

**A OBRIGATORIEDADE, GRATUIDADE E FINANCIAMENTO DA  
EDUCAÇÃO COMO UM DIREITO SOCIAL NO BRASIL**

***LA OBLIGATORIA, GRATUITA Y FINANCIAMIENTO DE LA EDUCACIÓN  
COMO UN DERECHO SOCIAL EN BRASIL***

***THE OBLIGATORY, GRATUITY AND FINANCING OF EDUCATION AS A  
SOCIAL LAW IN BRAZIL***

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**RESUMO:** O estudo teve o intuito de analisar a regulamentação do direito à educação no Brasil a partir da obrigatoriedade, gratuidade e financiamento. Para tanto, com o referencial da abordagem qualitativa, foi realizada uma pesquisa bibliográfica e documental, cuja fonte foi a Constituição Federal de 1988 e as suas respectivas emendas. Foi possível evidenciar que o país avançou na proteção jurídica da ampliação dos anos de escolaridade obrigatória e gratuita, mas, nos últimos anos, com o financiamento educacional sendo um dos alvos da Emenda Constitucional n. 95/2016, o congelamento de investimento de recursos públicos ameaça a cobertura, a expansão e, conseqüentemente, a garantia do direito à educação.

**PALAVRAS-CHAVE:** Direito à educação. Financiamento. Gratuidade. Obrigatoriedade.

**RESUMEN:** *El estudio tuvo el propósito de analizar la reglamentación del derecho a la educación en Brasil a partir de la obligatoriedad, gratuidad y financiamiento. Para ello, con el referencial del abordaje cualitativo, se realizó una investigación bibliográfica y documental, cuya fuente fue la Constitución Federal de 1988 y sus respectivas enmiendas. Es posible evidenciar que el país avanzó en la protección jurídica de la ampliación de los años de escolaridad obligatoria y gratuita, pero en los últimos años, con el financiamiento educacional siendo uno de los objetivos de la Enmienda Constitucional n. 95/2016, la congelación de la inversión de recursos públicos amenaza la cobertura, la expansión y, por consiguiente, la garantía del derecho a la educación.*

**PALABRAS CLAVE:** *Derecho a la educación. Financiación. Gratuidad. Obligatorio.*

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**ABSTRACT:** *The purpose of this study was to analyze the regulation of the right to education in Brazil based on compulsory, gratuitous and financing. For that, with the reference of the qualitative approach, a bibliographical and documentary research was carried out, whose source was the Federal Constitution of 1988 and its respective amendments. It was possible to show that the country has advanced in the legal protection of the expansion of years of compulsory and free schooling, but in recent years, with educational funding being one of the targets of Constitutional Amendment n. 95/2016, the freezing of investment of public resources threatens to cover, expand and, consequently, guarantee the right to education.*

**KEYWORDS:** *Right to education. Financing. Gratuity. Obligatory.*

## **Introduction**

Considering that education as a right fall within the field of public policies and the existence of a right implies the existence of a normative system (BOBBIO, 1992), the present study aims to analyze the right to education in Brazil from the obligation, gratuity and educational funding. In order to achieve the goal of the established objective, a qualitative bibliographical and documentary research was carried out. The documentary source contemplates the Federal Constitution of 1988 and its respective amendments, having as categories of analysis the forecast of the obligation, the free offer of education and the public expenditure destined to education.

In Brazil, according to Flach (2009), there was a historic advance in the definition and regulation of the right to education, which has the 1988 Federal Constitution as its main framework. However, we must not lose sight of the fact that the State must guarantee the educational right always aiming to expand its offer free of charge and provide the concrete means necessary for its implementation, in which financing is crucial.

We know that understanding the right to education in a country with regard to its normative order would include a broader research that considers the elements: management perspectives, inclusive education, structural and material conditions, curriculum, training and valorization of education professionals and evaluation. However, covering all these aspects would run counter to the need for the delimitation necessary to guarantee the execution of the present research. With this background, we opted for the analysis of compulsory, gratuitous and educational financing.

