

**SPECIAL EDUCATION AND INCLUSION OF PEOPLE WITH DISABILITIES:  
insufficiencies of the National Policy of Inclusion in Brazil**

ÉDUCATION SPÉCIALE ET INCLUSION DES PERSONNES HANDICAPÉES: insuffisances de la  
Politique Nationale d'Inclusion au Brésil

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**ABSTRACT:** The present study adopts by theme the right to education for the inclusion of people with disabilities. The research problem lies in identifying the possible shortcomings of the current mechanisms and equating solutions within the scope of the Statute of the Person with Disability - Law 13,146 / 2015, formally called the "Brazilian Law on the Inclusion of People with Disabilities", as a policy capable of making the right to effective education. The aim of the paper is to analyze the content of the innovative legal guarantee system and specifically to assess whether the rule is effective in terms of inclusive education. The importance of research is justified by the perspective of functional equality or result, resulting from the presence of mechanisms for the realization of the right to education for inclusion. The method is hypothetical-deductive, from bibliographic sources and the normative text at the heart of the research. The research is divided into three distinct parts: in the first, it analyzes the relationship between public policies and the realization of rights, including the policies conveyed in the form of legislation; in the second, the right to education, inserted in the context of social rights; in the third part, the aspects related to education in the text of Law 13.146 / 2015 so that, in conclusion, the relationship of this specific legislative policy to the effectiveness of the right to education of people with disabilities can be explored in order to ensure a level playing field between these people and the others.

**Keywords:** Social rights, Right to education, Public policies, Inclusive education, Disabled People Statute.

**RÉSUMÉ:** La présente étude adopte par thème le droit à l'éducation pour l'inclusion des personnes handicapées. Les problèmes de recherche dans l'identification des lacunes possibles des mécanismes actuels et l'assimilation des solutions dans le cadre du statut de la personne handicapée - Loi 13,146 / 2015, formellement appelée la «loi brésilienne sur l'inclusion des personnes handicapées», le politique capable de faire le droit à une éducation efficace. L'objectif de cet article est d'analyser le contenu du système de garantie juridique innovant et, en particulier, d'évaluer si la règle est efficace en termes d'éducation inclusive. L'importance de la recherche est justifiée par la perspective d'égalité fonctionnelle ou de résultat, résultant de la présence de mécanismes pour la réalisation du droit à l'éducation pour l'inclusion. La méthode est hypothétique-déductive, à partir de sources bibliographiques et du texte normatif

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au cœur de la recherche. La recherche est divisée en trois parties distinctes: dans la première, elle analyse la relation entre les politiques publiques et la réalisation des droits, y compris les politiques véhiculées sous forme de législation; dans le second, le droit à l'éducation, inséré dans le contexte des droits sociaux; dans la troisième partie, les aspects liés à l'éducation dans le texte de la loi 13.146 / 2015 afin que, en conclusion, la relation de cette politique législative spécifique avec l'efficacité du droit à l'éducation des personnes handicapées puisse être explorée afin d'assurer des règles du jeu équitables entre ces personnes et les autres.

**Mots-clés:** Droits sociaux, Droit à l'éducation, Politiques publiques, Education inclusive, Statut des personnes handicapées.

## 1. INTRODUCTION

Among the list of rights constitutionally guaranteed in Brazil is education, which is envisaged as a fundamental social right and must be provided to all without distinction. The right to education, therefore, constitutes one of the pillars of the Democratic State of Law, since it must be provided and demanded, in a permanent and indistinct way to all Brazilian citizens, to correspond to the wishes of the people to whom the action of the State is addressed.

An important factor in this context is that education must be guaranteed to all, regardless of particular situations that may differentiate one person from another. Therefore, when talking about education, it is necessary to mention the importance of the access of people with disabilities to education, as well as the opportunities of choice and improvement of life that this right provides, when it's provided and exercised.

People with special needs have often mitigated the exercise of the right to education in relation to difficulties in accessing the school, their permanence in institutions and the opportunities conferred after proper school education. This is due to several factors, such as the failure of physical access to the physically handicapped to the obligation of having a second teacher for those with mental retardation inserted in the regular school.

