

The New Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals in Brazil and the Public-Private Partnerships in Early Childhood Education: an overview in the perspective of the Abidjan Principles

Andressa Pellanda

Universidade de São Paulo (USP), São Paulo/SP – Brazil

Koumbou Boly Barry

United Nations (UN), Geneva – Switzerland

Islamic World Educational, Scientific and Cultural Organization (ICESCO), Rabat – Morocco

Abstract

The approval of the new Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals - Fundeb - represents a big step to guaranteeing free and public education. Early childhood education is the stage of education most affected by the increase in resources to the fund, but it continues to encourage public-private partnerships, without regulations that guarantee the quality offered by the private sector. Overall, studies show that educational public-private partnerships appear to find more negative than positive effects. In the UN special rapporteur for the right to education's 2019 report, it is recommended to countries to implement the "Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education". This article, therefore, analyzes the Constitutional Amendment 108, of the new Fundeb, and its regulatory and accessory laws, pointing out the norms that follow international law, based on the Abidjan Principles, and those that lack to face the privatization of education in Brazil.

Keywords: Fundeb. Right to Education. Privatization of Education. Abidjan Principles. International Law.

O Novo Fundo de Manutenção e Desenvolvimento da Educação Básica e de Valorização dos Profissionais da Educação no Brasil e as Parcerias Público-Privadas na Educação Infantil: um panorama na perspectiva dos Princípios de Abidjan

Resumo

A aprovação do novo Fundo de Manutenção e Desenvolvimento da Educação Básica e de Valorização dos Profissionais da Educação - Fundeb - representa um grande passo para a garantia da educação pública e gratuita. A educação infantil é a etapa da educação mais afetada pelo aumento dos recursos do fundo, mas continua incentivando as parcerias público-privadas, sem regulamentações que garantam a qualidade oferecida pelo setor privado. Em geral, os estudos mostram que as parcerias educacionais público-privadas parecem encontrar

mais efeitos negativos do que positivos. No relatório da relatora especial da ONU para o direito à educação de 2019, recomenda-se aos países que implementem os “Princípios de Abidjan sobre as obrigações dos Estados em relação aos direitos humanos de fornecer educação pública e regulamentar o envolvimento privado na educação”. Este artigo, portanto, analisa a Emenda Constitucional 108, do novo Fundeb, e sua legislação regulatória e assessória, apontando as normas que seguem o direito internacional, com base nos Princípios de Abidjan, e aquelas que carecem de enfrentar a privatização da educação no Brasil.

Palavras-chave: **Fundeb. Direito à Educação. Privatização da Educação. Princípios de Abidjan. Direito Internacional.**

El Nuevo Fondo para el Mantenimiento y el Desarrollo de la Educación Primaria y la Valorización de los Profesionales de la Educación en Brasil y las Alianzas Público-Privadas en la Educación Inicial: una visión general desde la perspectiva de los Principios de Abiyán

Resumen

La aprobación del nuevo Fondo de Mantenimiento y Desarrollo de la Educación Primaria y de Valorización de los Profesionales de la Educación - Fundeb - representa un gran paso hacia la garantía de la educación pública y gratuita. La educación inicial es la etapa educativa más afectada por el aumento de recursos del fondo, pero sigue fomentando la colaboración público-privada, sin que exista una normativa que garantice la calidad ofrecida por el sector privado. En general, los estudios demuestran que las asociaciones público-privadas en materia de educación parecen tener más efectos negativos que positivos. En el informe de 2019 del Relator Especial de la ONU sobre el derecho a la educación, se recomienda a los países que apliquen los "Principios de Abiyán sobre las obligaciones de los Estados en materia de derechos humanos de proporcionar educación pública y regular la participación privada en la educación". Este artículo, por lo tanto, analiza la Enmienda Constitucional 108, el nuevo Fundeb y su legislación reglamentaria y consultiva, señalando las normas que siguen el derecho internacional, basadas en los Principios de Abiyán, y aquellas que carecen de enfrentar la privatización de la educación en Brasil.

Palabras-clave: **Fundeb (Fondo Público). Derecho a la Educación. Privatización de la Educación. Principios de Abiyán. Derecho Internacional.**

Introduction

Early childhood education in Brazil, unlike what happens in many parts of the world, has an advanced legal framework, recognizing the character of education as a right of children from zero to five years of age. This is provided for by the Federal Constitution of 1988, as a duty of the State, with supporting responsibility of the family and society, as well as other legislation, such as the Law of Guidelines and Bases of National Education – Law 9394/1996 (BRASIL, 1996) – and, more recently, the National Education Plan – Law 13.005/2014 (BRASIL, 2014). In that regard,

Faced with a long history of denial of the right of young children and a service that segmented groups and compensatory policies, the elevation of Early Childhood Education to the status of a right imposes an obligation on the State and places it in the disputed space of the public fund for more resources, to ensure the expansion of your service under quality conditions (FINEDUCA, 2021, our translation).

Thus, it was from the performance of social movements led by the National Campaign for the Right to Education in the articulation of the movement *Fundeb pra Valer* (NASCI-MENTO, 2020), that the former Fund for Maintenance and Development of Elementary Education (Fundef) – which included budget for elementary education only – becomes the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals (Fundeb) – including early childhood education and secondary education.

Fundeb represented an advance in formulation and implementation in relation to Fundef - Fund for the Maintenance and Development of Elementary Education and the Valorization of Teaching, prior to it. According to an analysis by Martins (2008, p. 322-324 apud CARA; PELLANDA, 2017), in the formulation of the law, among the aspects that represent improvement in relation to Fundef stand out:

- all stages of basic education now have a financing mechanism (the inclusion of day care centers occurred with the mobilization of the educational community, particularly the Fraldas Pintadas movement);
- the Union's complementation rule, previously defined in ordinary legislation, and never respected by the governments of the period, was constitutionalized (at least 10% of the funds' resources) and represents the greatest advance of the new model, a victory obtained in the National Congress, which it even reconstituted in the regulatory law the text of EC n. 53/06, since the Provisional Measure - MP - no. 339/06 had removed the expression "at least";
- the prohibition of the use of the source of the education salary to complement the Federal Government;
- the concern with improving the institutional design of the social monitoring and control councils;
- the provision for the establishment of a national professional salary floor for teachers in the law;
- the calculation of enrollments, to receive funds from the fund, having as mandatory criterion meeting the scope of priority action;
- the forecast of periodic evaluations and a deadline for carrying out the first evaluation of the law (until 2008);
- the forecast of holding, within five years, a national forum with the objective of evaluating the financing of basic education, in addition to guaranteeing popular participation in the process of defining the national quality standard (CARA; PELLANDA, 2017, p. 10-11, our translation).

The effective complementation of the Union was an important factor for the collaboration regime, as it gave credibility to the Union's commitment to complement at least 10% (ten) percent of the value of the funds (MARTINS, 2015a, p. 4). This commitment represented an advance in the FUNDEB legislation by overcoming the Union's lack of responsibility. Nevertheless,

[...] the criterion became that of 'federative effort' (MARTINS, 2009, p. 236), allowing for the "minimum" of 10% to go from starting point to finishing point, as described on the FNDE website (CARA; PELLANDA, 2017, p. 14, our translation).

Cara and Pellanda, in their article, demonstrate that, even though Fundeb 2007-2020 has overcome a series of problems existing in Fundef, it still “was not sufficient for the proper functioning of education policies” (p. 15). In addition to the challenge of increasing the minimum level – surpassed in the approval of the new Fundeb, in the Constitutional Amendment 108/2020 –, there are challenges of 1) implementing the policies in a collaborative way between federated entities – which requires the regulation of the National System of Education –; 2) as well as “less humiliating” student cost investment (ARAÚJO, 2005, p. 81 apud MARTINS, 2009, p. 155) – demanding the regulation and implementation of the Cost of Quality Education per Student (CAQ), now provided for by the Constitution Federal of 1988 through permanent Fundeb; to 3) make it possible to overcome the practice that touches certain modalities, such as special education, and a particular stage, which is early childhood education, the promotion of public-private partnerships and processes of privatization of education in the long term, as a way of simplified to meet the demand for places at this stage of education, but without compromises with the quality of this same education.

We will focus on this last point in this article, which aims to analyze regulatory gaps in the provision of the private sector in early childhood education, in the light of Chapter IV, Principle 5, of Abidjan's Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, which deal specifically with domestic financing of education. The Abidjan Principles are

[...] a reference point for governments, educators and education providers when debating the respective roles and duties of states and private actors in education. They compile and unpack existing legal obligations that States have regarding the delivery of education, and in particular the role and limitations of private actors in the provision of education. They provide more details about what international human rights law means by drawing from other sources of law and existing authoritative interpretations (ABIDJAN PRINCIPLES, 2018).