## Obligation and gratuity of the right to education in Brazil

The right to education has historically served as the bridge between political rights and social rights. In this way, guaranteeing a minimum level of schooling to the individual becomes a right/duty closely related to the exercise of citizenship. According to Flach (2009), besides obligatory, gratuitousness is another imperative principle in guaranteeing this right and to preserve its egalitarian character. The state cannot make education compulsory without making it free, since compulsory and free basic education is associated with the commitment to the personal, social and political development of the human being. It is thinking about the development of a nation's nation.

According to the author, education must be ensured in a broad legal framework, so as to enhance not only its legal guarantee but, above all, its material guarantee, since the enjoyment of this right represents the creation of individual and collective conditions for the development of consciousness about the reality in which one lives and about the existing relationships in the contexts of which the subjects are historical, social, cultural, economic and political. It is, therefore, the right that makes possible the concrete instruments to achieve citizenship in an effective way.

In guaranteeing the right to compulsory and free basic education, the State will ensure a universal condition for the enjoyment of civil rights. Thus, Cury (2002) points out that the relevance of primary education made as an essential citizen's right and a duty of the State have imposed compulsion and gratuity as ways of making it accessible to all, regardless.

In formal education, universalization, compulsion and gratuity are part of a single process. The obligation and the free education represent, at the same time, the guarantee of universality of access to education, while ensuring the right of man to education. The universalization of education thus represents the mechanism by which it is possible to guarantee equal access to the school (DIAS, 2007, p.450).<sup>4</sup>

"For this reason, the right to primary school education is inscribed within a broader perspective of the civil rights of citizens". The guarantee of basic education as a law arose

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<sup>4</sup> Na educação formal, universalização, obrigatoriedade e gratuidade formam parte de um único processo. A obrigatoriedade e a gratuidade da educação representam, simultaneamente, a garantia da universalidade do acesso à educação, ao tempo em que asseguram o direito do homem à educação. A universalização do ensino representa, assim, o mecanismo mediante o qual é possível garantir a igualdade de acesso à escola (DIAS, 2007, p. 450).

from a historical process of struggles led by a democratic conception of society in which equality of opportunities is sought or even equality of social conditions and to seek this premise means to postulate the expansion of compulsion and gratuity as principles which extend the protection of law (CURY, 2002, p.268).

In view of the foregoing, let us see how the principles of compulsion and gratuity are treated in the Brazilian constitution. In Brazil, the Federal Constitution of 1988 endorsed, in its article n. 6, education as a social right. Cury (2002) emphasizes that this condition of Brazilian constitutionalism has placed education as a principle of the dignity of the human person as the highest value of the State, inasmuch as, along with other social rights, it enshrines it as a fundamental right. For Oliveira and Araújo (2005, p. 6), the Brazilian Federal Constitution was a normative framework for the country, as "[...] it pointed to a more universalizing perspective of social rights and advanced in the attempt to formalize, from the point of view of the Brazilian legal system, a state of social welfare in an unprecedented dimension in its history".

Sarlet (2005) points out that fundamental rights, especially education and health, must be expressed constitutionally. These rights require extensive legal protection as they represent the conditions vital to human dignity. Specifically, on the right to education, nine articles have been included, in which a series of aspects that involve their implementation are explicitly stated. Article 205 states that education is the right of everyone and the duty of the State and the family.

Article 206 establishes the principles that underlie the offer of education in the country, namely, "I - equality of conditions for access and stay in school; II - Freedom to learn, to teach, to research and to spread thought, art and knowledge ... IV - free public education in official establishments ". Article 208 presents, in particular, the right to education, which will be carried out by guaranteeing:

I - compulsory basic education free of charge from 4 (four) to 17 (seventeen) years, including those who did not have access to it at the age of their own<sup>5</sup>;

II - progressive universalization of free secondary education<sup>6</sup>;

III - specialized educational services for the disabled, preferably in the regular educational network;

IV - Early childhood education, day care and preschool, to children up to five (5) years of age<sup>7</sup>;

<sup>5</sup> Writing provided by the Constitutional Amendment n° 59 de 2009.

<sup>6</sup> Writing provided by the Constitutional Amendment n° 14 de 1996.

<sup>7</sup> Writing provided by the Constitutional Amendment n° 53 de 2006.

