



## Essay

### Legal Guidelines for the Gifted Student

**Diretrizes legais para o atendimento do estudante com altas habilidades/superdotação**

**Directrices legales para la atención del estudiante con altas habilidades/superdotación**

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#### Abstract

Current Brazilian legislation defines the gifted as those who have high ability and high involvement in areas of human knowledge (intellectual, leadership, psychomotor, arts and creativity), whether in isolation or in combined areas. The law nº 9.394/1996, integrates these students to the public of Special Education and assures them education appropriate to their needs, possibility of acceleration of studies, specialized educational assistance and special education for work. However, the estimates indicate that a large number of these students are unassisted, without them being at least identified by the educational systems. The historical recovery of the legal guidelines that guided and guide the educational service of the gifted in Brazil reveals that the national legislation was preceded by isolated pedagogical practices, which began in the first half of the twentieth century. Initiatives in favor of the gifted have gained strength after the law nº 5.692/1971 explicitly mentions this pupil. At that time, the Federal Council of Education issued opinions aimed at meeting the needs of this public, but the expansion of care has occurred in a gradual and modest way, so that, despite a series of legal documents issued in the last decades, the gifted remain with their potentialities and needs ignored.

**Keywords:** Special Education; Education Guidelines; Giftedness.

**Palavras-chave:** Educação especial, Diretrizes da educação, Superdotação.

**Palabra clave:** Educación especial, Pautas educativas, Superdotación.

#### You Have to Be Careful for Not Suffering Later<sup>4</sup>

*All of us, currently adults, are responsible for the future. Parents, teachers, public men, priests, writers, artists – everyone will share the blame if the generation that replaces us is imperfect as ours or worse than ours... Taking care of the well-gifted children is to predict the paths of a future society, in a certain way (ANTIPOFF, 1992b, p. 11, apud ANTIPOFF, 2010, p. 60).*

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<sup>4</sup> "É Preciso Saber Viver", composed by Roberto and Erasmo Carlos.

Quality Education is one of the bases that support any nation seeking high levels of technological, scientific, cultural, and social development (GAMA, 2013, p. 176). Without investments in the development of a critical mass, people are impoverished, becoming hostage to their ignorance (SILVA, 2015).

Nevertheless, this type of Education is built with a multiplicity of factors – laws that regulate its practice, with financial investments, appropriate spaces, diverse pedagogical material, external partnership, and, perhaps, the most important factor of all this mechanism: human potential. Under this scenario, teachers are fundamentally important during the creation of quality education, consequently, their training is extremely relevant. A teacher whose education is deficient will possibly have great obstacles to raise the quality of classes, and a discouraging class without challenges weakens the students' critical mass, impoverishes their actions, and creates a country doomed to lethargic development (GAMA, 2013).

This scenario worsens concerning gifted students because a discouraging class sometimes has devastating effects. It decreases their production (GUENTHER, 2006, p. 39; MAIA-PINTO; FLEITH, 2013, p. 149), resulting in a loss of their high potential in order to adjust themselves to social expectations (OUROFINO; GUIMARÃES, 2007, p. 48) and “making their performance mediocre” (GUENTHER, 2006, p. 55), so they frequently present symptoms of depression and boredom (MAIA-PINTO; FLEITH, 2013, p. 149).

Certainly, the universalization of a high-level education is required, however, it is not possible to neglect or delay the education of gifted children (DELOU, 2007, p. 38) while pursuing this objective “because its development will drive the education improvement” (GAMA, 2013, p. 187). According to Viana (2011), students with above-average intelligence are not easily adapted to the traditional teaching model, which prevents them from questioning, disagreeing, expressing their opinions, investigating, and creating. Unquestionably, the educational transformation that these students demand is beneficial to everyone, since we aim at educating critical and active citizens.

As stated by Gama (2013), it is understood that countries with international prominence consider the education of the gifted children to be at the heart of their development, from a point of view of economy and development. Paraphrasing Gallagher, the author dared to say that “Brazil [a developing country] is neither so rich nor so blessed with natural resources, so it can educationally ignore the human potential existing in gifted students” (p. 189). Therefore, she considered that the country needs to invest strategically in the development of Science and Technology, consequently boosting democracy in favor of the whole society (GAMA, 2013), since the investment in human potential is one of the solutions (FLEITH; ALENCAR, 2010). For this purpose, the school must undergo great transformations, which must be linked to a deep transformation of society itself (MIRANDA, 2008) and become more suitable to individuals' growth of skills.

Social, school, and family factors influence the manifestation and development of talents. Accordingly, the resources, conditions, and possibilities that the environment offers are decisive for using or wasting the individuals' potential (ALMEIDA; ARAÚJO; SAINZ-GÓMES; PRIETO, 2016; MIRANDA; ARAÚJO; ALMEIDA, 2013; SÁNCHEZ ANEAS, 2013). From this point of view, Viana (2011) warned that the possible use of superior skills in antisocial practices is even more serious than the waste of the contributions of our best human resources to social advancement, as a result of society's negligence concerning gifted individuals. “For the most gifted individuals to become society support [...] it is necessary to give them special care” (ANTIPOFF, 1992b, p. 15, *apud* ANTIPOFF, 2010, p. 94).

