

**LEGAL REQUIREMENTS FOR TEACHERS' ACTION IN THE EARLY YEARS OF  
FUNDAMENTAL EDUCATION (1996-2019)**

***EXIGÊNCIAS LEGAIS PARA A ATUAÇÃO DE PROFESSORES NOS ANOS INICIAIS  
DO ENSINO FUNDAMENTAL (1996-2019)***

***EXIGENCIAS LEGALES PARA LA ACTUACIÓN DE PROFESORES EN LOS AÑOS  
INICIALES DE LA EDUCACIÓN BÁSICA (1996-2019)***

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**ABSTRACT:** The aim of this article is to present, in chronological form, the changes in the formative requirements for the performance of teachers in the early years of elementary education, comprised in the legislation after the enactment of Law no. 9,394/1996. It becomes evident that the demand for higher education to work at this level of education is eased and relativized over time, maintaining the admissibility of the formation in the Normal School/ Teacher-training colleges. Thus, the current guidelines for teacher-formation in the early years of elementary school are similar to those present in the LDB, promulgated more than two decades ago.

**KEYWORDS:** Teacher-formation for the early years of fundamental education. Education legislation. Pedagogy. Normal School. Teacher formation colleges.

**RESUMO:** O objetivo do artigo é apresentar, de forma cronológica, as alterações nas exigências formativas para a atuação nos anos iniciais do ensino fundamental contidas na legislação após a promulgação da Lei nº 9.394/1996. Evidencia-se que a exigência da formação superior para atuar nesse nível de ensino é abrandada e relativizada ao longo do tempo, com a manutenção da admissibilidade da formação no Curso Normal Médio/Magistério. Assim, as diretrizes atuais para a formação de professores para os anos iniciais do ensino fundamental são semelhantes àquelas presentes na LDB promulgada há mais de duas décadas.

**PALAVRAS-CHAVE:** Formação de professores para os anos iniciais do ensino fundamental. Legislação educacional. Pedagogia. Normal Superior. Curso Normal Médio/Magistério.

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**RESUMEN:** *El propósito del artículo es presentar, en forma cronológica, los cambios en los requisitos de capacitación para la actuación de los profesores en los primeros años de educación básica, comprendidos en la legislación después de la promulgación de la Ley n° 9.394/1996. Se ha evidenciado que la exigencia de formación profesional superior para trabajar en este nivel de educación es ablandada y se relativizada con el tiempo, por medio del mantenimiento de la admisibilidad de la capacitación en la Escuela Normal/Magisterio. Así, las directrices actuales para la capacitación de los profesores para los primeros años de la escuela básica son similares a aquellas presentes en la LDB, promulgada hace más de dos décadas.*

**PALABRAS CLAVE:** *Capacitación de los profesores para los primeros años de la escuela primaria. Legislación educativa. Pedagogía. Normal Superior. Escuela Normal/Magisterio.*

The specific formation requirement for teachers who work in the early years of elementary education has undergone several changes since the enactment of the Law of Directives and Bases of National Education (LDB), Law No. 9,394, of 23 December 1996 (BRASIL, 1996a). This article analyzes these changes and has as a data source the legislation and other official documents of the Ministry of Education.

The text promulgated in 1996 defines teacher formation for basic education, in its article 62, considering that:

The formation of teachers to work in basic education will take place at a higher level, in a teaching degree course, with a full graduation, in universities and higher education institutes, admitted, as a minimum formation for the exercise of teaching in early childhood education and in first four grades of elementary school, the one offered at the secondary level, in the Normal modality (BRASIL, 1996a, our translation).

This article establishes the formation of teachers at a higher level to work in basic education and, at the same time, it also explains that the minimum formation required to act as a teacher in early childhood education and in the initial grades of elementary education is Normal High School/Teaching. In the words of Pinheiro and Romanowski (2010, p. 148, our translation): “The announcement of minimum formation in higher education is an advance, however, not in full when maintaining the high school level”.

