127 - THE STUDENT IS CONSTITUTIONAL LAW, HAVE PROFESSIONAL DUE PHYSICAL EDUCATION ENTITLED TO OFFER YOU CONTENT AND LEARNING ASSESSMENT IN BASIC EDUCATION

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INTRODUCTION

After 27 (twenty-seven) years of enactment of the Brazilian Constitutional Charter, and with it, the solidification of achievements of a nation, sometimes we find ourselves here and there, with some acts performed by public managers that meet the wide struggle of the Brazilian people, when in 1985, at the opening of the democratization process, bringing a new "set of ideas", which will form the "Constitutionalism." (CANOTILHO, 2002)

Consolidated ideas that "fundamental law of society" (MORAES, 2011 P.7) will be named Constitution and our charter brought the formation of more than a rule of law, but also a democratic state, introduced in "constitutionalism as legitimization of warranty and limitation of power." (MORAES, 2011, p. 6)

In order to build a society "more just, fraternal and united" (MORAES, 2011, p.22), the Constituent Legislator had the zeal to conceptualize education as a bias that safeguards the formation of the democratic state of law, to do so, We transcribe the article 205 of our Constitution:

> Art. 205. The education, universal right and duty of the State and the family, will be promoted and encouraged with the cooperation of society, seeking the full development of the person, his preparation for the exercise of citizenship and his qualification for work. (PLATEAU, 2015)

Consolidating the thought of the highest standard of Brazil, also let us see the concept of education, the teaching of Moraes cited Celso de Melo:

> Education is more comprehensive and inclusive than the mere instruction. The objective education provide the necessary training to develop the skills, the potential and the student's personality. The educational process is aimed at: (a) qualify the student to work; and (b) prepares it for the conscious exercise of citizenship. Access to education is one way of concrete realization of the democratic ideal. "(MORAES, 2011, p. 857-858)

It must be noted that pragmatism is present in both the literal definition of what comes to education, the interpretation offered by Citation (MORAES, 2011), but both converge on the development of the human person.

Achieving this development requires adherence to principles (level playing field, freedom to learn, teach, research and express thought, art and knowledge, ideas pluralism, enhancement of professional education, guaranteed quality standard, among others.) (MORAIS, 2011), so that the constitutional objectives are achieved, among which the improvement of teaching quality. (Emphasis added)

Observe the congruence of the principles of Valuing professional education and one of the goals, improving the quality of education; both contribute to the development of the student, enabling him to the full exercise of citizenship and qualification for work.

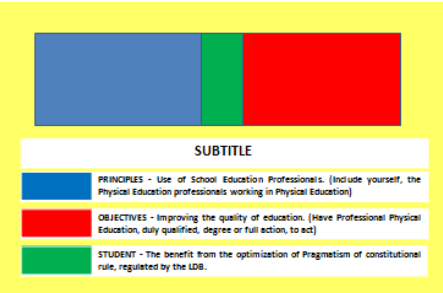


Figure 01 - The performance of the Professional Physical Education in Basic Education, permeates the appreciation of professionals and compete for improving the quality of education.

The topic of this article is geared towards the reach of the development, which permeates the quality of education offered by the state and the family, as a duty, in kind, by the state entity, a priori, in reverse, the city of Recife, capital Pernambuco, through its Department of Municipal Education, issued the Circular Letter No. 122/2015 - GAB / SE of April 28, 2015, whose purpose, "is the autorizatório / indictment act, their teachers from classrooms, to the 5th Grade, the minister content of Physical Education, carrying out assessment and registration in Class Diary ". (Emphasis added)

Inquiring to the Recife City Council (PCR), through its Secretaries, we are faced with numerous responses, which, they say motivate their actions, the legal understanding that they have on the Law of Guidelines and Bases, attending to the commitment the state entity (municipality) with the Fiscal Responsibility Law (FRL), considering, Recife being the prudential limits it accepted.