- V - access to the highest levels of education, research and artistic creation, according to the capacity of each one;
- VI - provision of regular night education, adequate to the conditions of the student;
- VII - assistance to the student in all stages of basic education, through supplementary programs of school didactic material, transportation, food and health care<sup>8</sup> (BRAZIL, 1988).<sup>9</sup>

Paragraphs 1, 2 and 3 of article 208 also define that access to compulsory and free education is subjective public right; the non-offer of compulsory education by the government, or its irregular offer, is the responsibility of the competent authority. Education, in the Federal Constitution of 1988, was conceived as compulsory and gratuitous and, when offered by the public authorities, became a subjective public right, by which the individual has an inviolable sphere of action, in which the public power cannot penetrate (DUARTE, 2004).

[...] subjective public law confers on the individual the possibility of transforming the general and abstract norm contained in a given legal order into something that he possesses as his own. The way to do this is by triggering the legal norms (objective law) and transforming them into their law (subjective right). The interesting thing is to note that the subjective public right is configured as a legal instrument to control the performance of state power, since it allows its holder to judicially constrain the State to perform what it owes (DUARTE, 2004: 113).<sup>10</sup>

Subjective public law is a constitutional legal norm that guarantees to every citizen, legitimately invested with his right, the power to demand compliance with the law and, to the State, the obligation to promote it. In the case of education, it means that the holder of this right is any person, of any age, who had access to compulsory schooling

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<sup>8</sup> Writing provided by the Constitutional Amendment n° 59 de 2009.

<sup>9</sup> I - educação básica obrigatória e gratuita dos 4 (quatro) aos 17 (dezessete) anos, assegurado inclusive para os que a ele não tiveram acesso na idade própria;

II - progressiva universalização do ensino médio gratuito;

III - atendimento educacional especializado aos portadores de deficiência, preferencialmente na rede regular de ensino;

IV – educação infantil, em creche e pré-escola, às crianças até 5 (cinco) anos de idade;

V - acesso aos níveis mais elevados do ensino, da pesquisa e da criação artística, segundo a capacidade de cada um;

VI - oferta de ensino noturno regular, adequada às condições do educando;

VII - atendimento ao educando, em todas as etapas da educação básica, por meio de programas suplementares de material didático escolar, transporte, alimentação e assistência à saúde (BRASIL, 1988).

<sup>10</sup> [...] o direito público subjetivo confere ao indivíduo a possibilidade de transformar a norma geral e abstrata contida num determinado ordenamento jurídico em algo que possua como próprio. A maneira de fazê-lo é acionando as normas jurídicas (direito objetivo) e transformando-as em seu direito (direito subjetivo). O interessante é notar que o direito público subjetivo configura-se como um instrumento jurídico de controle da atuação do poder estatal, pois permite ao seu titular constranger judicialmente o Estado a executar o que deve. (DUARTE, 2004, p. 113)

at the appropriate age or not. It is subjective because it is inherent to its holder and as the subject of this duty is the State, it is a public right. According to Duarte (2004), it is a legal instrument to control state action, since it enables the citizen invested with his right to legally demand from the State the fulfillment of his duties.

The compulsory and free education in Brazil has undergone several changes through revisions in the constitutional text over the last twenty years, among them, the expansion of compulsory schooling. While the original text provided compulsory and free education for primary schooling, which included children between the ages of 7 and 14, Constitutional Amendment nº 59/2009 established the age of 4 to 17 years, which totals 14 years of compulsory school time.

According to Flach (2009), the expansion of the years of schooling was an advance for the Brazilian educational reality, which shows that the referred Constitutional Amendment constitutes a landmark for the education of the country. The expansion of compulsory and free schooling from 4 to 17 years implies the legal guarantee of a greater number of children and adolescents in school. We understand that this is a historic achievement forged both in the context of economic and socio-cultural development and, above all, in the social struggle for expanding the right to education inalienable to all.

The Brazilian educational context, especially in the last two decades, presented to basic education a configuration of profound changes regarding educational policies, among which, the expansion of the years of compulsory schooling in the country was constituted as one of the central guidelines. These changes were mainly due to the need to overcome the scenario of Brazilian education, historically marked by failure and social exclusion (SENNA, 2008).