The Abidjan Principles were supported in their formulation by dozens of experts from around the world, as well as civil society organizations, with the Brazilian Campaign for the Right to Education being the Brazilian organization that participated in this process. After their approval, in 2018, they were recognized by a number of international bodies, notably by the UN Special Rapporteur for the right to education in a report of April 2019 (UN, 2019a - A/HRC/41/37) and by the UN Human Rights Council in Resolution A/HRC/41/L.26 (UN, 2019b, p. 2) and again in 2021 in Resolution A/HRC/47/L.4/Rev.1 (UN, 2021, p. 3).

Challenges for universalizing access to public, free and quality early childhood education: from the lack of places to public-private partnerships as an easy and long-term solution

According to the Federal Constitution of 1988,

Art. 211. The Union, the States, the Federal District and the Municipalities will organize their education systems in collaboration.

§ 1 The Union will organize the federal education system and the Territories, will finance federal public education institutions and will exercise, in educational matters, **a redistributive and supplementary function, in order to ensure equalization of educational opportunities and a minimum standard of teaching quality through technical and financial assistance to States, the Federal District and Municipalities;**

§ 2 **The Municipalities will act primarily in elementary and early childhood education.**

§ 3 The States and the Federal District will act primarily in primary and secondary education.

§ 4 In the organization of their education systems, the Union, the States, the Federal District and the Municipalities **will define forms of collaboration in order to ensure the universalization, quality and equity of compulsory education** (BRASIL, 1988, emphasis added, our translation).

Despite such legal obligation, the guarantee of supply, with equalization of opportunities, quality and equity, does not occur. According to the National Continuous Household Sample Survey (PNADC/IBGE) of 2019, with the most recent data for this age group, the attendance rate for children between 0 and 3 years old was 37%, and expansion is still necessary. of 1,312,592 enrollments to meet the National Education Plan goal of meeting 50%. For children aged 4 and 5, whose goal was to provide universal care by 2016 – and which has not yet been met – the rate is 94.1%, according to the same survey. It is noteworthy that these data do not yet reflect the school exclusion caused by the Covid-19 pandemic, which greatly affected early childhood education, as it is a very complex stage in terms of remote activities.

Still, even in locations where access is expanded, there is great inequality:

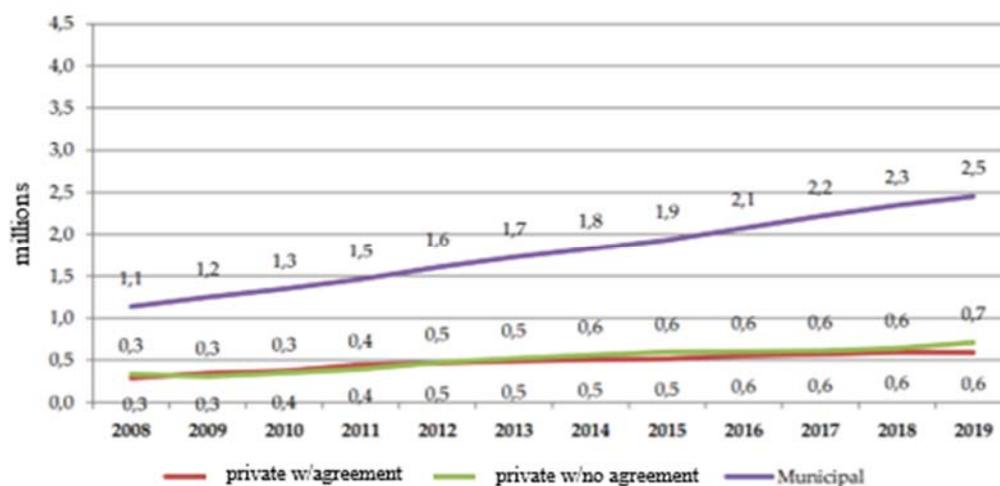
The inequality of access to education in day care centers is enormous between the poorest 20% and the richest 20%, with, at the national level, 26% of assistance to the poorest, well below the average of assistance to the richest, 53%. This inequality remains in all states and DF, being more accentuated in the states of the North and Center-West. When we analyze race/color in Brazil, the service for blacks was 34% and, for whites, 40%, a smaller difference when compared mainly with income. By area of location, service in rural areas is very low (20%), a strong difference in relation to urban areas (40%) at the national level, drawing attention to the marked inequality between these two areas in the states of the North region, but the states of Minas Gerais, Espírito Santo, São Paulo, Paraná, Mato Grosso do Sul and Acre also stand out, with a difference of 25 percentage points or more. [...] When analyzing the rate of attendance [in preschool] by group, the inequality between the poorest 20% and the richest 20% stands out. In Brazil, this difference is not as big, as for the age group from 0 to 3 years old, but it does exist, being 92% the service for the poorest and 98% for the richest. However, the difference in the states of Rondônia, Acre, Amazonas, Pará, Rio Grande do Sul and Goiás is more than 15 percentage points. When we analyze race/color, this inequality is smaller, but there are attendance rates for younger black children 90% in six of the seven northern states (Rondônia, Acre, Amazonas, Roraima, Pará, Amapá) and in Rio Grande do Sul, Goiás and the Federal District. Likewise, for assistance in urban and rural areas, the states of Rondônia, Acre, Amazonas, Tocantins and Mato Grosso do Sul stand out, with less than 80% assistance for children aged 4 and 5 in rural areas (FINEDUCA, 2021, p. 18 e 20, our translation).

It turns out that early childhood education – especially day care centers – requires a greater investment per student than the other stages (FINEDUCA, 2021, p. 30). Despite this, existing data show that there is less investment in this stage (FINEDUCA, 2021, p. 33-36). To ensure adequate funding for this stage of education, in accordance with Goal 1 of the National Education Plan, it is estimated that additional investments in the order of R\$ 10.2 billion would be needed - equivalent to 0.14% of the GDP (FINEDUCA, 2021, p. 38). However, a greater effort by the federal government to expand its contribution to Fundeb would be necessary, since the finances of the States, DF and Municipalities are reasonably committed (FINEDUCA,

2021, p. 38). And, thus, the path that municipalities across the country follow is the agreement with the private sector.

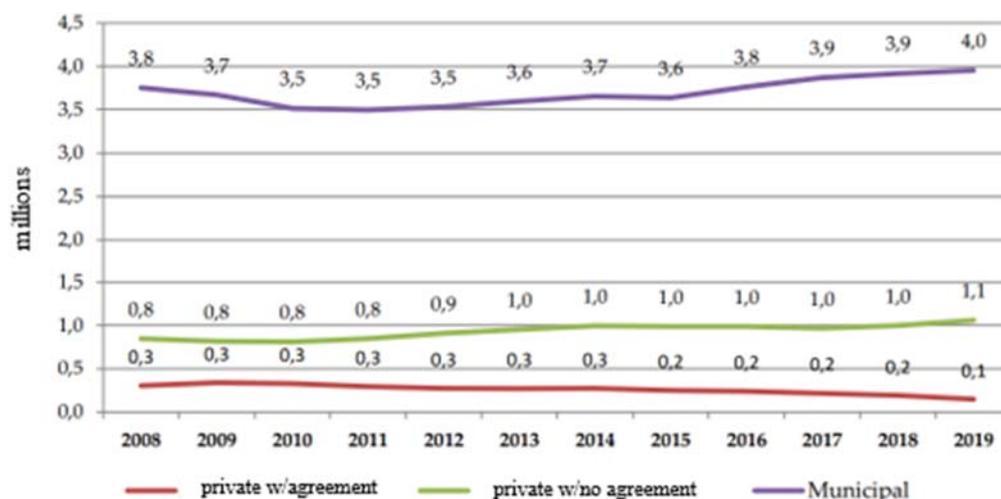
In the comparison of enrollments in public networks and private networks with agreements and non-members, the findings show that there are still significant rates, as shown by the graphs below, prepared in a Technical Note by Fineduca.

Graph 1 – Enrollments in a private, non-agreeable and municipal day care center, Brazil – 2008 to 2019



Source: FINEDUCA (2021, p. 22) - Prepared based on data from the School Census/Inep from 2008 to 2019 made available by the Educational Data Laboratory (LDE, 2020).

Graph 2 – Enrollments in private, non-agreeable and municipal preschools, Brazil – 2008 to 2019



Source: FINEDUCA (2021, p. 23) - Prepared based on data from the School Census/Inep from 2008 to 2019 made available by the Educational Data Laboratory (LDE, 2020).

As we have seen, the Union's complementation in the order of 10% minimum in Fundeb 2007-2020 was not enough to guarantee the necessary resources for access and quality in public and free early childhood education. In the new and permanent Fundeb, as we will see below, there is a substantial advance, but it will not be enough to guarantee the parameters of the Student-Quality Cost (CAQ), according to the constitutional precepts. Therefore, it is even more necessary to look at the need to regulate the provision of early childhood education by the private sector, which will still be responsible for a considerable portion of enrollments.

