

The influence of ableism on *Decreto n° 10.502/2020* and *PNEE 2020**

Bianca dos Santos Soares¹

ORCID: 0009-0005-7952-3748

Iara Pereira Ribeiro¹

ORCID: 0000-0002-4085-695X

Abstract

The fight for the inclusion of persons with disabilities in Brazilian regular schools intensified when Brazil ratified the *Convenção Internacional sobre os Direitos das Pessoas com Deficiência* and issued the *Lei Brasileira de Inclusão*. However, the struggle for advancements and improvement in the Brazilian inclusive teaching system retreated after the *Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida (PNEE 2020)* was established by *Decreto n° 10.502/2020*. The reason is that it proposed significant changes in the conception of inclusive education when it considered the possibility of special education services, centers, or schools to meet specific disabilities, determining that students and/or their families would be free to choose between an inclusive, regular, or bilingual school. The normative instruments were compared, and a policy segregating students with disabilities in the school environment is hidden between the lines under this alleged right. Such policy is discriminatory and ableist as it reproduces the notion that, according to a hierarchical corponormativity paradigm, these students are inferior, thus, conceiving that they are excluded from regular school due to their disabilities. Even though *Decreto n° 11.370/2023* revoked *Decreto n° 10.502/2020*, the discussion proposed here remains relevant, considering the need to effectively implement inclusive education in Brazil.

Keywords

Persons with disability – Ableism – Inclusive Education – *Decreto n° 10.502/2020* – *PNEE 2020*.

Introduction

1- Universidade São Paulo, Ribeirão Preto, SP, Brasil. Contacts: biancasoares9@usp.br; iararibeiro@usp.br



<https://doi.org/10.1590/S1678-4634202349257304eng>
This content is licensed under a Creative Commons attribution-type BY 4.0.

Inclusive education prescribes the transformation of culture and the education system's practices and policies to ensure students' equitable access, participation, and learning without discrimination, besides welcoming human diversity. The inclusive education conception is broader than education for students with disabilities, as it encompasses all students, including racial, ethnic, religious, gender, and sexual minorities (LGBTQIA+ population)². Hence, it is based on an effort to identify and remove those barriers impeding learning (BAGLIERI *et al.*, 2011).

Although inclusive education is a teaching philosophy that encompasses all students (BAGLIERI *et al.*, 2011), this study focuses on inclusive education from the perspective of persons with disabilities (PwD), addressing *Decreto n° 10.502/2020*, which established the *Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida* (PNEE, 2020), and proposed significant changes in the conception of inclusive education in the Brazilian educational system.

This study investigates whether the *Política Nacional de Educação Especial (PNEE): Equitativa, Inclusiva e com Aprendizado ao Longo da Vida*, established by *Decreto n° 10.502/2020*, is in disagreement with current legislation, i.e., the *Convenção Internacional sobre os Direitos das Pessoas com Deficiência (CDPD)*, the *Constituição Federal* and *Lei Brasileira de Inclusão (LBI)* and other normative instruments, discussing the school segregation of PwD, to verify whether PNEE is (in) constitutional.

Therefore, the articles of *Decreto n° 10.502/2020* and PNEE 2020 were analyzed and compared to the legislation on the right of PwD to inclusive education. Regarding the theoretical framework, the studies by Fiona Kumari Campbell and Anahi Guedes de Mello supported this study's delimitation of the ableism concept.

The analysis of the influence of ableism on PNEE 2020 was based on studies addressing "anti-ableist education," in particular the book *Psicologia escolar e educacional: processos educacionais e debates contemporâneos*, in co-authorship with several authors, among them, the book organizer Marivete Gesser. As for the educational approach, the authors Rosângela Machado and Maria Teresa Mantoan were adopted, with an emphasis on the book *Educação e inclusão: entendimentos, proposições e práticas*.

This qualitative study analyzes normative documents based on the theoretical framework previously described; the inductive method was adopted. Hence, it starts with an analysis of *Decreto n° 10.502/2020* and PNEE 2020 (private data), concluding that it is dissonant with current legislation on inclusive education, and presents its relationship with ableist assumptions (general propositions)³.

This paper is organized into three sections: the first presents the normative context of inclusive education in Brazil, the second gives the definition of ableism and its

2- *Declaração de Icheon Para Educação 2030* established goals to ensure inclusive and equitable quality education, promoting lifelong learning opportunities for all, regardless of gender, race, religion, political opinion, or social status, especially for those with disabilities, migrants, indigenous peoples, children and youths in social vulnerability (UNESCO, 2015).

3- The methodological framework was the book *Fundamentos de metodologia científica*, which defines the inductive method as "a mental process through which, based on private, sufficiently established data, a general or universal truth is inferred. The purpose of inductive arguments is to lead to conclusions, the content of which is much broader than that of the premises on which they were based" (free translation) (LAKATOS; MARCONI, 2017, p. 97).

influence on education, and finally, the third section presents an analysis of the new policy comparing it to current legislation, identifying ableist assumptions.

The legal status of inclusive education in Brazil

The Brazilian law dealing with the right of PwD to inclusive education was influenced by international normative acts, which, from the second half of the 20th century onwards, determined the concept of disability and the struggle for the same rights granted to people without disabilities.