For this reason, a theoretical essay, based on documents in the field of Special Education from the perspective of inclusive education, can confront what Delou (2007, p. 27) called “contradictory contrast between the continuity and discontinuity” of public

policies regarding the education of gifted students. Consequently, both for the objectives adopted in this work and the arbitrariness regarding the selection of the analyzed legal texts, the essay is configured with a narrative bibliographic review that “[...] presents a more open theme; hardly part of a specific, well-defined issue, not requiring a rigid protocol for its preparation. Therefore, the search for sources is not predetermined and specific, and is often less comprehensive” (VOSGERAU; ROMANOWSKI, 2014, p. 430).

*Data venia* to be less comprehensive, Rother (2007) assumed great importance, due to its rapid acquisition and updating on a given topic in a short period.

Regarding this, it is important to trace a brief history of the trajectory of Special Education in Brazil, highlighting the legal provisions aimed at gifted students, among which are Imperial Decree No. 1,426 of March 12th, 1854; Constitution of the Federative Republic of Brazil (1988); Child and Adolescent Statute (1990); Declaration of Salamanca (1994); Law on Brazilian Education Guidelines and Bases (Law 9,394/1996) and its changes; National Special Education Policy from the Perspective of Inclusive Education (2008) and CNE/CEB Resolutions No. 2 (2001) and No. 4 (2009b).

### **And Brazil Starts Thinking about Gifted Students...**

Some centuries have passed since the first Brazilian educational actions – of assistance and philanthropic nature –, towards a currently inclusive Special Education (MIRANDA, 2008).

This type of Education was inspired by the liberal thought, influenced mainly by France between the 18th and 19th centuries, and it took place on the initiative of the Imperial government with the foundation of the Imperial Institute of the Blind Boys (today, Benjamin Constant Institute), through *Imperial Decree No. 1,426 of September 12th, 1854* (BRASIL, 1854). Three years later, it was created the Imperial Institute for the Deaf and Mute (today, National Institute of Deaf Education), but both in Rio de Janeiro (RJ) through *Law No. 839 of September 26th, 1857* (SIGOLO; GUERREIRO; CRUZ, 2010, p. 174; MIRANDA, 2008, p. 31). Therefore, Brazilian Special Education has arisen with medical-pedagogical and psycho-pedagogical aspects of assistance, aimed at only 50 individuals with visual and hearing disabilities (MIRANDA, 2008, p.31), which was not free for everybody, according to Art. 21 of the Decree in 1854.

Specifying the quantitative insignificance of the services provided, Jannuzzi (2006) revealed that 35 students with visual disabilities attended the Imperial Institute of the Blind Boys in 1874, while 17 students with hearing disabilities attended the Imperial Institute for the Deaf and Mute. The census of the Brazilian population of 1872 registered 15,848 and 11,595 people with both disabilities; however, these two institutions had an important contribution by openly discussing Special Education.

On the other hand, intellectual disability started to be the target of educational assistance after 1903, when the Bourneville Pavilion-School was founded because of the National Hospital for Alienated renovation in Rio de Janeiro. By that time, it was common for children considered to be abnormal being sent to the asylums of the alienated, which were places that functioned precariously, serving to shelter and providing food for the needy population under government support, according to Holanda (1976 *apud* JANNUZZI, 2006).

Between the 1920s and 1930s, the psycho-pedagogical aspect was influenced by the educational movement at Escola-Nova that “[...] allowed Psychology in Education and the use of intelligence tests [especially] to diagnose mentally disabled individuals” (MIRANDA, 2008, p. 32, emphasis added). Up to this time, there was no law in force mentioning gifted individuals. Delou stated that “[...] the first *validations of American intelligence tests*” intended for these individuals were performed in Brazil only around 1924, in Recife and the Federal District (2007, p. 27, emphasis added). In 1929, due to the

Reform of the Primary, Professional and Normal Education of the State of Rio de Janeiro, students were identified as gifted; however, even though the pedagogical work was guaranteed in the state legislation, “[...] without the existence of public policies that could support the actions for the education of these students, there was no possibility of meeting their educational needs” to achieve consistency (ANTIPOFF, 2010, p. 62) becoming isolated initiatives (DELOU, 2007). Afterward, in 1931, the first national book about giftedness was published: *A educação dos Super-Normais* (The Education of the Super-Normal Individuals) by Leoni Kaseff (GAMA, 2006; KASEFF, 1933), but legislative and practical initiatives were difficult to implement. Then based on a political and punctual decision, this history began to change.

Still due to the ideals of the educational movement of Escola-Nova (MIRANDA, 2008), in 1929, the governor of Minas Gerais State, Antônio Carlos Ribeiro de Andrade (ALVARENGA, 2014), invited Helena Wladimirna Antipoff, a Russian psychologist and educator, to teach in the Teacher Improvement School, “[...] aiming at the training of educators committed to the new educational methods inspired by Psychology” (CAMPOS, 2003, p. 216; DELOU, 2007, p. 28). One of its roles was to advise the education system on the application of intelligence tests to collaborate with public schools, regarding the organization of “homogeneous classes”, based on the intellectual level of students, and “special classes” provided in the legislation in force at the time (CAMPOS, 2003, p. 217).

