of 2020, will be transferred to the municipalities

II - up to 35% (thirty-five percent), according to what is provided by state law, with the mandatory observation of the distribution of at least 10 (ten) percentage points based on indicators of improvement in learning outcomes and increased equity, considering the socioeconomic level of the students (Brasil, 2020b).

Linking the receipt of resources to the improvement of educational indicators leads to a reduction in the concept of quality, in addition to "[...] contributing to an increase in inequalities instead of promoting equity in the provision of school education" (Castioni; Cerqueira; Cardoso, 2021, p. 296).

We believe that the overvaluation of indicators can, in the very near future, give a new tone to the fight for the right to quality education, that is, society may demand from the legislator the right to quality education, based on numerical indicator results, since the legislation is still weak in defining quality standards or what would be a quality education. This is the consolidation of a concept of quality linked to market and neoliberal precepts.

Final Considerations

The analysis of the constitutional provisions and the post-1988 constitution normative frameworks made it possible to show that the right to quality education is a term that appears in a dissociated manner in Brazilian legislation. Regarding the right to education, the Federal Constitution (FC) of 1988 recognizes education as a right for all.

Quality, on the other hand, is treated as one of the constitutional principles that form the basis for education, a principle reiterated in other infraconstitutional legislations, such as the LDB.

Although the FC and the LDB mention the term quality, they do not refer to which parameters and/or analytical references could be taken as benchmarks of quality. Thus, in the post-1988 constitution period, we identify in several national documents attempts to signal what would constitute a quality education, as well as disputes over models that, despite occasionally, as identified in the DCNEB, being permeated by a notion of social quality, do not align with the project assumed by the State.

In general, it was possible to verify that in Brazil it has not been common to adopt the expression right to quality education and that given the lack of definition of the concept of quality, as well as analytical references to guide what would constitute the guarantee of the right to quality education, there are strong indications that the notion of quality widely disseminated in the national context is associated with the results of evaluations and educational indicators.

In this way, we consider it essential to broaden the discussions on attempts to regulate certain conceptions/references of educational quality, as well as to overcome the view that, in contemporary society, only the regime of protection of the right to education is sufficient. Still, we advocate for the need to ensure the right to quality education, based on a concept of quality grounded in the social dimension.

To conclude, it is necessary to highlight the possibilities for future analyses regarding the guarantee of the right to education, especially of social quality, as well as studies that contribute to the construction of analytical references/parameters from which the federated entities can overcome this reductionist and market-oriented conception of quality.

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Notes

¹ According Rizzatto Nunes (2019, p. 231), the constitutional principles "are true main beams, foundations on which the legal system is built." Constitutional principles provide structure and cohesion to the *legal framework*. Thus, they must be strictly obeyed, under penalty of the entire legal system being corrupted."

² The actions of the Church were centered on offering its spaces to be used as education centers, on spreading education based on faith, and on an educational model aimed at the formation of elites (Xavier, 1980; Oliveira, 2004).

³ Legislative texts will be transcribed according to the original spelling.

⁴ From the 1990s onwards, according to Schneider and Rostirola (2023), the role of multilateral organizations has grown, which have disseminated, in their documents, perceptions/conceptions of quality that influence the definition of policies and programs to ensure educational quality in Brazil. The inclusion of educational quality as one of the Sustainable Development Goals (SDGs) established by the United Nations

(UN), in the year 2015, also contributed to this topic gaining prominence on national and international agendas and being adopted as a global commitment.

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