LDB's initial proposal was that, within 10 years, the country would have at this level of education, only teachers with higher education. In the caput of article 87 of the legal diploma, it was instituted: “Decade of Education, starting one year after the publication of this Law”, that is, from 23 December 1997 until 23 December 2007. Paragraph 4 of the same article stated that: “Until the end of the Education Decade, only qualified teachers with a higher education degree or formed by in-service training will be admitted” (our translation). Thus, as provided

for in art. 62, the high school level formation in the Normal modality would be accepted as a minimum requirement for performance in early childhood education and in the early years of elementary school. In turn, the art. 87, § 4 established a ten-year period for teachers in office to obtain certification at a higher level.

The following day after the publication of the LDB, Law No. 9,424/1996 (BRASIL, 1996b) was enacted, which created the FUNDEF (Portuguese initials) Fund for the Maintenance and Development of Elementary Education and the Enhancement of Teaching. In its art. 9, § 2, a deadline for obtaining certification was again established, in this case for teachers without any formation: "Lay teachers are guaranteed a period of five years to obtain the necessary qualifications to exercise teaching activities" (our translation).

In this sense, still without the regulation of article 62 of the LDB, the Basic Education Chamber of the National Education Council published Resolution CEB no. 2, of 19 April 1999 (BRASIL, 1999a) which was included in the caput of its article 1:

The Normal Course at High School level, foreseen in article 62 of Law 9394/96, open to the graduates of Elementary Education, must provide, in compliance with the provisions of the Magna Carta and the Law of Directives and Bases of National Education, LDBEN, the formation of teachers to act as teachers in Early Childhood Education and in the early years of Elementary School, adding to the specificities of each of these groups the requirements that are specific to indigenous communities and people with special educational needs (BRASIL, 1999a, Art. 1º, our translation) .

Despite this, on 6 December 1999, article 62 of the LDB was regulated by Decree No. 3,276, which provided for the formation in higher education of teachers to work in basic education, defining the requirement for higher education to work in the early years of elementary school:

The formation in higher education of teachers for multidisciplinary work, aimed at teaching in early childhood education and in the early years of elementary school, will be carried out exclusively in normal higher education courses (BRASIL, 1999b, Art. 3, § 2, our translation).

Through this decree, the Normal Higher Course was created, the only higher education that would be accepted for professional practice in the early years of elementary school. As evidenced by CNE Opinion No. 970/1999, of the CNE (BRASIL, 1999c), the LDB standardized that, with the established period of 10 years, teachers of this level of education should have certification in the Normal Higher Course (BRASIL, 1996a, 62 and Art. 87, § 4). In turn, the performance of professionals with a degree in Pedagogy was established in Article 64 of that law:

The formation of education professionals for administration, planning, supervision and educational guidance for basic education, will be done in undergraduate courses in Pedagogy or at postgraduate level, at the discretion of the educational institution, guaranteed in this formation, the common national basis (BRASIL, 1996a, Art. 64, our translation).

As a result, holders of degrees in Pedagogy were disqualified from teaching, which was changed in the following year, enabling these professionals to act again. As shown in Figure 1, there was a significant increase in the offer of Pedagogy and Higher Education courses and, consequently, in the number of enrollments.

**Figure 1** – Table of the number of formation courses, enrollments and graduates to work in the early years of elementary school

	Course	Number of courses	Enrollments*	Graduates in the previous year	
				From the course	Total
1996	Pedagogy	513	123,700	26,159	26,159
2000	Pedagogy	837	202,584	31,027	32,380
	BETF <sup>1</sup> (N.H.) <sup>2</sup>	110 (20)	15,385 (1,166)	1,353 (0)	
2004	Pedagogy	1,437	178,026	66,793	109,869
	DE <sup>3</sup>	33 <sup>4</sup>	35,528	12,938	
	BETF (N.H.)	996 (701)	106,933 (69,212)	30,138 (10,385)	
2008	Pedagogy	1,636	278,677	55,290	74,726
	BETF (N.H.)	426 (373)	33,742 (28,228)	19,436 (17,847)	
2012	Pedagogy	1,724	307,564	56,735	56,735
	Pedagogy DE	110	295,702	55,402	
	BETF	66	5,203	157	
	BETF DE	1	593	0	
2018	Pedagogy	1,495	269,787	52,546	122,478
	Pedagogy DE	232	478,103	69,932	

\* The number of enrollments corresponds to the number of students enrolled in the course in that year, regardless of the year of entry.

