



Year V, v.2 2025 | Submission: November 27, 2025 | Accepted: November 29, 2025 | Publication: December 1, 2025

Inclusive education and the State in the dock: legal responsibility in guaranteeing education for children and adolescents with ASD.

Inclusive education and the State in the dock: Legal responsibility in guaranteeing education for children and adolescents with asd

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SUMMARY

This study aims to evaluate the State's responsibility in guaranteeing the right to inclusive education for children and adolescents with Autism Spectrum Disorder (ASD). Despite legislative advances in Brazil, such as Law No. 12.764/12, which recognizes ASD as a disability, and the inclusion of autism in the 2020 demographic census, difficulties remain in implementing effective public policies that ensure access to quality education for these students.

This research adopted a qualitative approach, reviewing legislation, international treaties, case law, and academic studies, as well as analyzing cases of state omission in providing inclusive school environments. The results show that, although legislation protects the right to education, practice still faces problems such as insufficient qualified professionals, inadequate pedagogical resources, and a lack of adaptations in schools. This negligence violates fundamental rights and hinders the full development of students with ASD, contributing to the maintenance of social inequalities. It concludes that it is essential for the State to implement concrete actions, such as efficient public policies, training of specialized professionals, and the creation of inclusive school environments. These measures are fundamental to guaranteeing the right to education, promoting social inclusion, and ensuring the full development of children and adolescents with ASD, fostering a more just, equitable, and inclusive society.

Keywords: Education. Autism. State. Right to Education.

ABSTRACT

This study aims to assess the State's responsibility in guaranteeing the right to inclusive education for children and adolescents with Autism Spectrum Disorder (ASD). Despite legislative advances in Brazil, such as Law 12.764/12, which recognizes ASD as a disability, and the inclusion of autism in the 2020 demographic census, there are still difficulties in implementing effective public policies that ensure access to quality education for these students. The research adopted a qualitative approach, reviewing legislation, international treaties, case law and academic studies, in addition to analyzing cases of state omission in offering including school environments. The results show that, although legislation protects the right to education, the practice still faces problems such as a lack of trained professionals, inadequate pedagogical resources and a lack of adaptations in schools. This negligence violates fundamental rights and prevents the full development of students with ASD, contributing to the maintenance of social inequalities. It is concluded that it is essential for the State to implement concrete actions, such as efficient public policies, training of specialized professionals and the creation of inclusive school environments. These measures are fundamental to guarantee the right to education, promote social inclusion and ensure the full development of children and adolescents with ASD, fostering a more just, equitable and inclusive society.

Keywords: Education. Autism. State. Right to Education.



1. Introduction

The fundamental right to education, elevated to the status of a pillar of the Federative Republic of Brazil, through the Federal Constitution of 1988, imposes on the State and the family the duty to guarantee the full development of the individual and their preparation for the exercise of citizenship. In this context, Education Inclusion emerges as a legal, ethical, and social imperative, seeking to fully integrate children and adolescents with disabilities in the regular education system. The complexity of this guarantee is particularly pronounced when it comes to Autism Spectrum Disorder (ASD), as defined by the Ministry of Health. ASD is a neurodevelopmental disorder characterized by atypical patterns of communication, social interaction and behavior.

The growing visibility and significant increase in diagnoses of ASD in recent years underscore the urgency of the issue, given that this neurological condition requires care and special adaptations for the best development and learning of the individual. Law No. 12.764/2012, by determining that a person with ASD is considered a person with a disability for all purposes, reinforced the primary and joint responsibility of the State in providing conditions, adequate teaching methods. However, even with the progress in the regulatory framework, serious problems persist, such as gaps in its implementation.

Educational reality reveals that state negligence in ensuring adequate conditions, such as providing trained professionals (mediators, assistants) and educational resources, appropriate, constitutes an inexcusable violation of fundamental rights. This mismatch between what is foreseen in the law and what is actually implemented in practice raises a direct question about the effectiveness of the legal protection. Given this scenario, the present study seeks to answer the following research question: To what extent does the state's failure to provide quality inclusive education for children and adolescents with ASD (Autism Spectrum Disorder) falls on the State, and what are the implications of this? Failure to ensure the realization of fundamental rights?