The difficulties are diverse and perennial, imposing, permanently, the propagation of public policies so that inclusion actions are disseminated, in a way that spreads a differentiated cultural vision and diminishes the conducts of exclusion of people with disabilities.

One of the recent policies was published in a legislative form, with the publication of Law 13.146 / 2015, which established the Brazilian Law on the Inclusion of People with Disabilities, also called the Individuals with Disabilities Act or, simply, the Brazilian

Inclusion Law (LBI). It is a legislative measure that seeks to realize the rights of people with disabilities, including the right to education.

In this section, the research problem rests on identifying the possible shortcomings of the current mechanisms and equating solutions within the scope of the innovative system of legal guarantee, as a policy to enable the effectiveness of the right to education, especially from the perspective of the principles of equality and the dignity of the human person, constitutionally reiterated, for the respect to the special condition of people with disability.

The study is justified on the basis of the importance given to the topic by the Constitution of the Federative Republic of Brazil, which, in providing for the provision of the fundamental right to education for all, on a level playing field and without distinction, makes it clear that the offense of compliance of these determinations will culminate with the ineffectiveness of the principle of the dignity of the human person.

In order to solve the research problem, we adopt the bibliographic research, with a predominance of the hypothetical-deductive method, based on a literature review and the normative mechanisms applicable to the species, in order to identify possible contributions of the innovations brought by the Statute of People with Disability related to statistical data. The following assumptions are therefore made: (I) the provision of the right to education for people with disabilities in Brazil does not meet the constitutional requirements; (II) public policies for people with disabilities have been based on criteria of charity, not justice, throughout history; (III) the Brazilian Inclusion Law corresponds to the desires advocated by the International Convention on the Rights of People with Disabilities; and (IV) the inclusive policy introduced by the Brazilian Inclusion Law presents mechanisms capable of contributing to the effectiveness of the right to education for people with disabilities in Brazil.

Structurally, the research analyzes, to one, the relation between public policies and the realization of rights (highlighting, as appropriate, legislative policies); to two, the right to education, inserted in the context of social rights; and to three, the aspects related to education in the text of Law 13.146 / 2015, so that the relationship between this specific legislative policy and the effectiveness of the right to education of the disabled can be explored.

## **2. PUBLIC POLICIES AND THE EFFECTIVENESS OF RIGHTS**

Since the State began to act as an intervener of social relations, much was attributed to the need to satisfy positive benefits, in order to achieve, more and more, the improvement of

the living conditions of the population under power through the effective application of positive norms.

In the performance of this role, the State itself culminated in assuming binding obligations for itself, subordinated to legal and constitutional determinations. Such determinations are attributed by the State to itself, considering that the spheres of state action manifest themselves with administrative, jurisdictional and legislative functions.

In the current social state, positive benefits usually occur as a result of the search for the realization of fundamental constitutional rights. To this end, however, the State acts not only with the provision of public services, but also with the implementation of specific public policies.

In this sense, Bucci (1997, p.90) says that the social state is characterized by "government action in the form of public policies", which would encompass a broader concept than the public service, since it also incorporates the functions of coordination and oversight of public and private agents.

The expression acquired by certain spheres of rights in the social State can be considered as a basis for this "action", that is, the very existence of social rights asserts itself as the medium foundation of public policies and justifies their emergence.

Since it is the responsibility of the State to perform the benefits legally attributed to it<sup>3</sup>, public bodies must do so in full, in compliance with constitutional provisions and in accordance with the wishes of the population. Even because the state function of coordinating actions for the realization of citizens' rights is legitimized by the conviction of society regarding the need to realize these social rights (BUCCI, 1997, p.90), which includes the provision of public services and the realization of rights such as health, housing, welfare, education, among many others.

Thus, the relationship between public policies and the realization of fundamental rights, especially social rights, is extremely direct due to the demand for positive benefits from the State to be transmitted and effectively implemented through public policies.

