



Inclusive education and the (un)constitutionality of Decree 10,502/2020: perspectives in the context of people with disabilities

Inclusive education and the (in) constitutionality of decree 10.502/2020: perspectives in the field of persons with disabilities

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SUMMARY

Special Education is an integral modality of inclusive education, whose primary purpose is to offer quality education to everyone, without difference. Based on this statement, the objective of this research was to analyze Decree Law 10,502/2020 and reflect on its impact on the process of including people with disabilities in the educational sphere. The specific objectives were defined as: understanding the historical and legal milestones of the process of inclusion of people with disabilities in Brazilian education, discussing the unconstitutionality of the decree analyzed in light of the LBI and analyzing the meaning of the approval of the decree in terms of setback to the process of inclusion. The methodology used was bibliographical research and documentary analysis, while books, scientific articles and research published on the subject were used, as well as the study of the aforementioned legislation which, in the same year of its publication, was suspended. By way of conclusion, as it violates the principles of equality and equity, the aforementioned Decree is unconstitutional and presents in its text retrogressive actions that represent a return to previous times in which people with disabilities were simply excluded from society because they were not seen as useful. to its operation.

Key words:Inclusive education. Unconstitutionality. Disabled people.

ABSTRACT

Special Education is an integral modality of inclusive education, whose primary purpose is to offer quality education to all, without difference. Based on this statement, the objective of this research was to analyze the Decree of Law 10.502/2020 and reflect on its impact on the process of inclusion of people with disabilities in the educational field. The following specific objectives were defined: to understand the historical and legal frameworks of the process of inclusion of people with disabilities in Brazilian education, to discuss the unconstitutionality of the decree analyzed in the light of the LBI and to analyze the meaning of the approval of the decree in terms of retrogression to the process of inclusion. The methodology used was bibliographic research and document analysis, while books, scientific articles and published research on the subject were used, as well as the study of the legislation that, in the same year of its publication, was suspended. In conclusion, as it violates the principles of equality and equity, the Decree is unconstitutional and presents in its text retrogressive actions that represent a return to previous times in which people with disabilities were simply excluded from society for not being seen as useful. to its operation.

Keywords:Including Education. Unconstitutionality. Disabled people.

1. INTRODUCTION

Around the 1990s, in the global context, a phase began driven by the motto “Education for All”, with a main focus on an inclusive perspective, aimed at people with disabilities. Therefore, the motto of universalization of education became a consensus, especially from the World Declaration on Education for All (1990) and the Declaration of Salamanca (BRASIL, 1994) which were responsible for guiding the construction of documents in this sense for various countries. This is the case, for example, of the National Education Guidelines and Bases Law (LDB) (BRASIL, 1996), as well as some parameters that served and still serve to guide special education within education.

basic Brazilian.

190 Before this phase, one can imagine that schooling for this audience, the target audience for special education, was

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scarce and often segregated. The data from this story tells us that scattered initiatives took place until, in fact, it became a legal obligation. This is the case, for example, of the Instituto dos Cegos, created in 1854, and the Instituto dos Meninos Surdos-Mudos, from 1857, which to this day are in operation as the Benjamin Constant Institute and the National Institute of Education for the Deaf (INES) and with other settings. We can still highlight the initiative of psychologist Helena Antipoff, with the creation of the Pestalozzi Society, in 1932 (JANUZZI, 1992).

Nowadays, it is possible to highlight the National Guidelines for Special Education (2001), the National Education Policy from the perspective of Inclusive Education (BRASIL, 2008) and some other Laws and Decrees aimed exclusively at this purpose. Such documents have provided means to guarantee access and permanence of people with disabilities in regular education. It is worth highlighting that the special education audience includes people with disabilities, global developmental disorders and high abilities or giftedness (BRASIL, 2001).

This process of equalization of rights, far from being completed, still began very late in Brazilian society, as a whole, and not only in the educational context, especially if we analyze some other legal apparatus linked to the inclusion of people with disabilities in the social sphere. , such as Law No. 13,146, sanctioned only in 2015, also known as the Brazilian Inclusion Law (LBI) or Statute of Persons with Disabilities, whose main purpose was to “ensure and promote, under conditions of equality, the exercise of rights and fundamental freedoms for people with disabilities, aiming at their social inclusion and citizenship” (BRASIL, 2015).