Meetings and Public Hearings were held, discussing not only the legal repercussions, but also the pedagogical approach, involving various segments of society (Municipal Union, City Council, prosecutors, CONFEF system / CREFs), demonstrating the importance of having a Physical Education professional, duly empowered to carry out their activities in basic education, as a right of the student.

It is therefore this research paper, the topic of discussion mentioned in the previous paragraph, seeking breadwinner in the exploratory-argumentative methodology, based on literature and experience in the study of the case in question.

ALL IS GIVEN THE RIGHT TO HAVE PROFESSIONAL DUE TO ENABLE PHYSICAL EDUCATION PROFESSIONAL PRACTICE

Forward, transcribed verbatim, the office recorded by the Recife City Council (PCR), which is subject matter of this article:

Circular Letter No. 122/2015 - GAB / SE
Recife, April 28, 2015. Circular Letter no. 122/2015 - GAB / SE Dear Lea ders, According to the LDB (Law 9.394 / 1996): Art. 26. The elementary and high school curricula should have a common national basis, to be completed in each school and school and system for a diverse part, demanded by regional and local characteristics of the society, culture, economy and customer base. § 1 The curricula referred to in the heading should include, obligatorily, the study of Portuguese language and mathematics, knowledge of the physical and natural world and the social and political reality, especially in Brazil. § 3. The physical education, integrated into the pedagogical proposal of the school, is compulsory curricular component of basic education (...). (...) Art. 62. The training of teachers for working in basic education far shall be at a higher level in the undergraduate program, full graduation in universities and colleges of education, accepted as a minimum for training the practice of teaching in kindergarten and in the first four grades of elementary education, offered in mid -level in Normal mode. Please be advised that the legislation requiring the provision of classroom / content of Physical Education, to the 5th year disclaims be licensed teacher, valid for all curriculum components. Therefore, the curriculum component Physical Edu cation will be evaluated and worked in the early years of primary education as stated in the curricular mesh Education Policy. As for the Class Diary, this must be completed and finalized following the same guidelines of other curriculum components. Given the above, we inform you that our goal is to ensure the student access to knowledge and participating in all the activities necessary for their full development. (Emphasis added)

It must be noted that the office recorded by the City of Recife City Hall, mentions only the Law of Education Guidelines and Bases (LDB), and jettisons that process, Law 9696/98, which, in its menu, offers on regulation of the profession of Physical Education and creates its Federal Council and Regional Councils of Physical Education.

The discussion under discussion, as recorded in this article, was the subject of numerous discussions tools for organized civil society, and support for CREF12 manifested at various times, both from a legal point of view, even more, the quality that suitably qualified professional offer the children and adolescents the knowledge acquired in their training to work in basic education.

But the contribution we are seeking also, by the evidence of the discussions participated by the authors, give yourself to the fact that CRP sought to base his decision on a pragmatic law, not observing the direction of the species, which is a Effectiveness of Law contained.

It is well advised to note that throughout these almost twenty (20) years of existence, as might be expected, the LDB looked as amended, proceeded through the Common Law No. 10870/2004 and 12,061 / 2009, and it is equip Articles pertaining to education, provided on the CF / 88, so the lesson MORAES (2011) cited by Maria Helena Diniz, citing articles of the Constitution of 1988 as pragmatic standards, Limited Effectiveness, among which the 205 and 211, which They treat of Education and are governed by LDB:

> As an example of program standards, not directly regulate interests or rights enshrined in them, but are confined to the outline some principles to be met by the Government, as "programs of their activities, claiming only the achievement of social purposes by the State". (MORAES, 2011, p. 14)

As the law that regulated the profession of Ed. Physics, she will discipline an existing standard in the constitutional bulge 1988 precisely, item XIII of art. 5, which says "is free to carry on any work, trade or profession, observing the professional qualifications prescribed by law". (PLATEAU, 2015)