There is talk of positive benefits in the sense of imposing State action to guarantee social rights, because the enforcement of rights can not only occur through legal norms

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<sup>3</sup> The *latu sensu* concept of "law" is used here as broadly and generically as possible, encompassing any and all normative species capable of authorizing State action as Public Administration. It has been called by FREITAS (2009, p. 70) of tempered legality, in the sense that the Public Administration should be based on the Law as "an open totality, greater than the set of legal rules", considering that " the juridical content, by virtue of the value nature, transcends the mere and sparsely positive."

prohibiting conduct that is harmful and liable to impose sanctions. In the wake of this statement, Arzabe (2001, p. 32) states that it is necessary to have laws, regulations and public measures to promote and strengthen social rights.

Moreover, according to the aforementioned understanding (ARZABE, 2001, p. 32), social rights can only be realized through public policies, since they establish in a planned way guidelines and forms for the action of the Public Power and society.

The State needs coordinated and well-structured actions, specific to the resolution of a particular situation or to reach peculiar situations. In addition to the theoretical prediction of positive benefits, thus, articulations between the spheres of state action are necessary in order to achieve the objectives.

According to Procopiuck (2013, page 14), the Public Administration places itself as an executive device at the service of the entire State, which is disaggregated at an institutional level and at an operational level. In other words, the state acts as an extension of the political organization that is acting conditioned by its own general normative framework.

Therefore, if the typical State profile is defined by the articulated composition between the Legislative, Executive and Judiciary Powers, it will be difficult to succeed in the realization of fundamental social rights without the use of mechanisms such as public policies.

At the conceptual level, according to Souza (2007, p. 68), there is no single, nor better, definition about what public policy is. It can thus be said that the term can take different approaches as it may imply in decisions or in certain stages, from the initial taking of the deliberations to the implementation of what was stipulated.

It is therefore the understanding of Souza (2007, p.83), of the field of knowledge that seeks to integrate some elements, such as public policy itself, politics, political society and the institutions that govern decisions, the designs and the implementations of the public policies, focusing its process and its results.

It is true that public policies are constituted of cyclical and interconnected activities; one phase depends and influences the other, involving the action of several actors in search of collective well-being. At this point, it is probably the index for policy success: the existence of interdependent phases, depending on several actors and successful cycles in order to achieve the realization of rights aimed at.

Also determining factor for the success of the policies is the federative political system in which they are inserted. In addition to the state structure in autonomous Powers, in the case

of Brazil, there is a configuration that confers different autonomies to federative entities, namely: Union, Member States, Federal District and Municipalities.

Thus, complications can be caused, for example, to the practice of national policies that depend on the implementation of local or regional actions for their success. With regard to fundamental social rights, especially, there is a need for interlinked actions between the federative entities and their spheres of action, residing at this point, a categorical factor for the success (or failure) of the policies.

Baptista and Rezende (2011, p.161) point out that, in the Brazilian case, the configuration of the federative political system brings some further complications in this analysis. It would be impracticable, therefore, to speak of the implementation of national policies when states and municipalities exercise or are called to exercise their local autonomy.

For these issues, analyzes should be made available that reflect the political debate in question and are not simply reproductions of national and universal political models, regardless of the context in which the policies are inserted, their specificities and the arrangement that is constituted in each case (BAPTISTA, REZENDE, 2011, p.161). This is because the idea of a policy cycle with delimited phases can work very well for the control and definition of policies that subsidize decision making, but not so well for the verification of the success of the processes that have been triggered.

Thus, as a means of action by governments, public policies must accompany social needs for the realization of normatively enforced rights, with the verification of local political potentialities, needs and attributions.

In Bobbio's words (2004, p.203), "human rights, democracy and peace are three necessary moments of the same historical movement: without recognized and effectively protected human rights there is no democracy." Public policies, therefore, because they constitute tools for the implementation of social rights, are also real instruments of democracy.

### **3. RIGHT TO EDUCATION AND PEOPLE WITH DISABILITIES**

Among the social rights to be provided by the State, the right to education deserves special mention. There is no way to speak of an evolved state, which promotes equality and social well-being without considering advances in the educational system and the effective provision of this right.