The overall objective of this work is to analyze the legal responsibility of the State in its actions and omissions regarding the guarantee of the right to inclusive education for children and adolescents with ASD. Therefore, the study aims to examine the legal foundations and identify the shortcomings in the provision of service and discuss the mechanisms of judicial accountability. Methodologically, the research is of a qualitative nature, based on a bibliographic review of doctrine and legislation, in addition to analysis of documentary evidence and related case law allow for a critical legal approach to the topic. The article is structured in three main sections, addressing educational inclusion and the rights of children with disabilities, the challenges in the education of children and adolescents with Down Syndrome, Autism Spectrum Disorder and finally, an analysis of the violation of the fundamental right to education, as well as the consequences of state omission and the corresponding state responsibility.



2. Educational inclusion and the rights of children with disabilities

Internationally, Brazil has committed to fulfilling what was agreed upon and approved by...

The UN General Assembly, with one of its most important documents, the Universal Declaration of Human Rights. Humans of 1948.

Indeed, by opposing the various violations of Human Rights, the UDHR brought with it... guidelines that must be followed by all its member countries, highlighted in its article 2. which brings equal treatment, eliminating forms of differentiated and prejudiced treatment, for so that everyone can enjoy the rights presented in its text and article 26, determining access. Free education aimed at fostering harmonious coexistence in society, with respect for differences.

In this sense, human rights can be understood as those rights inherent to man from birth, however, unlike other rights, those They possess five inseparable aspects, namely, their universality, their morality, being fundamental, preferential and abstract right (Alexy, 1999).

We consider the approval of the law to be a major milestone in the Rights of Children and Adolescents. United Nations Convention on the Rights of the Child, in 1989, by Legislative Decree No. 99.710 of November 21, 1990.

For Maria Dinair Acosta Gonçalves, the Convention is binding in the sense that non-compliance a set of duties and obligations, including the adoption of public policy measures for to promote them. This is the most important national document on the subject.

The Convention resulted in a greater appreciation for the principle of the best interests of the child. According to Tania da Silva Pereira:

The Convention also reaffirms, in accordance with the principle of the best interests of the child, that it is the duty of parents and guardians to guarantee children special protection and care, and in the absence of such, it is the State's obligation to ensure that institutions and care services provide it. It recognizes the family as the primary social group and natural environment for the growth and well-being of its members, specifically children, emphasizing their right to receive the necessary protection and assistance in order to fully assume their responsibilities within the community.

Thus, children began to be seen and prioritized in various conventions and declarations. over the decades, they have increasingly secured their rights, such as education, which in In 1994, it was the main theme of the World Conference on Special Education, by the General Assembly of United Nations, where the Salamanca Declaration was proclaimed.

The Salamanca Declaration brings with it the perspective of inclusive education, which according to Sassaki (2002) social inclusion is a process that seeks to contribute to the construction of a society through transformations, not only in physical environments, but also in the mentality of the whole the population, including people with disabilities.

According to the author, social inclusion is a bilateral process in which excluded people and the



societies seek to work in partnership to address problems, decide on solutions and

To ensure equal opportunities for all.

The Salamanca Declaration (Brazil, 1994) has the following principles:

1. Every child has a fundamental right to education and should be given the opportunity to achieve and maintain an adequate level of learning;
2. Every child has unique characteristics, interests, abilities, and learning needs;
3. Educational systems should be defined and educational programs should be implemented in a way that takes into account the vast diversity of such characteristics and needs;
4. Those with special educational needs should have access to regular schools, which should accommodate them within a child-centered pedagogy capable of meeting those needs;
5. Regular schools that have such an inclusive orientation constitute the most effective means of combating discriminatory attitudes, creating more welcoming communities, building an inclusive society, and achieving education for all;

From Ciriaco's (2020) perspective, legislation regarding inclusion is important, however,

We have a need to ensure the right to inclusive education for students, as advocated by...

the legal frameworks:

Many laws regulate the educational system and policy; they emphasize a focus on differences, diversity, and inclusion. Thus, through analysis of the laws and further study, we were able to perceive that legislation may be geared towards the inclusion process of people with special educational needs, but real inclusion is far from happening, since it is not restricted to people with disabilities but to all individuals who do not have the possibility of being included in the educational sphere in one way or another. It is not enough to simply have laws; it is necessary to have a broad view of the country's educational reality. Despite talking about education for all, we must analyze how this education is happening and whether it is truly prepared to include everyone without leaving gaps in terms of addressing diversity (p. 2).

In 2015, the text of the Statute of Persons with Disabilities, known as the Brazilian Law

Regarding inclusion, it says with respect to education that:

It is the right of persons with disabilities to be guaranteed an inclusive education system at all levels and lifelong learning, in order to achieve the maximum possible development of their physical, sensory, intellectual and social talents and abilities, according to their characteristics, interests and learning needs (Art. 27).

