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**The effectiveness of the fundamental right to inclusive education in light of the 1988 Federal Constitution.**

*The effectiveness of the fundamental right to inclusive Education in light of the 1988 Federal Constitution*

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## SUMMARY

This final course paper aims to analyze the effectiveness of the fundamental right to inclusive education in light of the 1988 Federal Constitution, considering the advances and challenges faced by the Brazilian State in promoting truly accessible and egalitarian education. The research initially addresses the history of the treatment of people with disabilities throughout the centuries, highlighting the transition from an exclusionary and welfare-oriented perspective to a paradigm of inclusion and citizenship. Next, it discusses the Brazilian context, highlighting the evolution of public policies and legal instruments aimed at educational inclusion, culminating in the constitutional consolidation of 1988 as a landmark in guaranteeing fundamental rights. Finally, it analyzes state actions and public policies aimed at inclusive education, emphasizing important advances, but also the structural, pedagogical, and formative barriers that still hinder the effectiveness of this right. This research uses the deductive method, based on bibliographic and documentary review, demonstrating that, despite legislative progress, the full realization of inclusive education depends on the effective implementation of public policies that guarantee equal opportunities and respect for diversity.

**Keywords:** Inclusive education. Federal Constitution of 1988. Fundamental rights. Public policies. Effectiveness.

## ABSTRACT

This undergraduate thesis aims to analyze the effectiveness of the fundamental right to inclusive education in light of the 1988 Federal Constitution, considering the advances and challenges faced by the Brazilian State in promoting truly accessible and egalitarian education. The research initially addresses the history of the treatment of people with disabilities over the centuries, highlighting the transition from an exclusion and welfare perspective to a paradigm of inclusion and citizenship. Next, the Brazilian context is discussed, highlighting the evolution of public policies and legal instruments aimed at educational inclusion, culminating in the 1988 constitutional consolidation as a milestone in guaranteeing fundamental rights. Finally, state actions and public policies aimed at inclusive education are analyzed, highlighting important advances, but also the structural, pedagogical, and formative barriers that still hinder the effectiveness of this right. The research uses the deductive method, based on bibliographic and documentary review, demonstrating that despite legislative progress, the full realization of inclusive education depends on the effective implementation of public policies that guarantee equal opportunities and respect for diversity.

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## 1. Introduction

Education is one of the fundamental pillars for human and social development, being recognized by the Federal Constitution of 1988 as a right of all and a duty of the State and of family. Among the constitutional principles that guide this right, the pursuit of family stands out. equal conditions for access to and retention in school, which necessarily implies... promoting inclusive education.

In this context, inclusive education represents a civilizational advance, as it recognizes the diversity as part of the human condition and seeks to ensure that all people, regardless of their limitations or disabilities, they can fully enjoy the process. education in equal opportunities.

Discussions surrounding the topic of school inclusion are present in the daily lives of... In schools, teacher training is often insufficient to help students with disabilities. The relevance of the topic addressed stems from the unusual number of research and studies surrounding it. systematized on the issue within the scope of law. Although inclusion is one of the rights Despite the fundamental rights enshrined in the 1988 Federal Constitution, prejudice is still present in society.

Historically, people with disabilities have been targets of exclusion, prejudice, and Marginalization. For centuries, society has maintained a stigmatized view of these individuals. restricting their social and educational participation. Only with the emergence of social movements and with the strengthening of human rights, especially in the second half of the 20th century, it is that A new understanding has been consolidated, based on the dignity of the human person and equality. material.

In Brazil, the promulgation of the 1988 Constitution, known as the "Citizen Constitution," It marked a turning point by expressly recognizing inclusive education as a right. fundamental, reaffirming the State's commitment to building a free and just society. and supportive.

From this milestone, various laws and public policies were created with the aim of... to promote school inclusion, such as the Law of Guidelines and Bases of National Education (Law No. 9.394/1996), the National Policy on Special Education from the Perspective of Inclusive Education (2008) and the National Education Plan (2014–2024).

Despite these regulatory advances, the effectiveness of inclusive education still faces challenges. obstacles, such as the lack of adequate infrastructure, the insufficient training of professionals in education and the persistence of exclusionary pedagogical practices.

In this context, the need to reflect critically on the role of the State and of society in promoting an education that values human diversity and ensures full



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

The exercise of citizenship for all individuals. School inclusion, more than a legal obligation, it constitutes an ethical and social commitment that reaffirms respect for fundamental rights and... dignity of the human person.

The methodology used for the development of this work was a review.