The funding policy, the advancement of the permanent Fundeb and the step to be taken to guarantee public, free and quality early childhood education

In 2020, the new and permanent Fundeb was approved. Among its achievements, many of them bring innovations with a significant impact on the financing of public early childhood education:

- the transformation of its transitory to permanent character, guaranteeing stability for the financing of basic education;
- increase in the Union's minimum complementation from 10% to 23%, bringing more resources to subnational entities;
- implementation of a new hybrid resource distribution format, bringing greater equalization to schools at a regional level and with a racial/ethnic focus;
- mandatory application of at least 70% of resources in the remuneration of education professionals;
- prioritization of funding for early childhood education in part by complementing resources; and
- determination of the Cost of Quality Education per Student (CAQ) as a reference for ensuring a quality standard in education.

The Cost of Quality Education per Student (CAQ) was developed by the Brazilian Campaign for the Right to Education, which acted so that it could be a legal and now constitutional parameter for Brazilian basic education (CAMPANHA..., 2018). With the development of the Cost of Quality Education Per Student Simulator (SimCAQ) (ALVES et al., 2019), it was possible to take another step towards the projection of investments needed in basic education to make the CAQ a reality.

As shown in Table 1, a total of R\$107 billion would be needed, which is equivalent to 1.47% of GDP, to guarantee public and quality early childhood education, universally, with updating of the parameters of the National Education Plan (FINEDUCA, 2021, p. 40).

Table 1 – Estimate of the additional demand for resources to meet current enrollments in Early Childhood Education as well as the additional enrollments defined by PNE 2014-2024 in the CAQ standard by UF, Brazil – 2019

States	Number of enrollments (current + new)				Additional demand for resources	
	Nursery		kindergarten		in R\$ millions	% RPEb
	Urban	Rural	Urban	Rural		
AC	16.526	8.864	20.971	10.538	783	154%
AL	43.513	21.325	39.402	25.000	1.858	82%
AM	94.822	26.040	92.927	36.470	3.419	114%
AP	16.914	2.978	20.157	4.621	578	143%
BA	180.392	99.227	168.059	102.849	7.984	71%
CE	157.809	57.679	128.981	52.382	5.729	82%
ES	79.596	11.438	87.340	11.873	2.487	101%
GO	129.110	12.643	134.439	7.621	3.706	81%
MA	107.369	69.439	103.006	81.444	5.249	81%
MG	289.004	54.293	350.518	35.304	9.509	75%
MS	68.070	5.867	61.077	6.843	1.889	74%
MT	83.395	12.395	83.094	13.016	2.555	96%
PA	145.263	71.573	147.638	89.500	6.407	96%
PB	55.423	21.517	49.861	22.072	2.120	77%
PE	73.167	35.883	106.017	47.709	3.506	55%
PI	49.125	29.324	52.634	25.385	2.253	88%
PR	200.045	24.369	214.735	16.922	5.963	73%
RJ	238.688	14.566	239.473	23.382	6.677	58%
RN	45.151	18.148	48.416	17.823	1.802	77%
RO	32.126	10.335	29.389	7.192	1.119	99%
RR	14.164	3.689	15.292	5.627	519	102%
RS	150.960	18.931	182.540	21.910	4.780	53%
SC	148.807	15.680	145.967	17.561	4.325	69%
SE	30.674	12.847	25.831	15.849	1.222	72%
SP	580.920	25.148	918.859	23.514	18.310	43%
TO	33.406	5.025	31.021	5.536	1.010	77%
DF	28.519	2.928	50.685	3.213	1.007	24%
Total	3.092.959	692.154	3.548.328	731.154	106.767	65%

Source: FINEDUCA (2021, p. 41) - Prepared based on the 2019 RPEb data provided by the Fundeb Simulator; in the microdata of PNAD Continued/IBGE for the 2nd quarter of 2019 and CAQ values calculated by SimCAQ available at simcaq.c3sl.ufpr.br (see table 12). Note: (*) Result of multiplying the number of daycare and preschool enrollments in urban and rural areas by the corresponding CAQ values presented in table 12. A proportion of 70% of full-time offer for daycare and 30% was considered for preschool.

This is not, yet, the reality achieved by the permanent Fundeb, which still needs the regulation of several mechanisms, including the Student-Quality Cost (CAQ), in order to be fully and fully effective.

Privatization in early childhood education beyond current agreements: unsuccessful attempts to include vouchers in Fundeb, but approval of maintenance of agreements

During the course of the new Fundeb in the National Congress, there was a series of onslaughts by interest groups from the private sector in an attempt to advance the privatization

of the Fund, contrary to international and national guidelines for the right to education (PELLANDA; CARA, 2020). Two of them concerned early childhood education – one frustrated and one not.

During the processing of the Proposal for Constitutional Amendment 15/2015 – proposal that was processed in the Chamber of Deputies –, there was a presentation, by federal deputy Tiago Mitraud (NOVO-MG) and then federal deputy Marcelo Calero (CIDADANIA-RJ), of the Amendment 03, which proposed that states, DF and municipalities could use Fundeb resources to finance compulsory public education in private, for-profit or non-profit institutions. This proposal was challenged by civil society, as it is unconstitutional (CAMPANHA..., 2019), as it opted for the transitory nature of partnerships with the private sector in providing the public service of compulsory education, exclusively to meet the shortage of places in public schools in the course of implementation of the expansion of the public segment.

This proposal also violated the quality of education. The policies of vouchers and so-called charter schools are criticized worldwide. In the report *Accountability in Education: Fulfilling Our Commitments*, which globally monitored education -2017/8, Unesco (2017) indicates that voucher practices and school choices should be viewed with caution, as they should not be singled out as the great solution for educational problems, as they have different results in different realities. The report points out that these mechanisms have favored the processes of exclusion and segregation, as “[...] in school choice systems, parents base their choice on factors such as demographic composition, which can lead to a reduction in diversity and reinforce socioeconomic divisions”.

The case of Chile is one of the most emblematic and significant when it comes to the voucher program, since since the 1980s the Chilean school system has been organized around the idea of an educational market.

As an example of these policies, the voucher program can be highlighted, which, among other aspects, has 5 results, according to the National Education Policy Center Report (2018, p. 4-5): 1) families don't choose schools; “instead, schools choose families and students. [...] Vouchers thus create incentives for schools to maximize the social status or class position of families that they can attract, given their market niche”; 2) competition has generally relegated poor students to underperforming and highly segregated schools; 3) private schools that calculate budgets based on student vouchers have no interest in improving teachers' skills and salaries, as families applying for enrollment pay more attention to network; 4) a system that thrives on competition and exclusion can consistently produce a variety of calamities, as discrimination, low trust and neglect of civic education; and 5) recapturing the public option after it has been abandoned is extremely difficult.

Thus, advocates of the argument that children from socially vulnerable families would have better advantages and better performance studying, with scholarships, in private schools, ignore, for different reasons, what Ravitch (2011) points out by saying that the fundamentals of a good education will be found in the classroom, at home, in the community and in culture, and it is consistent with his assertion that reformers of our time continue to look for shortcuts and quick answers.

This amendment was not incorporated into the final text of the Constitutional Amendment, however, given the limitation imposed on the voting of the new Fund at the distance of what is still necessary to guarantee quality public early childhood education, it was approved

that day care centers and preschools, non-profits, affiliates can receive Fundeb resources, without a defined deadline for the day care center – despite statements to the contrary by experts and civil society (FINEDUCA, 2020; CAMPANHA..., 2020) –, but with a lock in the preschool, until its universalization in public networks.

It is expected that, through the approval, in Law 14.113/2020 (BRASIL, 2020), which regulates the new Fundeb, of permission to transfer funds from the Fund in the amount of R\$ 764 million for non-profit community, confessional or philanthropic private preschools and in partnership with the government (CAMPANHA...; FINEDUCA, 2020). Given this situation, it is necessary to reflect and advance in the formulation and implementation of legislation that can regulate the performance of the private sector in education and, therefore, we bring the analysis of current legislation in the light of the Abidjan Principles.

Analysis of constitutional and infra-constitutional guidelines on education financing in light of the Abidjan Principles

From the Federal Constitution of 1988, it includes EC 108/2020, of the permanent Fundeb, of the main infra-constitutional legislations (the Law of Guidelines and Bases of National Education (LDB) – Law 9,394/1996 (BRASIL, 1996) – and the National Education Plan (PNE) – Law 13.005/2014), and Law 14.113/2020, which regulates the new Fundeb, we prepared the following comparative table in the light of Chapter IV, Principle 5, of the Abidjan Principles, on the domestic financing of education.

It is noteworthy that there is labor legislation and legislation on data protection and public transparency that regulate part of the principles that deal with such points, respectively, but they are not regulations focused on public-private partnerships in education, on educational legislation, which would be more precise and in accordance with the Abidjan Principles. We chose, therefore, not to extend the analysis to other legislations and to keep the focus on the educational ones mentioned above.