In this sense, the Convention on the Rights of Persons with Disabilities, decree no. 6,949 of

In 2009, education was established as a basic right that must be guaranteed and provided with a system.

Educational institutions that foster the full development of people with disabilities. Therefore, states should:

1. States Parties recognize the right of persons with disabilities to education. To realize this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning, with the following objectives:
 - a) The full development of human potential and a sense of dignity and self-esteem, as well as the strengthening of respect for human rights, fundamental freedoms, and human diversity;
 - b) The maximum possible development of the personality, talents, and creativity of people with disabilities, as well as their physical and intellectual abilities;
 - c) The effective participation of people with disabilities in a free society.
2. To realize this right, States Parties shall ensure that:



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- a) Persons with disabilities should not be excluded from the general education system on the basis of disability, and children with disabilities should not be excluded from free and compulsory primary education or secondary education on the basis of disability;
- b) People with disabilities can have access to inclusive, quality, and free primary education and secondary education on an equal basis with others in the community in which they live;
- (c) Reasonable accommodations should be provided according to individual needs;
- d) People with disabilities receive the necessary support within the education system.
In general, with a view to facilitating their effective education;
- (e) Individualized and effective support measures should be adopted in environments that maximize academic and social development, in accordance with the goal of full inclusion.
(UN, 1975, online).

It is observed that the States also commit to guaranteeing the right to education for these [children/entities].

people through the implementation of public policies aimed at both basic education and for higher education.

Article 7 of the LDB (Brazilian Law of Education) states that "it is the duty of the State, the family, the school community and society has a responsibility to ensure quality education for people with disabilities, protecting them from all harm.

"A form of violence, neglect, and discrimination." The same law develops a known model.

such as special education, for people who need changes and adaptations in

The conventional education system, thus transitioning to specialized support services, as

Reading of article 58, which states that "special education, for the purposes of this Law, is understood to be the modality of School education offered preferably within the regular education system, for students with

"Disability, pervasive developmental disorders, and high abilities or giftedness."

Thus, the LDB establishes a fundamental framework for guaranteeing inclusive education.

and of high quality, promoting respect for diversity and ensuring rights for people with disabilities.

disability. Through Special Education, the commitment to adapting the system is reinforced.

teaching methods to meet the specific needs of these students, guaranteeing them access,

permanence and full development in the school environment, under conditions of equality and dignity.

Therefore, with the adoption of sub-constitutional legislation, the Federal Constitution of 1988

And the Brazilian legal system has been adopting this view as a means of ensuring the rights of...

children and adolescents, thus combining with the doctrines, we find the foundation of

current understandings of the courts. This approach establishes the legal basis for guaranteeing the

The right to education for autistic children and adolescents.

2.1 The challenges in educating children and adolescents with autism spectrum disorder

While some have sensory difficulties, others have difficulty communicating or

behavioral, bringing with it the challenge of meeting the individual needs of each person, the

which gives meaning to the concept of spectrum, configuring the special and variable needs of each

person in the school environment.

According to Santos (2008, p. 9):



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The school receives a child who has difficulties relating to others, following social rules, and adapting to the new environment. This behavior is often mistaken for a lack of education and boundaries. Due to a lack of knowledge, some education professionals are unable to recognize and identify the characteristics of autistic individuals, especially those with high-functioning autism and a low degree of impairment. Education professionals are not prepared to work with autistic children, and the scarcity of appropriate literature hinders access to information in this area.

Therefore, when educators and peers lack a clear and adequate understanding...

Regarding the condition, it generates a series of discomforts, prejudices, and a lack of support in the environment, leaving

It is evident that not all schools have sufficient resources for this adaptation, making it difficult to...

The transition of educational levels for these children and adolescents facilitates their social integration.

The family is compromised and support is reduced.

According to Santos (2008), the school plays a crucial role in research.

diagnostic, since it is the child's first environment of social interaction outside the family nucleus, being

The place where she faces the greatest difficulties in adapting to social rules.

Learning is a characteristic of human beings. Teaching and learning are two interconnected processes that contribute to the construction of knowledge. It is a dialogical and non-dialogical construction.

interpretative; an immanent expression of our humanity, which also encompasses the learner with autism (Cunha, 2016, p. 15). Thus, the student with ASD will learn.

Individuals with autism encounter a number of difficulties when starting school.

regular difficulties, which end up becoming part of the routine and daily life of teachers and everyone else. the school community.

In these educational challenges, autistic children and adolescents may experience: 1.

Communication difficulties, both verbal and non-verbal; 2. Difficulty in social interaction; 3.