An integrative literature review that aims to gather and synthesize research on the subject in question, seeking thus providing a better understanding of the proposed topic.

The following steps were used for the analysis of this study: delimitation of the topic, characterization of the general object, specific objectives, establishment of criteria for selection, quality of information and their boundaries.

Therefore, the general objective of this work is to analyze the effectiveness of the law. fundamental to inclusive education in light of the 1988 Constitution, seeking to understand to what extent Public policies and state action have been able to transform legal guarantees into concrete reality.

To that end, three main themes are addressed: the historical treatment of people with deficiency throughout the centuries; the development of this process in Brazil and its consolidation. constitutional; the analysis of public policies and the challenges that still limit the effectiveness of inclusive education; and, finally, the human right to inclusive education as a vector of citizenship. People with disabilities.

## 2. The treatment of people with disabilities throughout the centuries

An analysis of the treatment afforded to people with disabilities throughout history. humanity reveals a path marked by exclusion, prejudice, and stigmatization, but also due to gradual advances in the social, legal, and political perception of these individuals. Understanding this The historical process is fundamental to the consolidation of inclusive education as a right. Fundamental rights guaranteed constitutionally in Brazil since 1988.

From the earliest times, people who were not considered normal by society... (Those with a physical or mental disorder) ended up being socially excluded. In In classical antiquity in Athens and Greece, children with these conditions were considered subhuman, abnormal, which justified them being victims of neglect and abandonment (Soares, 2021).

Pessotti (1948, p. 3) explains that in Sparta, those who possessed these characteristics were Launched from the top of cliffs, this practice was considered normal for many centuries in history. humanity.

In the Middle Ages, people with special needs were isolated in asylums or specialized institutions, being welcomed as sinners or as a consequence of sin. In In Ancient Greece, the ideal of physical and mental perfection permeated the entire social organization. Children who



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

Those born with some type of disability were frequently abandoned or sacrificed.

especially in Sparta, where the logic of physical strength prevailed as a requirement for citizenship.

In Athens, although there was greater tolerance, there were no policies of inclusion and the Individuals with disabilities were, to a large extent, excluded from public life. Rome, in turn, It also perpetuated practices of marginalization. It was not uncommon for children with disabilities to be rejected. Nevertheless, some Romans with physical limitations managed to achieve social mobility, especially through the arts or philosophy.

With the consolidation of Christianity, a welfare and charitable perspective emerges, where People with disabilities came to be considered children of God, thus preventing their They were abandoned because they were contrary to the designs of the deity. Thus, they came to be welcomed into hospitals, convents and churches (Pessotti, 1984, pp. 4-5).

However, even with this charitable conception, the idea that people still persisted still persisted. People with disabilities posed a risk to others; therefore, their care was provided under appropriate conditions. degrading conditions were considered a necessary measure for social security (Silva, 2009, p. 136).

Mendes (2006, p. 387) suggests that the history of special education began to be traced in 16th century, challenging all the concepts and prejudices prevalent at the time, doctors and educators They believed in the possibilities of educating these individuals who until then were considered uneducable.

Since recognizing diversity as a core value, the education system has been following this path. Constant improvement in the pursuit of an inclusive education that is, in fact, adequate and of quality. In this process, several public policies were implemented with the goal of To mitigate the negative impact of discrimination and ensure the full inclusion of people with disabilities. both in the school environment and in society. School inclusion is therefore configured as a a daily and non-negotiable commitment, essential for all individuals to have access to a An educational process that respects and values their unique characteristics.

### 3. History of the treatment of people with disabilities in Brazil

During the colonial period, the inclusion of people with disabilities was not considered an issue. Significantly relevant in Brazil, it was common for these people to be kept in homes, hidden from society. or sent to hospitals and even prisons.

It was only in the 19th century that the first actions aimed at understanding these people emerged, through Decree No. 82 of 1841, which mandated the creation of the Dom Pedro II Hospice, the first hospital for the mentally ill, which began operating in 1852 (Caliman, Manica, 2015).

The Brazilian State's concern in guaranteeing equality for people with some type of disability. The deficiency actually came about with Constitutional Amendment No. 12 of October 1987, adding a



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

The only article in the 1969 Constitution aimed at guaranteeing an improvement in social living conditions and economic benefits for people with disabilities, through free special education, assistance and rehabilitation, prohibiting discrimination, including in relation to the labor market (Costa, 2022, *cited in* Lemos, 2015).