Regarding the right to education to be set in a subjective right, the words of Garcia (2004) are invoked, for whom both objective and subjective right have a common epicenter: the person, natural or legal, who is the holder in potential of the juridical relationships that develop in the social organism. In this line of thought, while the objective law occupies a strand external to the person, but directed to it, the subjective right is realized in the person himself, reason to place the right to education as a subjective right.

No wonder education is one of the fundamental rights that are crucial to the exercise of a dignified life. It must be provided by the State in an effective way and capable of fostering the effective exercise of dignity, thus considered as a basic principle that is not in line with the possibility of consideration.

It can be said, therefore, that rationality and knowledge provided by education are crucial for the exercise of the dignity of the human person, since man is considered as an end in itself and in function of its autonomy as a rational being (KANT , 2004). Providing, education, autonomy, would reinforce the universal law that refutes the use of man as a means to another end that is not himself.

The right to education and the principle of the dignity of the human being are so closely related that several declarations of rights emphasize the relevance of education to a dignified life, as well as insert it in the list of fundamental rights<sup>4</sup>.

In the same sense, by linking education with the principle of the dignity of the human person, the words of Haberle (2009, 81) can be invoked in saying that the exact understanding of what is the rule of law depends on existence of a compromise of its Constitution with human dignity. Education, in this understanding, contributes to being a fundamental rule of the State, able to base the society already constituted or to be constituted. This idea of fundamentality corroborates the right included commonly as dependent on positive state benefits, as well as other social rights.

The consecrated concept of Alexy (2015, pp. 433-434) is brought here, for whom the rights to social assistance, work, housing and education constitute what is called the "right to provision", that is, the rights to a positive state action, which belong to a positive status, in the

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<sup>4</sup> In order to clarify that the dignity of the human person is the central point ("hard core") of fundamental rights for various people, as explained in the various declarations of rights, Baez and Mozetic (2013) point out that the proposed values should be examined with a intercultural vision, without the power to attribute the supremacy of one nation over the other (s), given the existence of antagonistic cultures that have hitherto prevented a global understanding of a universal category of fundamental rights.

strict sense. In contrast, the rights of defense of the citizen would come against the State, constituting rights to negative actions of the State.

In the wake of this classification, we have the words of Sarlet (2012, p.260), stating that fundamental rights, because of their multifunctionality, can be classified basically into two main groups, namely the rights of defense and rights to provisions. According to the author (SARLET, 2012, p. 260), the first group includes the rights of liberty, equality, guarantees, as well as part of social rights (in this case, social freedoms) and political rights; the second group, in turn, integrates the rights to benefits in a broad sense, such as the rights to protection in the strict sense, represented by social rights of a benefit nature, among which is the right to education.

In the same sense, regarding the enforceability of social rights, their constitutional recognition and the relation with positive provisions, Abramovich and Courtis (2009, p. 4-5) argue that because they are rights that establish positive obligations, "compliance depends of the provision of public funds, and that therefore the judiciary could not impose on the State the fulfillment of conduct to give or do, imparting the provision of social rights to positive benefits, often costly to the State.

Bucci (1997: 90) asserts that social rights, among the list of fundamental human rights, are effected by means of positive state provisions. While individual rights, referred to as fundamental rights of the first generation, consist of freedoms, so-called second-generation social rights consist of powers. Thus, they could only be realized if others, positive obligations are imposed, including here the public agencies.

The discussion on fundamental social rights is seen as being of a purely utilitarian nature. From such discussion, the right to education, which is fundamental and serviceable in nature, cannot be ruled out. There is also divergence from the fact that education consists, or not, of a fundamental right (CESAR, VIANA, 2009). The most current doctrine recognizes fundamental rights as prerogatives that the individual has in the face of the state, encompassing individual, social (as educational) and political rights.