Repetitive and stereotyped behaviors; 4. Sensory sensitivity; 5. Learning difficulties; 6. Behavioral challenges; and, 7. Giftedness in specific areas.

Ferreira, Kubaski and Schmidt (2025) address the difficulties faced by students with autism in school environment and concluded that the main distinct categories are: Behavior, communication difficulties, cognitive challenges, and other difficulties such as lack of autonomy and independence.

As Cunha (2009) reinforces, autism has a set of behaviors.

grouped into what he calls the "main triad," as being commitments in communication, difficulties with social interaction, and restricted-repetitive activities.

It is worth noting that a child may only have some of these difficulties, as it is not a matter of...

It is not an exhaustive list, but rather an illustrative one.

According to the 2023 School Census, there are 636,202 autistic students in Brazil, and 95.4% are enrolled in mainstream classes in schools. This shows that autism is present.

regardless of social class, culture, or race, and that all schools in the regular education system need



specializing in serving students with autism.

Given these challenges, the use of public policies and approaches becomes necessary. Specific measures to support optimal development. The provision of training and adaptations. curricular support for teachers and caregivers, adaptation of environments to meet needs. Specific lectures and awareness campaigns for society, from parents to students. that those who live with the person with ASD [Autism Spectrum Disorder], are ways that would leverage the potential for care and bring various benefits for ensuring a dignified and efficient education in the lives of these children and teenagers.

According to Santos et al. (2024), curricular adaptation within the context of inclusive education It encompasses a set of adjustments applied to the objectives, content, methods, and assessments of the curriculum. to meet the specific learning needs of all students, with an approach especially for those with special educational needs. Such changes are important for To facilitate access, participation, and success for all students in an inclusive educational context.

According to Valle and Maia (2010, p. 23), curricular adaptation is defined as "the set of modifications that are made to the objectives, content, criteria and evaluation procedures, Activities and methodology to meet the individual differences of students.

The author also emphasizes that "curricular adaptations serve to make things more flexible and feasible." access to the guidelines established by the regular curriculum and do not intend to develop a new curricular proposal, but to establish a dynamic, changeable curriculum, open to adaptation. expansion, so that it truly serves all students. This is easily achieved when there is The availability of a resource room professional at the school contributes to the planning process. the pedagogical actions and the content that the student should learn." (Valle; Maia, 2010).

The school system must be enthusiastic and persistent when working with autistic students, achieving by step their inclusion and education goals, reinforcing their learning process, because According to Gauderer (1987), "children with autism generally have difficulty learning." They use words correctly, but when they participate in an intensive program of classes they seem... Positive changes can occur in language skills, motor skills, social interaction, and... learning".

Often, the lack of progress and response in autistic children is due to a lack of... Understanding their needs, due to not receiving service that meets their requirements.

3. Education as a constitutional right in the upbringing of children and adolescents with ASD

The right to education is a constitutional right and is addressed in various provisions. constitutional provisions, from Article 6, which deals with a social right, to Article 208, item III, which states that guaranteeing specialized educational services for people with disabilities, preferably



in the regular education system.

This legal basis of the Magna Carta leads us to conclude that no school can refuse to...
Enrolling a student based on their Autism diagnosis, and in addition to guaranteeing enrollment,
The school must guarantee conditions for its inclusion.

In several other articles of the Constitution we find aspects that aim at the protection of
children and adolescents, as well as article 227, which reminds us of their vulnerability and condition of
A child is a being in development, according to the scholar Jose de Afonso da Silva:

Thus, Article 227, under consideration, is in itself a charter of fundamental rights for children and adolescents
corresponding to those provided for in that Convention. These rights specified in Article 227 of the Constitution do not
mean that other constitutional provisions of fundamental rights do not apply to them. On the contrary, the human rights
referred to in the Constitution are also inherent to them – thus, the rights to education, culture, sport and leisure, as
already seen, apply to them, in the manner specified in the Statute.

In addition to the Constitution, the right to education is enshrined in Law 12.764, Policy
National Protection of the Rights of Persons with Autism Spectrum Disorder, where it is ensured
education and vocational training.

In the Brazilian Law for the Inclusion of Persons with Disabilities, 13.146/15, education is viewed as
The right to education is a duty of the State, society, and family; moreover, we can find it in...
various aspects of the Brazilian legal system, thus involving legal and social issues,
connecting the State, society and families.

