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# Brazil

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### Introduction

In Brazil over the last 100 years, five constitutions and at least six educational reforms have faced education challenges in the fields of equity, finance, access, and quality, all of which have affected the rights of teachers directly and indirectly. In a broad sense, this legislation is characterized by the absence of educational policies and planning, by the adoption of measures in response to immediate conditions, and by normative over-detailing. As a result, the more the federal government legislates, the less internally coherent the laws are, creating a gap between the legal country and the real country. All of this can be clearly seen in many aspects of education, including the rights of teachers.

Indeed, the rights of teachers in Brazil are provided for and guaranteed by the Federal Constitution; by the National Education Law, or NEL (*Lei de Diretrizes e Bases da Educação*); by labor laws; and by specific laws pertaining to each of the country's three educational systems (federal, state, and municipal) since Brazil is a federal republic. Within this legal context, the rights of teachers can be seen from different perspectives: the civil and political rights that all Brazilians are entitled to receive; the rights that all workers share; the rights that they are entitled to as teachers, specifically, and which can be referred to as academic rights; the rights that teachers are entitled to in the private education system; and the rights that they are entitled to as public school teachers, differing in some aspects according to the education systems within which they work.

Some of the rights of teachers overlap, especially between civil and academic rights, as a result of a complex legal network characteristic of the

Brazilian culture and its patchy democratic experience. Starting with the Portuguese colonization of Brazil in the sixteenth century, and except for some unsuccessful attempts, citizens never claimed their rights until recently. The government provided civil and political rights; labor and social rights were conceded, during the Vargas dictatorship in the 1930s, very often, as a political instrument to co-opt certain groups. As a result, people are not used to fighting for their rights in Brazil, and labor rights were seen as a privilege for certain categories, especially in the civil service.

Teachers' rights are no exception. Insofar as the status of teachers is essentially no different from that of other Brazilians, it is possible to understand why the numerous and specific legislative activities have occurred since the NEL became law in the late 1990s. In other words, the NEL attempted to eliminate discrepancies and privileges by establishing a national standard by which candidates enter and progress in the teaching profession.

The NEL is innovative and modernizing. In breaking off with many of the rigid provisions of earlier educational legislation, it allowed a revision of the State's position in relation to recurring issues in Brazilian schooling. Among the issues that needed to be addressed were decentralizing governmental control, financing public education, opening new career opportunities for teachers, and bringing about more active participation in organizing education. Sponsors of these changes expected that all of these measures, combined with a new fund for financing public basic education (FUNDEB), which obliges the government to allocate 60% of these resources on better salaries for teachers, would engender significant improvements in the educational system.

In Brazil, the term *basic education* refers to both preschool, which starts at the age of six, and primary education, which covers students between the ages of seven and fourteen. Primary education, also referred to as fundamental education, is compulsory, free to all and must be accessible to all, at any age. Secondary education must be available and accessible to all, by all suitable means. However, to date, there are no conclusive studies or research in the law describing the impact that these measures have had on the educational system.

At the same time, and in spite of the NEL, it is important to point out that there remains a significant difference between the rights of the teachers in private and public schools, a distinction which lies in the legal employment regime: in the private sector teachers are covered by the common labor laws, while in the public schools teachers are protected by specific statutory public laws which still maintain privileges established in the past and are difficult to abolish because of the power that unions continue to assert. The rest of this chapter, then, presents and comments on selected aspects of the complex legal structure of teachers' rights in Brazil.

### Employment Rights of the Teachers: Civil, Political, and Social Rights

As Brazilian citizens, teachers are entitled to all liberal civil and political rights such as freedom of speech, freedom of belief, the right to participate in unions and political parties, and intellectual property rights. It is also worth keeping in mind that these rights are also still guaranteed in other articles of the Constitution and the NEL. Further, teachers are entitled to the guarantees of due process such as full defense and access to the judicial power. Moreover, the Brazilian Constitution broadly stipulates punishment for acts of discrimination by which officials or others may attempt to limit the fundamental rights and liberties of teachers, and it also prohibits the practice of racism, which Article 5 of the Constitution defines as a non-bailable crime.

Having mentioned freedom of belief, the NEL allows the existence of private schools of any religion or creed, maintained by religious entities; in this case, teachers are subject to the schools' religious orientations. In public schools, whether to provide religious education is not a decision ordinarily made by teachers and school officials. Rather, if religious instruction occurs in public schools, it usually does so based on demands made by students or their parents. This also applies to demands for multi-religious education.

Insofar as the State is secular, religious education must be offered with no extra cost in the public school system, but during the normal school period, teachers have to be prepared by churches or religious entities. In summary, in this area, students' rights prevail over the rights of the teachers. This is not new, as equivalent guarantees had already been provided for by former Brazilian constitutions in 1934, 1937, and 1946. However, the constitutions of 1967 and 1988 suppressed the free choice of religious education by students that was reinstated by the NEL.