Table 2 – Comparison of Chapter IV of the Abidjan Principles with Brazilian constitutional and infra-constitutional guidelines on education financing (summary – find complete in attached table)

Abidjan Principles (Chapter IV)	Federal Constitution of 1988 ¹	Law of Guidelines and Bases of Education ²	National Education Plan ³	Fundeb 2020 Regulation Law ⁴
64	Art. 209 Art. 212 Art. 213	Art. 3 Art. 4 Art. 7 Art. 19. Art. 77.	Strategy 7.35	Art. 7
65. a.	Art. 212	Art. 3		Art. 7 § 4
65. b.				
65. c.				
65. d.	Art. 213	Art. 77		Art. 7
65. e.				
65. f.				

¹ Our translation.

² Our translation.

³ Our translation.

⁴ Our translation.

66.			Strategy 7.35	
66. b.	Article 212-A.			Art. 30. Art. 34.
66. c.	Article 212-A.			Art. 30. Art. 31.
66. d.				
67.				
68.				
69.				
70.				
71.				
72.				
73.	Article 212-A.	Art. 3 Art. 4 Art. 7 Art. 77.		Art. 7
74.			Strategy 7.35	

Source: Elaborated by the authors – full version attached.

Based on an analysis, we conclude that there are still many gaps in the regulatory legislation of the performance of the private sector in Brazil, as detailed below, there is no provision to guarantee:

- not creating a predictable risk that the privately funded educational institution may exercise an undue influence on the education system or be responsible for a substantial part of the education system that could harm the right to education;
- not creating a predictable risk of any other systemic impact on the right to education, with special attention to obligations related to non-discrimination, equality and non-segregation;
- meeting the requirement that, before funding is considered for an eligible private educational institution, there is an adequate regulatory framework in place, addressing the due process, rules and modalities for such funding - regulation provided for in the National Education Plan but never fulfilled;
- the constitution of funding in such a way as to make it possible, in practice, to invert it or transfer the role of private educational institutions to the State;
- that if a private educational institution is eligible to receive public funding, the standards and regulations applicable to that institution must impose at least the same educational, labor and other standards that are imposed on public educational institutions, including the effective protection of conditions and terms of employment work, labor rights and union rights;
- that States should take all effective measures to overcome as effectively and quickly as possible the inability to provide or manage any aspect of the provision of education services that justifies the financing of a private educational institution. In so doing, States must ensure that funding is reinforced and regularly re-evaluated against the State's ability to fulfill its obligations to fulfill the right to education. This must include, from the beginning, a plan to eliminate this funding, as the inability of the State that justified this funding is rectified;

- that any public funding from an eligible private educational institution must be subject to ex-ante, ongoing and ex-post human rights impact assessments, which are made public and are used to continually reassess the contribution of funding to the achievement of the right to education and, if necessary, change or terminate funding. The assessment should measure the individual and systemic effect of each institution, in the short and long term, and involve all interested parties, including children and other students, parents or legal guardians, communities, teachers and non-faculty, education unions and other organizations from civil society;
- States must make continued provision of funding conditional on compliance with required standards and ensure that all contracts allow the state to withdraw funding without prejudice if standards are not met, while ensuring the continued enjoyment of the right to education. They must withdraw any public funding if the impact of funding would substantially nullify or impair the realization of the right to education, including the development of a public education system;
- that the cost of human rights impact assessment, regulation and other requirements on States should be considered as part of the assessment of the cost of the financing arrangement, with due regard given to the State's obligation to provide free education of the most high-level possible quality for all to the maximum of available resources;
- that States should ensure that all private educational institutions that receive public funding make available to relevant public authorities all proprietary data and materials that can help improve the education system, without a license, within a reasonable time frame defined by law. This includes the technology used in the classroom and the management systems. This must be done with due respect for the right to privacy, in particular of students and teachers, and the right of everyone to benefit from the protection of moral and material interests arising from any scientific, literary or artistic activity. rigid production of which they are the authors.

Final considerations

Early childhood education in Brazil, unlike what happens in many parts of the world, has an advanced legal framework, recognizing the character of education as a right of children from zero to five years of age. Fundeb 2007-2020 represented an advance in formulation and implementation in relation to the Fundef that preceded it. The effective complementation of the Union was an important factor for the collaboration regime, as it gave credibility to the Union's commitment to complement at least 10% (ten) percent of the value of the funds (MARTINS, 2015a, p. 4). This commitment represented an advance in FUNDEB legislation by overcoming the lack of responsibility of the Union. However, the minimum was instead of a starting point, a point of arrival, when analyzing the implementation of the Fund.

In addition to the challenge of increasing the minimum level – overcome in the approval of the new Fundeb, in the Constitutional Amendment 108/2020 –, there are several challenges, among other challenges, that of making it possible to overcome the practice that affects early childhood education of promoting public-private partnerships and long-term privatization processes of education, as a simplified way to meet the demand for places at this stage of education, but without compromises with the quality of this same education. It is this last point that we focus on in this article, in the light of chapter IV, Principle 5, of the Abidjan Principles.

Despite the legal requirement, the guarantee of supply, with equalization of opportunities, quality and equity, does not occur and we are far from complying with Goal 1, of the National Education Plan (Law 13.005/2014), as shown in this article, with data recent offers. It turns out that early childhood education – especially day care centers – requires a greater investment per student than the other stages (FINEDUCA, 2021, p. 30). Despite this, existing data show that there is less investment in this stage (FINEDUCA, 2021, p. 33-36). In the new and permanent Fundeb, there is a substantive advance, but it will not be enough to guarantee the parameters of the Cost of Quality Education per Student (CAQ), according to the constitutional precepts. Therefore, it is even more necessary to look at the need to regulate the provision of early childhood education by the private sector, which will still be responsible for a considerable portion of enrollments.

During the course of the new Fundeb in the National Congress, there was a series of onslaughts by interest groups from the private sector in an attempt to advance the privatization of the Fund, contrary to international and national guidelines for the right to education (PELLANDA; CARA, 2020). Two of them related to early childhood education – one frustrated and the other not: the first, the attempt to allow vouchers and the second, the permission that non-profit day care centers and preschools, with agreements, can receive Fundeb resources, without a deadline defined for the day care center – despite statements to the contrary by specialists and civil society (FINEDUCA, 2020; CAMPANHA..., 2020) –, but locked in preschool, until its universalization in public networks.

Based on the analysis of the Federal Constitution of 1988, it includes EC 108/2020, permanent Fundeb, the main infra-constitutional legislations LDB, PNE, and Law 14.113/2020 (BRASIL, 2020), which regulates the new Fundeb, in comparison with Chapter IV, Principle 5, of the Abidjan Principles, we conclude that there are still several gaps in the legislation regulating the performance of the private sector in Brazil. Also, according to the Right to Education Index (2018) survey, Brazil has enormous challenges in relation to compliance with the foreseen legislation, which indicates that, although there are some points of the Abidjan Principles provided for in Law, they are not necessarily fulfilled - analysis indicated for future research.

References

- ABIDJAN PRINCIPLES, The. **Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education**. 2018. Available at: https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5dc414bb9f409d285dc9abf2/1573131454068/Online+version_A4_WEB_COUV%2BTEXTE_THE-ABIDJAN-PRINCIPLES_Nov_2019.pdf. Access on: 16 Aug 2021.
- ALVES, Thiago; SILVEIRA, Adriana Dragone; SCHNEIDER, Gabriela; DEL FABRO, Marcos. Financiamento da escola pública de educação básica: a proposta do Simulador de Custo-Aluno Qualidade. **Educação & Sociedade**, Campinas, v. 40, p. 1-40, 2019.
- BRASIL. Constituição da República Federativa do Brasil de 1988. **Diário Oficial da União**, Brasília, 05 out. 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access on: 16 Aug 2021.

BRASIL. Lei nº. 9.394, de 20 de dezembro 1996. Estabelece as Diretrizes e Bases da Educação Nacional. **Diário Oficial da União**, Brasília, 1996. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9394.htm. Access on: 16 Aug 2021.

BRASIL. Lei no 13.005, de 25 de junho de 2014. Aprova o Plano Nacional de Educação - PNE e dá outras providências. **Diário Oficial da União**, Brasília, 2014. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l13005.htm. Access on: 16 Aug 2020.

BRASIL. Lei nº 14.113, de 25 de dezembro de 2020. 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; revoga dispositivos da Lei nº 11.494, de 20 de junho de 2007; e dá outras providências. **Diário Oficial da União**, Brasília, 2020. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Lei/L14113.htm. Access on: 16 Aug. 2021.

CAMPANHA Nacional pelo Direito à Educação. **O CAQi e CAQ no PNE**: Quanto custa a educação de qualidade no Brasil. São Paulo, 2018. Available at: <http://www.custoalunoqualidade.org.br/pdf/quanto-custa-a-educacao-publica-de-qualidade-nobrasil.pdf>. Access on: 16 Aug 2021.