<sup>1</sup> BETF - Basic Education Teacher Formation: courses with different denominations, including Normal Higher (N.H.).

<sup>2</sup> The Normal Higher (N.H.) Course became part of the Education Census in 1999.

<sup>3</sup> In the Higher Education Census of 2000, the first mention of distance education courses (DE) appears.

<sup>4</sup> Distance education: 8 Pedagogy courses, 20 for Normal Higher Education and 5 for teacher formation in the initial grades of elementary school (Cf. 2020a, Synopsis of Higher Education 2004, table 7.1).

Source: Adapted by the authors from INEP, 2020 (Synopses of Higher Education Statistics 1996-2018): 1996 (table 4.5); 2000 (tables 3.2 and 6.2); 2004 (tables 3.2 and 4.5); 2008 (tables 4.5 and 5.2); 2012 (tables 3.2, 5.2, 6.2, 7.4, 7.6 and 7.7); 2018 (tables 1.14, 3.2, 6.2 and 7.4). (our translation).

On 7 August 2000, eight months after the publication of the regulation, Decree No. 3,554 was promulgated, which changed the wording of Art. 3, § 2 of Decree No. 3,276/1999, determining that:

Higher education formation of teachers for multidisciplinary work, aimed at teaching in early childhood education and in the early years of elementary school, will preferably take place in normal higher education courses (BRASIL, 2000, Art. 1º, our translation).

Thus, what previously expressed the obligation - “exclusively in normal higher education courses” (BRASIL, 1999b, Art. 3, § 2) - of higher education, was redefined to something merely preferential, which in this case denoted the requirement of formation only when possible. It is noted that, with this change, the goal established in art. 87, § 4 was not revoked or excluded from the LDB.

The LDB also stated in its article 87 that:

The Union, within one year from the publication of this Law, will forward to the National Congress the National Education Plan, with guidelines and goals for the next ten years, in line with the World Declaration on Education for All (BRASIL, 1996a, Art. 87, § 1, our translation).

Presented at the Federal Chamber on 10 February 1998, the project passed until the year 2001, when Law No. 10,172, of 9 January 2001 (BRASIL, 2001) was approved, which approved the National Education Plan (PNE). In the topic Diagnosis (10.1) of item 10 of the PNE, Teacher formation and valuing the teaching profession, it was stated: “For the first 4 [four] grades of elementary school: 94,976 need to obtain a high school diploma, normal modality”. In the topic Objectives and Goals (10.3) of the same chapter 10 (item 18), it reads:

To guarantee, through a joint program of the Union, the States and Municipalities, that, within ten years, 70% of teachers of early childhood and elementary education (in all modalities) have specific higher education, complete teaching degrees in qualified institutions (our translation).

In turn, Opinion No. 1 of the National Education Council (CNE), of 19 February 2003 (BRASIL, 2003), clarified that:

Holders of a high school diploma, as well as those who came to obtain it under the terms of Law No. 9394/96, have a guaranteed right (and until the end of their lives) to exercise professional teaching in the classes of Early Childhood Education or in the initial grades of Elementary School, according to their qualification (our translation).

In 2006, the CNE<sup>4</sup>, through Resolution CNE/CP n0. 1, of 15 May 2006, defined the Pedagogy course as the only graduation for acting in early childhood education and in the first

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<sup>4</sup> Although the PNE cites the Statistical Synopsis of Basic Education 1996 from MEC as a source, the data refers to the Statistical Synopsis of Basic Education 1998 (INEP, 1996; 1998).

years of elementary school (BRASIL, 2006, Art 4) that should be offered in higher education institutions. The same resolution makes reference to the Normal course of medium level (Art. 2, 4 and 9). As Article 11 of the document points out:

Institutions of higher education that maintain courses authorized as Normal Superior and that intend to transform Pedagogy into a course and institutions that already offer Pedagogy courses should prepare a new pedagogical project, obeying what is contained in this Resolution (BRASIL, 2006, Art. 11, our translation).

It should be noted that the 2007 Commitment to All for Education Goals Plan (BRASIL, 2007) does not make specific references to teacher formation<sup>5</sup>.