Unlike the LDB (Law 9.394 / 96), Law 9,696 / 98, which regulates the profession of Physical Education, harmonizes with a standard contained efficacy, or lesson Moraes cited Michel Temer:

> To be of immediate and full applicability, although its efficacy may be reduced, restricted in cases and manner provided by law; therefore have their power reduced by legislative activity. They are constitutional provisions that received the normativity constituent able to govern interests, but contain within itself, prescribing normative means or concepts that restrict the production of its effects. Standards are subject to restriction. (MORAES, 2011, p.13)

The Federal Constitution of 1988 tendered by 1 September 1998, the effectiveness of pragmatic standard, namely the applicability of Article 62 of the LDB, which allowed the teacher to the classroom to work in basic education in the early grades, it precarious, unfortunately, included to physical education classes, given the availability of section XIII of art. 5 of our Citizen Constitution, however, with the entry into force of Law 9696/98 of 1 September 1998, which governs the profession of physical education, only those who have the qualification, which involves the training and capacity to act, and must be registered in the class body. The most well protected by the standard in kind is the company that will have a professional duly qualified to provide quality, in this case, the beneficiaries of the service (children and adolescents), who will be a system, CONFEF / CREFs at their disposal in safeguarding the full exercise of citizenship and preparing young people for the future premises of Education, defended by the Constitution.

Unfortunately, the National Education Council / Chamber of Basic Education, issued Resolution No. 7 of 14 December 2010, which "fixes National Curriculum Guidelines for the Basic Education of nine (9) years."

In the case in concrete, PCR, sticks to 02 (two) legislation, the LDB, in Articles 26, paragraph 3 c / c art. 62 and fully, without mentioning Article 31 of Resolution No. 7 of 14 December 2010, all transcribed in sequence below:

> Art. 26. The elementary and high school curricula should have a common national basis, to be completed in each school and school and system for a diverse part, demanded by regional and local characteristics of the society, culture, economy and customer base.
> § 3. Physical education, integrated into the pedagogical proposal of the school's curricular component of basic education, adjusting to the age and conditions of the school population, being optional in evening classes. (ECM, 2015)
> Art. 62. The training of teachers for working in basic education far shall be at a higher level in the undergraduate program, full graduation in universities and colleges of education, accepted as a minimum training for the practice of teaching in early childhood education and first four grades of elementary education, offered in mid-level in Normal mode. (ECM, 2015)

> Art. 31 From 1st to 5th grade of primary school, the curriculum components Physical Education and Art may be charged to the class reference teacher, one with which the students spend most of the school day, or licensed teachers in their components. (ECM, 2015)

As for two (02) first articles of the LDB, its effectiveness ended with the entry into force on 1 September 1998, compared with Law 9696/98, which came to provide for the regulation of the profession of Physical Education, a point Pacific, however, the CNE / CEB through art. 31 Resolution No. 07/2010, brought a text that goes against a law that was passed by Congress, which disciplined efficacy rule contained, in this constitutional bulge in the manner already discussed in this article. In the legal environment, the term "stillborn" and fits to Art. 31 of Resolution No. 07/2010, when many consider disreputable, but we would be the first expression.

In the hierarchy of laws under Article 59 of CF / 88, the resolutions are the latest in a hierarchy, so a resolution could not go against disciplined by common law, and even ordinary laws should treat the species; We remember that there is peaceful coexistence of Law 9696/98 with Law 9394/96, but the action of the Professional Physical Education, it is entitled to, by law.

Proceeded to legal considerations, it is appropriate to pedagogical approach about the importance of having a physical education professional, able to act in basic education, given that today, it is necessary to offer more quality to students and reduce by education, increasing social inequalities; behold, today, to work in basic education, it is necessary to complete the Degree in Physical Education, Bachelor, will soon be able to work in primary education, all in accordance with the CNE resolution / CP 1 of 18 February 2002 stating that due to general education, there is still qualified professionals to act as Bachelors and Basic Education, without thereby come to hurt the legislation, given the control exercised by CONFEF / CREFs system.