CAMPANHA Nacional pelo Direito à Educação. **Novo Fundeb**: em nome de um consenso que promova o direito à educação. Nota Técnica. São Paulo, 2019. Available at: https://media.campanha.org.br/wp-content/uploads/2019/06/NotaTecnica-PorUmConsensoNoFundeb_final.pdf. Access on: 16 Aug 2021.

CAMPANHA Nacional pelo Direito à Educação. **Relatório de autoria do Deputado Felipe Rigoni sobre Projeto de Lei 4.372/2020**: 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. Nota Técnica. São Paulo, 2020. Available at: https://media.campanha.org.br/acervo/documentos/Fundeb2020_Relatorio_PL4372-2020_NT_2020_12_09.pdf. Access on 16 Aug 2021.

CAMPANHA Nacional pelo Direito à Educação; FINEDUCA. Associação Nacional de Pesquisa em Financiamento da Educação **PL da Câmara sobre o Fundeb**: retirando recursos de Estados, DF e Municípios e rasgando a Constituição. Nota Técnica. São Paulo, 2020. Available at: https://media.campanha.org.br/acervo/documentos/PautasPoliticas_Fundeb2020_NotaTecnica_2020_12_14_Campanha-Fineduca_final_1.pdf. Access on: 16 Aug 2021.

CARA, Daniel; PELLANDA, Andressa. Entre a garantia legal e a do direito: um panorama de três políticas públicas de educação no Brasil nos últimos dez anos. In: CONGRESSO LATINO-AMERICANO DE CIÊNCIA POLÍTICA, 9., 2017, Montevideo. **Anais [...]**. Montevideo, 2017. Available at: <http://www.congresoalacip2017.org/arquivo/downloadpublic2?q=YToyOntzOjY6InBhcmFt-cyl7czozNToiYToxOntzOjEwOiJJRF9BUiFVSzZPIjtzOjQ6IjI3NTYiO30iO3M6MT0iaCI7czozMjoiZmFhMWFhZWE3MTFhNDZjNzI3NGQ1NzhjNWRYWjYjQiO30%3D>. Access on: 16 Aug. 2021.

FINEDUCA. **Fundeb**: Ponderar com mais racionalidade para redistribuir com mais equidade! Nota Técnica. São Paulo, Dec. 2020. Available at: <https://fineduca.org.br/2020/12/09/fundeb-ponderar-com-mais-racionalidade-para-redistribuir-com-mais-equidade/>. Access on: 16 Aug 2021.

FINEDUCA. **A Política de Educação Infantil no Brasil**: das garantias legais ao financiamento do atendimento público. Nota Técnica. São Paulo, 2021. Available at: https://fineduca.org.br/wp-content/uploads/2021/07/20210611_NT_Fineduca_EI.pdf. Access on: 16 Aug 2021.

NASCIMENTO, Iracema Santos do. **Fundeb Pra Valer! A incidência política da Campanha Nacional pelo Direito à Educação na criação do Fundo da Educação Básica**. São Paulo: Editora Chiado, 2020.

PELLANDA, Andressa; CARA, Daniel. Renewal of Basic Education Fund in Brazil: Disputes on Funding and Federal Distribution. **NORRAG Special Issues**, n. 5, Geneva, Nov. 2020. Available at: <https://resources.norrag.org/resource/download/630/364>. Access on: 16 Aug 2020.

RAVITCH, Diane. **Vida e morte do grande sistema escolar americano**: como os testes padronizados e o modelo de mercado ameaçam a educação. Porto Alegre: Sulina, 2011.

RIGHT to education index. **Brazil Country Brief**. 2018. Available at: https://www.rtei.org/documents/626/Brazil_-_RTEI_2018_Country_Brief.pdf. Access on: 20 Aug 2021.

UN. **Right to education**: the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education. Relatório da relatora especial. Alto Comissariado Especial para os Direitos Humanos, Geneva, 2019a. Available at: <https://undocs.org/A/HRC/41/37>. Access on: 16 Aug. 2021.

UN. **The right to education**: follow-up to Human Rights Council resolution 8/4. Resolução. Conselho de Direitos Humanos. Geneva, 2019b. Available at: <https://undocs.org/A/HRC/41/L.26>. Access on: 16 Aug 2021.

UN. **The right to education**. Resolução. Conselho de Direitos Humanos, Geneva, 2021. Available at: <https://undocs.org/A/HRC/47/L.4/Rev.1>. Access on: 16 Aug. 2021.

UNESCO. **Responsabilização na educação**: cumprir nossos compromissos. Relatório de Monitoramento Global da Educação. Resumo. 2017. Available at <http://unesdoc.unesco.org/images/0025/002595/259593por.pdf>. Access on: 16 Aug 2021.

Attached

Table 2 – Comparison of Chapter IV of the Abidjan Principles with Brazilian constitutional and infra-constitutional guidelines on education financing

Abidjan Principles (Chapter IV)	Federal Constitution of 1988 ⁵	Law of Guidelines and Bases of Education ⁶	National Education Plan ⁷	Fundeb 2020 Regulation Law ⁸
64. The right to education does not entail an obligation for the State to fund private instructional educational institutions. States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including	Art. 209. Teaching is free to the private sector, subject to the following conditions: I - compliance with the general norms of national education;	Art. 3 The teaching will be given based on the following principles: I - equal conditions for access and permanence in school;	Strategy 7.35) promote the regulation of the provision of basic education by the private sector, in	Art. 7 The distribution of resources that make up the Funds, pursuant to art. 3 of this Law, within the scope of each State and the Federal District and the complementation of the Union, pursuant to art. 5 of this Law, it shall be given, in the form of the Annex to this Law, depending on the number of students enrolled in the

⁵ Our translation.

⁶ Our translation.

⁷ Our translation.

⁸ Our translation.

The New Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals...

<p>through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all the substantive, procedural, and operational requirements identified below.</p>	<p>II - authorization and quality assessment by the Government. [...] Art. 212. The Union shall apply, annually, no less than eighteen, and the States, the Federal District, and the Municipalities, at least twenty-five percent of the income resulting from taxes, including that from transfers, in maintenance and development of teaching. [...] § 3 The distribution of public resources will ensure priority to meeting the needs of compulsory education, regarding universalization, guaranteeing a standard of quality and equity, under the terms of the national education plan. [...] Art. 213. Public funds will be allocated to public schools, and may be directed to community, confessional, or philanthropic schools, defined by law, which: I - prove non-profit purpose and apply their financial surplus in education; II - ensure the allocation of their assets to another community, philanthropic or confessional school, or to the Government, in the event of their activities being closed.</p>	<p>III - freedom to learn, teach, research and disseminate culture, thought, art and knowledge; III - pluralism of ideas and pedagogical conceptions; IV - respect for freedom and appreciation for tolerance; V - coexistence of public and private educational institutions; VI - free public education in official establishments; VII - valuing the professional in school education; VIII - democratic management of public education, in the form of this Law and the legislation on education systems; IX - quality standard guarantee; X - enhancement of extra-school experience; XI - link between school education, work, and social practices. XII - consideration of ethnic-racial diversity. XIII - guarantee of the right to education and lifelong learning. XIV - respect for human, linguistic, cultural and identity diversity of deaf, deaf-blind and hearing impaired people. Art. 4 The duty of the State with public school education will be carried out by guaranteeing: I - compulsory and free basic education from 4 (four) to 17 (seventeen) years of age, organized as follows: a) preschool; [...] II - free early childhood education for children up to 5 (five) years of age; [...] VIII - assistance to the student, at all stages of basic education, through supplementary programs of teaching material, transport, food and health care; IX - minimum standards of teaching quality, defined as the minimum variety and quantity, per student, of indispensable inputs for the development of the teaching-learning process. X - vacancy in the public school of kindergarten or elementary school closest to their residence for every child from the day they turn 4 (four) years of age. § 4 Once the competent authority's negligence to guarantee the provision of compulsory education has been proven, it may be charged with a crime of responsibility. [...] Art. 7 Education is free to the private sector, subject to the following conditions: I - compliance with the general norms of national education and the respective education system;</p>	<p>order to guarantee the quality and fulfillment of the social function of education;</p>	<p>respective on-site public basic education networks, observing the differences and weightings regarding the annual amount per student (VAAF, VAAT or VAAR) between stages, modalities, duration of the journey and types of educational establishment and considering the respective specificities and the necessary inputs to guarantee its quality, as well as the provisions of art. 10 of this Law. [...] § 3 For the purpose of distributing the resources provided for in the caput of art. 212-A of the Federal Constitution: I - in relation to non-profit community, confessional or philanthropic institutions in partnership with the government, the calculation of enrollments: a) in early childhood education offered in day care centers for children up to 3 (three) years old; [...] c) in preschools, until the universalization of this stage of education, which serve children aged 4 (four) and 5 (five) years, subject to the conditions provided for in items I, II, III, IV and V of § 4 of this article, carried out, according to the most updated school census; [...] § 4 The institutions referred to in item I of § 3 of this article shall obligatorily and cumulatively: I - offer equal conditions for access and permanence in school and free educational assistance to all its students; II - prove non-profit purpose and apply its financial surplus in education in the stage or in the modality provided for in § 3 of this article; III - ensure the allocation of its assets to another community, philanthropic or confessional school operating in the stage or in the modality provided for in § 3 of this article or to the government in the event of the termination of its activities; IV - meet the minimum quality standards defined by the educational system's regulatory body, including, obligatorily, having its pedagogical projects approved; V - have a Social Assistance Beneficial Entity Certification, in the form of a regulation. § 5 The resources destined to the institutions mentioned in § 3 of this article can only be destined to the categories of expenses foreseen in art. 70 of Law No. 9,394, of December 20, 1996. § 6 The information regarding the agreements signed under the terms of § 3 of this article, specifying the number of students considered and values transferred, including those corresponding to any professionals and material goods transferred, will be declared annually to the Ministry of Education, by the States, by the Federal District and by the Municipalities, within the scope of the information system on public budgets in education, in the form of regulations.</p>
---	--	--	--	--