The right to access education is a fundamental principle of the human person, internationally regulated by various normative provisions, including the *Declaração Universal dos Direitos Humanos* (DUDH), enacted in 1948, which provides in its Art. 26th that education is everyone's right and should aim at the full development of the human personality, strengthening human rights and fundamental freedoms; in Art. 3rd of the *Declaração Mundial sobre Educação para Todos*, from 1990 that foresees universal access to quality education and the promotion of equity; and the *Declaração de Salamanca*, proclaimed in 1994, which was the first document to recommend inclusive education (ONU, 1948, 1990; UNESCO, 1994).

Even though the documents mentioned above are significantly relevant in the fight for education for all, the normative framework that ensured this right in an inclusive general education system and revolutionized the concept of disability was the *Convenção Internacional sobre os Direitos das Pessoas com Deficiência* (CDPD) and its optional protocol.⁴

The CDPD modified the understanding of disability by removing the focus from an "injured body" to the barriers from the social environment. Hence, it breaks with the medical model, in which PwD were considered abnormal, requiring only biomedical care and rehabilitation, and proposes the social model, in which disability is seen as the result of the interaction of an injured body and a discriminatory society (DINIZ, 2007).

In its preamble, item e, CDPD recognizes that disability is "an evolving concept," as it derives from the interaction between PwD and barriers, whether represented by human attitudes or in the environment, preventing these individuals from equitably, fully, and effectively participating in society on equal terms as people without disabilities (BRASIL, 2009).

In the same sense, *Lei n° 13.146*, from July 6th, 2015, known as the *Lei Brasileira de Inclusão (LBI)* or *Estatuto da Pessoa com Deficiência*, defined the PwD concept. The caput of Art. 2 provides that PwD will be considered "those who have long-term physical, mental, intellectual, or sensory impairments, the interaction of which with one or more barriers may obstruct these individuals' full and effective participation in society on equal terms with other people," (free translation) providing that, if necessary, a biopsychosocial evaluation to determine the existence of a disability will be performed by a multidisciplinary and interdisciplinary team, to assess the extent to which the impairments in the functions

4- CDPD is a constitutional amendment in Brazil under paragraph 3rd of article 5th of CF/88, instituted through *Decreto Legislativo n° 186/2008* and *Decreto Executivo n° 6.949/2009*.

and structures of the body restricts the activities or the participation of PwD, considering socio-environmental, psychological, and personal factors (§1 of article 2), reinforcing a shift of paradigm to the social model of disability.

As for the right to education, CDPD provides in Art. 24 that States Parties must ensure an inclusive education system at all levels of lifelong learning. In item 2 of the same article, the document provides that PwD are not excluded from regular education on the grounds of disability. They must have access to quality education on an equal basis with other people and receive the necessary support for their effective learning.

Likewise, the *Constituição Federal* establishes, among its list of social rights in Art. 6th, the right to education. Additionally, its specific regulation in articles 205th to 214th, and Art. 206th, I, provides equal conditions for school access and permanence. Art. 208th, III ensures the access of people with disabilities to education and determines that the State must ensure “specialized educational services for people with disabilities, preferably in the regular education network.”

In 2008, under the influence of the CDPD, the *Política Nacional de Educação Especial na Perspectiva da Educação Inclusiva* (PNEE 2008) was implemented in Brazil, re-signifying special education by addressing it as a teaching modality that works together with regular education, rather than replacing it. Therefore, special education provides specialized educational services (*Atendimento Educacional Especializado - AEE*), together with the resources and guidelines regulating how such services are implemented.

Similar to the PNEE 2008, which was based on the CDPD, the LBI also adopted it as a reference, with its chapter IV specifically dealing with the right to education. Art. 27 ensures PwD have equitable access to education at all levels and lifelong learning, free from discrimination, negligence, or violence.

Ableism

The term ableism (*capacitismo* in Portuguese) was translated and used for the first time in Brazil by the anthropologist Anahi Guedes de Mello⁵ in analogy to discrimination forms already named in contemporary society, such as racism and sexism, to refer to the hierarchy of people according to the extent to which their bodies meet normativity⁶ standards, entailing a moral judgment, implying that PwD are incapable and inferior (MELLO, 2016, p. 3.272). Later, Adriana Dias addressed the concept of ableism as “a neologism that suggests a departure from capacity and aptitude through disability” (free translation) (DIAS, 2013, p. 5).

Although only recently the ableism concept started to be discussed in Brazil, internationally, it has been widely addressed by authors such as Campbell (2001, 2008, 2009), Wolbring (2008), and Taylor (2017). According to Fiona Campbell, ableism is “a network of beliefs, processes and practices that produces a particular kind of self and the body (the corporeal standard) that is projected as the perfect, species-typical, and

5- The word ableism, as an analytical category, was initially used in the paper “*Entre pesquisar e militar: engajamento político e construção da teoria feminista no Brasil*”, a text by Anahi Guedes de Mello co-authored with Felipe Fernandes and Miriam Grossi, published in 2013.

6- Corporonormativity concerns ideal body beauty and functional standards.

therefore essential and fully human.” Hence, PwD would represent a diminished state of being human (CAMPBELL, 2001, p. 44).

Campbell defends the concept of “internalized ableism” by clarifying that the concept transcends procedures, structures, institutions, and social values, being consolidated in culture and, therefore, responsible for molding and forming individuals, albeit unconsciously, in the belief that disability is an inherently negative condition and should be, alleviated, cured or even eliminated whenever possible (CAMPBELL, 2008). The pathologization of disability is supported by the opposition between normality and deviation of functional standards and body structure.