The examples of progress manifested in the laws, policies and declarations highlighted above, however, are in line with the publication, in October 2020, of Decree No. 10,502, of September 30, 2020, which establishes the National Special Education Policy: equitable, inclusive and with lifelong learning, signed by the President of the Republic, Jair Messias Bolsonaro.

Identified as a setback, many published manifestos and notes of repudiation against the Decree which, in its most drastic measure, abolishes the obligation that regular schools have to enroll students with disabilities, in addition to allowing the return of teaching for these subjects. by specialized institutions (BRASIL, 2020).

Given this fact, and analyzing inconsistencies and mistakes made by the decree, it is possible to question the existence of unconstitutionality of this deliberation, considering that the principle of inclusion of people with disabilities in Brazilian society is in the constitutional text, included by the LBI, the which goes completely against the segregation proposed by the idea of “specialized schools”. Furthermore, it is necessary to question how the decree will impact the inclusive education movement.

Based on this problematization, the objective of this research is to analyze Decree Law 10,502/2020 and reflect on its impact on the process of inclusion of people with disabilities in the educational sphere. The specific objectives were defined as: understanding the historical and legal milestones of the process of inclusion of people with disabilities in Brazilian education, discussing the unconstitutionality of the decree analyzed in light of the LBI and analyzing the meaning of the approval of the decree in terms of setback to the inclusion process. To this end, the methodology used was bibliographical research and documentary analysis, while books, scientific articles and research published on the subject were used, as well as the study of the aforementioned legislation which, in the same year of its publication, was suspended. .

2. THEORETICAL FRAMEWORK

2.1 Brief history of special education in Brazil

As Mantoan (2015) points out, the motto of the process of inclusion in schools is not to leave anyone “outside” regular education, from the beginning of school life. Therefore, inclusion implies a change in educational perspective by not only reaching students with disabilities, but everyone else, valuing differences.

Although this information now sounds acceptable and even necessary, this was not always the case. In ancient literature, people with intellectual disabilities were relegated to the occupation of court jesters or clowns. In Antiquity, they were either exterminated from birth because they were considered obstacles to the survival of the group, or they were excluded and mistreated because they were seen as manifestations of the devil or divine punishment (NUNES et al., 2015).

It was thanks to Christianity, in the Middle Ages, that this situation began to change: “Christianity, still in the Middle Ages, interfered in the way these people were treated, who began to be supported in care homes maintained by feudal lords” (NUNES et al., 2015, p. 1108). However, it was only at the beginning of the 20th century, with the emergence of medical and psychological studies on people's intelligence, which provides a new view on individuals with disabilities were being gestated.

When analyzing special education in various countries, including Brazil, it is common for different periods to occur that mark changes in the conception of disability and, consequently, in this type of teaching, given the abandonment suffered by disabled people over a long period. history, due to conditions considered inappropriate for “good” social functioning and treatment that varied between charity and punishment.

Brazilian special education has its genesis in the 19th century, inspired by American and European experiences brought by Brazilians who were willing to organize themselves to serve people with disabilities. Few moments

that deserve to be referenced as the beginning of offering special education were the creation of the Institute for the Blind, created in 1854, currently known as the Benjamin Constant Institute (still in operation) and, in 1857, the Institute for Deaf-Mute Boys (currently it is INES or National Institute of Education for the Deaf). Another particularity that unites the two institutions is that they had their headquarters in Rio de Janeiro, having been an initiative of the imperial government, which corroborates the statement that ideas for helping people with disabilities, to a large extent, were brought from other countries. countries (JANUZZI, 1992).

Despite the aforementioned institutions acting in a segregating manner, and considering the current perspective of integration of differences, they were important actions by the government to offer education to people with disabilities. On the other hand, during the First Republic in Brazil (1889-1930), it is possible to observe a medicalization of disabilities and the interest of doctors in studying children with more severe disabilities and the creation of places next to psychiatric hospitals to care for this condition. clientele (MENDES, 2010a). As Mendes (2010a) points out:

This interest of doctors in people with disabilities would have greater repercussions after the creation of mental hygiene and public health services, which in some states gave rise to the medical-school inspection service and the concern with the identification and education of abnormal states of intelligence. (MENDES, 2010a, p. 95).

In 1920, changes began to emerge in Brazilian education, which underwent several reforms based on inspiration from the New School ideology. To implement these changes, European teacher-psychologists came to Brazilian soil to offer training in this regard for the country's teachers, an attitude that influenced the paths of Special Education in Brazil. One of these examples was the arrival, in 1929, of the Russian psychologist Helena Antipoff, in Minas Gerais. The educator was responsible for establishing the Pestalozzi Society in this state, an institution that offered diagnostic services and classes to care for people with disabilities (JANNUZZI, 1992).