		<p>II - authorization of operation and quality assessment by the Public Authority;</p> <p>III - self-financing capacity, except as provided for in art. 213 of the Federal Constitution.</p> <p>[...]</p> <p>Art. 19. Educational institutions at different levels are classified into the following administrative categories:</p> <p>I - public, understood as those created or incorporated, maintained and administered by the Government;</p> <p>II - private, understood as those maintained and managed by individuals or legal entities governed by private law.</p> <p>III - community, in accordance with the law</p> <p>§ 1 The educational institutions referred to in items II and III of the caput of this article may qualify as confessional, taking into account the confessional orientation and specific ideology.</p> <p>§ 2 The educational institutions referred to in items II and III of the caput of this article may be certified as philanthropic, in accordance with the law.</p> <p>[...]</p> <p>Art. 77. Public funds will be allocated to public schools, and may be directed to community, confessional, or philanthropic schools that:</p> <p>I - prove a non-profit purpose and do not distribute results, dividends, bonuses, shares or part of their assets under any form or pretext;</p> <p>II - apply their financial surplus to education;</p> <p>III - ensure the allocation of their assets to another community, philanthropic or confessional school, or to the Government, in the event of their activities being closed;</p> <p>IV - account to the Public Power for the funds received.</p> <p>§ 1 The resources referred to in this article may be allocated to scholarships for basic education, in accordance with the law, for those who demonstrate insufficient resources, when there is a lack of places and regular courses in the public network of the student's home, the Public Power being obliged to invest primarily in the expansion of its local network.</p>	
65. Any potential public funding to an eligible private instructional educational institution should meet all the following substantive requirements: a. it is a time-bound measure, which the State publicly demonstrates to be the only effective option to advance the realization of the right to education in the situation in question in order to either:	Art. 212. The Union shall apply, annually, no less than eighteen, and the States, the Federal District and the Municipalities, at least twenty-five percent of the income resulting from taxes, including that from transfers, in	Art. 3 The teaching will be given based on the following principles: I - equal conditions for access and permanence in school; II - freedom to learn, teach, research and disseminate culture, thought, art and knowledge;	§ 4 The institutions referred to in item I of § 3 of this article shall, obligatorily and cumulatively: I - offer equal conditions for access and permanence in school and free educational assistance to all its students; II - prove non-profit purpose and apply its financial surplus in education in the stage or in the modality provided for in § 3 of this article;

The New Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals...

<p>i. ensure short-term access to education for individuals where the State publicly demonstrates that there is no other immediate option which would realize the right to free, quality education;</p> <p>ii. promote respect for cultural diversity and ensure the realization of cultural rights, where it is in accordance with the right to an inclusive education;</p> <p>iii. facilitate the integration within the public education system of private instructional educational institutions that have previously operated independently; or</p> <p>iv. respond to the demand for or to pilot a diversity of pedagogical approaches and content, which the State publicly demonstrates not to be rapidly achievable in public educational institutions.</p>	<p>maintenance and development of teaching. [...]</p> <p>§ 3 The distribution of public resources will ensure priority to meeting the needs of compulsory education, with regard to universalization, guaranteeing a standard of quality and equity, under the terms of the national education plan.</p>	<p>III - pluralism of ideas and pedagogical conceptions;</p> <p>IV - respect for freedom and appreciation for tolerance;</p> <p>V - coexistence of public and private educational institutions;</p> <p>VI - free public education in official establishments;</p> <p>VII - valuing the professional in school education;</p> <p>VIII - democratic management of public education, in the form of this Law and the legislation on education systems;</p> <p>IX - quality standard guarantee;</p> <p>X - valuing the extra-school experience;</p> <p>XI - link between school education, work and social practices.</p> <p>XII - consideration of ethnic-racial diversity.</p> <p>XIII - guarantee of the right to education and lifelong learning.</p> <p>XIV - respect for human, linguistic, cultural and identity diversity of deaf, deaf-blind and hearing impaired people.</p> <p>Art. 4 The duty of the State with public school education will be carried out by guaranteeing:</p> <p>I - compulsory and free basic education from 4 (four) to 17 (seventeen) years old, organized as follows:</p> <p>a) preschool;</p> <p>[...]</p> <p>II - free early childhood education for children up to 5 (five) years old;</p> <p>[...]</p> <p>VIII - assistance to the student, at all stages of basic education, through supplementary programs of teaching materials, transport, food and health care;</p> <p>IX - minimum standards of teaching quality, defined as the minimum variety and quantity, per student, of indispensable inputs for the development of the teaching-learning process.</p> <p>X - vacancy in the public school of kindergarten or elementary school closest to their residence for every child from the day they turn 4 (four) years old.</p>		<p>III - ensure the allocation of its assets to another community, philanthropic or confessional school operating in the stage or in the modality provided for in § 3 of this article or to the public authorities in the event of the termination of its activities;</p> <p>IV - meet the minimum quality standards defined by the educational system's regulatory body, including, obligatorily, having its pedagogical projects approved;</p> <p>V - have a Social Assistance Beneficial Entity Certification, in the form of a regulation.</p>
<p>65. b. it does not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality in accordance with States' obligations to realise the right to education to the maximum of their available resources;</p>				
<p>65. c. it does not lead to a diversion of public resources that would constitute an impermissible retrogressive measure, in particular by lowering standards in the public education system;</p>				
<p>65. d. it does not constitute or contribute to the commercialisation of the education system;</p>	<p>Art. 213. Public funds will be allocated to public schools, and may be directed to community,</p>	<p>Art. 77. Public funds will be allocated to public schools, and may be directed to community, confessional, or philanthropic schools that:</p>		<p>Art. 7 The distribution of resources that make up the Funds, pursuant to art. 3 of this Law, within the scope of each State and the Federal District and the complementation of the Union, pursuant to art. 5 of this Law, it shall be given, in the form</p>

	<p>confessional, or philanthropic schools, defined by law, which:</p> <p>I - prove non-profit purpose and apply their financial surplus in education;</p> <p>II - ensure the allocation of their assets to another community, philanthropic or confessional school, or to the Public Authority, in the event of the termination of their activities.</p>	<p>I - prove a non-profit purpose and do not distribute results, dividends, bonuses, shares or part of their assets under any form or pretext;</p> <p>II - apply their financial surplus to education;</p> <p>III - ensure the allocation of their assets to another community, philanthropic or confessional school, or to the Government, in the event of their activities ending;</p> <p>IV - account to the Public Power for the funds received.</p> <p>§ 1 The resources referred to in this article may be allocated to scholarships for basic education, in accordance with the law, for those who demonstrate insufficient resources, when there is a lack of places and regular courses in the public network of the student's home, the Public Power being obliged to invest primarily in the expansion of its local network.</p>		<p>of the Annex to this Law, depending on the number of students enrolled in the respective on-site public basic education networks, observing the differences and weightings regarding the annual amount per student (VAAF, VAAT or VAAR) between stages, modalities, duration of the journey and types of educational establishment and considering the respective specificities and the necessary inputs to guarantee its quality, as well as the provisions of art. 10 of this Law.</p> <p>[...]</p> <p>§ 3 For the purpose of distributing the resources provided for in the caput of art. 212-A of the Federal Constitution:</p> <p>I - in relation to non-profit community, confessional or philanthropic institutions in partnership with the government, the calculation of enrollments:</p> <p>a) in early childhood education offered in day care centers for children up to 3 (three) years old;</p> <p>[...]</p> <p>c) in preschools, until the universalization of this stage of education, which serve children aged 4 (four) and 5 (five) years, subject to the conditions provided for in items I, II, III, IV and V of § 4 of this article, carried out, according to the most updated school census;</p> <p>[...]</p> <p>§ 4 The institutions referred to in item I of § 3 of this article shall obligatorily and cumulatively:</p> <p>I - offer equal conditions for access and permanence in school and free educational assistance to all its students;</p> <p>II - prove non-profit purpose and apply its financial surplus in education in the stage or in the modality provided for in § 3 of this article;</p> <p>III - ensure the allocation of its assets to another community, philanthropic or confessional school operating in the stage or in the modality provided for in § 3 of this article or to the government in the event of the termination of its activities;</p> <p>IV - meet the minimum quality standards defined by the educational system's regulatory body, including, obligatorily, having its pedagogical projects approved;</p> <p>V - have a Social Assistance Beneficent Entity Certification, in the form of a regulation.</p>
65. e. it does not create a foreseeable risk that the funded private instructional educational institution could exercise an undue influence on the education system or account for such a substantial part of the education system that it risks undermining the right to education; and				
65. f. it does not create a foreseeable risk of any other systemic impact on the right to education, paying particular attention to obligations related to non-discrimination, equality, and non-segregation.				
66. Any potential allocation of public funding to an eligible private instructional educational institution should meet all of the following procedural requirements:			7.35) promote the regulation of the provision of basic education by the private sector, to guarantee the	
a. before the funding is considered, there is an adequate regulatory framework put in place addressing the due process,				