CNE/CP Ordinance No. 10, of 6 August 2009 (BRASIL, 2009), with "Indications to support the construction of the National Education Plan 2011 - 2020" pointed out in the third item of the topic 2.17 Priorities for Professional Formation: "Establish a deadline to extinguish the normal high school course in the country, so that it ceases to be considered as initial teacher formation and, consequently, as a basic level of remuneration" (our translation).

In 2011, the year of the end of the decade of the PNE (BRASIL, 2001), the number of teachers in the early years of elementary school with a higher education diploma jumped to 68.16% (INEP, 2012), just below the established goal. In 2013, after seventeen years of the publication of LDB (BRASIL, 1996) and twelve years of PNE (BRASIL, 2001), the number of teachers in the early years of elementary school with a diploma had jumped to 71.08% (INEP, 2014).

The 2001 National Education Plan, valid until 2011, should be replaced by a new PNE from that date. It is worth mentioning that, although article 214 of the Federal Constitution (CF) of 1988 (BRASIL, 1988) defines that "The law will establish the national plan of education, of multiyear duration [...]", it was only through the LDB (BRASIL, 1996a, Art. 87, § 1) and the 2001 PNE (BRASIL, 2001, Art. 1) which regulated the validity period of each PNE for ten years, an amendment incorporated in the Constitution through Constitutional Amendment no. 59, of 11 November 2009. In an ordinance of 6 August 2009 (BRASIL, 2009), the National Education Council (CNE) stated that: "All the indications in this document should guide the construction of the PNE (2011-2020) [...]". It turns out that a new National Education Plan was only approved with the publication of Law No. 13,005, on 25 June 2014, to take effect in the 2014-2024 decade. Among the goals presented in the 2014 PNE, there is:

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<sup>5</sup> Consta no Art. 2º, inciso XII: "Instituir programa próprio ou em regime de colaboração para formação inicial e continuada de profissionais da educação".

Goal 15: ensure, in a collaborative regime between the Union, the States, the Federal District and the Municipalities, within 1 (one) year of the validity of this PNE, a national policy for the formation of education professionals referred to in items I, II and III of the caput of art. 61 of Law No. 9,394, of 20 December 1996, ensured that all teachers of basic education have specific higher education, obtained in a degree course in the area of knowledge in which they work (BRASIL, 2014, our translation).

This lack of definition corroborates the previous decision of the Brazilian government to revoke, by means of Law No. 12,796/2013 (BRASIL, 2013), the section of the LDB (BRASIL, 1996a, Art. 87, § 4, our translation) where it read: “Until the end of the Education Decade, only teachers qualified at a higher level or formed by in-service training will be admitted”. In other words, after the end of the goal established by LDB and not being successful in its fulfillment, it was decided to exclude the section of the law. Thus, it was emphasized that, although the country has goals that aim to ensure the formation of all teachers at a higher level, there is no deadline for compliance.

Law No. 12,796 (BRASIL, 2013) also modified article 62 of the LDB, which came into force with the following text:

The formation of teachers to work in basic education will take place at a higher level, in a teaching degree course, with a full graduation, in universities and higher education institutes, admitted, as a minimum formation for the exercise of teaching in early childhood education and in 5 (five) first years of elementary school, the one offered at the medium level in the normal mode (our translation).

As a result, the admission of teachers with secondary education in the normal<sup>6</sup> modality for teaching in the first years of elementary school was maintained. About this, points BARRETTO (2015, p. 693, our translation):

The evident conservative content of the measure is not only manifested in terms of the very conception of teacher formation necessary to meet the educational needs of the population at all levels of the educational system, but also in relation to the effort made by the country to take teaching to a new level, in line with world trends. But it also returns to a known pattern of education policies: that of legitimizing emergency measures as permanent!

For the author, there is also an economic and political component: with a larger contingent of teachers without higher education, there is no increase in expenditure on payrolls, “[...] since the Law on the Salary Floor of Teaching [Law no. 11,738, of 16 July 2008] was

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<sup>6</sup> In 2015, there were 1,137 educational establishments offering Secondary Education in the Normal/Teaching modality, with a total of 93,919 enrollments (INEP, 2016, tables 1.1 and 3.1).

established based on the earnings of professionals with secondary education” (BARRETTO, 2015, p. 693, our translation).