Antipoff defended the integration of practice and theory, therefore, her students performed a psychological analysis in students of school groups and regular schools in the last semester of her course, accompanied by a psychosocial analysis of schools, demanding a final report, containing “[...] personality aspects concerning their physical and social development, in addition to a survey of school performance and its determining factors” (CAMPOS, 2003, p. 217). These data were the object of extensive research and, with interpretation on socio-cultural bases, contrary to the “[...] hegemonic innate ideology of the time”, Antipoff created the term *exceptional* (opposed to derogatory terms, as “idiot” and “retarded”) to refer to the students “[...] whose tests results were far from normality”. According to her, the results of intelligence tests after research, based mainly on Binet and Simon, could be considered as a “civilized intelligence”, that is, the intelligence acquired by the individuals’ mental nature interacting with society and experienced by the time (CAMPOS, 2003, p. 218).

Helena Antipoff’s contributions to the area of Special Education were numerous and she also participated in the creation of institutions aimed at serving “exceptional children”: Pestalozzi Society (1932); Brazilian Pestalozzi Society [SPB] (1945); Brazilian Association of Parents and Friends of Disabled People [APAE] (1954); and Milton Campos Association for the Development and Assistance of the Gifted Vocation [ADAV] (1973), which assisted “well-gifted” children (DOMINGUES, 2011). This new “genre of clients” was revealed by Antipoff to the Pestalozzi Society in 1938 and, one year later, she included above-average students (the super-normal individuals) of her comparable group to the term *exceptional*, which was only represented by the infra-normal individuals in the Statute of Brazilian Pestalozzi Society (GUENTHER, 2011, p. 6; DELOU, 2007, p. 28).

In 1945, Antipoff already grouped “well-gifted” students for the studies of literature, theater, and music in the Pestalozzi Society at Rio de Janeiro (NOVAES, 1979). Unlike others involved in the field, she believed that this group was not restricted to the areas assessed by traditional intelligence tests (language and logical-reasoning), but could be found in several areas of human construct: Arts, Sciences, Sports, etc. (ANTIPOFF, 2010).

Considering the nomenclature invented by Antipoff, *Law No. 4,024 of 20th of December of 1961* establishes the National Education Guidelines and Bases [LDB]<sup>5</sup> and

<sup>5</sup> “The Law on Education Guidelines and Bases (LDB) defines and regulates the Brazilian education system based on the principles of the Constitution. It was first mentioned in the Constitution of 1934. The first bill was referred to the

dedicates its Title X to the *Education of Exceptional Individuals*, suggesting in Art. 88 that their education was included in the general education system, whenever possible, aiming at their integration in the community. Nonetheless, this action was incipient and, in 1963, Helena Antipoff complained about the lack of attention to the exceptionally well-gifted individuals, showing the inefficiency of the law by the law, because “[...] society and governments have done something for the disabled individuals and the exceptionally poorly gifted individuals, but the well-gifted individuals have not received proper attention so far!” (GUENTHER, 2011, p. 6).

On August 11th, 1971, a reformulation of LDB of 1961, *Law No. 5,692* (BRASIL, 1971) was published. Its Art. 9 adopted the term *gifted*, referring to the above-average students of the comparable group of Helena Antipoff. She “[...] strongly opposed herself to this term because it was related to human powers, ‘*avis rara*’, an attraction, an exception, a negative idea for the Education” (GUENTHER, 2011, p. 207, emphasis added). This legislative action “[...] does not promote the organization of a teaching system that meets special educational needs and ends up reinforcing the referral of students to special classes and schools.” Although current policies guarantee access to school for everyone, “[...] specialized care is not organized considering the learning singularities of these students” (BRASIL, 2008, p. 7; BRASIL, 2010).

This scenario motivates the pedagogue, who was already in her last years of life in the 1970s, to dedicate herself to “[...] the discovery of talents and well-gifted individuals education” and the creation of ADAV in 1972, “[...] dedicated to discovering and encouraging talent and creativity”, which received “[...] children appointed by public schools in the metropolitan region of Belo Horizonte. Therefore, the children in internship or semi-internship could be submitted to an intensive program for the development of creativity and talent on weekends” (CAMPOS, 2003, p. 226; GUENTHER, 2011, p. 209). This is considered a historic landmark in Brazil, offering a “[...] physical, educational, cultural and social environment that would stimulate and provide [to talented adolescents] the development of their personalities” (ANTIPOFF, 2010, p. 107). Helena Antipoff, a pioneer in the identification and assistance of gifted students in Brazil died in August of 1974, leaving the following questions behind:

Regular schools? Special schools only for well-gifted students? Regular schools with differentiated activities, with dynamic methods and expansion of special skills and the development of the scientific spirit of the well-gifted students? [...] Among children of lesser capacity, will the well-gifted students lose opportunities for their development? In special schools, with a small group of well-gifted students, will they be missing out on their social and moral development, with a risk of feeling isolated, or overvaluing themselves, constituting a “cyst” and not a dynamic group? In the third type of assistance, mentioned above, would they find resources for the expansion of their intelligence and special skills, allowing them better social and moral development, without the risk of exaggerated self-valorization, and feeling that they can use their full capacity to elevate the group that lives with them? *All of this leads us to leave the following in the air...* [emphasis added] (ANTIPOFF, 1992b, p. 35, *apud* ANTIPOFF, 2010, p. 101).

Helena Antipoff strongly contributed to Special Education during her years in Brazil and, above all, to the area of giftedness, in order to leave us a legacy that has been developed.

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Legislation by the Executive Branch in 1948, and it took thirteen years of debate before the content reached its final version. The first LDB was published on December 20th, 1961, by President João Goulart [...].