The New Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals...

rules and modalities for such funding, including regulations for b. to d. below;			quality and fulfillment of the social function of education;	
<p>66. b. before the funding is determined:</p> <p>i. there is a participatory, inclusive, transparent, and accountable consultation process involving a meaningful opportunity for full and effective participation by all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations;</p> <p>ii. the State publicly demonstrates that such public funding meets all of the substantive, procedural, and other requirements; and</p> <p>iii. the State assesses and publicly demonstrates its capacity and intent to continuously monitor and regulate the private instructional educational institution's ability to meet the applicable standards;</p>	<p>Article 212-A. The States, the Federal District and the Municipalities will allocate part of the resources referred to in the caput of art. 212 of this Constitution to the maintenance and development of teaching in basic education and the decent remuneration of its professionals, subject to the following provisions:</p> <p>[...]</p> <p>X - the law will provide, subject to the guarantees established in items I, II, III and IV of the caput and in § 1 of art. 208 and the relevant goals of the national education plan, pursuant to art. 214 of this Constitution, on:</p> <p>[...]</p> <p>d) the transparency, monitoring, inspection and internal, external and social control of the funds referred to in item I of the caput of this article, ensuring the creation, autonomy, maintenance and consolidation of monitoring and social control councils, admitted its integration to the education councils;</p>			<p>Art. 30. Inspection and control regarding compliance with the provisions of art. 212 of the Federal Constitution and the provisions of this Law, especially in relation to the application of all the resources of the Funds, will be exercised:</p> <p>I - by the internal control agency within the Union and by the internal control agencies within the scope of the States, the Federal District and the Municipalities;</p> <p>II - by the Courts of Accounts of the States, the Federal District and the Municipalities, before the respective governmental entities under their jurisdictions;</p> <p>III - by the Federal Court of Accounts, with regard to the attributions of the federal bodies, especially in relation to the complementation of the Union;</p> <p>IV - by the respective monitoring and social control councils of the Funds, referred to in arts. 33 and 34 of this Law.</p> <p>[...]</p> <p>Art. 31. The States, the Federal District and the Municipalities shall render accounts for the Funds resources in accordance with the procedures adopted by the competent Courts of Auditors, in compliance with the applicable regulations.</p> <p>Single paragraph. The rendering of accounts will be accompanied by an opinion from the responsible council, which must be presented to the respective Executive Power within 30 (thirty) days before the deadline for the presentation of the rendering of accounts provided for in the caput of this article.</p> <p>[...]</p> <p>Art. 34. The councils will be created by specific legislation, edited in the respective governmental sphere, observing the following composition criteria:</p> <p>I - at the federal level:</p> <p>a) 3 (three) representatives of the Ministry of Education;</p> <p>b) 2 (two) representatives of the Ministry of Economy;</p> <p>c) 1 (one) representative of the National Education Council (CNE);</p> <p>d) 1 (one) representative of the National Council of State Secretaries of Education (Consed);</p> <p>e) 1 (one) representative of the National Confederation of Education Workers (CNTE);</p> <p>f) 1 (one) representative of the National Union of Municipal Education Directors (Undime);</p> <p>g) 2 (two) representatives of parents of public basic education students;</p> <p>h) 2 (two) representatives of public basic education students, of which 1 (one) is appointed by the Brazilian Union of Secondary Students (Ubes);</p> <p>i) 2 (two) representatives of civil society organizations;</p> <p>II - at the state level:</p> <p>a) 3 (three) representatives of the state Executive Power, of which at least 1</p>

				<p>(one) from the state body responsible for basic education;</p> <p>b) 2 (two) representatives of the municipal Executive Powers;</p> <p>c) 2 (two) representatives of the State Council of Education;</p> <p>d) 1 (one) representative of the sectional of the National Union of Municipal Education Directors (Undime);</p> <p>e) 1 (one) representative of the sectional of the National Confederation of Education Workers (CNTE);</p> <p>f) 2 (two) representatives of parents of public basic education students;</p> <p>g) 2 (two) representatives of public basic education students, of which 1 (one) is appointed by the state entity of secondary students;</p> <p>h) 2 (two) representatives of civil society organizations;</p> <p>i) 1 (one) representative of indigenous schools, if any;</p> <p>j) 1 (one) representative of the quilombola schools, if any;</p> <p>III - in the Federal District, with the composition determined by the provisions of item II of this caput, excluding the members mentioned in items b and d;</p> <p>IV - at the municipal level:</p> <p>a) 2 (two) representatives of the municipal Executive Power, of which at least 1 (one) from the Municipal Department of Education or equivalent educational body;</p> <p>b) 1 (one) representative of public basic education teachers;</p> <p>c) 1 (one) representative of the principals of public elementary schools;</p> <p>d) 1 (one) representative of technical-administrative employees of public basic schools;</p> <p>e) 2 (two) representatives of parents of public basic education students;</p> <p>f) 2 (two) representatives of public basic education students, of which 1 (one) is appointed by the entity of secondary students.</p> <p>§ 1 The following will also be part of the Funds' municipal councils, if any:</p> <p>I - 1 (one) representative of the respective Municipal Council of Education (CME);</p> <p>II - 1 (one) representative of the Guardianship Council referred to in Law No. 8.069, of July 13, 1990, appointed by his peers;</p> <p>III - 2 (two) representatives of civil society organizations;</p> <p>IV - 1 (one) representative of indigenous schools;</p> <p>V - 1 (one) representative of the countryside schools;</p> <p>VI - 1 (one) representative of the quilombola schools.</p>
66. c. the process for allocating funding is transparent and not discriminatory; and	Article 212-A. The States, the Federal District and the Municipalities will allocate part of the resources referred to in the caput of art. 212 of this Constitution to the maintenance and development of teaching in basic education and the decent remuneration of its professionals, subject			<p>Art. 30. Inspection and control regarding compliance with the provisions of art. 212 of the Federal Constitution and the provisions of this Law, especially in relation to the application of all the resources of the Funds, will be exercised:</p> <p>I - by the internal control agency within the Union and by the internal control agencies within the scope of the States, the Federal District and the Municipalities;</p>

	to the following provisions: [...] X - the law will provide, subject to the guarantees established in items I, II, III and IV of the caput and in § 1 of art. 208 and the relevant goals of the national education plan, pursuant to art. 214 of this Constitution, on: [...] d) the transparency, monitoring, inspection and internal, external and social control of the funds referred to in item I of the caput of this article, ensuring the creation, autonomy, maintenance and consolidation of monitoring and social control councils, admitted its integration to the education councils;			II - by the Courts of Accounts of the States, the Federal District and the Municipalities, before the respective governmental entities under their jurisdictions; III - by the Federal Court of Accounts, with regard to the attributions of the federal bodies, especially in relation to the complementation of the Union; IV - by the respective monitoring and social control councils of the Funds, referred to in arts. 33 and 34 of this Law. [...] Art. 31. The States, the Federal District and the Municipalities shall render accounts for the Funds resources in accordance with the procedures adopted by the competent Courts of Auditors, in compliance with the applicable regulations. Single paragraph. The rendering of accounts will be accompanied by an opinion from the responsible council, which must be presented to the respective Executive Power within 30 (thirty) days before the deadline for the presentation of the rendering of accounts provided for in the caput of this article.
66. d. the funding is set up in such a way that it is possible in practice to reverse it or to transfer the role of the private instructional educational institutions to the State.				
67. If an eligible private instructional educational institution receives public funding, the standards and regulations applying to that institution must impose at least the same educational, labour, and other relevant standards as are imposed on public educational institutions, including the effective protection of working conditions and terms of employment, labour rights, and union rights.				
68. States must take all effective measures to overcome as effectively and expeditiously as possible the inability to deliver or manage any aspect of the provision of education services which justified funding a private instructional educational institution. In so doing, States should ensure that the funding reinforces and is regularly re-assessed against State capacity to meet their obligations to realise the right to education. This should include from its inception a plan to phase out such funding as the State's incapacity that justified this funding is rectified.				
69. Any public funding of an eligible private instructional educational institution must be subject to ex-ante, on-going and ex-post human rights impact assessments, which are made public, and are used to continually re-evaluate the contribution of the funding to the realisation of the right to education, and if necessary, change or terminate the funding. The assessment should measure both the individual and systemic effect of each institution, in the short and long term, and involve all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations.				
70. States should make the continued provision of funding conditional on fulfil-				