Furthermore, we also find insight in the Statute of Children and Adolescents, which addresses...
See Special Law No. 8.069/90, where José de Farias Tavares says:

The philosophy behind this statutory decree is the comprehensive protection of children and adolescents, taking into
consideration their unique characteristics as human beings in a phase of biopsychosocial development. The text of
our law is in accordance with the stipulations of the Convention on the Rights of the Child adopted by the General
Assembly of the United Nations, in Resolution No. 44 of the General Assembly, of November 20, 1989, signed by the
Brazilian Government on January 26, 1990, approved by the National Congress through Legislative Decree No. 28, of
September 14, 1990, and finally promulgated by Executive Decree No. 99,710, of November 21, 1990, thus becoming
a binding norm of internal positive law.

In the context of education for children with Autism Spectrum Disorder, who by law are
For all legal purposes, we consider people with disabilities to be a great diversity of...
special needs, since, being a spectrum, it means a wide variety of symptoms.
on various levels.

According to the Ministry of Health, autism spectrum disorder (ASD) is understood as...
a neurodevelopmental disorder characterized by atypical development, manifestations
behavioral deficits, deficits in communication and social interaction, behavioral patterns
repetitive and stereotypical, possibly presenting a limited repertoire of interests and activities.



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In Brazil, autism was included in the 2020 demographic census by order of Law No.

Law 13.861, of July 18, 2019. Currently, the Brazilian Institute of Geography and Statistics (IBGE)

It is estimated that there are two million autistic Brazilians, which means that 1% of the population is autistic.

It would be on the spectrum. (Health Mail - Edition No. 1212 of 04/12/2023).

Furthermore, Brazilian jurisprudence recognizes, based on the constitutional text and the Law of National Education Guidelines and Framework: the right to education and special care for children.

and adolescents with ASD, ensuring the hiring of qualified teachers for support aimed at ensuring their integration into regular classes.

I cite national court decisions on the subject:

NECESSARY REVIEW. WRIT OF MANDAMUS. MINOR WITH SPECIAL NEEDS. AUTISM SPECTRUM DISORDER. RIGHT TO

EDUCATION. MAINTENANCE OF SUPPORT TEACHER. NECESSARY TECHNICAL TRAINING. RESPONSIBILITY OF FEDERAL ENTITIES. CONSTITUTIONAL AND LEGAL PROVISION. JUDGMENT UPHELD. 1. The constitutional text states that education is a right of all and a duty of the State, including the guarantee of specialized educational services for people with disabilities, preferably within the regular education system. 2. The Law of Guidelines and Bases of National Education ensures the hiring of qualified teachers to assist people with special needs, in order to guarantee their integration into regular classes. 3. With a proven clinical picture of cognitive impairment (autism spectrum disorder) and the need for support by a teacher with the necessary technical training, the public entity must be compelled to maintain the proper assistance to the student. MANDATORY REVIEW DISMISSED. (Court of Justice of the State of Goiás, 5013450-65.2020.8.09.0011, Judge Anderson Máximo de Holanda, 3rd Civil Chamber, decided on 08/25/2023 at 1:51:16 PM)

RIGHT TO EDUCATION. PUBLIC CIVIL ACTION. PROVISION OF A QUALIFIED ASSISTANT TEACHER FOR AN AUTISTIC STUDENT. OBLIGATION TO ACT. MANDATORY REVIEW NOT GRANTED AND APPEAL NOT UPHELD. I. CASE UNDER EXAMINATION 1. Public Civil Action filed by the Public Prosecutor's Office of the State of São Paulo against the State of São Paulo, aiming at the provision of a qualified assistant teacher for continuous assistance to a student diagnosed with Autism Spectrum Disorder (ASD). The judgment of merit condemned the defendant to the obligation to act. The Public Treasury appealed, arguing the lack of legal provision for the figure of an assistant teacher and the sufficiency of the school support professionals already provided for by law. II.

QUESTION UNDER DISCUSSION 2. There are three questions under discussion: (i) to analyze whether the admissibility of the necessary review is appropriate; (ii) to determine whether the State of São Paulo has a duty to provide a qualified assistant teacher to accompany the student with ASD; and (iii) to assess whether the first-instance decision constituted undue interference by the Judiciary in public policies. III. REASONS FOR DECISION 3. Negative admissibility judgment. Jurisprudence consolidated by the E. STJ in the sense of the applicability by analogy of article 19 of Law No. 4,717/1965 to the necessary review under consideration.