Even with small advances toward inclusion, there was still little state action, of that sort. In this way, civil society has created its own initiatives to help people with disabilities, with the creation of Pestalozzi Societies and the Associations of Parents and Friends of Exceptional Children (APAE), focused on assisting this group of people and featuring a multidisciplinary team.

The study of the trajectory of people with disabilities in Brazil reveals a marked path. due to social invisibility, welfare dependency, and segregation, but also due to important advances. normative, institutional, and political. The construction of the fundamental right to inclusive education in The country is the result of a historical evolution marked by resistance, but also by achievements. especially since the 1988 Constitution.

Although the 1824 Constitution already guaranteed the right to education for people with disabilities... In cases of disability, this was still focused on welfare, nursing homes, and other institutions, without of great importance to the public authorities. With the promulgation of the Federal Constitution of 1988, The aim was to promote the rights of people with disabilities. According to Article 5 of the Constitution:

Article 5. All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, under the following terms (Brazil, 1988).

However, formal equality becomes insufficient, since it does not take into account the peculiarities of less fortunate individuals, thus failing to offer the same opportunities in relation to others. (Soares, 2021)

The 1988 Federal Constitution is known as the "citizen's constitution" because it highlights in Your text addresses fundamental rights and guarantees. Among them, the right to education stands out, as stipulated in Article 6. Education is the path to social construction. It is in the school environment that the child develops. Their social, motor, and emotional skills develop, and they learn to live in society.

Inclusive education is also provided for in Law No. 9,394, of December 20, 1999. 1996, which states that students with special educational needs should be included in the regular education system. Of particular note is Article 4, item III, of this Law, which states that "specialized educational services Free education for students with special needs, preferably within the regular education system.

Santos (2008) states that the school plays an important role in diagnostic investigation, since it is the child's first place of social interaction separate from their family. It is where the child will have more difficulty adapting to social rules.

According to Oliveira's view, the teacher should observe their student and encourage them enthusiastically. Approaching slowly and always with a clear objective. Interaction with the family is important.



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

Although it may seem slow, this process becomes effective when based on a lesson geared towards... the pre-established goals (Vieira, 2014).

According to Alvim's thinking (2008, p. 28):

The school environment must be permeated by the Principle of Equality so that we can realize the Democratic Rule of Law. Education is a right for all. Therefore, people with or without disabilities have the right to quality education, so that we can give due application to the Principle of Equality. Ideally, the education of people with disabilities should take place in the same space, in the same class as people without disabilities, because in this way everyone has the opportunity to develop a greater number of skills and become human beings with their full potential. Certainly, the inclusion of people with disabilities in the regular education system will show how the Principle of Equality is effectively applied.

However, despite already having a consolidated provision in the legal system In Brazil, there is still a need to train more professionals, aiming to improve education of this class of individuals.

#### **4. The role of the State and public policies aimed at inclusion: advances and challenges in implementing inclusive education in Brazil.**

As previously discussed, the 1988 Federal Constitution represents a milestone in The consolidation of fundamental rights in Brazil, by establishing broad guarantees aimed at dignity. Humanity, equality, and social inclusion.

In the field of education, its article 205 establishes that "education is a right of all and a duty of all." from the State and the family, will be promoted and encouraged with the collaboration of society" aiming at full development of the person, their preparation for the exercise of citizenship and their qualification for the work (Brazil, 1988).

Article 206 establishes equal conditions for access as a principle of education. and remaining in school and guaranteeing a standard of quality. More directly, article 208, Paragraph III ensures "specialized educational services for people with disabilities." preferably within the regular education system", enshrining the principle of inclusive education as a constitutional duty.

Based on these constitutional provisions, public policies were formulated aiming to To realize the right to inclusive education, the National Policy on Special Education from the Perspective The Inclusive Education initiative, launched in 2008, guides education systems to enroll all students. in regular classrooms and ensure specialized educational support (AEE). This policy encouraged the creation of multifunctional resource rooms and ongoing teacher training for the Meeting the specific needs of students with disabilities.

Furthermore, the National Education Plan (PNE 2014–2024) includes specific goals. aimed at expanding services for students with disabilities and global developmental disorders. Development and high abilities/giftedness in the regular education system (Brazil, 2014).



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

The Statute of Persons with Disabilities (Law No. 13.146/2015) reinforces the state's duty to

To promote educational inclusion, establishing that refusal of enrollment by institutions is not a valid reason.

It is a crime, and education systems must provide conditions for physical accessibility.

communicational and pedagogical.

However, despite the regulatory achievements, there are still structural and pedagogical challenges that...