In the 1970s, the Gifted Learning Support Center (1975) was created in Brasília, followed by the installation of the Brazilian Gifted Association (1978), which started its activities based in its offices in Rio de Janeiro and other states (GAMA, 2006). Since then, many public and private initiatives in favor of the education of gifted children have started to appear in different Brazilian states. Over time, some of these initiatives have remained persistent and become a reference in the area (DELOU, 2007). As an example, the Center for the Development of Potential and Talent, conceived by Guenther, stands out (2011) intending to promote the identification, monitoring, and stimulation of talents and abilities, since 1993, in the city of Lavras (MG). Later, it expanded to Poços de Caldas (MG), Assis (SP), São José dos Campos (SP), and São José do Rio Preto (SP). Programs developed by universities also had important contributions to the research and development of potentials, such as the Fluminense Federal University (1993), Santa Maria Federal University (2003), São Paulo State University “Júlio de Mesquita Filho” (2011); among others.

In 2005, another relevant initiative in favor of serving these students was the implementation of the Giftedness Activities Centers (NAAH/S) in all Brazilian states and the Federal District. The explanation for this accomplishment was based on the low number of gifted students registered in the School Census, since, in 2005, of a total of 56,733,865 enrollments in Basic Education, only 1,928 were of students identified as gifted. This situation corresponded to 0.003% of the estimated number when considering the incidence between 15 to 20% of the student population, which revealed the need for investments in the identification and educational attention of this group. Accordingly, NAAH/S have appeared with the purpose of assisting gifted students, training teachers, and other education professionals to identify and meet the needs of this group, providing family support, producing and disseminating knowledge, and contributing to the effective inclusion of these students (BRASIL, 2006).

### **Legal Guidelines for the Gifted Student in Brazil**

Exclusion, Segregation, Integration, Inclusion (partial or total) summarize the Brazilian education journey (or the lack of it) involving the individuals considered different from their peers (MIRANDA, 2008; BRASIL, 2008; BRASIL, 2010).

Although the LDB of 1961 already established the integration of exceptional individuals (BRASIL, 1961), isolated experiences were observed. For example, the historical landmark of this process was the *Constitution of the Federative Republic of Brazil* (1988) that ensured social rights and citizenship for everybody and recommended specialized educational assistance, preferably in the regular school system. Nevertheless, specifically concerning gifted students, it is important to emphasize that they have always been in regular schools, but without being recognized and, consequently, assisted.

From this perspective, the Federal Education Council interfered in order to reverse the situation. *Opinion No. 255 of March 9th, 1972*, pointed out the necessity to consider the students' pace of learning, their interests, and skills, not considering those who present “exceptional achievement”, as well as an accelerated grade progression, regardless of the civil calendar. *Opinion No. 436 of May 9th, 1972*, enabled gifted students to enter higher education, having up to two years to legally confirm high school completion, provided they were identified before the date of enrollment in the entrance exam. *Opinion No. 711 of September 2nd, 1987*, offered measures to assist these students, including identification, assistance, education involving human resources; among others (BRASIL, 1995, p. 09).

The *Constitution of the Federative Republic of Brazil* (1988), in its Art. 208, item V, values individual abilities while determining that the government must guarantee “[...] access to the highest levels of education, research, and artistic creation, according to an

individual ability” (p. 47), which is reaffirmed by *Law No. 8,069, of July 13th, 1990*, and presented in the Child and Adolescent Statute (BRASIL, 1990).

The inclusion principle is a reflex of internationally assumed commitments that aims at transforming educational systems for meeting the students’ needs with quality.

In this scenario, two documents were globally significant for the development of public policies approaching inclusive education, which was not different in Brazil. The first was the *World Declaration on Education for All: Meeting Basic Learning Needs* (UNESCO, 1990), which is the result of the World Conference on Education for All, held in Jomtien, Thailand, in 1990; and the second was the *Salamanca Declaration and Framework for Action on Special Needs Education* (UNESCO, 1994), which is the result of the World Conference on Special Needs Education: Access and Quality, held in Salamanca, Spain, in 1994.

These documents provide equality of access to education to all people, including those who are gifted, and invite the governments to satisfy their differences (MIRANDA, 2008; DELOU, 2007; ANTIPOFF, 2010).

Article 2 of the *World Declaration* invokes a comprehensive approach to meet basic learning needs for all, such as a) universalizing access to education and promoting equity, therefore – “prejudices and stereotypes of any kind must be excluded from education”; b) focusing attention on learning – making it possible for people to learn “[...] useful knowledge, reasoning skills, abilities and values”; c) expanding the means and scope of basic education – considering “[...] the culture, needs, and possibilities of the community”; d) providing a suitable learning environment – “[...] where there are human heat and vibration”; and e) strengthening alliances, consequently – “the society is invited to collaborate with basic education for all: governmental and non-governmental organizations, local communities, religious groups, family; among others.” (UNESCO, 1990, p. 3-4).