However, there is no obstacle to such discussions, from all points of view, education, far from being an adornment or the result of vanity, enables the full development of the human personality and is an indispensable requirement for the concretion of the citizenship itself. According to Garcia (2004), the individual understands the extent of his or her freedoms, the way of exercising their rights and the importance of their duties, allowing their integration into an effectively participative democracy.

Thus, in essence, education is the passport to citizenship. Moreover, it is a necessary presupposition for the evolution of any Rule of Law, since the qualification for work and the critical capacity of the individuals are essential to the achievement of this objective (GARCIA, 2004). It means that, although conceived as a social right, occupying a second generation or dimension, the effectiveness of the right to education is essential to the very safeguard of the right to self-determination.

Education, therefore, although considered a social right, is essential for safeguarding a right that, from a logical and evolutionary perspective, predates it in the formation of the rule of law: freedom (GARCIA, 2004), demonstrating that rights of first and of second dimension, are defined as negative or positive, defense or serviceable, can - and should - coexist in a way that is neat, inseparable and complementary.

However, in Brazil, statistics show significant differences between the level of education of people with at least one of the deficiencies investigated and those without some of those deficiencies. While 61.1% of the population aged 15 or over had no education or had only incomplete fundamental level, this percentage was 38.2% for people aged 15 years or over who stated that they had none of the deficiencies investigated, representing a difference of 22.9 percentage points (IBGE, 2010).

It is thus clear that this range of people is not fully delivered when it comes to the right to education, precisely because the public policies applicable to inclusion cannot be based on criteria of charity, but rather on justice. Each society has different needs, which is why the expected result of state action is not obtained when the same expectations for all are expressed. By virtue of this, public policies become more effective when proposed and implemented from an initial status of equality of their recipients, from the same situation that has led to the adoption of respective policies.

John Bordley Rawls (2008), outlining justice as fairness, proposes a conception of justice that focuses on the basic culture of society (RAWLS, 2008). It can be seen, therefore, the application of Rawls's Theory of Justice that it is possible to give greater effectiveness to social rights when the public policies envisaged for this purpose are applied based on a situation of equality of those who need the state benefit.<sup>5</sup> Already Amartya Sen, in *The Idea of Justice* (2011), aims to present a theory capable of creating a social justice based on political decisions aimed at at least reducing injustices.

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<sup>5</sup> Such effectiveness, even in the proposed ways, can be idealized and achieved in contemporary society, already permeated by significant social disparities, so that one can walk at a greater pace towards the desired justice and equality between people.

In seeking to resolve issues allegedly neglected in Rawls's theory (while demonstrating the author's commitment to the tradition of the social contract and Kantian ideas), while analyzing Sen's main propositions, Nussbaum (2013, p.2) to clarify that one of the outstanding problems of resolution in society is based on social justice for people with physical and mental disabilities, amplifying the propositions of Rawls and Sen.

The Nussbaum proposal (2013, p. 91-92) called Capabilities Approach, Nussbaum argues that some capacities are so important to human life that, in the absence of any of them, a human life with dignity would not be configured. It proposes, therefore, the acceptance of the terminologies "impediments" and "deficiencies" in their different conceptions, emphasizing that there are at least two ways of understanding the deficiency. The first considers it as a manifestation of human diversity, since a body with impediments is that of someone who experiences physical, intellectual or sensorial impediments. The second way of understanding disability, however, is that it is a natural disadvantage, and efforts should focus on repairing bodily handicaps in order to guarantee all people a standard functioning of the species.

The central thesis of the social model allowed the displacement of the issue of the deficiency of domestic spaces to public life, even because disability is not a matter of private life or family care, but a matter of justice (NUSSBAUM, 2007, p.35) .

From the capacity approach, it is understood that public policies could play a role of guardianship, as a way of protecting people with disabilities and with a view to inclusion. It is necessary, however, not to allow policies aimed at the protection of people with special needs to lead to the denial of their autonomy and, consequently, to disempowerment, disconcerted with the possibilities of such people (NUSSBAUM, 2013, p.238).