In 1957, the public authorities created campaigns to address each of the deficiencies, starting the Campaign for the Education of the Brazilian Deaf (CESB). In turn, the aforementioned Pestalozzi Society, which had been operating for over 30 years on Brazilian soil, already had 16 institutions across the country, which significantly increased assistance to people with disabilities. One cannot fail to mention the Association of Parents and Friends of the Exceptional, APAE, created in 1954 and which also played a fundamental role in the development and insertion of its target audience in society (MENDES, 1995).

In view of the growing initiatives towards organizing an inclusive society, the Brazilian Magna Carta was a divider, in this sense, as it brought in its text reflections of this paradigm shift, guiding issues such as the role of Social Assistance for people with disabilities, insertion in the job market without distinction or differentiation, obligation of the Union to protect and social integration of people with disabilities, among others (BRASIL, 1988).

Still highlighting foreign participation in the process of raising awareness in Brazilian society about the need to include people with disabilities in all areas of the country's functioning, the 1990s also strongly demarcated this movement as a movement began to develop in favor of inclusive society created by the United Nations.

Under the motto of the resolution "Society for All", the UN call offered a kind of universal direction for this inclusion to be implemented. The educational field could not be excluded from this process and, in 1994, following the meeting that had the Salamanca Declaration as its main result, several countries signed the document that aimed to modify educational institutions based on a principle of inclusion (BIAGGIO, 2007, p. 20). As the previous model proposed a welfare vision and provided for compensatory education, the declaration became an important counterpoint to this deep-rooted thought, as it innovated by bringing an integral vision of development, in which the student is considered as an autonomous person, inserted in a given context. socio, historical and cultural. This Declaration also highlights the need to implement a Pedagogy focused on the diversity and specific needs of students in different contexts, with the adoption of different pedagogical strategies that can benefit all students (BIAGGIO, 2007).

2.2 Standardization of special education

192

It is noticeable that several isolated actions gave rise to inclusive education in Brazil, such as the creation of institutes and organizations that work in the area of social inclusion of people with disabilities, providing these individuals with the necessary conditions to live in society. This entire context of struggle leads to the importance of talking about some of the legal mechanisms that played a fundamental role in this situation. This is the case, for example, of the Education Guidelines and Bases Law, the main text that governs basic education in the country.

The first, published in 1961, highlights in article 88: "The education of exceptional people must, as far as possible, fit into the general education system, in order to integrate them into the community" (BRASIL, 1961) and complements it with the article 89

with the possibility of financing from private institutions that also take care of this function.

In 1971, the second LDB, Law No. 5,602/1971, was enacted, which defined the target audience for special education: students with physical disabilities, intellectual disabilities, gifted students and those with age/grade distortion. At that moment, special education officially became responsible for the education of students who did not meet the requirements of regular schools (BRASIL, 1971).

In 1973, the National Center for Special Education (Cenesp) was created by the Ministry of Education, responsible for special education policy. Glat et al. (2007, p. 21) highlight: “[...] Special education subsystems were implemented in the various public education networks through the creation of special schools and classes”, the forecast of investments in projects focusing on the training of specialized teachers, at postgraduate level outside the country.

In the meantime, the Federal Constitution of 1988, with regard to education, reflected the changes that had been taking place, guiding that special education should occur in the regular education network and guaranteeing the right to specialized educational assistance (BRASIL, 1988). It is necessary to emphasize that the events of the last decades of the 20th century represent the integration between economic, scientific and legal transformations, which occurred not only in Brazil, but in a global context, culminating in the proposal for inclusive education, which is defined by Mendes (2010b):

The term 'inclusive education' was a proposal for the practical application to the field of education of a global movement, called 'Social Inclusion', which is proposed as a new paradigm, which would imply the construction of a bilateral process in which excluded people and society seeks, in partnership, to achieve equal opportunities for all. (MENDES, 2010b, p. 22).

Based on the inclusion proposal that was being created in the country at that time, it is clear that the focus was not exclusively on people with disabilities, but included the school environment, as it is in this space that conditions for access must be offered. adequate, providing full conditions for the participation of people with disabilities. Given this finding, we see the complexity of the inclusion process, since the expression “offering adequate conditions” covers several areas of what school education would be.