In the *Salamanca Declaration*, the Delegates representing 92 countries and 25 international organizations proposed a document intended to guide governments and organizations “[...] for the spirit of its proposals and recommendations” (UNESCO, 1994, p. viii). Thus, this document introduces the *special educational needs* for the student’s target group of the Declaration, regardless of their physical, intellectual, social, emotional, linguistic or other conditions (UNESCO, 1994). The Delegates declare and proclaim that:

- Each child has the fundamental right to education and must have the opportunity to achieve and maintain an acceptable level of learning;
- All children have their characteristics, interests, abilities, and learning needs;
- Educational systems must be designed and educational programs must be implemented, considering the variety of these characteristics and needs;
- Children and adolescents with *special educational needs* must have access to regular schools that *should be adapted to them using a child-centered pedagogy* capable of meeting these needs;
- Regular schools, according to inclusive guidance, are responsible for fighting discriminatory attitudes, which results in open and solidary communities, and inclusive society and education for all [...] (UNESCO, 1994, p. viii-ix).

In its Framework for Action, the Declaration is emphatic in recommending that “[...] schools should be adapted to all children, regardless of their physical, social, linguistic or other conditions” (UNESCO, 1994, p. 6).

Accordingly, we have noticed that these documents never recommended that children need to adjust themselves to school, although it is common knowledge that this

situation is not easy. Moreover, Helena Antipoff received answers to some of her questions, but schools still must find the best way to do the following:

A fundamental principle of the inclusive school is that all children *should learn together*, whenever possible, regardless of any difficulties or differences they may have. [...] In the inclusive schools, children with special educational needs *should receive any extra support* required to ensure effective education. [...] Permanent *referral* of children to *special schools, special classes, or special sessions* within the school *should be exceptions*. It is recommended only in rare cases in which the education in regular classes is unable to meet the child's educational or social status, or when requested on behalf of the child's or other children's welfare. (UNESCO, 1994, p. 05, emphasis added).

Due to current conventions, agreements, and declarations, the Department of Education published, in 1995, the *General Guidelines for Educational Assistance to Gifted Students*. This document reinforces the benefits that the education investments on these students can provide to the country, contributing to guidance on definition, identification, educational assistance, education involving human resources, the importance of studies and research, etc.

International documents also affected the LDB of 1971 and, on the 20th of December of 1996, its reformulation (*Law No. 9,394 of 1996*) was published, intending to offer a suitable learning environment, as provided in the *World Declaration*. (UNESCO, 1990, p. 04) – “[...] where there are human heat and vibration”. Consequently, it has the principles of “I - equal conditions for access and permanence in schools”; and “IV - respect for freedom and tolerance appreciation [...]” (BRASIL, 1996, p. 09).

This document dedicates Chapter V to Special Education, which should be offered, preferably in regular schools, through “specialized support services” (p. 39), when necessary. The Art. 58, § 2º, authorizes students to attend classes and special schools even with conditions that make it impossible to “[...] integrate them into regular classes of regular education” (p. 40). Article 59, Item I, determines that the education systems must ensure “[...] specific curricula, methods, techniques, educational resources, and organization to meet students’ needs” (p. 40).

The Law, in its Art. 23, flexibilities learning whenever the process recommends that teaching is organized, such as “[...] in annual grades, semester periods, cycles, regular alternation of study periods, non-graded groups based on age, competence, and other criteria, or a different type of organization.” (BRASIL, 1996, p. 17).

Although it does not explicitly define the target group of Special Education, it guarantees “[...] acceleration to complete the school program in less time” for gifted students according to Art. 59 II (BRASIL, 1996, p. 40).

With the changes provided by these last legal instruments, *CNE/CEB Resolution No. 2 (2001)* establishes the National Guidelines for Special Education in Basic Education and invests in students who have superior skills, since not only includes them as the target group of Special Education, but also considers them as gifted, “[...] associating two concepts of different theoretical ideologies (social-interactionism and innatism) together” (CUPERTINO, 2008, p. 10). Besides, it generally defines them as individuals with “[...] great ease of learning quickly mastering concepts, procedures and behaviors” (BRASIL, 2001, p. 45, emphasis added). In its Art. 3, it considers Special Education as an educational process aimed at guaranteeing school education and developing potential, “[...] defined by a pedagogical proposal that ensures special educational resources and services, institutionally organized to support, complement, supplement and, *in some cases, replace regular educational services*” (BRASIL, 2001, p. 01, emphasis added) of students with special needs.



Moreover, Art. 8º emphasizes that regular schools must “*predict and provide*”

IX – activities that favor the deepening and enrichment of curriculum aspects for gifted students, through supplementary challenges in *regular classes*, in a *resource room* or *other spaces* defined by the education systems, including grade or school stage for completion in less time, under Article 24, V, “c” of Law 9,394/96 (p. 03).

Furthermore, Art. 11 *recommends* schools to establish partnerships with higher education institutions that search and study to help them in the teaching-learning process of the Special Education focused on students, with the purpose of this educational process improvement.

Nevertheless, while the Resolution improves the concept of quality education for all, supplementing or complementing the students’ learning, and replacing regular educational services, “[...] it does not enhance the adoption of inclusive education policy in the public school system” (BRASIL, 2008, p. 8; BRASIL, 2010, p. 14).

In 2008, *Decree No. 6,571*<sup>6</sup> was published, with the Union offering technical support to public education systems (state, municipal, and Federal District), to expand Specialized Educational Service (AEE) to the target group of Special Education, provided they are enrolled in the regular education. The Art. 1º, §2º adds that this attendance “[...] must integrate the pedagogical proposal of the school, involve the participation of the family and be carried out together with other public policies” (BRASIL, 2010, p. 28). It states that the Department of Education must offer technical and financial support to the actions intended for the AEE, which are the implementation of multifunctional resource rooms, according to Art. 3º, I, and “[...] environments with equipment, furniture and didactic and pedagogical materials for the specialized educational services” (BRASIL, 2010, p. 29).