Ableism is directly related to the discourses of the medical model of disability, which, as previously mentioned, reduces PwD to their bodily appearances, emphasizing their injuries and distancing them from reference standards. From this perspective, Campbell summarizes the two central points that characterize ableism: “the notion of the normative (and normate individual) and the enforcement of a constitutional division between perfected naturalized humanity and the aberrant, unthinkable, quasi-human hybrid and therefore, non-human.” (CAMPBELL, 2009, p. 6).

Additionally, Campbell criticizes legal reasoning for invoking “an ableist norm that contains an already assumed ‘scaling of bodies’ wherein the weak form the benchmark body’s ontological exterior” (CAMPBELL, 2009, p. 132). Hence, the author clarifies that the legal norms themselves reaffirm the internalized ableism in society, which does not affect PwD only but subjugates other vulnerable bodies, such as women and Afro-descendant individuals.

After addressing the origin of the term ableism in Brazil and its definition, we ask, how does ableism influence education? To answer this question, one must consider how students with disabilities are excluded from the school environment. Such exclusion is based on a stereotype of a model student who meets the required intelligence standards to determine that the PwD are incapable of being in that environment; thus, they must attend a specialized school or classes segregated from social life.

In this sense, Gesser (2020) clarifies that ableism is naturalized in school exclusion processes to the extent that permanence and learning difficulties lie upon the students rather than being considered an inability or incompetence of the school or the State to provide learning conditions for all. Therefore, the logic guiding schools is that students must adjust and adapt to how schools function, disregarding the need to eliminate barriers that prevent their accessibility and failing to embrace human diversity.

Likewise, Nuernberg (2020) corroborates the understanding that teaching methods reaffirm ableism internalized in society, stating that school curricula “value the common abilities of neurotypical students, who see, walk, hear, and have reasoning and memory abilities” (free translation). He also states that even though the concept of disability was reframed by the CDPD and, later, by LBI, special education practices are still based on the notion of a passive and incapable student requiring rehabilitation with low learning expectations (NUERNBERG, 2020).

Thus, it is now time to uncover the hidden meaning of ableism as it is presented in *Decreto n° 10.502/2020* and in the text of the *Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida* (PNEE 2020).

Decreto n° 10.502/2020 and PNEE 2020

Decreto n° 10.502/2020 was promulgated on September 30th, 2020, and the *Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida* (PNEE 2020), was established, proposing significant changes in the logic guiding inclusive education in Brazil. Such device proposes regulating the *Lei de Diretrizes e Bases da Educação Nacional* - LBDEN (Lei n° 9.394/1996), which already has itself an ableist influence, as it addresses Special Education in a chapter separated from that of Elementary Education, reinforcing the exclusion of students with disabilities from that of regular education and reproducing a conservative position, as it identifies these individuals as “exceptional” (LIMA; FERREIRA; LOPES; 2020).

In addition to LBDEN dedicating a specific chapter to Special Education, Art. 58, § 2, it foresees that “educational assistance will be provided in classes, schools, or specialized services, whenever, due to the specific conditions, students cannot be integrated into regular education classes” (free translation) (BRASIL, 1996), which once again proves to be an ableist assumption, as it demeans PwD as if there were incapable of being included in the regular educational system. The device is also at odds with the goal of full inclusion advocated by the CDPD, which is hierarchically higher than other national legal norms.

Additionally, *Decreto n° 10.502/2020* changes the understanding of special education as proposed by PNEE 2008, which was presented as a significant achievement for the inclusion of PwD in regular schools since the *Decreto* considers centers, classes, and schools intended for specific disabilities, such as visual, auditory, intellectual, mental, and physical-motor, as special education resources and services (Art. 7th). Therefore, keeping segregated teaching environments portrays the hegemonic ableist notion of “having places of belonging based on the paradigm of regular students and inclusion students” (free translation) to determine those who naturally belong to the school and those who are in this environment out of benevolence or partial political awareness (ANGELUCCI; SANTOS; PEDOTT, 2020).

Another change proposed by *Decreto n° 10.502/2020* is the possibility of students with disabilities to choose, together with their families and a multidisciplinary team, where they want to study, which could be a regular, inclusive, specialized, or bilingual school (Art. 3rd, VI; Art. 6th, IV). The explanation is that students and their families should be free to choose the most appropriate educational alternative.

Although families are free to choose where to enroll their children, such a possibility is not unlimited and must comply with the current rules regulating the Brazilian inclusive education system. Hence, the Brazilian legal system does not allow families to segregate a student with a disability in a non-inclusive institution (LOPES; REICHER, 2020). Note that the PNEE 2020, under a false idea of flexibility and freedom, resumes excluding people with disabilities from the school environment based on an ableist assumption.

The PNEE 2020 also argues that some students' development "is not favored by being included in inclusive regular schools" and, therefore, must attend specialized classes or schools to ensure their right to learning (BRASIL, 2020, p. 42). This premise proves to be retrograde, discriminatory, and ableist, as all students, with and without disabilities, benefit from attending an inclusive environment as long as appropriate learning and accessibility conditions are provided while, at the same time, barriers are eliminated.

The study *Os benefícios da educação inclusiva para estudantes com e sem deficiência*, developed by the Alana Institute in partnership with ABT Associates, shows that students with disabilities attending inclusive schools experience improved memory, literacy, language, and math skills, and also are less likely to present behavioral problems, being more likely to complete high school than students not attending inclusive schools (HERIR *et al.*, 2016). The study also notes that people without disabilities studying in inclusive environments hold less prejudiced opinions and are more receptive to differences (HERIR *et al.*, 2016).