Today it is possible to identify a certain consensus to accept that religious teaching must, first of all, be based on the principles of citizenship; religious education should not be used to convert people or impose dogmas, rites, or prayers but, rather, serve more as an educational tool to understand religions and human societies. The concept of religious teaching as an area of knowledge was established in Resolution n° [AQ27]02/98 of the Chamber of Basic Education/National Education Council, which points to the necessity of having a qualified professional for the teaching of religion in primary and secondary education and not a volunteer or someone representing a religious denomination, as it was in the past.

In the field of social rights, teachers in both private and public schools are entitled to the employment rights guaranteed by Article 7 of the Constitution. The extension of these rights to public school teachers is recent, as a result of a broader reform of the civil servants statutory regime carried out in 1998.

In both sectors, these rights include a nationally unified minimum wage; a year-end, one-salary bonus; pensions; separate pay rates for night-shift work; family benefits in some circumstances; normal working hours not exceeding eight hours a day and forty-four hours a week; paid weekly leave, preferably on Sundays; annual vacations, with remuneration at least one-third higher than the normal salary; maternity leave without loss of job and of salary, for a period of 120 days; paternity leave; protection of the labor market for women through specific incentives; and prohibition of any discrimination with respect to wages and hiring criteria of handicapped workers. In addition, many of these rights were given by the law and not as a result of any specific demands or movements on the part of teachers.

Teachers in the private education sector must receive notice of dismissals in proportion to the length of service of at least thirty days, as provided by Article 7 of the Constitution. On the other hand, in the public sector, dismissals require a judicial sentence for tenured teachers and an administrative process for those who are yet to be tenured.

### **Rights Teachers Are Entitled to as Teachers**

Freedom of teaching in Brazil has always been an educational principle except during the military dictatorship, when the Constitution of 1969 imposed restrictions on the practice of teaching under detailed and rigid education legislation (Law 4.024/62 and Law 5.540/68, which were revoked by the NEL in 1996).

In the Constitution, and with regard to the influence that governments and the private school boards exercise over the activity of teaching, Article 206 establishes some educational principles to protect and ensure teachers a certain autonomy in their activities such as the “freedom to teach, research and express thought, art and knowledge; pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions.” Obviously, these rights are practiced within the legal framework of the National Education Plan (Law 10.172/01) and the NEL as also foreseen in the Constitution, which establishes the objectives and guidelines of this activity.

The NEL itself imposes a minimum standard to be upheld all over the country, which includes a national basis not only for syllabi at each level of education, whether primary, intermediate, or secondary, but also for teacher education, since the Constitution demands a “guarantee of standards of quality.” Teacher education also varies according to the level of education: for lower education, a higher education degree is required; for higher education, a post-graduate degree is necessary.

A B.A. or post-graduate degree in pedagogy is required for administration, planning, inspection, supervision, and pedagogical counseling for primary education. Among the innovations introduced by the NEL education colleges (called *institutos superiores de educação*) is that they were created to prepare teachers for only primary and secondary education (Article 63). More specifically, the Brazilian legislation accepts the following degrees in the exercise of teaching: religious science, pedagogy, history, philosophy, social sciences, and psychology. Candidates who earn diplomas in education issued by the *institutos superiores de educação* can also enter the teaching profession. [AQ28]

A question that had been the subject of a great deal of controversy refers to the innovations introduced by the 1998 Brazilian Constitution concerning teachers who wished to serve native communities. This provision established that “the regular fundamental teaching shall be practiced in Portuguese language, still ensuring to the native communities the use of their maternal native language and to their proper learning processes” (Article 210). Bilingual education, appropriated to the cultural peculiarities of different groups, is better attended through indigenous teachers. In this point of view, the National Education Plan calls for the creation of specific programs in order to attend native schools as well as the creation of financing lines looking for an increase in education programs in native areas.

One of the goals to be reached in this performance circle is to professionalize and to recognize publicly native teaching, promoting the creation of the native teachers’ category (preferring those coming from the proper community) as a specific teaching career, and by the increasing of continuous programs for the systematic graduation of the native teacher staff. [AQ29] The proposal of a native school holding quality, differentiated from other schools, represents a great novelty in Brazil’s educational system. However, this change also requires responsible organizations and institutions to provide definitions about new dynamic actions, conceptions, and mechanisms, not only to incorporate these schools as part of the official teaching system but also to ensure that they are respected.

The challenge is that it is difficult to implement these requirements for teachers in the interior and poorer regions of the country, especially at the primary levels of education, while seeking to guarantee the quality of education that these schools will provide. The NEL tried to enforce these measures in the so-called “Decade of Education” (1997–2007), the purpose of which was to admit only teachers with higher education or with supervised teacher training (Article 87). This last requirement can substitute, in extraordinary circumstances and taking into consideration the enormous disparities that exist in a huge country like Brazil, the requirement of higher education for

teaching in primary schools, as long as candidates have received the benefit of teacher education at the secondary school level (*Curso Normal*, as described in Article 62).