This progress achieved in the formation distinction today Licensee work specifically in basic education, give up due to the need of skilled care to target audience needs that will be benefited from the knowledge that will be applied by the Education Professional physical, which will provide meet the principles, objectives and targets estimated by the LDB, in line with the CF / 88.

As we said previously, Law No. 9696/98, is disciplining restrictive for the quality of the product offered to society aimed at building more just, fraternal solidarity (MORAES, 2011), this nation consolidated in the constitution and pledged to build; logo is the law that disposes on the regulation of the profession of Physical Education and creates its Federal Council and Regional Councils of Physical Education, which is committed to harmonize and offer the quality of education through the enhancement of the professional, so longed for by law. 9.394 / 96 (LDB).

The qualified professionals to work in Basic Education, throughout their training, builds the necessary knowledge to understand the Human Growth and Development, in its different stages, learning and applying techniques that will create opportunities holistic enhancement of children and adolescents, through the playful.

CONCLUSION

Enjoying the guidance given in office by the Recife City Hall, one of the most important cities of the country on the cause, the classroom professionals can take, precariously, teaching physical education classes, evaluating and recording the Journal class, contrary to the rule of law and for all exposed in this article, we found that it finds no legal effect because its foundation is fragile, therefore the discretion of the administrative action taken, and smite the Principles of Public Administration to which the Public Administrator, You are bound to notice, set out in art. 37 of the Constitution, which are those of legality, impersonality, morality, Advertising and efficiency. (ARAUJO, 2007, p. 143)

As derived from the legality, the Administrative Discretion, only provides the Administrator to act in accordance with the law, being conceptualized as "college conferred by law In the Administration to assess the actual case, according to opportunity and convenience criteria, and choose from two or more solutions, all valid before the law. " (ARAUJO, 2007, p.463)

Therefore, until the earlier date the rule of law 9696/98, any person of the people, could come to teach an activity that resembles physical activity and can then draw on the office of the PCR recorded in its April 28, 2015, in the manner directed to the classroom professionals.

However, before the enactment of Law 9696/98, there is a limitation to the agent who committed the act, that even existing power to take action, a purpose that meets the public interest, the manager of the Recife City Council who signed practiced the act, the lesson (ARAUJO, 2007, p.463), "should observe the way (prescribed or permitted by law)," that is, should observe the dictates of the law which governs the profession of Physical Education.

The Act practiced by the Manager of the city of Recife, affront to Law 9696/98, as we have already commented in this article, through its Signatory, for not observing the limiting factor of the action, and "push the boundaries, means arbitrary, unlike discretion ". (ARAUJO, 2007, p. 463)

Aside from the legal issues, the action taken by the PCR manager, deprives children and adolescents in basic education, to receive the qualified knowledge of who is actually entitled to and exercise the profession, based on advance knowledge of the psychomotor, the physiology, kinesiology, among other powers relating to professional practice and aiming to offer quality in service delivery in the legal text itself which regulates the profession, brought their skills:

> Art. 3 incumbent upon the physical education professionals to coordinate, plan, schedule, supervise, stimulate, direct, organize, evaluate and execute jobs, programs, plans and projects, and provide audit services, consulting and advisory services, conduct specialized training, participate multidisciplinary and interdisciplinary teams and prepare technical reports, scientific and educational, all in the areas of physical activity and sport. (PLATEAU, 2015)

It should be considered that guiding classroom teachers minister, evaluate and register in class daily activities of Physical Education, those who comply with this guidance, will be sadly entering a criminal liability of the harvest, therefore acting in this way, may be taken by the police force, upon request of the class entity, or person of the people, the Chief of Police, coming against him, to be drawn up the relevant Term Occurrence of Robust, by incurring the illegal profession Exercise as typicality of Article 47, Decree-Law, 3688, to October 3, 1941, to do so, let's see, what guides the Technical Note of CONFEF No. 002/2012 and defines evaluation as essential to the work of the professional of Physical Education:

> The physical examination is an essential procedure of the work of the Professional Physical Education and gather objective evidence to substantiate its decision on the method, type of exercise and other procedures to be adopted for prescribing physical exercise and sports. (CONFEF, 2015)

For all here discoursed, it is concluded that the office issued by PCR, brought harm to students and classroom

professionals; these were supported by the Syndicate, the councilors, the CONFEF system / CREF12, the people in general, who fought for children and adolescents had their constitutional right to the front of the Physical Education classes, in serious 1st to 5th , taught by professionals of Physical Education, a form of expression that ensures the consolidation of the democratic rule of law, as a guarantee of legitimacy and power limitation (MORAES, 2011, p.6); act like this, it should not be followed by any municipality, and revoke it would be an act of extreme magnitude, avoiding the application of paragraph 6 of art. 37 of CF / 88, which are regressive suits for damages to classroom teachers, giving heed to a riddled command addiction because there is one complication with the student, fainting, for example, will be held accountable along with the city of Recife and Finally, ensure the students, the quality of education desired by the Constitution, to have the Physical Education Professional enabled, at your service.

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ABSTRACTS

This article aims to demonstrate the legal and pedagogical implications practiced by the administrative action taken by the Recife City Hall, to allow Professor of Fundamental I Education classroom (1st to 5th), at the expense of Professor of Physical Education, enabled the exercise of the profession in Basic Education, which runs counter to constitutional provisions necessary for the exercise of citizenship and qualification for work of the student, and the quality of education, a constitutional guarantee.

KEYWORDS: Education. Citizenship. Warranty.

RÉSUMÉ

Cet article vise à démontrer les implications juridiques et pédagogiques pratiquées par la mesure administrative prise par la Mairie de Recife, pour permettre professeur de classe I Éducation Fondamentale (1ère à 5ème), au détriment de professeur d'éducation physique, a permis l'exercice de la profession dans l'éducation de base, ce qui va à l'encontre des dispositions constitutionnelles nécessaires à l'exercice de la citoyenneté et de la qualification pour le travail de l'étudiant, et la qualité de l'éducation, une garantie constitutionnelle.

MOTS-CLÉS: l'éducation. Citoyenneté. Garantie.

RESUMEN

Este artículo tiene como objetivo demostrar las implicaciones jurídicas y pedagógicas practicadas por la acción administrativa adoptada por el Ayuntamiento de Recife, para permitir que el profesor de la clase I Educación Fundamental (1 al 5), a expensas de Profesor de Educación Física, habilitado el ejercicio de la profesión en la Educación Básica, que va en contra de las disposiciones constitucionales necesarias para el ejercicio de la ciudadanía y la calificación para el trabajo del estudiante, y la calidad de la educación, una garantía constitucional.

PALABRAS CLAVE: Educación. Ciudadanía. Garantía.

DIREITO CONSTITUCIONAL DO DISCENTE, TER O PROFISSIONAL DE EDUCAÇÃO FÍSICA DEVIDAMENTE HABILITADO, PARA LHE OFERTAR CONTEÚDO E AVALIAÇÃO DA APRENDIZAGEM NA EDUCAÇÃO BÁSICA.

RESUMO

Este artigo tem por objetivo demonstrar as implicações jurídicas e pedagógicas praticadas pelo ato administrativo praticado pela Prefeitura da Cidade do Recife, em autorizar o Professor de sala de aula da Educação Fundamental I (1ª a 5ª), em detrimento do Professor de Educação Física, habilitado ao exercício da Profissão na Educação Básica, o qual contraria dispositivos constitucionais necessários ao exercício da cidadania e qualificação para o trabalho do discente, sendo a qualidade do ensino, uma garantia constitucional.

PALAVRAS-CHAVE: Educação. Cidadania. Garantia.