The third LDB nº 9394/96 was promulgated two years after the aforementioned Declaration of Salamanca, which allowed Brazilian law to add principles from that document. Thus, the new law on guidelines and bases for education has a chapter dedicated to special education, which defines what is meant by this type of teaching: “a type of school education offered preferably in the regular education network, for students with disabilities, global developmental disorders and high abilities or giftedness” (BRASIL, 1996).

LDB also provides specialized assistance, which must be provided in specific classes and depending on the conditions of each student, whenever it is not possible to integrate them into common classes. And, no less important, discipline on teacher training for work in Special Education, since the methods, techniques and curricula must be aimed, in a singular way, at students with disabilities, global developmental disorders and high abilities or giftedness (BRAZIL, 1996).

This legislation, which defines and regulates the Brazilian educational system, is fundamental for inclusive education as it establishes the basis for its implementation and for it to occur, within regular education and not in a segregated manner, in specialized schools, for example. With the bases established, other legal mechanisms emerge, in order to regulate each of the possibilities to be offered to students with disabilities.

This is the case of Decree 7,611/11, a presidential decree that regulates special education, specialized educational services, among others. The focus of this decree is the promotion of inclusive education, governed by the basic principles set out in its Article 1. The decree determines that inclusive education is a duty of the State and that, by offering specialized support, it eliminates barriers that obstruct the schooling process of students with disabilities (BRASIL, 2011). This will occur through family participation, articulation of public policies and “teaching and educational materials in Braille, audio and Brazilian Sign Language - LIBRAS, laptops with voice synthesizer, software for alternative communication and other technical aids that enable access to the curriculum” (BRAZIL, 2011).

In addition to the LDB, decrees and technical notes were created to offer guidance so that special education exists in schools. These documents culminate, in 2008, in the National Policy on Special Education from the Perspective of Inclusive Education (PNEE-EI), which states that inclusive education is a paradigm based on the conception of rights of humans (BRAZIL, 2008).

193 It is clear, from what has been presented so far, that the long process of implementing special education in the perspective of inclusive education has made advances without which it would not be possible for a considerable number of people with disabilities in Brazil to have access to quality education.

However, it is necessary to emphasize that the inclusive principle is still threatened, given the moves initiated in 2018 by the Ministry of Education and which gave rise to Decree No. 10,502, of September 30, 2020, which establishes the National Special Education Policy: Equitable, Inclusive and Lifelong Learning.

3. MATERIALS AND METHODS

From the point of view of its characteristics, this is an exploratory study that has a qualitative approach. The procedures adopted to develop this research were: bibliographic research and document analysis. Initially, bibliographical research was carried out with the aim of delving deeper into the topic, understanding the history of inclusive education in Brazil, as well as the legislation that accompanies its implementation process. To this end, we used books, articles and academic research already published and dedicated to this topic, such as Januzzi (1992), Mendes (2010a; 2010b), Mantoan (2015), among others.

The documentary analysis occurred based on the assessment of the legislation concerning PNEE-2020, established through Presidential Decree No. 10,502, of December 30, 2020, in addition to the comparison of its unconstitutionality based on the Federal Constitution of 1988, the Brazilian Law of Inclusion (LBI), as well as legislation focused on Special Education.

Finally, a discussion was held about the setback that the decree means, even if it has been revoked, and what the attempt to modify educational policies linked to inclusive education represents in the ways that have been designed since 2016, based on the *corpustheory* gathered in the bibliographical research stage.

4. RESULTS AND DISCUSSIONS

4.1 The “new” special education policy and its consequences

Presidential Decree No. 10,502, of September 30, 2020, established the new PNEE, in an attempt to replace the one promulgated in 2008. As pointed out by Rocha et al. (2021), was in the context of *impeachment* of Dilma Rousseff, which occurred in 2016, and the worsening of a political crisis in Brazil that saw the beginning of changes in policies aimed at Special Education in the country. In 2017, when Michel Temer had already assumed the presidency, notices were opened to select specialists who would be consultants for reforms and updates in basic education and higher education based on interference and even modifications in the National Curricular Guidelines for Special Education in Brazil.