It must be observed that although these requirements aimed at improving and standardizing teaching and education, as far as possible, it also led to a race for postgraduate degrees from any institution as a means of improving careers without necessarily improving skills or qualifications. The fact that there is a lack of government control over the quality of these institutions and the specialization courses they offer has created a perverse phenomenon: although the law is observed, the result is a higher number of unqualified teachers.

At all levels of teaching, the NEL guarantees teachers the right to participate in the elaboration of pedagogic plans of their school. At the same time, the NEL demands commitment by teachers in the implementation of the plan and results, which include full dedication to planning, assessment, and continuous professional development as well as participation in the parents and teacher associations.

In addition, Article 206 of the Constitution highlights the “appreciation of the value of teaching professionals.” In this way, Article 206 guarantees, in accordance with the law, career plans for public school teachers, with a professional minimum salary and admittance exclusively by means of public entrance examinations consisting of tests and presentation of academic and professional credentials.

### Teacher Rights in Private Schools

Along with the rights identified previously, teachers in private schools are protected against arbitrary dismissal without just cause. Moreover, these teachers are entitled to unemployment benefits in the event of involuntary unemployment, to severance pay, to a minimum basic salary, to the maintenance of salaries when not under negotiations, and to receive notice of dismissal at least thirty days in advance.

Labor laws establish that the national minimum wage can be paid proportionally to the number of hours worked. Even so, teachers have a special working day that comprises four consecutive hours or six alternate hours (Article 318 of the Labor Law). Thus, private schools are not allowed to pay teachers proportionally to their working hours; teachers are entitled to receive the integral minimum wage.<sup>1</sup>

Teachers are also entitled to retirement pensions after 25 years of contributions to government pension funds for female teachers and 30 years for male

teachers, at the ages of 60 and 65, respectively. Moreover, teachers are provided with occupational accident insurance paid by their employers, without excluding the employers' liability for indemnity in the event of malice or fault, to child benefits up to six years of age, to be a member of teachers' unions, and to receive the benefits agreed on with the unions.<sup>2</sup> [AQ30] Teachers who have disabilities are protected against discrimination with respect to wages and hiring criteria. Of course, equal rights are guaranteed for both tenured and non-tenured teachers.

It must be mentioned that the private education sector has grown stronger in comparison to the public education sector in terms of organization, infrastructure, and quality. From 1930 until 1988, it could be said that the State did not make education a priority as a public service. To the contrary, the State acted in favor of the private sector, even transferring public resources, to the detriment of the public sector (with some exceptions in the public primary and secondary schools and higher education, as in the state of São Paulo). This was a corollary of a public policy that the government adopted in the 1930s when the State assumed the role of the main actor in the promotion of economic development. This attitude on the part of the government also encouraged the proliferation of private schools, allowing the government to invest public resources in areas other than education. The military government maintained such an educational policy into the late 1960s and 1970s.

The Constitution of 1988 changed the picture considerably, especially in the public sector. By sharing responsibilities in public education through the allocation of specific incumbencies to each level of government and by creating new ways of funding education, the State reassumed its responsibilities for education. In fact, since Constitutional Amendment 14 was enacted in 1996, all three levels of government—federal, state, and municipal—are obliged to allocate 60% of their resources of two temporary funds (Fund for the Maintenance and Development of Fundamental Education (FUNDEF) and the recent Fund for the Maintenance and Development of Basic Education (FUNDEB), which extinguished the first; cf. Law 11.274/07) for better salaries for public school teachers.

The Constitution also abolished part of the former civil servant privileges in 1988 and again in 1998 and 2003 in Constitutional Amendments 19 and 41. However, Article 213 allowed public resources to continue to be transferred to private schools under specified conditions but limited this approach to not-for-profit and philanthropic schools. In Article 209 the Constitution reaffirmed that teaching is open to private enterprises, provided that the following conditions are met: compliance with the general rules of national education, authorization, and evaluation of quality by the Government.

### Teacher Rights in Public Schools

Public school teachers come under the constitutional regime as civil servants in terms of employment rights with certain exceptions. This means that as a general rule, careers, salaries, professional statutes, and benefits are established by law, not by contract. As a consequence, this makes changes much slower and the whole system less flexible for public school teachers when compared with their counterparts in private schools.