#### **4. THE BRAZILIAN INCLUSION LAW**

Over time, laws aimed at realizing the right to education have gained a proportion in the Brazilian State, defining modes of action involving the most diverse actors and depending on the different governmental spheres. Norms that can be in line with Sarlet's description (2012, p. 266) are set out in order to establish more or less concrete programs, purposes and tasks to be implemented by state bodies and which demand a legislative, corresponding to a requirement of the Social State of Law.

The current constitutional wording, in addition to providing in its article 6 that education is a social right, also states in article 7 that it is the right of every worker to receive

salary capable of meeting family needs with education, stipulating, legislative and administrative aspects related to education in articles 22, 23, 24 and 30 (BRAZIL, 1988).

In addition, the Constitution (BRAZIL, 1988) has dedicated a chapter within the title that deals with the social order to discipline education, along with culture and sport. In a specific section, education was enshrined as a right of all, a duty of the State and the family, to be promoted and encouraged with the collaboration of society, aiming at the full development of the person, his preparation for the exercise of citizenship and your qualification for the job. In addition, by providing that access to compulsory and free education is a subjective public right, the Constitution established principles for education, as well as the State's duties to carry out education (BRAZIL, 1988).

With the intention of this effectiveness, Law 13.146 / 2015, instituting the Brazilian Law on the Inclusion of People with Disabilities, also called the Statute of People with Disabilities or, simply, the Brazilian Inclusion Law (LBI). Although without entering into the historical and legislative precedents, it is necessary to observe the contributions of this legislative text for the effectiveness of the fundamental right to education.

It is a legislative policy dated July 6, 2015, which is expected to come into force after 180 (one hundred and eighty) days of its official publication<sup>6</sup>, "to ensure and promote, on an equal footing, the exercise of rights and fundamental freedoms for persons with disabilities, with a view to their social inclusion and citizenship "(BRAZIL, 2015).

The Brazilian Inclusion Law is based on the Convention on the Rights of People with Disabilities and its Optional Protocol, ratified by the National Congress through Legislative Decree 186 of July 9, 2008, in accordance with the procedure set forth in paragraph 3 of article 5 of the Constitution, in force for Brazil, in the external legal framework, since August 31, 2008, and promulgated by Decree 6,949, dated August 25, 2009, the date of its beginning in force internally.

Article 2 defines a person with a disability as having a long-term disability of "physical, mental, intellectual or sensorial nature, which, in interaction with one or more barriers, may obstruct their full and effective in society on an equal basis with other people, "the LBI would generate reflexes for the effectiveness of the right to education. However, in

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<sup>6</sup> According to article 125 of the Brazilian Law of Inclusion (BRASIL, 2015), several deadlines were set, as from the entry into force of the Law, for compliance with some provisions, between 24 (twenty four) and 48 (forty eight ) months. Also, according to article 126 of the LBI, until December 31, 2021, Law no. No. 8,989 of February 24, 1995, which provides for exemption from the Tax on Industrialized Products (IPI), on the purchase of automobiles for use in the autonomous transport of passengers, as well as for people with physical disabilities, and makes other provisions.

advocating full participation in society and a level playing field for all people, LBI expressly undertakes to implement a range of fundamental rights, including education.

There are devices that indirectly contribute to the realization of the right to education of persons with disabilities, such as Article 4 (BRAZIL, 2015), according to which all persons with disabilities have the right to equal opportunities with other persons, and any type of discrimination is prohibited; and article 8, which recommends that it be the duty of the State, society and the family to ensure the disabled person, with priority, the realization of the rights related to education, among others. Nevertheless, the LBI devoted Chapter IV of its Title II (of Fundamental Rights) in full to the right to education, outlining in articles 27, 28 and 30 the governing norms of inclusive education.

According to article 27 of the LBI (BRAZIL, 2015), the disabled person has the right to education, with the inclusive educational system at all levels and lifelong learning ensured to achieve the maximum possible development of their talents and physical, sensory, intellectual and social skills, according to their characteristics, interests and learning needs. It also ensured that such a mechanism (BRAZIL, 2015, art. 27), which is the duty of the State, the family, the school community and society, to ensure quality education for the disabled, placing them safe from all forms of violence, neglect and discrimination.