Double jurisdiction is deemed inadmissible due to the judgment in favor of the plaintiff in the public civil action. This special rule prevails over the general rule contained in Article 496 of the Code of Civil Procedure. A re-examination is necessary and only required in cases where the request is deemed unfounded or insufficient. 4. Extension of the legal prescription originally foreseen for popular actions to public civil actions, serving the purpose of integrating and interacting with the norms that comprise the collective procedural microsystem. Necessary review constitutes an exceptional instrument in the procedural system and, as such, must be interpreted restrictively. 5. The right to inclusive education is guaranteed by the Federal Constitution (articles 205 and 208, III) and by specific norms such as Law 13.146/15 (Statute of Persons with Disabilities) and Law 12.764/12 (National Policy for the Protection of the Rights of Persons with ASD), imposing on the State the duty to provide individualized support measures that guarantee full inclusion.

6. Documents attached to the case file, with pedagogical and medical reports, demonstrate the need for continuous monitoring by a specialized professional, which confirms the academic and social harm suffered by the student in the absence of this support. 7. The role of an assistant teacher is distinct from that of a school support professional, being essential to ensure specific pedagogical adaptations to the student's educational context, according to precedents of the TJ-SP (Court of Justice of São Paulo). 8. The judicial action, in ordering the provision of an assistant teacher, does not constitute an invasion of the Executive's competence. The state's duty to guarantee the fundamental rights to education and human dignity is subject to judicial review. 9. The judicial decision that orders the implementation of an educational support measure does not constitute undue interference in public policies, but is an expression of judicial control over the effectiveness of fundamental rights. IV. DECISION 10. Necessary review not admitted and appeal dismissed. Relevant provisions cited: CF/1988, arts. 205, 208, III; Law 13.146/15, articles 27 and 28, XVII; Law 12.764/12, article 3, sole paragraph; Law 9.394/96, articles 58 and



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59. Relevant case law cited: TJ-SP, Appeal No. 1028782-31.2021.8.26.0562, Judge Antonio Celso Aguilar Cortez, judgment of 04.05.2024; TJ-SP, Appeal No. 1008226-68.2023.8.26.0099, Judge Antonio Celso Aguilar Cortez, judgment of 01.02.2024. (TJSP; Appeal / Mandatory Review 1000615-83.2023.8.26.0125; Rapporteur: Martin Vargas; Judging Body: 10th Chamber of Public Law; Court of Capivari - 2nd Court; Date of Judgment: 03/12/2025; Date of Registration: 03/12/2025)

The actions of the courts, as demonstrated by the decisions of the Court of Justice of Goiás and the The Court of Justice of São Paulo reinforces the responsibility of federative entities in ensuring the The provision of specialized educational services. This legal protection is essential to promote the equal opportunities, ensuring that the fundamental right to education is effectively realized. accessible, respecting the needs and potential of each individual.

As one of the biggest dilemmas in education today, inclusion is becoming mandatory in the systems. public and private educational institutions, as provided for in the Constitution, since education is a right. of all, seeking to avoid inequality in access and use. All existing diversities In the social environment, they should be supported and valued in the educational environment (Garcia; Michels, 2021)

We can define inclusive education as the practice of including everyone – regardless of their talent, disability, socioeconomic or cultural background – in schools and Provider classrooms, where the needs of these students are met (Stainback; Stainback, 1999, p. 21). Martins *et al.* (2008, p. 19) adds this “movement that seeks to rethink the school, so that it ceases to be a school of homogeneity and becomes a school of heterogeneity, so that "Let the school of discrimination give way to a school open to all."

Belonging to the list of fundamental rights, the right to education is guaranteed by virtue of and Compliance by the State, being a right that is available, accessible and acceptable, and a duty of the State. Your offer is free and guarantees places without any type of discrimination and in sufficient numbers. sufficient for everyone to enjoy this right.

From a social law perspective, its provision can be demanded individually or collectively. Thus, in both cases, when there is a failure to fulfill this duty on the part of the authority In public cases, it becomes feasible to refer the matter to the Judiciary after exhausting administrative channels.

4. Violation of the fundamental right to education and the consequences of state omission: state responsibility.

The primary obligation to guarantee the right to education lies with the State, which, according to... The 1988 Constitution, in several of its provisions, establishes the State's duty to guarantee this. law. And not only the constitution, but the Brazilian legal system uses statutes, guidelines and laws that regulate and govern this right.

It should be noted that legislation on this subject dates back a long time. In 1961, under the government...



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Under João Goulart, the Law of Guidelines and Bases of Education (Law 4.024) already addressed education for Children with disabilities, at the time called "exceptional" children.