The conclusion of these actions led to an even greater polarization between the political left and right, which had already been in conflict for some time. Thus, the first defended the maintenance of PNEE-EI/2008, while the right saw the urgency of reviewing policies aimed at special education, which led the Secretariat of Continuing Education, Literacy, Diversity and Inclusion (SECADI) to open a public consultation, in 2018, on the provisional text of the aforementioned “National Education Policy...”. This selection included the participation of the research group at the Federal University of Alagoas to create a digital platform so that people could access, analyze the text and offer their opinion (ROCHA et al., 2021).

Not without protest from various groups in society, such as educators and social movements for people with disabilities, the public consultation was concluded with the negligible participation of 8,329 (eight thousand three hundred and twenty-nine) people from all over Brazil, which could be justified by the short time for access and the insufficient publicity carried out by the government. Rocha et al. (2021) report, in this sense:

After the delivery of the report, in December 2018, in the following month, January 2019, there were changes in the Executive Branch, with the inauguration of the new President of the Republic. As a result, the proposal for a new PNEE was shelved for almost two years until it was published in 2020, in October, on page 6 of the Official Gazette of the Union (DOU). The publication reveals a different document to the one finalized in the 2018 report, being a simplified version with several items deleted. (ROCHA et al., 2021, p. 5).

This text, which was then published without any satisfaction to the Brazilian population and interest groups, in addition to the signature of the President of the Republic, Jair Messias Bolsonaro, was signed by the Minister of Education and the Minister of Women, Family and Human Rights. The act was shown on the Planalto channel on *YouTube*. Even with all the commotion on the part of supporters, this was the shortest-lasting national Special Education policy in Brazilian history, lasting 60 days, as, 26 days after its publication, it was filed by the Socialist Party (PSB), a request for precautionary measure, through a Direct Action of Unconstitutionality (ADI), submitted to the Federal Supreme Court (STF).

The decision of the reporting Minister, regarding the aforementioned request, was published on December 3, as follows: “In view of the above, I grant the precautionary measure requested, ad referendum of the Plenary, to suspend the effectiveness of Decree No. 10,502/2020, submitting this decision to referendum in the virtual session that begins on 12/11/2020” (BRASIL, 2020a, p. 26).

As a way of supporting his decision, as well as obtaining support to support it, the rapporteur accepted the request of groups with *expertise* on the theme of PNEE-2020 and obviously against it, to enter the process as a *amicus curiae*. This decision, as stated, was intended to support the matter in question with scientific data.

(LULIA; DOMINGUES, 2018).

Two days after the end of the trial, which took place on December 19, 2020, an injunction was published endorsing the decision to suspend Decree No. 10,502/2020: “The Court, by majority, endorsed the injunction decision to suspend the effectiveness of Decree No. 10,502/2020, in accordance with the Rapporteur’s vote, with Ministers Marco Aurélio and Nunes Marques defeated” (PORTAL STF, 2020). When granting the injunction, Minister Dias Toffoli highlighted that the project could: “found public policies that weaken the imperative of including students with disabilities, global developmental disorders and high abilities or giftedness in the regular education network” (PORTAL STF, 2020).

Given these facts, it is possible to analyze from what is described in the jurisprudence, that the suspension attitude practiced by the Federal Supreme Court (STF) occurred due to the fact that the dubious legal provision did not have the power to create, extinguish or modify rights and obligations. During this suspension, the fact was also exposed that the Presidential Decree went against what was established in the constitutional text, thus being considered unconstitutional, as it violated current laws, namely, the Federal Constitution of 1988, and the Constitutional Amendment in the form of Legislative Decree No. 6,949, of August 25, 2009, which approved the Convention on the Rights of Persons with Disabilities (BRASIL, 2009). Taking into account the context in which the decree was drawn up, it is possible to say that the entire process involving it was silent and without effective popular participation, or at least interest groups. This is because, as already reported, even though there was a public consultation, the number of participants was insufficient, if we consider that the IBGE demographic census, carried out in 2010, made it aware that 24% of the Brazilian population had some type of difficulty in at least one of the skills investigated (seeing, hearing, walking or climbing steps), or had a mental/intellectual disability, the latter representing 1.4% of the total number of people with disabilities.

Furthermore, it is still necessary to highlight that countless researchers and educators on this topic, supported by theories developed worldwide about the process of social inclusion, should also be heard, given that they have the *know-how* to offer the best alternatives in this regard. The “silence” is also exposed by the fact that the PNEE-2020 proposal was forgotten during two years of the current government, emerging with the publication of the decree in September 2020, with notice the day before about the signing ceremony.