Article 28, on the other hand, provides for public authorities to ensure, create, develop, implement, encourage, monitor and evaluate the inclusive educational system at all levels, modalities and their improvement; pedagogical projects; individualized and collective measures of access, permanence, participation and learning in educational institutions, including professional and technological education; research for the development of new teaching methods and resources; teacher training; bilingual education, in Libras and by the Braille system; accessibility; among others (BRAZIL, 2015).

Among the determinations of article 28 (BRAZIL, 2015), attributed to the public power, it is worth mentioning that provided for in item XXIII, providing for "intersectoral articulation in the implementation of public policies". Likewise, it is recorded the one contained in paragraph 1 of this article, determining that private institutions, of any level and modality of education, are prohibited the collection of additional amounts of any nature in their monthly payments, annuities and enrollments in compliance with the determinations of LBI.

It remained to article 30 (BRAZIL, 2015) to predict the measures to be adopted in the selective processes for admission and stay in courses offered by higher education institutions

and professional and technological education, public and private. Thus, it is based on an innovative legislative policy, compiling a complex set of obligations attributable to public and private bodies.

It can be seen, therefore, that the Statute of People with Disabilities presents a proposal that, depending on the policies carried out, can constitute a great step in the journey towards the realization of the right to education for all people, so that they become dignified and equal in rights. However, it is not enough for a given legislative policy to have rights, without it being a form of enforcement that guarantees the effectiveness of what was envisaged.

In this case, it is not enough for LBI to say what people with disabilities are entitled to without clarifying how these rights will be given. It is important to recall Habermas' question (2007, p.153) about whether he is talking about insertion in the sense of inclusion or confinement. That is, it is not enough to integrate and include the disabled person in the educational world, and should be provided with all means of empowerment and immersion in the social environment.

Discrimination in the educational environment is not only manifested by contempt, inattention or direct harassment, but also by the pragmatic behavior of imputing and originating behaviors that can constitute psychological harassment of students and constitute a serious violation of the human rights of freedom and equality of persons with disabilities. Consequently, there is a lack of attendance of the educational provision in its full form.

Failure to provide the right to education or education with poor quality of education means aborting the possibility of the pupil to improve his individual and social condition. It is a fact that education reduces poverty in that it gives conditions to those who access it to self-determine, to obtain better jobs or even to open their own business, based on the information and skills acquired and developed in the school.

## **5. CONCLUSION**

In compliance with constitutional and infraconstitutional determinations, the Brazilian State performs a series of social obligations towards the population. Considering the State's performance through administrative, jurisdictional and legislative activities, public policies are transmitted in the most diverse spheres through the Public Power.

State services are inherent to a State's performance, which are subject to statutory and constitutional requirements. In the current social state, mainly, many positive benefits are realized, with the objective of effecting fundamental constitutional rights.

Despite the fact that first-class rights are classified as negative and second-class rights are positive, it is necessary that some complement each other to a true fulfillment. The right to education, for example, although traditionally envisaged as effective for positive benefits, is essential for the consecration of the right to freedom, which is shaped by the negative performance of the State, that is, by its abstention.

Likewise, the right to education is intimately related to the dignity of the human person, which is one of the foundations of the Democratic Rule of Law. From this point of view, although it is considered a social right, carried out through a positive act of the State, the effectiveness of the right to education facilitates the exercise of freedoms and dignity by the human person in all its aspects.

For all this, the relationship between public policies and the realization of the fundamental right to education, due to the demand for positive benefits by the State to be transmitted and effectively implemented through policies, be they legislative, administrative or, still, through jurisdiction.

In addition to being characterized as instruments of action, involving decision-making processes, cycles and various actors, public policies have as a characteristic to accompany social needs, being essential for the realization of the right to education. For example, a series of measures adopted, in an interconnected and complementary way, between the Union, States and Municipalities, can be seen to achieve better statistics on access and permanence in school institutions.