In practice, Brazilian education can be identified as having a large disparity between the proposed approach. of educational inclusion and current educational policies, thus violating the fundamental right to Education during the pandemic in Brazil: the problems of educational inclusion. These issues have become more evident, particularly in the public education system, which has historically dealt with... with greater challenges and difficulties in the face of the need to promote training. equal educational attainment at basic and higher education levels (Silva and Sousa, 2020).

Amato (2022) argues that reversing the current scenario of exclusion historically maintained in The Brazilian educational system, especially the public school system, requires, first and foremost... Identifying existing obstacles will allow for the subsequent identification of possible solutions. solutions to be adopted by various stakeholders interested in building greater inclusion. socio-educational.

Therefore, acts of action or omission by the State that cause harm to people have been shaping up. a violation of fundamental rights and guarantees. The Brazilian legal system brings with it various norms, laws, guidelines, and case law that defend and guarantee the right to education. inclusive approach for children with disabilities, especially those who have Autism Spectrum Disorder.

The inclusion of this topic in current legislation demonstrates its relevance and importance, because in a society where people with disabilities were once considered "exceptional" in the face of In addition to legislation, progress towards gaining recognition of rights and guarantees is fundamental.

However, despite the broad scope of the legislation, we can see in society that there are... Failures and difficulties in the application of these laws are evident daily, revealing state inaction in the face of this failure. due to the applicability of these laws, the legal system is therefore full of processes to ensure that... manage to secure a right that is already explicitly stated in law.

Consequently, children and teenagers are harmed daily within schools. and public daycare centers, due to lack of infrastructure, qualified professionals, and assistants, thus causing a stagnation in their development and learning process.

Leaving the concept of inclusive education meaningless and without application because, according to (Miranda, 2001, p. 15), an inclusive school should be a school for everyone, therefore, each The student will be assisted according to their needs and difficulties, using methods and resources. They need to be adapted to provide learning and development.

Statistically, there has been an increase in enrollments of people with disabilities. in regular education, as demonstrated by the latest School Census of 2023:

The number of enrollments in special education reached 1.8 million in 2023, an increase of 41.6% compared to 2019. The largest number is in elementary education, which accounts for 62.9%.



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of these enrollments. When evaluating the increase in the number of enrollments between 2019 and 2023, it is observed that in early childhood education there was an increase of 193% in daycare enrollments and 151% in preschool enrollments.

However, the data mentioned do not demonstrate the true level of learning of the people. with deficiencies in the education system. Mere presence in classrooms does not demonstrate effective making the most of the time available for this purpose. Meira (2012, p. 91) discussed the illusion regarding Regarding the topic of inclusion, "which allows us to consider as included students who remain in school, but They do not truly appropriate the knowledge historically accumulated by humankind.

It is necessary to search for data that demonstrate the actual public development of learning, as the Brazilian Institute of Geography and Statistics demonstrates, shows the proportion of significant state negligence regarding Brazilian education:

School enrollment rates were lower among people with disabilities in all age groups. Of children aged 6 to 14 with disabilities, 95.1% attended school, down from 99.4% among those without disabilities. Among young people aged 15 to 17, enrollment rates were 84.6% for those with disabilities, compared to 93.0% for those without disabilities. For the 18 to 24 age group, the rates were 24.3% and 31.8% for people with and without disabilities, respectively.

The inequality is even greater when the issue of school delay is added, observed through the adjusted net attendance rate, which considers the age-grade appropriateness. For the 6-14 year old group with disabilities, 89.3% attended primary school, compared to 93.9% among those without disabilities. Just over half (54.4%) of young people aged 15-17 with disabilities attended secondary school, compared to 70.3% of young people without disabilities. In the 18-24 year old group, 14.3% of young people without disabilities were in higher education, compared to 25.5% of those without disabilities (IBGE, 2023).

Therefore, the State should not fail to provide satisfactory technical training for teachers. Government investment is therefore essential, but despite being publicized, it has not yet reached its intended goals. the necessary level, and the changes and school implementations are few. Because the fact that these institutions Taking on this responsibility does not guarantee effective service or projects that improve... definitely changes student life.

Employing qualified professionals should be a primary investment so that... students receive proper and specialized guidance and support for their development, leading to Taking this into account, the State's failure to offer positions and qualifications to educators has a major impact. impact on the quality of education.

According to Tardiff (2005, p. 65), it is necessary for the teacher to have full knowledge in the area of The teaching of which he delivers the content, the subject he teaches, in addition to vast knowledge about the The science of Education, in addition to rich practical knowledge gained through their own experience. professional.

Viegas and Bassi (2009, p. 73) highlight the urgency of reviewing the alternatives employed in Special education and the distribution of resources for social inclusion.