*Decree No. 7,611* (BRASIL, 2011) disposes in Art. 3º that the purposes of AEE are:

I - providing conditions of access, participation, and learning in regular education and guaranteeing specialized support services according to the individual needs of students; II - guaranteeing the transversality of special education actions in regular education; III - encouraging the development of didactic and pedagogical resources that remove the barriers of the teaching-learning process; and IV - ensuring conditions for the continuity of studies at other levels, stages and teaching modalities (BRASIL, 2011, p. 02).

The AEE is known as “[...] as the set of activities, accessibility and pedagogical resources institutionally and continuously organized” for supplementing “[...] the education of gifted students” (BRASIL, 2011, p. 1-2).

*Decree No. 6,949* (2009a) becomes effective in Brazil to provide “[...] an inclusive educational system at all levels” (p. 11), enacting the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed in New York, on 31th of March of 2007.

Afterward, the Operational Guidelines for Specialized Educational Assistance in Basic Education, with a Special Education modality, for the implementation of *Decree No. 6,571/2008*, were registered in *CNE/CEB Resolution No. 4* (BRASIL, 2009b). It expanded the possibilities of the AEE by allowing not only multifunctional resource rooms, but also “[...] public AEE centers or confessional or non-profit philanthropic institutions of the

<sup>6</sup> Repealed by Decree No. 7,611 of November 17th, 2011.

community.” (p. 10). This assistance must occur during the period as opposed to regular schooling for “[...] *not being a substitute of regular classes*” (BRASIL, 2010, p. 71, emphasis added). Especially for gifted students, CNE/CEB Resolution No. 4 provides curriculum enrichment activities, which “[...] according to Art. 7, will be developed “[...] in public schools of regular education in association with centers of activities for giftedness, higher education institutions, and institutes focused on the development and promotion of research, arts, and sports.” (BRASIL, 2009b, p. 71).

Art. 7 offers a possibility, verified in Art. 8, sole paragraph, when it addresses the financing of enrollment in the AEE, conditioning it to the enrollment of the student in regular public school education, with the registration in the School Census/MEC/INEP from the previous year. All the possibilities are:

- a) enrollment in a regular class and a multifunctional resource room at the same public school; b) enrollment in a regular class and a multifunctional resource room at another public school; c) enrollment in a regular class and a Specialized Educational Service center of a public Special Education institution; d) enrollment in a regular class and a Specialized Educational Service center of non-profit community, confessional or philanthropic Special Education institutions (p. 72).

Consequently, both Art. 23 of the LDB (1996) and Art. 7 of *CNE/CEB Resolution No. 4* (BRASIL, 2009b) have answers to Helena Antipoff’s concerns about the best way to serve students, the target group of Special Education focused on gifted students. Accordingly, Delou (2007) emphasized the pertinence of several alternatives of assistance to these students, available in the legislation, since

[...] they are usually ahead of the school content of their grade and end up being forced to stay in that grade until the school stage is over, due to the lack of organizational instruments in the school that allow flexible movement of gifted students in the curriculum (DELOU, 2007, p. 35).

However, it is important to know that the *CNE/CEB Resolution No. 4* (BRASIL, 2009b) does not authorize the substitution for Special Education, even if in a restricted way, as did *CNE/CEB Resolution No. 2* (2001). This decision is conflicting since both resolutions are in force (CARVALHO, 2013).

On the other hand, we need to consider the progress after the *CNE/CEB Resolution No. 4* (BRASIL, 2009b), concerning the expansion of the definition of gifted students, referring to the one used in the *CNE/CEB Resolution No. 2* (BRASIL, 2001), as being “[...] *those who have a high potential and great involvement with the areas of human knowledge, isolated or combined: intellectual, leadership, psychomotor, arts and creativity*” (BRASIL, 2009b, p. 01, emphasis added).

This definition is similar to the one developed 39 years ago by Marland Junior, who defined gifted and talented children as “[...] those identified by qualified professionals and capable of high performance due to exceptional skills”, defending that they needed differentiated educational programs and/or services and mastered one or more than one of the following domains: “1. general intellectual ability; 2. specific academic skills; 3. creative or productive thinking; 4. leadership ability; 5. visual and performing arts; 6. psychomotor ability” (1971, p. ix, our translation).

In 2013, *Law No. 12,796* changed the LDB, which now uses the expression “high abilities/giftedness” and reinforces, in Art. 60, sole paragraph, the preference for assistance “[...] in the regular public schools” (BRASIL, 1996, p. 41).

However, as Brazilian legislation allows the service to be offered in spaces other than regular teaching rooms, as a way to expand the provision of this service, municipalities frequently end up delegating this purpose to specialized centers/programs.

Consequently, without the challenge of offering assistance that demand improvements in several sections - people, curriculum, material, physical spaces - schools postpone their development and continue with the process of invisibility of these students (PÉREZ; FREITAS, 2011; ALMEIDA; CAPELLINI, 2005).