Education, however, goes beyond these evaluation factors; must be a true and effective means of knowledge, providing choices for a better life for all citizens. It is a fundamental, subjective right that is reflected in a true foundation for personal, professional and social growth, that is, a legitimate passport to citizenship.

It means that the right to education, when fully exercised, is essential to the very preservation of the right to freedoms in all its aspects - although it has been conceived as a social right, occupying a second generation or dimension.

The right to education must be provided to all people, regardless of the needs of each one, given their fundamental character. When it comes to people with special needs, however,

the issue becomes more relevant because it is very common for people with disabilities to remain on the margins of quality education.

By constitutional determination, education is a subjective fundamental social right, which must be provided to all in Brazil, without distinction. This is because it is one of the pillars for the development of autonomy and a legitimate means of empowerment. However, statistical analysis shows that the educational provision does not reach all, regardless of the fact that people with disabilities have less integration and stay in formal education than people without disabilities.

In the legislative sphere, as a means of ensuring and promoting, under conditions of equality, the exercise of fundamental rights and freedoms by persons with disabilities, with a view to their social inclusion and citizenship, Law 13,146 / 2015, which established the Brazilian Law on the Inclusion of People with Disabilities, also called the Person with Disabilities Statute. The Brazilian Law of Inclusion (LBI) is a legislative policy that affects the provision of the right to education, as it provides for direct action by public and private entities, as well as repressive behavior in the case of noncompliance with the dictates brought by the Law.

Effective from January 2016, LBI was launched in a context where school inclusion is much debated, both by federal entities and private initiative - but lacking effective results. To this end, the LBI has innovated in some devices, such as those in which the maximum possible development of the talents and physical, sensorial, intellectual and social abilities of people with disabilities according to their characteristics, interests and learning needs is preached.

For the purposes of LBI, a person with a disability is considered to be a person with a long-term physical, mental, intellectual or sensorial disability, which, in interaction with one or more barriers, may obstruct full and effective participation of disabled people in society on equal terms with other persons.

By devoting part of its predictions, directly or indirectly, to the search for the realization of the right to education for people with disabilities, the LBI is in itself an important mechanism. Regardless of what time will demonstrate regarding the fulfillment of its determinations, the legal text prescribes important assecuratorial measures of rights and the repressive action in case of noncompliance.

However, although the LBI has brought long-awaited predictions from the scholars and has enshrined rights already envisaged in the Constitution, it did not clarify how these

rights will leave the role and did not point out how in practice it will happen the viability of the programs and actions to which conduct your text. Moreover, it did not consider the recipients of the policy as individuals with individualities as regards their deficiencies, which culminates in ineffectiveness, as determined by other legal instruments in different social contexts.

At the present time, either educational inclusion is feasible in a concrete and full way or, simply, it is not speaking in inclusive education. There is no middle ground - and there can not be. In the case of the LBI, there does not seem to have been a real incorporation of the social model of the deficiencies, nor the promotion of fair justice to inclusion. Even because the disabled person does not want to be included by charity and inclusive policies must reflect just that: that inclusion is a matter of justice, not of any other criterion.

If LBI had presented skillful devices to convey different solutions of inclusion in the educational environment for each type of disability, in its different degrees of severity, a more fruitful horizon could be seen in what concerns to inclusive education. However, the chapter on the right to education only said what should be ensured to people with disabilities and what is right to them, without considering such peculiarities.

In the case of people with disabilities, what is sought with public policies of educational provision is not simply access to formal education, stay in institutions or obtain a diploma. It aims to confer the true and effective means of empowerment, providing choices for a better life, with autonomy.

In this way, the LBI would institute a much more effective policy if it considered the various types and degrees of disability and disability, as well as the real inequality that these peculiarities may cause for people in the social environment. It is necessary to promote true inclusion, in the human sense of the word, linked to values such as equality and dignity of the human person. Thus, the right to education will remain effective: with an unequal (and privileged) protection of the unequal, as a means of promoting the right to equality in its true sense, to ensure the dignity of the human being with disabilities, through knowledge.

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