Given the importance, the responsibility and the duty of the State regarding education, We can see the need for specific regulations and improvements to be made.



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implemented in educational plans across the country, outlining improvements for the provision of services.

students with autism spectrum disorder, and their families.

The improvement of the educational plan should aim at the inclusion of the student in all activities.

Respecting their limitations, bringing lecture proposals to all students, so that they know

To identify and accept difference in order to reduce occurrences of bullying and discrimination.

taking into account that today everyone in the educational circle is subject to interacting with a person

TEA, whether in the position of sibling, child, nephew/niece, and even boyfriend/girlfriend, husband, and wife, because these

People also grow and develop throughout their lives.

In addition to the precision of including qualified professionals for assistance and also for...

Seeking early diagnosis, in the preschool and daycare phases, thus making it easier for parents who do not

They understand their son's distress and that they also do not have the means to support all of it.

The diagnostic process, since it is carried out in various areas of child development and does not...

It is offered quickly and free of charge, thus significantly improving quality of life.

of the child with ASD and also of their family.

The State must offer, free of charge and effectively: early intervention; integration therapy.

Sensory Integration Therapy (SIT); Augmentative and Alternative Communication (AAC); Occupational Therapy (OT) and Therapy

Speech Therapy (ST); TEACCH (Treatment and Education of Autistic and Related Developmental Disabilities)

to Communication) and Applied Behavior Analysis (ABA).

In this sense, Brazilian jurisprudence has been consolidating its understanding of the

the State's responsibility regarding treatments offered by the SUS, such as the Analysis of

Applied Behavior Analysis (ABA) directly influences the educational process of children and

adolescents with autism spectrum disorder. I cite several precedents from the Superior Court.

Court of Justice: AREsp 2099194 TO 2022/0092469-1; AgInt in REsp 1945938 MG 2021/0197762-1.

The State's responsibility lies in the implementation of Educational and Inclusion Laws.

Individualized education plans, resources and specialized support, community-wide training.

schooling and access to specialized schools. Because of its failure to ensure inclusive education.

This constitutes a violation of the fundamental rights of individuals.

In this sense, the Constitution, in its article 37, § 6, adopts the objective responsibility of

The State, that is, the public authorities, must be held responsible for damages caused to third parties regardless of...

of the existence of intent or negligence. In the educational context, this implies that the State's failure to

Providing adequate conditions for the inclusion of students with disabilities results in their

civil liability.

State negligence in this regard not only perpetuates social and educational exclusion.

for these individuals, but it also results in irreparable psychological, social, and educational damage.

State accountability, therefore, is essential to ensure that public policies of



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Inclusive education should be effective, guaranteeing that all students, regardless of their abilities, have the opportunity to participate. conditions, the full exercise of their right to education.

In light of this scenario, it is crucial that civil society, education professionals, and judicial bodies should work together to push for structural changes that ensure A truly inclusive education. The State's responsibility should not be seen only not as a punitive measure, but as a mechanism for social transformation aimed at guaranteeing the dignity and the rights of all citizens.

5. Final considerations

This study has demonstrated the undeniable complexity and urgency involved in guaranteeing the fundamental right to education for children and adolescents with Diabetes Spectrum Disorder Autistic individuals (ASD), confirming that the full effectiveness of this right is hindered by the structural omission of State. The legal and sociological analysis undertaken throughout the chapters revealed the depth of the problem.

Firstly, the study established that the right to educational inclusion is an imperative. constitutional and conventional principles, reinforced by specific legislation that treats individuals with ASD as person with a disability. Subsequently, it became evident that the education of the public with ASD requires a structural qualification that the current public system does not provide, highlighting the shortage of professionals. specialized, lack of adapted teaching resources and absence of continuing education suitable for faculty.

The main conclusion of the work lies in demonstrating that state omission in providing this qualified structure constitutes a serious violation of the fundamental right to education. imposing on the State the legal and political responsibility for such a failure. The State, by occupying the "bank" of the defendants in this study, must be compelled to assume their responsibility, since negligence in The provision of adequate services compromises the realization of human dignity and material equality.

Establishing an inclusive education for children and adolescents with ASD is not just a... It's a matter of legal compliance, but also of social justice and the promotion of human dignity. to ensure that these children and adolescents have access to an educational environment that respects Despite its unique characteristics, the State promotes the construction of a more equitable and inclusive society committed to the well-being of all its citizens. It is essential that the rights guaranteed... They should not be limited to paper, but transformed into concrete practices, contributing to the formation of autonomous, fulfilled individuals capable of fully participating in life in society.



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