Recently, Brazilian public policy has taken another step towards identifying and developing students with characteristics of giftedness. On December 29th, 2015, it created *Law No. 13,234* that provides the identification, registration, and attendance of gifted students in basic education and higher education, in order to insert VI-A in Article 9 of *Law No. 9,394* (BRASIL, 1996), which determines the establishment of guidelines and procedures for these students to be identified, registered and educationally attended. Once again, the collaborative character among the institutions is invoked to emphasize the cooperation among States, Municipalities, and the Federal District. When establishing Art. 59-A, the law defended that the government must create a national register of these students, so that public policies are developed in favor of their potential, because, according to its sole paragraph, all the action, entities, mechanisms, and policies must work under a specific regulation (BRASIL, 1996, p. 41-42), that is, consisting of a limited effectiveness rule that depends on future regulation.

For this purpose, it is not extendable that public education systems, within the Municipal Departments and Education Boards, enforce legal guarantees about their association with higher education institutions while searching for partnerships to develop guidelines, identification, and provision of educational services aimed at gifted students, so that they occur within schools, in regular teaching rooms (BRASIL, 2009a, 2015a):

[...] public policies for the gifted children education in Brazil, as well as public policies for Special Education, need to be *reframed*. *Teachers, students, and society do not change by decree or any external pressure* [emphasis added]. It is necessary to know the successful experiences in basic education and higher education to optimize critical-reflexive education, to encourage specialized pedagogical practices. As a consequence, there is a change based on equal opportunities that generate a more just and civil society. [...] We do not have specialist teachers in gifted education at all public universities in the country. As a line of research in Special Education, gifted education is not considered relevant in *stricto sensu* graduate programs [...] (DELOU, 2005, p. 3-4).

In 2017, the School Census registered 1,066,446 students for Special Education, but only 19,451 were gifted. In 2019, there was a substantial increase in enrollments of gifted students, with the amount of 54,359. Although this significant increase indicates an advance in these students' identification, the numbers are far from the estimated in the general population (INEP, 2017). The validity of *Law No. 13,234* (2015b) was followed by national political instability, reaching the year 2020 without the regulation on the national registry. Therefore, the development policies of this target group's potential have been enacted.

We can observe that, although there are several regulations involving gifted students, according to a survey carried out by Santos, Guenther, and Zaniolo (2016, p. 652), “[...] the legal provision has not helped to recognize them at school”, keeping them invisible, which is against the legal principles such as the equality.

The above-mentioned research revealed that Brazil has invested in theoretical research and laws, but it does not mean that there are effective identification and development of the gifted students' potential. “The actions implemented were not effective and have not changed the position of schools and the attitude of teachers” (SANTOS; GUENTHER; ZANIOLO, 2016, p. 653). This conclusion was based on the data obtained with managers, which revealed a mismatch between the established legal assumptions

and what actually occurs in schools. The whole situation is represented by alarming numbers, since only 11.5% of the managers reported that the official documents assist gifted students. Besides, we should consider that some of them were not even able to mention the type of documents. Only 12% understood that the legal guidelines help in identifying gifted students, and only 5% mentioned MEC guidelines, publications, and implementation of student-oriented practices, with most managers expressing difficulty in finding and recognizing high-ability signals. At last, only 23% pointed out identification mechanisms and only 8% of them affirmed that the legal norms work as a pedagogical intervention (SANTOS; GUENTHER; ZANIOLO, 2016).

Despite the education program for MEC managers and educators, Santos, Guenther, and Zaniolo (2016) noted that there is a lack of specific and continuing education; “[...] it is believed that the effectiveness of any educational measure depends on the intensity of the differentiation, the clarity of the constructs and identification, and the intervention processes” (2016, p. 664).

Regarding the invisibility that surrounds gifted students, we can notice that the Brazilian Law on the Inclusion (Statute on Persons with Disabilities) No. 13,146 of July 6th, 2015, guarantees the right to inclusive education to people with long-term physical, mental, intellectual or sensory disabilities in order to achieve “[...] the maximum possible development of their talents, and physical, sensory, intellectual and social skills, according to their characteristics, interests, and learning needs” (BRASIL, 2015a, p. 34). This guarantee also applies to people with an autism spectrum disorder, since Law No. 12,764, of December 27th, 2012, which institutes the National Policy for the Protection of the Rights of People with Autism Spectrum Disorder, establishes that they will be considered people with disabilities to all legal effects. Among the target group of Special Education, gifted students are the only ones who do not have a National Law to defend their specific rights.

In order to emphasize the importance of people and their full development, on March 6th, 2018, *Law No. 13,632* was published, amending the Law of Guidelines and Bases of National Education (BRASIL, 1996) to include, in article 3, item XIII, one of the principles of teaching: the “[...] guarantee of the right to education and lifelong learning”, which was also consolidated in the amendment of §3 of Article 58. Besides, it stated that the special education offer starts in Early Childhood Education and is extended throughout life (BRASIL, 2018). This innovation revealed the importance that education has in the Brazilian legal system, following the provision described in article 205 of the *Constitution of the Federative Republic of Brazil* (1988). This provision defends education as a right of all, a joint duty of the family and the State, aiming at full human development, training to exercise citizenship, and qualification for work, which will occur throughout life.

However, scholars of public education policies emphasize that the introduction of the neoliberal ideology in the country's policies and economy, from the 1990s, had an impact on education. Therefore, it began to be guided more by market demands than the socialization of the historically constructed knowledge and the maximum development of people. Even with the rise of self-styled left-wing governments, despite the defense of the state's role in citizenship, this scenario has not changed and commercial educational practices have manifested themselves in large-scale assessments and public-private partnerships (NASCIMENTO; BARROS, 2018; KASSAR; REBELO; OLIVEIRA, 2019). Accordingly, Special Education in the 21st century remains associated with the practice of using public resources to subsidize private entities, as before 2003. After this, the idea that regular schools are a place for everyone has spread, emphasizing specialized educational assistance in public schools.