Furthermore, *Decreto n° 10.502/2020* resumes the medical model of disability when addressing the *Plano de Desenvolvimento Individual e Escolar (PDIE)*, a document that organizes pedagogical actions to be implemented among students with disabilities during the school year, including the school, the families, and other professionals working with special education (Art. 2nd, XI). This device allows health professionals to collaborate on the plan to "correct" supposed deviations based on biomedical and non-pedagogical practices.

Thus, there seems to be a concern with identifying and categorizing students with disabilities according to diagnoses and clinical reports, as if the "type" of disability were the only important attribute to determine teaching practices. From this perspective, the establishment of an inclusive school permeates an understanding that teachers need to be familiar with the students with disabilities, considering how they interact with the teaching environment, and learn about their experiences and strengths, and difficulties rather than starting from the assumption that all students with disabilities live in the same way as others with the same disability (MACHADO, 2020).

In addition to *Plano de Desenvolvimento Individual e Escolar (PDIE)*, PNEE 2020 also provides the *Plano de Ensino Individual (PEI)* for special classes, which is a pedagogical planning instrument that ensures adaptations are implemented in the school curriculum, to meet "the students' specificities" (BRASIL, 2020, p. 72). Both the PDIE and the PEI were proposed in the PNEE 2020, focusing on the institutions and based on the limitations and/or impediments of people with disabilities, again returning to the medical model of disability.

At the same time, the current understanding is that the PEI should be individual-centered, aiming at developing individuals and deepening their personal relationships and life in the community (MENDES; TANNÚS-VALADÃO, 2018). PEI is a support to the official curriculum, as it specifies and structures the type of activity and professional support that are most convenient for students with disabilities so that there are no restrictions, but rather more stimuli to the teaching-learning process (MENDES; TANNÚS-VALADÃO, 2018).

At yet another moment, PNEE 2020 resumes the biomedical-rehabilitative discourse by clarifying that "specialized (or special) schools must exist to return students, as soon as possible, to regular inclusive schools" (BRASIL, 2020, p. 42). Therefore, such a policy

considers special schools as environments where students with disabilities will be cured or “corrected” so that they are only later included in regular schools, based on the ableist assumption of “normalizing” PwD whenever possible.

For Maria Teresa Mantoan, the Brazilian educational system does not admit special schools, i.e., special schools are not regulated by national law, as CF/88, more precisely Art. 208, I ensures compulsory education is provided in regular schools to all individuals aged from 4 to 17 (elementary education) (WEBINÁRIO INTERNACIONAL, 2021; MANTOAN, 2003). Therefore, Mantoan states that the CF/88 provides that specialized educational services (AEE) are not supposed to replace the regular school. Additionally, Art. 208th, III, of the normative text establishes that the AEE must be preferably offered within the regular educational system. Thus, special education can be provided in institutions such as APAEs. However, these are not schools; they offer a clinical-therapeutic service (MANTOAN, 2003).

When we consider Mantoan’s position to analyze *Decreto n° 10.502/2020* and PNEE 2020, we verify that special schools could not be an alternative for students and their families because they are not legally regulated; therefore, these documents would be unconstitutional. From now on, we focus on the AEE as we address how its concept is misrepresented by the Decreto.

Specialized educational services (*Atendimento Educacional Especializado - AEE*) are regulated by *Decreto n° 7.611/2011*, which defines these services as a set of activities, accessibility, and pedagogical resources aimed to complement or supplement regular education and overcome learning barriers (Article 2nd, § 1). Still, according to *Resolução CEB/CNE No. 4*, AEE must be a priority in regular schools and may also take place in a public school or non-profit community centers, confessional or philanthropic institutions, though it should not replace regular education (Art. 5th); AEE is a pedagogical inclusion support that is supposed to work together with the regular school.

However, *Decreto n° 10.502/2020* distorts the concept of AEE when addressing Art. 4th, III, in which one of its objectives is “to ensure specialized educational services as a constitutional guideline, beyond institutionalizing times and spaces reserved for complementary or supplementary activities” (BRASIL, 2020). Therefore, such an article recognizes the possibility of AEE being offered to replace regular education, which violates the current constitutional and infra-constitutional legislation and mischaracterizes the service, the nature of which is to support accessibility, identify the barriers these students face and propose resources and mechanisms to overcome them. Thus, the AEE does not waive compulsory regular education.

Based on the paradigms of segregated educational spaces and the discourse of the medical model of disability, *Decreto n° 10.502/2020* holds ableist and discriminatory assumptions, setting back the educational rights achieved by people with disabilities and subverting the logic that guides inclusive education in Brazil. Due to the Decreto problematic approach, the Brazilian Socialist Party filed a *Ação Direta de Inconstitucionalidade (ADI) n° 6.590/2020* and requested a preliminary injunction so that the Court determines its unconstitutionality and ceases its effects.

On December 1st, 2020, Minister Dias Toffoli accepted the request of *ADI n° 6.590/2020* and monocratically decided for the preventive suspension of the effects of

Decreto n° 10.502/2020, understanding that the contested rule is not merely regulatory in nature. It is not limited to detailing the terms of the *Lei de Diretrizes e Bases da Educação Nacional*, as it innovates in the legal system by establishing institutes, services, and obligations that were not previously included in the Brazilian educational system (BRASIL; STF, 2021). Thus, the Minister considered that the *Decreto* had sufficient normative content to be submitted to the Court's concentrated control of constitutionality⁷.