### **Regulating educational funding**

Financing is the main indicator of each national government's effort to expand supply coverage, ensure permanence and quality of education. The expansion of public investments for education, in real terms, tends to enhance the economic and, especially, social development of a nation. On the other hand, the maintenance or reduction can trigger a change of priorities on the part of the country, which will impact the effective realization of the right to education (TROJAN, 2010).

The realization of education as a social, obligatory and free, guaranteed constitutionally, demand cost. Thus, the contribution necessary for the maintenance of

educational institutions, remuneration and valuation of education professionals and construction of new physical structures, ie to subsidize educational policies, come from society itself, by paying taxes that will be redistributed by the State. Educational investments should be predicted in the budget<sup>11</sup> from a country's income and should be classified according to standardization. However, the percentage of transfer to the area will require the standardization of a legal apparatus (OLIVEIRA; MORAES; DOURADO, 2009).

Brazil establishes, in its constituent, the regulation of educational financing. The Brazilian Constitution, in relation to the organization and division of responsibilities in the financial provision of education among federated entities, establishes, in article 211, that the Union, the states, the Federal District and the municipalities will organize their education systems on a regime of collaboration. This article also defines that the municipalities will work in Primary Education and Early Childhood Education; States and the Federal District will be responsible, primarily, for Elementary and Middle School; and the Union will organize the federal system of education and territories (BRASIL, 1988).

The organization of the financing in the educational system of Brazil, according to the Federal Constitution is characterized by the division of competences and responsibilities between Union, states, Federal District and municipalities of the different levels, stages and educational modalities. This determination, which defines teaching priorities, does not prohibit or restrict the performance of federated entities in other levels and stages of Brazilian education, but is considered as a parameter for the management of budgetary resources (SOUZA, 2017).

The legal structure of the country's financing is based on the competencies attributed to its federated entities: Union, States, Federal District and Municipalities. It is up to the Union to apply its budget in the federal education system and also in the transfer of resources to make up the revenues of the States and Municipalities. In this bias, the

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<sup>11</sup> “The budget is a planning phase, that is, it is a law that guides the execution of government plans. In the Budgetary Law, all revenue and all public expenditure corresponding to one year must be foreseen. Thus, in the budget, whether of the union, the states, the Federal District or the municipality, all sources of income, for example, education (taxes, transfers, salary-education and others) and all will be realized, comprising the expenses with personnel, material, services, works, equipment and others. Revenue is the total income of a state, an entity or a person, destined to meet the necessary expenses. Public revenue is comprised of current revenues and capital revenues. Tax revenue consists of the sum of taxes that the State requires of individuals and corporations, coercively, without offering them a direct and determinate consideration” (OLIVEIRA; MORAES, 2009, 2-3).

normalization of financing in the country is governed by the collaboration regime (ABRAHÃO, 2005).

Article 212 emphasizes that the Union will apply annually, never less than 18%, and the States, Federal District and Municipalities, at least 25% of revenue from taxes, including that from transfers, in the maintenance and development of teaching. Sena (2008) emphasizes that it is important to make the reservation that the state constituents and the organic laws of the municipalities may establish greater percentages of the application of resources for education.

The resources for educational financing in Brazil come from the tax collections of the society, which means that the expressive portion of the sources of the union, states, Federal District and municipalities comes from the tax collection. Abrahão (2005) considers that, by legally linking a percentage to education expenditures through the revenue stream, the country assures an important legal tool to guarantee the concrete availability of resources for the fulfillment of the responsibility of the public power in guaranteeing the right the education.

Each ruler, when comes to power, cannot use public money as he sees fit. To ensure the education of all, the Federal Constitution establishes a minimum of annual expenditures that the Union, states, Federal District and municipalities should devote to education policies. These are the so-called compulsory expenses with education (RIZZI; GONZALEZ; XIMENES, 2011, p. 43).<sup>12</sup>

Paragraph 3 establishes that the distribution of public resources will ensure the priority of attending to the needs of compulsory education, regarding universalization, guarantee of quality standard and equity, according to the national education plan (BRASIL, 1988). The other sections of this article highlight:

§ 1º The portion of the collection of taxes transferred by the Federal Government to the States, the Federal District and the Municipalities, or by the States to the respective Municipalities, is not considered, for the purpose of the calculation provided for in this article, revenue of the government that to transfer.