In turn, the PNE for the 2014-2024 decade (BRASIL, 2014) has as one of its goals:

15.9) to implement special courses and programs to ensure specific formation in higher education, in the respective areas of activity, to teachers with secondary education in the normal mode, who are not licensed or licensed in an area other than that of teaching, in effective exercise; (BRASIL, 2014, goal 15.9, our translation).

In 2017, through Law No. 13,415 (BRASIL, 2017), the last amendment to article 62 of the LDB occurred, giving its current configuration. As pointed out by Lima and Maciel (2018, p. 9), this law “materialized the reform of high school education by the Temer Government”, which directly or indirectly affected all basic education. The article came into force with the following text:

The formation of teachers to work in basic education will take place at a higher level, in a full teaching degree course, admitted as a minimum formation for the exercise of teaching in early childhood education and in the first five years of elementary school, the level offered at high school, in the normal modality (BRASIL, 2017, Art. 7, our translation).

We have that, the current requirements for the formation and performance of teachers in the early years of elementary school, have - after so many unfulfilled promises present in the legislation (BRASIL, 1996; 2001; 2014) - guidelines very similar to those present in the enacted LDB for more than two decades. The two differences to be highlighted are: the exclusion of the requirement for higher education in universities and higher education institutes, since there is a greater range of formative institutions; and the unnecessary inclusion of the term “full teaching degree”, since the short degrees were extinguished by the LDB of 1996, as highlighted by CES Resolution No. 2, of 19 May 1999 (BRASIL, 1999d).

## **Final considerations**

With the various changes mentioned here about the requirements for the performance of teachers in the early years of elementary school, it is clear that the Brazilian educational legislation has been, since the Law of Guidelines and Bases of 1996, adapting to the reality and the social and economic context of the country, inferring about the educational public policy strategies that were not effective. According to Nader (2012, p. 18, our translation), “Legal institutions are human inventions that suffer variations in time and space. As a process of social



adaptation, the Law must always be remaking itself, in the face of social mobility [...]”. In this sense, Gatti *et al.* (2019, p. 32, our translation) state that:

What we observe is that there has always been, and still are, improvisations in the country to supply the expansion of schools with teachers. It is noticed in time choices in educational policies that are somewhat wrong, forgetting the needs of properly formed teachers so that educational reforms and proposed curricula could really be carried out in their purposes in school educational practices.

As shown in Figure 2, in the period from 1996 to 2019 the number of teachers in the early years of elementary school had small variations in each quadrennium, remaining stable. There has been a significant increase in the number of teachers with higher education.

**Figure 2** – Table of the number of teaching functions (1996-2004) and teachers (2008-2009) in the initial years of basic education by schooling

	Incomplete Elementary Education	Elementary Education	High School/ Normal High School**	Higher Education	Total
1996	8.15% (63,257)	7.11% (55,225)	64.42% (500,238)	20.32% (157,817)	776,537
2000	2.67% (21,774)	5.46% (44,510)	67.29% (548,469)	24.58% (200,326)	815,076
2004	0.32% (2,633)	1.07% (8,841)	57.08% (469,597)	41.53% (341,637)	822,708
2008	No register <sup>1</sup>	0.65% (4,669)	39.11% (280,555)	60.24% (432,108)	717,332
2012	No register	0.31% (2,344)	31% (231,811)	68.39% (513,557) <sup>2</sup>	747,712
2016	No register	0.23% (1,787)	24.77% (189,186)	75% (572,954) <sup>3</sup>	763,927
2019	No register	0.21% (1,615)	15.54% (116,838)	84.25% <sup>4</sup> (633,541)	751,944 <sup>5</sup>

\* Until 2006, the teaching function was counted, that is, the same teacher could "be counted more than once in the exercise of his duties as class leader" (INEP, 2007). From then on, "in the Synopsis on Teacher 2007, the production of data related to the number of teachers is privileged" (INEP, 2007).

Therefore, the significant difference between the total data for the years 2004 and 2008 presented here. \*\* The statistical synopses of basic education produced by INEP do not specify whether it is a regular high school or a normal course in high school.