In his vote, Minister Dias Toffoli understood that by providing for the implementation of specific schools and classes to assist students with disabilities and considering a learning environment separate from other students without disabilities, *Decreto n° 10.502/2020* goes against Brazil's commitment to inclusive education, ensured in several normative provisions, such as Art. 208th, inc. III, of CF/88; Art. 24th of the CDPD; and the 1994 *Declaração de Salamanca sobre Princípios, Políticas e Práticas na Área das Necessidades Educativas Especiais de 1994* (BRASIL; STF, 2021).

His vote also mentions the previous decision of the STF, handed down in the *Ação Direta de Inconstitucionalidade (ADI) n° 5.357/DF*, on the obligation of private schools, as well as public schools, to implement adequate and inclusive educational services for people with disabilities according to the LBI, prohibiting the exclusion of PwD from the regular education system and private schools from charging extra for the enrollment of students with disabilities (BRASIL; STF, 2016).

Regarding special classes and schools, Minister Dias Toffoli clarifies that such schools are exceptionally admitted by LDBEN (Arts. 4th, al. I, inc. III, and 58, paragraph 2nd). At the same time, the enrollment of all students in the regular educational system is a priority (ADI n° 6.590, 2020, p. 31-32). As opposed to Art. 2nd, X, of *Decreto n° 10.502/2020*, which, in Dias Toffoli's words, "stands out" because the "device treats inclusive regular schools as a specific category within the universe of special education as if there were the possibility of non-inclusive regular schools" (BRASIL; STF, 2021, p. 34).

The preliminary decision by Minister Dias Toffoli was submitted to the Plenary of the STF from December 11th to 18th, 2020, which endorsed it to suspend the effectiveness of *Decreto n° 10.502/2020*. Minister Roberto Barroso accompanied the rapporteur but noted the possibility of revising the matter related to bilingual education for people who are deaf when judging the merits of the action (BRASIL; STF, 2021, p. 57). Minister Marco Aurélio disagreed with the rapporteur and was joined by Minister Nunes Marques, arguing that the *Decreto* did not innovate in the legal order and did not prove to be an autonomous⁸ abstract normative act, rejecting *ADI n° 6.590/2020* (BRASIL. STF, 2021, p. 53-54). Thus, by majority vote, the STF understood that *Decreto n° 10.502/2020* is unconstitutional and suspended its effects.

7- The concentrated or abstract control of constitutionality is incumbent upon the *Supremo Tribunal Federal*, which may declare the (un) constitutionality of a law or normative act in theory, regardless of the existence of a concrete case, meaning it "verifies the adequacy (compatibility) of a law or normative act with the constitution, checking its formal and material requirements" (MORAES, 2016, p. 1120).

8- For a presidential *Decreto* to have its constitutionality analyzed by the Federal Supreme Court, it must, in whole or in part, not be restricted to regulating a previous law, presenting itself as an autonomous *Decreto*, that is, a law in the formal sense (MORAES, 2016). In the case of *Decreto n° 10.502/2020*, Ministers Marco Aurélio and Nunes Marques understood that the *Decreto* regulates the *Lei de Diretrizes e Bases da Educação Nacional* (Lei 9.394/1996), not being a law in the formal sense, but a regulatory *Decreto*, and for this reason, they considered that only the analysis of legality, conducted by the National Congress, under the terms of Art. 49, V, of CF/88 would suffice.

ADI n° 6.590 did not have its merits analyzed by the Court. Still, on January 1st, 2023, *Decreto n° 11.370* came into effect, revoking *Decreto n° 10,502/2020*, which established the PNEE 2020. Consequently, the *Política Nacional de Educação Especial na Perspectiva da Educação Inclusiva* (PNEE 2008) remains in effect.

The repeal of *Decreto n° 10.502/2020* is an important achievement concerning PwD's educational rights; however, it should be clarified that the PNEE 2008, despite being based on CF/88 and the Convenção Internacional sobre os Direitos das Pessoas com Deficiência (CDPD), it has been in force for fifteen years. Hence, considering the challenges arising in the last decade, it needs to be updated, mainly concerning how inclusive education has been implemented.

Additionally, despite the criticism of *Decreto n° 10,502/2020* and PNEE 2020, there were people with disabilities and institutions defending the rights of this group that positioned themselves favorably to the changes proposed to the inclusive education system, contrary to its revocation. Also, note that the PNEE 2020 is supported by studies developed internationally by special education researchers, such as Garry Hornby and James M. Kauffman, being a policy defended in other countries, such as the United States and England. Therefore, society must continue the debate and protect the educational rights of PwD since these achievements are recent and constantly under threat.

Conclusion

Decreto n° 10.502/2020 and PNEE 2020 subvert the logic guiding inclusive education in Brazil and represent a setback to the educational rights of PwD, as it legitimizes the segregation of students with disabilities to specialized (special) schools without socializing with other students without disabilities. Such a policy is influenced by ableism, as it, consciously or unconsciously, reproduces practices that lead to differential or unequal treatment of people due to existing or presumed deficiencies (CAMPBELL, 2009).

This policy, supported by ableist assumptions, resumes the notion of “places of belonging” (ANGELUCCI; SANTOS; PEDOTT, 2020), according to the binomial normality/deviation, to determine which students are (in)capable of attending regular schools, which contributes to the exclusion of students with disabilities from the school environment. By adopting the medical model of disability, in which education is guided by the disability's limitations, PNEE 2020 ignores the interaction of PwD with the social environment and the barriers imposed, as opposed to the biopsychosocial view proposed by the LBI.