§ 2º For the purpose of complying with the provisions of the "caput" of this article, the federal, state and municipal education systems and the resources applied in the form of art. 213

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<sup>12</sup> Cada governante, quando chega ao poder, não pode usar o dinheiro público como bem entender. Para garantir a educação de todas e todos, a Constituição Federal estabelece um mínimo de gastos anuais que União, estados, Distrito Federal e municípios devem destinar às políticas de educação. São as chamadas despesas obrigatórias com o ensino. (RIZZI; GONZALEZ; XIMENES, 2011, p. 43)



§ 3º The distribution of public resources will ensure priority to meeting the needs of compulsory education, regarding universalization, quality assurance and equity, under the terms of the national education plan.

§ 4º The supplementary food and health care programs provided for in art. 208, VII, shall be financed from social contributions and other budgetary resources.

§ 5º The public basic education will have as additional source of funding the social contribution of the education wage, collected by the companies according to the law.

§ 6º The state and municipal quotas of the social contribution levy of the education wage will be distributed proportionally to the number of students enrolled in basic education in the respective public education networks. (BRASIL, 1988)<sup>13</sup>

It is notorious that the constitutional text emphasizes that resources should be given priority to compulsory education, with a view to universality with equity and quality. In addition to taxation, the Brazilian Constitution provides for the following sources of financing for education: contributions (salary-education, lottery income, contributions on profit and social security); untying of Union revenues; and credit operations. Although diversified sources are observed, taxation is still the main source of income in the financing of public compulsory education, both by the Federal Government and the states, Distrito Federal and municipalities (GEMAQUE, 2011).

Article 213 states that public resources shall be allocated to public schools and may be directed to community, faith-based or philanthropic schools, as defined by law. In addition to these two articles, the constituent presents, in its article 206, the valuation of education professionals, an issue that is related to educational funding.

V - valorization of school education professionals, guaranteed by the law, career plans, with admission only by public examination of tests and titles, those of public networks; VIII - National professional salary

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<sup>13</sup> § 1º A parcela da arrecadação de impostos transferida pela União aos Estados, ao Distrito Federal e aos Municípios, ou pelos Estados aos respectivos Municípios, não é considerada, para efeito do cálculo previsto neste artigo, receita do governo que a transferir.

§ 2º Para efeito do cumprimento do disposto no "caput" deste artigo, serão considerados os sistemas de ensino federal, estadual e municipal e os recursos aplicados na forma do art. 213.

§ 3º A distribuição dos recursos públicos assegurará prioridade ao atendimento das necessidades do ensino obrigatório, no que se refere a universalização, garantia de padrão de qualidade e equidade, nos termos do plano nacional de educação.

§ 4º Os programas suplementares de alimentação e assistência à saúde previstos no art. 208, VII, serão financiados com recursos provenientes de contribuições sociais e outros recursos orçamentários.

§ 5º A educação básica pública terá como fonte adicional de financiamento a contribuição social do salário-educação, recolhida pelas empresas na forma da lei.

§ 6º As cotas estaduais e municipais da arrecadação da contribuição social do salário-educação serão distribuídas proporcionalmente ao número de alunos matriculados na educação básica nas respectivas redes públicas de ensino. (BRASIL, 1988)

floor for professionals of public school education, under the terms of federal law (BRASIL, 1988).<sup>14</sup>

The valorization of education professionals, as enshrined in the Brazilian Constitution, stemmed from the regulation of Constitutional Amendment n. 53/2006. This legal instrument also establishes the creation of the Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals (FUNDEB), which is of an accounting nature and is expected to last 14 years. The objective of the fund is to guarantee the financing of the development and maintenance of education, as well as the improvement of the value of professionals involved in education by all federated entities. Article 60 of the Act of Transitional Constitutional Provisions<sup>15</sup> of the Federal Constitution also provides:

I - the distribution of resources and responsibilities between the Federal District, the States and their Municipalities is ensured through the creation, within each State and the Federal District, of a Fund for the Maintenance and Development of Basic Education and Valorization of Professionals of Education - FUNDEB, of an accounting nature; II - the Funds referred to in item I of the caput of this article shall be constituted by 20% (twenty percent) of the resources referred to in items I, II and III of art. 155; item II of the caput of art. 157; items II, III and IV of the caput of art. 158; and items a and b of item I and item II of the caput of art. 159, all of the Federal Constitution, and distributed among each State and its Municipalities, proportionally to the number of students of the various stages and modalities of the basic face-to-face education, enrolled in the respective networks, in the respective priority areas established in §§ 2 and 3 of the Art. 211 of the Federal Constitution (BRASIL, 1988).<sup>16</sup>

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<sup>14</sup> V - valorização dos profissionais da educação escolar, garantidos, na forma da lei, planos de carreira, com ingresso exclusivamente por concurso público de provas e títulos, aos das redes públicas; VIII - piso salarial profissional nacional para os profissionais da educação escolar pública, nos termos de lei federal. (BRASIL, 1988)

<sup>15</sup> The Brazilian Federal Constitution, from the structural point of view, contains a preamble, the body and an Act of Transitional Constitutional Provisions. The purpose of the act is to establish rules of transition between an old and a new legal system, supported by constitutional protection (CANOTILHO, 2003).

<sup>16</sup> I - a distribuição dos recursos e de responsabilidades entre o Distrito Federal, os Estados e seus Municípios é assegurada mediante a criação, no âmbito de cada Estado e do Distrito Federal, de um Fundo de Manutenção e Desenvolvimento da Educação Básica e de Valorização dos Profissionais da Educação - FUNDEB, de natureza contábil;

II - os Fundos referidos no inciso I do caput deste artigo serão constituídos por 20% (vinte por cento) dos recursos a que se referem os incisos I, II e III do art. 155; o inciso II do caput do art. 157; os incisos II, III e IV do caput do art. 158; e as alíneas a e b do inciso I e o inciso II do caput do art. 159, todos da Constituição Federal, e distribuídos entre cada Estado e seus Municípios, proporcionalmente ao número de alunos das diversas etapas e modalidades da educação básica presencial, matriculados nas respectivas redes, nos respectivos âmbitos de atuação prioritária estabelecidos nos §§ 2º e 3º do art. 211 da Constituição Federal (BRASIL, 1988).

The Fundeb therefore determines the proportional distribution of resources to the States and Municipalities according to the number of students enrolled in the respective public basic education networks. Sena (2008) points out that one of the significant advances of FUNDEB, which replaced the Fund for Maintenance and Development of Elementary Education and Valorization of Teaching (FUNDEF), lies mainly in its coverage, which, as a financing mechanism, all stages of basic education, unlike the previous fund, which limited Fundamental Education as the only stage for the allocation of the fund.

According to Castro and Carvalho (2013), the Brazilian Federal Constitution of 1988 and its consequent amendments not only increased educational spending, but also expanded the institutional structure of competences and shared responsibility for Brazilian compulsory education among federated entities. However, it is important to emphasize that this expansion does not necessarily reflect the exclusivity of entities to finance educational actions. Even with the institutionalization of the collaboration system, educational financing depends significantly on the contribution of resources of the union, especially considering the collection asymmetries among the Brazilian states and municipalities.

Although the Federal Constitution provides greater legal protection to the educational budget, it should be noted that at the end of 2016, the country's congress approved Constitutional Amendment n° 95/2016, which amended the Transitory Provisions Act to establish the New Tax Regime. This standardization established the New Fiscal Regime in the scope of Public Budgets and Social Security of the Union, which will be in force for the next twenty financial years (BRASIL, 2016). Specifically, on education, the amendment provides:

Article 110. Under the New Fiscal Regime, the minimum investments in public health actions and services and maintenance and development of education will be equivalent to: I - in 2017, the minimum applications calculated in accordance with item I of paragraph 2 of art. 198 and caput of art. 212, of the Federal Constitution; II - in subsequent years, to the values calculated for the minimum investments of the immediately preceding year, corrected in the form established by item II of paragraph 1 of art. 107 of this Act of Transitional Constitutional Provisions".