On the other hand, benefits for public school teachers tend to be more ample, despite the administrative reforms of the Constitution of 1988 and the complex nature of the employment laws, especially where salaries are concerned. This complexity is due to the constant amendments to the law due to union pressure rather than on account of long-term career planning. Consequently, public school teachers are admitted to positions only through qualifying exams, a rule stipulated by all former constitutions, with no exceptions, which entitles applicants to tenured positions after three years of teaching. During probationary periods, teacher dismissal was an administrative decision which called for due process. Once teachers gained tenure, they could only be dismissed by judicial decisions. Prior to the changes enacted in the 1988 Constitution, teachers held lifelong tenure and permanence in their positions, making dismissals very difficult. [AQ31]

In terms of retirement, the situation is very different when compared to teachers in private schools since primary and secondary public school teachers can retire earlier, at 55 and 60 years of age for women and men, respectively, and after 20 and 25 years of contributing to government pension funds for female and male teachers, respectively; this is five years fewer than in the private schools. This benefit is extended to teachers who serve in administrative positions or in pedagogic activities such as supervision and coordination.

Public school teachers are also allowed a remunerated accumulation of two teaching offices or one teaching office with another technical or scientific office; the accumulation of public offices is forbidden by the Constitution as a general rule (Article 37, XVI). In this respect, the jurisprudence of Brazilian courts prevails today, allowing for this exception as long as there is a compatibility of working hours between the two jobs.<sup>3</sup>

Another aspect of the NEL which deserves some comment is the decentralization of the administration of public schools. This is an innovation in the Brazilian Administrative Law, especially in the public school system. Prior to the enactment of the NEL, administration was highly centralized in the hands of government entities such as state and municipal secretaries of education, a heritage of the legislation issued during the military dictatorship. Currently, Article 15 of the NEL allows educators in primary and secondary schools to practice a



limited degree of autonomy in academic and administrative decision-making. Together with this decentralization, Article 14 of the NEL demands that teachers participate in the elaboration of the pedagogic directives of their schools. Both of these measures—administrative decentralization and increased pedagogic participation—have greatly increased the rights of teachers.

### Conclusion

According to the Brazilian Institute of Statistics and to the Ministry of Education, the Brazilian population was 188 million in 2006. Of that number, 25% were children enrolled in basic education—an average of 42 million students between the ages of 7 to 15 in fundamental education—and 9.8 million, between the ages of 15 to 18, were in secondary education. In higher education, the average is 3% of the population enrolled in undergraduate and postgraduate programs. In 40 years, the Brazilian population is expected to top 268 million. Thus, the roles of the State and of teachers are crucial in this educational scenario.

As can be seen, legislation concerning the rights of public school teachers in Brazil is much more complex than that in private schools. However, there is no guarantee of better quality in teaching for many reasons, such as the lack of adequate infrastructure, violence in the outskirts and centers of big cities, individuals holding more than one teaching job, mental and emotional stress from the job, and lack of teacher dedication. Unfortunately, years in service are seen merely as a means to retirement and not as a fulfilling working experience for many teachers.

In spite of the advances achieved by the Constitution of 1988 and the NEL, it is clearly necessary to face the difficult task of revising the career plans and structures for public school teachers, working schedules, and promotions and benefits in an attempt to de-bureaucratize and rationalize the system that is so full of inherited legal details and privileges that no longer serve a purpose. Some measures in this direction suggested by public school administrators are a combination of years of service, academic qualifications, and assessments based on learning results such as criteria for benefits and promotions to reduce absenteeism (one of the biggest problems in public schools), increased dedication, and motivation among teachers.

The general panorama of public education in Brazil is characterized by the lack of policies in human resources, with some exceptions. For example, leaders in some states, such as Rio Grande do Sul, Tocantins, and the capital Brasília, have taken steps toward drastic reforms in the public teaching careers. Broadly speaking, the lack of administrative policies is due to negotiations

between the government and the strongest teachers' unions, in which a variety of often-conflicting interests are at play. In circumstances such as these, the government usually reacts to the pressures and increases teacher privileges merely to maintain this public service without a clear reform plan in mind. Recently, the federal government announced a new education plan, trying to enforce some of the measures mentioned above, although such serious structural problems cannot be solved with a wave of a magic wand. Continuity of government policies in the field of education, once they have been set into motion, is fundamental.

These are some of the major problems that the rapidly expanding Brazilian educational system faces. If leaders fail to address these problems, then further difficulties in equity, finance, and access will only multiply. This is a phenomenon that is not limited to the area of education but is but one of the outcomes of the developmental conditions of the Brazilian State.

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### Notes

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2. Brazilian Superior Court of Justice (2007). *Case No. 461.008/PB*, Judge Felix Fischer. Published in the *Official Journal of Justice*, April 16, 2007; p. 269.3.[\[AQ34\]](#)
3. Brazilian Superior Court of Justice (2007). *Writ of Mandamus No. 11.566/DF*, Judge Arnaldo Esteves Lima. Published in the *Official Journal of Justice*, April 16, 2007; p. 165.