The provisions of *Decreto n° 10.502/2020* are also at odds with the International Convenção Internacional sobre os Direitos das Pessoas com Deficiência (CDPD) and its Optional Protocol, which, as previously mentioned, has a constitutional hierarchy. The national legal system does not admit that infra-constitutional norms violate its provisions under the circumstance of being considered unconstitutional. There is no doubt that *Decreto n° 10.502/2020* is an unconstitutional norm. Thus, we conclude that this paper's objective was achieved.

Furthermore, our analysis indicates that *Decreto n° 10,502/2020* and PNEE 2020 recognize the State's inability to ensure inclusive education that meets the needs of all

people and their effective learning, regardless of the type of disability, offering special schools to “solve” the situation and withdrawing its responsibility to increasingly improve and perfect regular schools to serve all PwD. Thus, the responsibility for learning is transferred to PwD and their families, i.e., if they are not benefited from regular schools, they should be directed to special schools, as if the “problem” were exclusively that of those with a disability, making them responsible for their difficulties and disadvantages, rather than the school, which is unable to provide the proper resources and conditions for them to have a good education in an inclusive environment.

It is important to bear in mind that this paper does not state that inclusive education is fully and adequately implemented in Brazil, as provided by the legislation; quite the contrary, there is much room for improvement. However, improvements are only possible if we continue to fight for an inclusive education system rather than inverting its logic. Obviously, we acknowledge the existence of students with disabilities who are not effectively included in the school environment, mainly due to a lack of conditions and resources for their learning, and, for this reason, regular schools must heed their demands. That is, schools must adapt to properly serve students with disabilities rather than the other way around.

The analysis of PNEE 2020 in light of the normative framework did not address arguments from people with disabilities and civil associations⁹ in favor of the document, nor did we interview people with disabilities to learn their opinions on inclusive education or *Decreto n° 10.502/2020* and PNEE 2020; which constitute limitations. Thus, future studies are suggested to address these aspects to identify how effective school inclusion is from the perspective of PwD¹⁰.

Additionally, it is worth noting that even though *Decreto n° 10.502/2020* was revoked by *Decreto n° 11.370/2023*, the subject remains current and relevant, as students with disabilities face countless challenges in regular schools. Furthermore, some still attend special schools only, even though they are entitled to attend regular schools. Government agencies overseeing education in Brazil and social science researchers should perform technical analyses and verify in practice the positive aspects implemented by PNEE 2008, identifying those that need to be revised so a new policy is formulated.

Finally, the lesson provided by the anthropologist Anahi Guedes de Mello is worth mentioning. She states that PwD are not “special,” nor do they have “special needs” just because they have a disability. Instead, having needs is an attribute of the human condition, not a problem or disability, as all people have needs during the life cycle, such as in old age; thus, having needs is an inherent human condition (MELLO, 2019). New legislation and public policies must demystify the ableist perspective, which ranks

9- A Federação Nacional de Educação e Integração dos Surdos (FENEIS), as amicus curiae, defended the constitutionality of *Decreto n° 10.502/2020* before the STF during the judgment of *ADI n° 6.590*. The entity’s lawyer, Bruno César Deschamps, verbally argued that the *Decreto* should not be suspended, at least the topics concerning individuals in the deaf community, as bilingual schools are considered better suited to foster the development of deaf identity and culture.

10- The full participation of PwD in society requires they be heard when public policies, programs, and services that concern their interests are proposed, according to the motto: “Nothing about us without us.” This motto became widely adopted in the struggle for the rights of PwD. It was first adopted in the Madrid Declaration in 2002. It emphasizes the need to involve persons with disabilities in decision-making affecting them (SASSAKI, 2007).

people according to their bodies' functionality, and transform the social understanding that people with disabilities are inferior and/or incapable.

References

ANGELUCCI, Carla Biancha; PEDOTT, Larissa Gomes Ornelas; SANTOS, Luciana Stoppa dos. Conhecer é transformar: notas sobre a produção implicada de modos anticapacitistas de habitar a universidade. *In*: GESSER, Marivete; BÖCK, Geisa Letícia Kempfer; LOPES, Paula Helena (org.). **Estudos da deficiência: anticapacitismo e emancipação social**. Curitiba: CRV, 2020. p. 55-72.

BAGLIERI, Susan *et al.* [Re]claiming "Inclusive education" toward cohesion in educational reform: disability studies unravels the myth of the normal child. **Teachers College Record**, New York, v. 113, n. 10, p. 2122-2154, 2011.

BRASIL. [1988]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidência da República, [2021]. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm Acesso em: 30 ago. 2021.

BRASIL. **Decreto nº 6.949, de 25 de agosto de 2009**. Promulga a Convenção Internacional sobre os Direitos das Pessoas com Deficiência e seu Protocolo Facultativo, assinados em Nova York, em 30 de março de 2007. Brasília, DF: [s. n.], 2009. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6949.htm Acesso em: 30 ago. 2021.

BRASIL. **Decreto nº 7.611, de 17 de novembro de 2011**. Dispõe sobre a educação especial, o atendimento especializado e dá outras providências. Brasília, DF: [s. n.], 2011. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/decreto/d7611.htm Acesso em: 30 ago. 2021.

BRASIL. **Decreto nº 10.502, de 30 de setembro de 2020**. Institui a Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida. Diário Oficial da União, Brasília, DF, 01 out. 2020. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10502.htm Acesso em: 30 ago. 2021.