They hinder the full implementation of these policies. According to the National Institute of Studies and Research

(INEP), many Brazilian public schools still lack architectural accessibility, resources

technological and qualified professionals to provide adequate support to students with

deficiency.

According to INEP, there is a significant number of schools lacking infrastructure, such as

Adapted bathrooms and access ramps hinder access and mobility for people with disabilities.

disability, which ultimately hinders the schooling process.

Another significant challenge is teacher training. Although the legislation provides for...

mandatory initial and ongoing teacher training for inclusive practice, many institutions

Higher education institutions still do not offer adequate training in this area.

According to Mantoan (2006), "it is not enough to place the student with disabilities in the regular classroom;

It is necessary to ensure that he has access to knowledge, through pedagogical practices that

"Respect their uniqueness."

Education is a powerful tool for child development, especially

during early childhood, as this is when the child begins to develop both academic and professional skills.

as much as it is part of daily life.

In this sense, the role of the State goes beyond the creation of laws. It involves the effective enforcement of...

public policies and the systematic monitoring of their implementation, guaranteeing real conditions

of learning and participation.

According to the Salamanca Declaration (1994), teacher training needs to be rethought.

specialized, so that they are able to work in different situations and can

to assume a key role in special educational needs programs.

School inclusion should be understood as an inseparable part of a project.

A democratic society, in which everyone truly has the same learning opportunities.

and development. Only with the effective commitment of public authorities and the community.

In schools, it will be possible to transform legal guarantees into lived realities, thus building a

A truly democratic, accessible, and inclusive school.



## 5. The human right to inclusive education as a vector of citizenship for people with disabilities.

The human right to inclusive education is one of the fundamental pillars for the dissemination of citizenship for people with disabilities, representing not only access to school, but full citizenship. participation, learning and recognition of human dignity (CNMP, 2024).

Education is a powerful tool for building citizenship. Through it, it is possible that... historically marginalized individuals can have the conditions to develop autonomy and participate. of public life and exercising their rights. In the context of people with disabilities, this process is only This is achieved when the school environment is prepared and capable of welcoming differences and eliminating... barriers and ensure equity in the school environment.

In this regard, according to Goffredo (1999, p. 67):

Inclusion, in a society of excluded people, becomes a key word for achieving true democracy. Citizenship is established through equality of rights and duties, and the opportunity to fully exercise them. {...} although this movement is much broader, also guiding all actions that emanate from social, political, and civil rights.

Therefore, the 1988 Constitution of the Federative Republic of Brazil presents a concept... of education based on equality and non-discrimination, establishing that education should be offered to all, without distinction. From it, the legal system evolved to incorporate a An inclusive vision, moving away from understanding disability from a purely medical-assistance perspective and towards... to recognize it as a result of the interaction between social impediments and barriers (Brazil, 1988).

This paradigm shift was consolidated by the UN Convention on the Rights of Children and Adolescents. People with Disabilities (CRPD), with constitutional status, which imposes on States the obligation to to guarantee inclusive education systems at all levels. Thus, inclusion ceases to be a alternative and becomes a legal and ethical duty (Brazil, 2008).

Inclusive education assumes a strategic role, enabling coexistence in diversity and promoting the construction of a more democratic society. Furthermore, it guarantees to... People with disabilities have access to the common education curriculum, accessibility, and the necessary support. for effective learning, strengthening autonomy and the ability to participate in social life. under conditions of equality (Jacomeli, 2024).

In this context, Silva, Kamianecy and Casagrande (2016, p. 11) state that:

The right to education is a fundamental right because it presupposes a process of individual development inherent to the human condition. Beyond this individual perspective, this right must be viewed, above all, collectively, as a right to an educational policy, to actions by the State that offer society the tools to achieve its goals.

In this way, inclusive education expands the possibilities for insertion into the job market. work and political participation, since education is one of the main factors for mobility. social. An education that respects individual differences and ensures adequate support contributes to that



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

people with disabilities can develop their potential, assume new social positions and to claim their rights. Thus, inclusion is not limited to the school environment, but has a direct impact in public life and in the exercise of citizenship.

In turn, it is essential to understand inclusive education as a human right. essential, analyzed from a critical perspective that ensures the full citizenship of people with disabilities. The concept of citizenship has various interpretations, given its direct link to relationships. existing relationships between the State, society, and the individual, being deeply connected to the different aspects of human rights. Initially, citizenship can be seen as equivalent to nationality, shaping the legal relationship between the individual and the State, especially in regimes democratic.