Article 111. As from the fiscal year 2018, until the last fiscal year of the New Fiscal Regime, the approval and execution provided for in Paragraphs 9 and 11 of Article 166 of the Federal Constitution shall correspond to the mandatory execution amount for the 2017 fiscal year, corrected in the form established by item

II of paragraph 1 of article 107 of this Act of Transitory Constitutional Provisions (BRASIL, 2016).<sup>17</sup>

The aforementioned Constitutional Amendment states that the resources allocated to education by the Union between 2018 and 2036 will be equivalent to 18% of tax revenues, with reference to those calculated in 2017, which can only be changed annually according to inflation accumulated according to the National Extended Consumer Price Index (IPCA). This means that, regardless of the country's increased tax revenues, resources for education will not be expanded.

In an analysis of the financing of education in Brazil, Monlevade (2014, p. 66-67) explained that the 1967 Federal Constitution adopted the same logic, maintaining the percentages of taxes for the education of states and municipalities, and withdrawing the constitutional duty of the Union. The author clarifies that this legislation was contradictory, since "[...] exactly when the federal government collected the highest revenues in history, the increase in the financial burden of all administrative spheres was made possible by the cut in the quality of education and the salaries of its professionals."

The untying of financial resources represents a serious attack on public policies for the maintenance and development of education and, consequently, for the guarantee of subjective public right. A nation that prioritizes education can never adopt the stagnation of resources as a goal for the area, especially in a country that depends on the financial contribution of the Union to compensate for distortions of revenue from the asymmetric tax sources of its states and municipalities (MONLEVADE, 2014).

## Final considerations

The legal apparatus should have as a landmark the Federal Constitution of a country, which is the main legal instrument for the construction of normativity and, consequently, for the protection of the right to educational activities. In this sense, the

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<sup>17</sup> Art. 110. Na vigência do Novo Regime Fiscal, as aplicações mínimas em ações e serviços públicos de saúde e em manutenção e desenvolvimento do ensino equivalerão:

I - no exercício de 2017, às aplicações mínimas calculadas nos termos do inciso I do § 2º do art. 198 e do caput do art. 212, da Constituição Federal;

II - nos exercícios posteriores, aos valores calculados para as aplicações mínimas do exercício imediatamente anterior, corrigidos na forma estabelecida pelo inciso II do § 1º do art. 107 deste Ato das Disposições Constitucionais Transitórias”.

Art. 111. A partir do exercício financeiro de 2018, até o último exercício de vigência do Novo Regime Fiscal, a aprovação e a execução previstas nos §§ 9º e 11 do art. 166 da Constituição Federal corresponderão ao montante de execução obrigatória para o exercício de 2017, corrigido na forma estabelecida pelo inciso II do § 1º do art. 107 deste Ato das Disposições Constitucionais Transitórias. (BRASIL, 2016)

Brazilian Magna Carta recognizes education as a social right and with characteristics of the rights of the personality, when it assures it as public and subjective, endowed with civil protection, however, while remaining a social right.

After three decades of the current Federal Constitution, we observed that compulsory and gratuitousness were amplified in this period, so that legal protection was not restricted to only one stage of basic education, Elementary School. Thus, Constitutional Amendment nº 59/2009 represents a political and normative framework regarding the right to education in Brazil.

In this sense, the constitutional reserves of financing linked to the gratuitousness, universalization of the right to basic education and its obligatory character to people from 4 to 17 year old, for Souza (2017), not only contain an equalizing horizon, but are also enablers of the policies in the country.

On the other hand, in recent years, the Federal Constitution has undergone amendments that jeopardize the guarantee of social rights. In the case of education, Constitutional Amendment nº 95/2016, which amended the Transitory Provisions Act to establish the New Tax Regime, represents a serious measure that prevents the expansion of investments of resources in the area. In addition, Fundeb, regulated by Constitutional Amendment nº 53/2006, is in force only until 2020.

This fund is the main source of financing for basic education and an educational public policy that has ensured the distribution of resources in an equitable way, which has resulted in the consolidation of the collaboration system between the federated entities, municipalities, states and the union.

Although Brazil has advanced from the normative point of view in expanding compulsory and gratuitous, the materialization of this right is seriously compromised if we consider the setbacks imposed to the guarantee of the public financing, which is determinant to envisage the expansion of the educational coverage of the country in the different levels, stages and educational modalities.

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