BRASIL. **Lei nº 9.394, de 20 de dezembro de 1996**. Estabelece as diretrizes e bases da educação nacional. Brasília, DF: [s. n.], 1996. Disponível em: http://www.planalto.gov.br/ccivil_03/LEIS/L9394.htm Acesso em: 30 ago. 2021.

BRASIL. **Lei nº 13.146, de 6 de julho de 2015**. Institui a Lei Brasileira de Inclusão da Pessoa com Deficiência (Estatuto da Pessoa com Deficiência). Brasília, DF: [s. n.], 2015. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13146.htm Acesso em: 30 ago. 2021.

BRASIL. Ministério da Educação. Conselho Nacional de Educação. Câmara de educação básica. **Resolução nº 4, de 2 de outubro de 2009**. Institui Diretrizes Operacionais para o Atendimento Educacional Especializado na Educação Básica, modalidade Educação Especial. Brasília, DF: MEC, 2009. Disponível em: http://portal.mec.gov.br/dmdocuments/rceb004_09.pdf Acesso em: 03 maio 2021.

BRASIL. Ministério da Educação. Secretaria de Modalidades Especializadas de Educação. **PNEE**: Política Nacional de Educação Especial: Equitativa, Inclusiva e com Aprendizado ao Longo da Vida. Brasília, DF: Ministério da Educação, 2020, 124p.

BRASIL; STF. Supremo Tribunal Federal. Plenário. ADI n° 5.357 MC-Ref / DF. Relator: Min. Edson Fachin. **Diário da Justiça**, Brasília, DF, 11 nov. 2016. Disponível em: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=310709378&ext=.pdf> Acesso em: 28 fev. 2022.

BRASIL; STF. Supremo Tribunal Federal. Plenário. ADI n° 6.590 MC-Ref / DF. Relator: Min. Dias Toffoli. **Diário da Justiça**, Brasília, DF, 12 fev. 2021. Disponível em: <http://portal.stf.jus.br/processos/downloadPeca.asp?id=15345649124&ext=.pdf> Acesso em: 30 ago. 2021.

CAMPBELL, Fiona Kumari. **Contours of ableism**: the production of disability and abledness. London: Palgrave Macmillan, 2009.

CAMPBELL, Fiona Kumari. Inciting legal fictions: disability's date with ontology and the ableist body of the law. **Griffith Law Review**, London, v. 10, n. 1, p. 42-62, 2001.

CAMPBELL, Fiona Kumari. Refusing able(ness): a preliminary conversation about ableism. **M/C Journal**, [S. l.], v. 11, n. 3, 2008.

DIAS, Adriana. Por uma genealogia do capacitismo: da eugenia estatal a narrativa capacitista social. *In*: SIMPÓSIO INTERNACIONAL DE ESTUDOS SOBRE A DEFICIÊNCIA SEDPcD/DIVERSITAS / USP Legal, 1., 2013, São Paulo. **Anais do [...]**. São Paulo: [s. n.], 2013, p. 1-14.

DINIZ, Débora. **O que é deficiência?** São Paulo: Brasiliense, 2007.

GESSER, Marivete. Por uma educação anticapacitista: contribuições dos estudos sobre deficiência para a promoção de processos educativos inclusivos na escola. *In*: OLTRAMARI, Leandro Castro; GESSER, Marivete; FEITOSA, Lígia Rocha Cavalcante (org.). **Psicologia escolar e educacional**: processos educacionais e debates contemporâneos. Florianópolis: Bosque, 2020. p. 93-113.

HERIR, Thomas *et al.* **Os benefícios da educação inclusiva para estudantes com e sem deficiência**: Instituto Alana em parceria com Abt Associates. [S. l.: s. n.], 2016. Disponível em: https://alana.org.br/wpcontent/uploads/2016/11/Os_Beneficios_da_Ed_Inclusiva_final.pdf Acesso em: 03 maio 2021.

LAKATOS, Eva Maria; MARCONI, Marina de Andrade. **Fundamentos de metodologia científica**. 8. ed. São Paulo: Atlas, 2017. Atualização: João Bosco Medeiros.

LIMA, Eloisa Barcellos de; FERREIRA, Simone De Mamann; LOPES, Paula Helena. Influências da eugenia na legislação educacional brasileira: as produções capacitistas na educação especial. *In*: GESSER, Marivete; BÖCK, Geisa Letícia Kempfer; LOPES, Paula Helena (org.). **Estudos da deficiência**: anticapacitismo e emancipação social. Curitiba: CRV, 2020. p. 165-188.

LOPES, Laís de Figueirêdo; REICHER, Stella Camlot. **Parecer Jurídico – análise do Decreto nº 10.502/2020** – Instituição da Política Nacional de Educação Especial – avaliação sobre retrocessos no ordenamento jurídico. São Paulo: Instituto Alana, 2020. Disponível em: https://alana.org.br/wpcontent/uploads/2020/10/ALANA_parecer_educacao_inclusiva-4.pdf Acesso em: 30 ago. 2021.

MACHADO, Rosângela. Diferença e educação: deslocamentos necessários. *In*: MACHADO, Rosângela; MANTOAN, Maria T. E. (org.). **Educação e inclusão: entendimentos, proposições e práticas**. Blumenau: FURB, 2020. p. 19-44.