According to Benevides (1994), a citizen is someone who maintains a formal legal link with The State, and therefore possesses rights and duties defined by the legal order, including recognition. of nationality. However, this definition can generate distinctions regarding rights and responsibilities, as illustrated in article 14, § 2, of the 1988 Federal Constitution, which limits the The right to vote is exclusively for Brazilian citizens.

However, the full implementation of this right still faces significant challenges, such as... The absence of qualified professionals, insufficient teaching resources, and exclusionary practices, which These ideas still persist in some Brazilian schools. In this debate, the lessons of Bruzaca and [name missing] stand out. Conceição (2024, p. 10):

However, this journey is not without challenges and setbacks, leading to the next objective of critically understanding the concept and possibilities of inclusive education as a human right, associated with the citizenship of people with disabilities. Similarly, a literature review was conducted, taking into account that the persistence of segregating policies and the lack of commitment to inclusive education represent significant obstacles that must be faced with determination and social mobilization. It is fundamental to recognize that inclusive education is not only a human right, but also an essential pillar for the construction of a truly democratic and inclusive society. Therefore, it is imperative to defend and promote policies and practices that guarantee the full exercise of citizenship and human rights for all people, especially those historically marginalized, such as people with disabilities, capable of advancing towards a society where equality, dignity, and justice are achieved for all. This thus falls within the political field of dispute and participation of people with disabilities, strengthened by effective citizenship.

Therefore, understanding the right to inclusive education as a true path to... Citizenship means recognizing that this process does not depend on a single person or institution. It is built day by day, through the joint action of the State, schools, families and everyone else. society.

## 6. Final considerations

This final course paper analyzed laws and guarantees from a legal perspective.



**Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025**

to the education of people with disabilities, analyzing their specificities and the applicability of same in everyday life.

School inclusion is a way to eliminate prejudice, bringing different groups closer together. realities and shaping character, making everyone involved learn to live with them. differences. However, the effectiveness of the fundamental right to inclusive education in light of the Constitution. The 1988 Federal Constitution represents one of the most important contemporary challenges facing the Brazilian State. The historical journey of people with disabilities, marked by exclusion, stigmatization and This invisibility reveals that the fight for educational inclusion is the result of a long history of resistance. and social transformation.

Over the centuries, society has evolved from a welfare-oriented and segregationist vision. for the construction of an inclusive perspective, founded on the principles of material equality, of human dignity and social justice. With this, the 1988 Constitution, in inaugurating a The new legal paradigm enshrined the right to education as a fundamental right for all and a the State's inescapable duty, recognizing that access to education must occur under conditions of Equality and respect for diversity.

However, formal recognition of the right to inclusive education has not been sufficient for to ensure its full effectiveness. What is observed, in many cases, is a mismatch between the Legal provisions and practical reality. The effectiveness of fundamental rights depends not only on... the existence of legal norms, but also the concrete action of the State in their implementation. Consistent, integrated, and permanent public policies.

In this sense, state action is crucial to guarantee the material conditions that enable access and retention of students with disabilities in regular schools.

Therefore, the public policies created in recent decades represent significant progress. in consolidating a legal framework focused on inclusion. They reinforce the state's duty to promote Conditions of physical, communicational, and pedagogical accessibility, in addition to providing for training. adequate training for education professionals.

However, such regulatory advances still face structural obstacles and Institutional factors that compromise the effectiveness of this right. The reality of many public schools. Brazilian studies reveal a lack of adapted infrastructure and an absence of accessible teaching materials. deficiencies in teacher training and, especially, cultural and social resistance to inclusion. These factors demonstrate that educational inclusion has not yet achieved universality and completeness. integrity, which is upheld by the 1988 Constitution.

Inclusive education is not limited to simply including students with disabilities in the environment. school-based learning, but it implies a commitment to ensuring meaningful learning, respect for diversity and valuing differences. The role of the State, therefore, must go beyond legislative production: it is



Year V, v.2 2025 | Submission: November 28, 2025 | Accepted: November 30, 2025 | Publication: December 2, 2025

It is necessary to ensure effective public policies, continuous investments, and ongoing oversight.

The effectiveness of the right to inclusive education requires that the public authorities act on three fronts.

Key aspects: adequate physical infrastructure, ongoing professional training, and cultural change.

Pedagogical approaches in educational institutions. Only in this way will it be possible to break with the paradigm of exclusion.

and to build a school that reflects the values of equality and citizenship enshrined in the Constitution.

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