<p>ment of the required standards, and ensure that all contracts permit the State to withdraw from the funding without prejudice if the standards are not met, while ensuring the continued enjoyment of the right to education. They must withdraw any public funding if the impact of the funding is to substantially nullify or impair the realisation of the right to education, including the development of a public education system.</p>			
<p>71. The cost of the human rights impact assessment, regulation, and other requirements on the States should be considered as part of the evaluation of the cost of the arrangement for funding, with due consideration given to the State's obligation to deliver free education of the highest attainable quality for all to the maximum of its available resources.</p>			
<p>72. States should ensure that all private instructional educational institutions receiving public funding make all proprietary data and material that could help to improve the education system available without a licence, within a reasonable time defined by law, to the relevant public authorities. This includes both technology used in the classroom and management systems. This must be done with due respect for the right to privacy, in particular of the learners and the teachers, and the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which they are the author.</p>			
<p>73. States must not fund or support, directly or indirectly, any private instructional educational institution that:</p> <p>a. abuses the rights to equality and non-discrimination, including by being selective; or expelling or sorting learners, whether directly or indirectly, on the basis of the socio-economic disadvantage, whether of the learner, family, or community, gender, disability, or any other prohibited ground;</p> <p>b. is commercial and excessively pursues its own self-interest;</p> <p>c. charges fees that substantially undermine access to education;</p> <p>d. does not meet any minimum standard applicable to private instructional educational institutions, or any other applicable human rights law or standards, or is not of adequate quality;</p> <p>e. does not comply with all of its domestic or international financial obligations; or</p> <p>f. contributes to an adverse systemic impact on the enjoyment of the right to education or undermines the realisation of human rights in any other way</p>	<p>Article 212-A. The States, the Federal District and the Municipalities will allocate part of the resources referred to in the caput of art. 212 of this Constitution to the maintenance and development of teaching in basic education and the decent remuneration of its professionals, subject to the following provisions:</p> <p>[...]</p> <p>X - the law will provide, subject to the guarantees established in items I, II, III and IV of the caput and in § 1 of art. 208 and the relevant goals of the national education plan, pursuant to art. 214 of this Constitution, on:</p> <p>[...]</p> <p>d) the transparency, monitoring, inspection, and internal, external and social control of the funds referred to in item I of the caput of this article, ensuring the creation, autonomy, maintenance and consolidation of monitoring and social control councils, admitted to its integration to the education councils</p>	<p>Art. 3 The teaching will be given based on the following principles:</p> <p>I - equal conditions for access and permanence in school;</p> <p>II - freedom to learn, teach, research and disseminate culture, thought, art and knowledge;</p> <p>III - pluralism of ideas and pedagogical conceptions;</p> <p>IV - respect for freedom and appreciation for tolerance;</p> <p>V - coexistence of public and private educational institutions;</p> <p>VI - free public education in official establishments;</p> <p>VII - valuing the professional in school education;</p> <p>VIII - democratic management of public education, in the form of this Law and the legislation on education systems;</p> <p>IX - quality standard guarantee;</p> <p>X - valuing the extra-school experience;</p> <p>XI - link between school education, work and social practices.</p> <p>XII - consideration of ethnic-racial diversity.</p> <p>XIII - guarantee of the right to education and lifelong learning.</p> <p>XIV - respect for human, linguistic, cultural and identity diversity of deaf, deaf-blind and hearing impaired people.</p> <p>[...]</p>	<p>Art. 7 The distribution of resources that make up the Funds, pursuant to art. 3 of this Law, within the scope of each State and the Federal District and the complementation of the Union, pursuant to art. 5 of this Law, it shall be given, in the form of the Annex to this Law, depending on the number of students enrolled in the respective on-site public basic education networks, observing the differences and weightings regarding the annual amount per student (VAAF, VAAT or VAAR) between stages, modalities, duration of the journey and types of educational establishment and considering the respective specificities and the necessary inputs to guarantee its quality, as well as the provisions of art. 10 of this Law.</p> <p>[...]</p> <p>§ 4 The institutions referred to in item I of § 3 of this article shall obligatorily and cumulatively:</p> <p>I - offer equal conditions for access and permanence in school and free educational assistance to all its students;</p> <p>II - prove non-profit purpose and apply its financial surplus in education in the stage or in the modality provided for in § 3 of this article;</p> <p>III - ensure the allocation of its assets to another community, philanthropic or confessional school operating in the stage or in the modality provided for in § 3 of this article or to the government in the event of the termination of its activities;</p>

		<p>Art. 4 The duty of the State with public school education will be carried out by guaranteeing:</p> <p>I - compulsory and free basic education from 4 (four) to 17 (seventeen) years of age, organized as follows:</p> <p>a) preschool;</p> <p>[...]</p> <p>II - free early childhood education for children up to 5 (five) years of age;</p> <p>[...]</p> <p>VIII - assistance to the student, at all stages of basic education, through supplementary programs of teaching material, transport, food and health care;</p> <p>IX - minimum standards of teaching quality, defined as the minimum variety and quantity, per student, of indispensable inputs for the development of the teaching-learning process.</p> <p>X – vacancy in the public school of kindergarten or elementary school closest to their residence for every child from the day they complete 4 (four) years of age.</p> <p>[...]</p> <p>Art. 7 Education is free to the private sector, subject to the following conditions:</p> <p>I - compliance with the general norms of national education and the respective education system;</p> <p>II - authorization of operation and quality assessment by the Public Authority;</p> <p>III - self-financing capacity, except as provided for in art. 213 of the Federal Constitution.</p> <p>[...]</p> <p>Art. 77. Public funds will be allocated to public schools, and may be directed to community, confessional or philanthropic schools that:</p> <p>I - prove a non-profit purpose and do not distribute results, dividends, bonuses, shares or part of their assets under any form or pretext;</p> <p>II - apply their financial surplus to education;</p> <p>III - ensure the allocation of their assets to another community, philanthropic or confessional school, or to the Government, in the event of their activities being closed;</p> <p>IV - account to the Public Power for the funds received.</p>		<p>IV - meet the minimum quality standards defined by the educational system's regulatory body, including, obligatorily, having its pedagogical projects approved;</p> <p>V - have a Social Assistance Beneficent Entity Certification, in the form of a regulation.</p>
<p>74. States must respect regulations governing procurement and other applicable regulations to ensure that contracting with any private non-instructional educational institutions does not adversely affect the enjoyment of the right to education.</p>			<p>7.35) promote the regulation of the provision of basic education by the private sector, in order to guarantee the quality and fulfillment of the social function of education;</p>	

Andressa Pellanda is a doctoral student in International Relations (IRI/USP), has a postgraduate degree in Political Science (FESP/SP) and a bachelor's degree in Social Communication, with a specialization in Journalism (ECA/USP). Undertook an academic exchange in contemporary history and theory of international relations (Université Paris-Sorbonne IV/France). He is a specialist in Diplomatic Negotiation Skills (Diplo Foundation/Switzerland) and has an international certification in social project management (PMD Pro). She is the general coordinator of the National Campaign for the Right to Education.

ORCID: <https://orcid.org/0000-0001-8172-5641>

E-mail: dre.pellanda@gmail.com

Koumbou Boly Barry is UN special rapporteur on the right to education and head of education sector at ICESCO. She has a PhD in Economic History from Cheikh Anta Diop University in Senegal. She is the former Minister of Education and Literacy of Burkina Faso, and has consulted widely for various governments and international institutions on the right to education. Dr. Boly Barry has been an advocate on gender issues in education. She also has ample knowledge and experience in training and research, as a visiting professor at University of Nottingham, United Kingdom; University of Louvain La Neuve, Belgium; and as a lecturer at Ouagadougou University, Burkina Faso; Vitoria University, Brazil; and Fribourg University, Switzerland.

ORCID: <https://orcid.org/0000-0002-0912-5251>

E-mail: bkoumbabar@gmail.com

Received on November 3, 2021

Approved on January 9, 2022