MEIRINHO, Bruno César Deschamps. **Sustentação oral no julgamento da ADI nº 6.590**. Brasília, DF: Supremo Tribunal Federal, 2020. Disponível: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6036507>, sessão virtual - referendo na medida cautelar direta de inconstitucionalidade Acesso em: 30 ago. 2021.

MELLO, Anahi Guedes. Deficiência, incapacidade e vulnerabilidade: do capacitismo ou a preeminência capacitista e biomédica do Comitê de Ética em Pesquisa da UFSC. **Ciência & Saúde Coletiva**, Rio de Janeiro, v. 21, n. 10, p. 3265-3276, 2016.

MELLO, Anahi Guedes. Politizar a deficiência, aleijar o queer: algumas notas sobre a produção da hashtag #ÉCapacitismoQuando no Facebook. *In*: PRATA, Nair; PESSOA, Sônia C. (org.). **Desigualdades, gêneros e comunicação**. São Paulo: Intercom, 2019. p. 125-142.

MENDES, Enicéia Gonçalves; TANNÚS-VALADÃO, Gabriela. Inclusão escolar e o planejamento educacional individualizado: estudo comparativo sobre práticas de planejamento em diferentes países. **Revista Brasileira de Educação**, Rio de Janeiro, v. 23, e230076, 2018. Disponível em: <https://www.scielo.br/rbedu/a/mJJDHWr3xyVzvtRdVjdhJSg/?lang=pt#> Acesso em: 22 fev. 2023.

MORAES, Alexandre de. Direito constitucional. 32. ed. São Paulo: Atlas, 2016. **Revista e atualizada até a EC nº 91**, de 18 de fevereiro de 2016.

NUERNBERG, Adriano Henrique. O capacitismo, a educação e a contribuição do campo de estudos sobre deficiência para educação inclusiva. *In*: MACHADO, Rosângela; MANTOAN, Maria T. E. (org.). **Educação e inclusão: entendimentos, proposições e práticas**. Blumenau: FURB, 2020. p. 45-60.

ONU. Organização das Nações Unidas. **Declaração Mundial sobre Educação para Todos: (Conferência de Jomtien – 1990)**. Aprovada pela Conferência Mundial sobre Educação para Todos, em Jomtien, Tailândia, de 5 a 9 de março de 1990. [S. l.: s. n.], 1990. Disponível em: <https://www.unicef.org/brazil/declaracao-mundial-sobre-educacao-para-todos-conferencia-de-jomtien-1990> Acesso em: 30 ago. 2021.

ONU. Organização das Nações Unidas. **Declaração Universal dos Direitos Humanos: adotada e proclamada pela Assembleia Geral das Nações Unidas (resolução 217 A III) em 10 de dezembro 1948**. [S. l.: s. n.], 1948. Disponível em: <https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos> Acesso em: 30 ago. 2021.

SASSAKI, Romeu Kazumi. Nada sobre nós, sem nós: da integração à inclusão. **Revista Nacional de Reabilitação**, São Paulo, v. 10, n. 57, jul./ago. 2007, p. 8-16. Disponível em: <https://www.sinprodf.org.br/wp-content/uploads/2012/01/nada-sobre-n%c3%93s-sem-n%c3%93s1.pdf>. Acesso em: 26 fev. 2022.

TAYLOR, Sunaura. **Beasts of Burden**: Animal and disability liberation. New York: The New Press, 2017.

UNESCO. **Declaração de Icheon: educação 2030**: rumo a uma educação de qualidade inclusiva e equitativa e à educação ao longo da vida para todos. Icheon: Unesco, 2015. Disponível em: https://unesdoc.unesco.org/ark:/48223/pf0000233137_por Acesso em: 28 ago. 2022.

UNESCO. **Declaração de Salamanca**: sobre princípios, políticas e práticas na área das necessidades educativas especiais. Salamanca: Unesco, 1994. Disponível em: <http://portal.mec.gov.br/seesp/arquivos/pdf/salamanca.pdf> Acesso em: 30 ago. 2021.

WEBINÁRIO INTERNACIONAL educação e inclusão – entendimento, proposições e práticas. Realização: FBASD e LEPED. Apoio: Instituto Alana e TV Escola. [S. l.]: Federação Down, 2021. 1 vídeo (160 min). Disponível em: <https://www.youtube.com/watch?v=q1vO1BAOYGw> Acesso em: 30 ago. 2021.

WOLBRING, Gregor. The politics of Ableism. **Development**, [S. l.], v. 51, n. 2, p. 252-258, jun. 2008. Disponível em: https://www.researchgate.net/publication/5219934_The_Politics_of_Ableism Acesso em: 30 ago. 2021.

Received on October 16, 2021

Reviewed on February 13, 2023

Approved on March 28, 2023

Editor: Profa. Dra. Cláudia Valentina Assumpção Galian

Bianca dos Santos Soares é pesquisadora bolsista pelo Programa Unificado de Bolsas (PUB) na Faculdade de Direito de Ribeirão Preto da Universidade de São Paulo (FDRP/USP), com o desenvolvimento do tema o direito ao acesso à educação inclusiva pelas pessoas com deficiência.

Iara Pereira Ribeiro é docente em direito civil na Faculdade de Direito de Ribeirão Preto da Universidade de São Paulo (FDRP/USP). Doutora, mestre e graduada em direito pela Pontifícia Universidade Católica de São Paulo (PUC/SP), bacharelada e licenciada em letras pela Faculdade de Filosofia, Letras e Ciências Humanas da Universidade de São Paulo (FFLCH/USP).