<sup>1</sup> In 2006, the last year to be record this information, there were 1,675 teaching functions (or 0.2% of the total) with incomplete elementary education.

<sup>2</sup> Of these, 19,232 (or 2.57% of the total teachers) do not have a teaching degree.

<sup>3</sup> Of these, 13,617 (or 1.78% of the total teachers) do not have a teaching degree.

<sup>4</sup> Of these, 31,166 (or 4.14% of the total teachers) do not have a teaching degree.

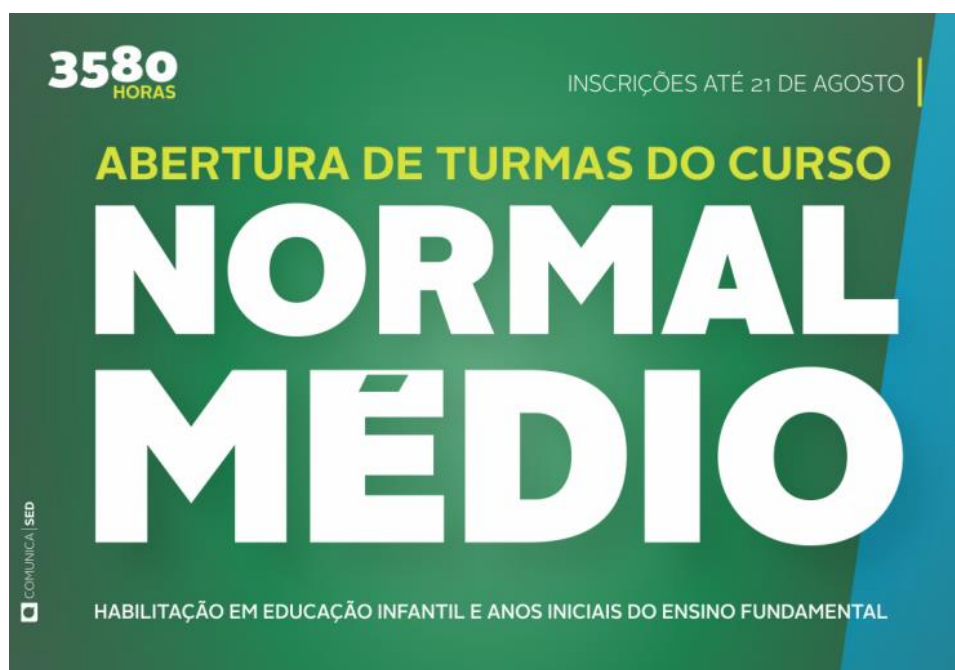
<sup>5</sup> Of these, 10.6% graduated from Normal High School/Teaching (INEP, 2020c, p. 22).

Source: INEP (2007) – adapted by the authors. Our translation.

On the other hand, in successive post-LDB governments, the legislation was permeated by (formation) demands on teachers while the Brazilian State itself was unable to supply the

need for formative institutions. In other words, the Brazilian State created expectations through formative requirements and supposed long-term planning, and then, with the failure to fulfill its role, relativize its own requirements.

**Figure 3** – Government advertising of Mato Grosso do Sul (2019)



Source: State Department of Education of Mato Grosso do Sul<sup>7</sup>

The High School Normal/Teaching Course continues to be offered in public and private networks. In 2019 (INEP, 2020b, tables 1.30, 3.19 and 4.14), the year of the last Basic Education Census, there were 2,583 classes of High School Normal/Teaching distributed by 692 schools with 64,222 students enrolled.

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## **How to reference this article**

SUFICIER, D. M.; AZADINHO, M. P. M.; MUZZETI, L. R. Legal requirements for teachers' action in the early years of fundamental education (1996-2019). **Revista on line de Política e Gestão Educacional**, Araraquara, v. 24, n. 3, p. 1461-1473, Sep./Dec. 2020. e-ISSN:1519-9029. DOI: <https://doi.org/10.22633/rpge.v24i3.13597>

**Submitted:** 19/04/2020

**Required revisions:** 18/06/2020

**Approved:** 27/07/2020

**Published:** 01/09/2020