Consequently, it is in the antagonism between the forces defending inclusion, and the private segments forces that public policies in the area are developed. Since 2016,

after Dilma Rousseff's impeachment, successor governments have expressed their intention to reduce the role of the State in order to privatize. In 2017, the former Department of Continuing Education, Literacy, Diversity, and Inclusion (SECADI/MEC) opened Notice 13, aimed at hiring specialized consultants for updating the National Policy on Special Education, developed in 2008. The updated proposal was presented by the Special Education Director, in a meeting with relevant entities, on April 16th, 2018, whose slides quickly spread, influencing contrary manifestations of pro-inclusion movements, leaders of Higher Education institutions, researchers from the National Association of Graduate Studies and Research in Education (ANPEd), Federal Public Ministry; among others. All of this because it highlighted the maintenance of segregated spaces (schools and special classes) in order to defend the strengthening of private groups (KASSAR; REBELO; OLIVEIRA, 2019). In the middle of the controversies, the document became available for public consultation in November 2018 and, since then, no proposal for the area of Special Education and giftedness has been presented.

After 18 months of the current government, three ministers have already been in charge of the Education Ministry, in addition to several resignations in important positions, such as the presidency of the National Institute for Educational Studies and Research "Anísio Teixeira" (INEP), the Department of Higher Education, the evaluation board of the Coordination for the Improvement of Higher Education Personnel (CAPES), etc. Due to the uncertainties, Ordinance No. 131 of the Ministry of Education, of January 28th, 2020, gives us hope. This symbolizes the appointment of Cristina Maria Carvalho Delou to the post of General Coordinator of Policies, Regulation, and Education of Professionals in Special Education, of the Special Education Board, of the Department of Specialized Education Modalities. Delou is a retired professor at the Faculty of Education of the Federal Fluminense University and an important researcher of giftedness in Brazil, giving us hope for the process of making normative documents available for transposing legal aspects into practice in schools.

### **Giftedness in the Brazilian Scenario and the International Context: Final Considerations**

The way countries understand and act regarding giftedness is quite different. For example, while Japan understands that this type of education is a result of hard work, which can be reached by most children (FREEMAN, 2014), Sweden and Norway appear in the study of the Education Information Network in Europe (EURYDICE, 2008) as countries where there are no terminologies to define this phenomenon and neither are specific educational measures taken.

Establishing parallels with Portugal and the United States, countries of strong interaction and influence over Brazil, we have the latter presenting concerns with these students since 1900 as a result of the society itself, which is very different from the Brazilian reality, where "[...] social actions arise as a consequence of political actions" (MATOS; MACIEL, 2016, p. 182). Only 60 years later, despite the existence of several legal texts, it is revealed that social action is still lacking. Mainly in the middle of the 20th century, the technological advance of the Soviet Union increased the United States' interest in the education of talented adolescents, starting to invest massively in identifying and stimulating the potentials of greatest interest to the nation (REZZULLI, 2004).

On the other hand, Portugal started discussions only in the 1980s, with Brazil as one of the main influences, counting on the participation of students' parents and associations (MIRANDA; ALMEIDA, 2010). Currently, the Portuguese national legislation does not consider this student to be the target of the official services of Special Education. Therefore, the associations are responsible for their care, except for the Autonomous

Region of Madeira, which has its own legislation (FLEITH *et al.*, 2010; RODRIGUES; NOGUEIRA, 2011).

It is observed that the Brazilian legislation directs the Special Education for the services being provided to the students in the regular (public) school system, as shown in *Mejor Educación para Todos*, from 2009. Consequently, although it is not illegal to offer separate classes and schools, it would be better for regular schools to have a structure capable of meeting the needs of all their students (INCLUSIÓN INTERNACIONAL, 2009, p. 25).

The legal guidelines are also in line with the UN guidelines, which lists the guarantee of inclusive, equitable, and quality education for everyone throughout life, among the 17 Sustainable Development Goals (SDGs) to be achieved by 2030 (ONU, 2016). The new SDGs were established between September 25th and 27th, 2015, in a meeting with 193 Member States held at the United Nations headquarters in New York. The document *Transforming Our World: The 2030 Agenda for Sustainable Development* defends the commitment of “[...] not leaving anyone behind” (ONU, 2016, p. 1). In this perspective, associated with the legislation and the principles spread worldwide, educational reality must be consistent with what is proclaimed. Accordingly, it should involve investments in infrastructure, teacher training, human and material resources, so that everyone can reach the goal of maximum possible development, including gifted individuals.

The current political scenario is characterized by changes and uncertainties concerning the future of our nation. Triggered mainly by the advance of ultra-liberalism (WERMUTH; NIELSSON, 2018), it is considered an indisputable conviction: a country that wants to be great cannot measure efforts in favor of the education of its people, nor can it spare investments in the development of its most capable citizens, at the risk of wasting important talents for the achievement of scientific, economic, social and cultural growth.

From a normative document until its practice in (public) educational institutions, educational agents must have a positive attitude. Otherwise, in the reality of the Brazilian (public) schools, it will be difficult to implement quality education, especially for the gifted students.

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