Regarding the citizen Constitution, it provides that education is based on equal conditions for all to access and remain in school (article 206, item I), being the right of all (article 205), further expressing in its article 208 that the State’s duty with education will be provided through “specialized educational assistance for people with disabilities, preferably in the regular education network”. The combination of these articles, when extended to Special Education, asserts the equity sought in special education from an inclusive perspective, insofar as the integration of students with disabilities into the regular education network cannot occur through the mere enrollment of these subjects in schools across the world. the country, without adequate conditions being offered.

Add to this the fact that the decree analyzed here offers the possibility of creating “specialized schools”:

[...] educational institutions designed to provide educational services **to special education students who do not benefit**, in its development, **when included in regular inclusive schools** and that present a demand for multiple and continuous support; VII - specialized classes - classes organized in inclusive regular schools, with accessible architecture, equipment, furniture, pedagogical design and teaching material, planned with a view to meeting the specificities of the public for which they are intended, and which must be led by qualified professionals to the fulfillment of its purpose [...]. (BRAZIL, 2020b, *online*, emphasis added).

The provision of specialized schools as an alternative to inclusive schools also goes against what is established in the LBI and the Convention on the Rights of Persons with Disabilities, the text of which was incorporated into the Federal Constitution in 2008. Therefore, this idea is completely unconstitutional, as in which the concept of inclusive schools and, therefore, the inclusive educational system, presupposes that all classes are inclusive, with no imperative or reasonable proof for the installation of “specialized” places. By offering this possibility, stating: “specialized classes [...] with a view to meeting specificities”, the Decree demonstrates that it is not correctly contemplating the difference between a classroom and the space occupied by the AEE.

As Alves (2006) defines, AEE are spaces in the school where specialized care is provided through the development of learning strategies, centered on pedagogical practice that benefits the construction of knowledge on the part of students, offering support for them to develop the curriculum and participate actively, within their possibilities, in school life. In this sense, contrary to what one might think, the intention of the multifunctional room and specialized service is not to segregate like that of “specialized” schools and classes, but to offer more conditions to special education students to fully develop their skills.

It is important to understand the setback that the decree brings with it, from the point of view of the dismantling of the inclusive perspective, since the achievements achieved are the result of a process of struggle. Furthermore, as the 2020 decree did not demonstrate, inclusive education is not the separation between subjects or groups, but rather the guarantee that all people with disabilities

have the right to access and participate in a common education model, which is emancipatory and egalitarian, without denying daily coexistence between people with and without disabilities in the same school and classroom. The speech that emerges from the decree, declared unconstitutional even before it came into force, despite highlighting the commitment to inclusion and equity for all, in a contradictory way, displays in its text a less “equitable” perspective than what was announced, given the title “National Special Education Policy: Equitable, Inclusive and with Lifelong Learning”, as it admits segregation, separation and, consequently, exclusion of its target audience, relegating them to spaces without diversity and which do not contemplate the socializing perspective of education and respect for differences.

FINAL CONSIDERATIONS

Despite the discussion intended here about the reasons why Decree No. 10,502/2020 was considered unconstitutional and revoked, understanding the paths that led to the drafting of the aforementioned legal instrument offers elements for reflecting on the setback that ends the entire course of the aforementioned decree, long before the events of 2016 and 2017, given that the fight for an inclusive society has been the daily agenda of social movements linked to this banner. Thus, it is understood that the possibility of approval and the existence of organized groups so that retrogressive actions such as those in the legal text analyzed here are put into practice, in themselves already represent a return to previous times in which people with disabilities were simply excluded from society because they are not seen as useful to its functioning.

The possibility of creating specialized classes, one of the most criticized points in the text, refers to the idea that people with disabilities are backward and, therefore, will be an obstacle to the development of “normal” classes, even though it is foreseen in the decree that these Schools must exist for those students who do not adapt to regular schools. This, in itself, would be one of the points that most violates the Constitution, given the relativization of the principles of equality and equity, as well as international treaties on the topic of inclusion. Furthermore, despite repeating several excerpts from the 2008 PNEE, it reintroduces the biologizing perspective, which focuses on disability, and does not consider other spheres of the human being.

On the other hand, the position of the STF, as well as of all those who opposed, formally or informally, the decree, shows that Brazilian society does not have homogeneous thinking that foresees the separation of people according to their differences. In this area, dialogue with society and interest groups is essential before the imposition of any decree or law, under the risk that the next legal guidelines will be completely at odds with the needs of these subjects.

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