

## **Legislative Book-PNAE-2009**

President of the Republic, Casa Civil, The Vice-President of the Republic, in the exercise of the charge of the President of the Republic, informs that the National Congress decrees and sanctions the following law:

### ***Law n° 11.947, 16 June 2009***

**Art. 1:** For the effects of this law, with school feeding understood as all food offered in the school environment, independent of its origin, during the school year.

**Art. 2:** The following are rights of school feeding:

I. The use of healthy and adequate food, with the use of a variety of foodstuffs that are secure, respect local culture, traditions and healthy eating habits, contributing to the development of students and for the improvement of school output, according to age group and state of health, including those who need specific attention;

II. The inclusion of food and nutrition education in the process of teaching and learning, throughout the school curriculum, focusing on themes of food and nutrition and the development of healthy life practices, from the perspective of food and nutritional security;

III. Universal attendance of students enrolled in public primary schools;

IV. The participation of the community in social control, in the accompaniment of actions conducted by States, the Federal District and Municipalities to guarantee the provision of health and adequate school feeding;

V. The support of sustainable development, with incentives for the acquisition of diverse foods, produced in the local environment and preferably by family agriculture and by rural family entrepreneurs, prioritizing traditional indigenous communities and descendants of *quilombos*;

VI. The right to school feeding, seeking to guarantee food and nutritional security for students, with equitable access, respecting the biological differences in ages and health conditions of students who need special attention and those who are socially vulnerable;

**Art. 3:** School feeding is a right of students of the primary education public school system and a duty of the State and will be promoted and incentivized with a focus on the attention to the rights established under this law;

**Art 4:** The National School Feeding Program (PNAE) has the objective to contribute to the growth and psychological and bio-social development, learning, school output, the formation of healthy habits among students, by means of actions of school feeding and nutrition, and in the availability of meals that cover these nutritional necessities during the school year;

**Art. 5:** The financial resources allocated in the budget of the Union for the execution of PNAE will be passed in parcels to States, the Federal District, Municipalities and Federal schools by the National Foundation for Educational Development (FNDE), in conformity with the Art. 208 in the Federal Constitution and observed as delineated in this law;

I. The transferal of financial resources, for the execution of PNAE, will be completed automatically by FNDE, without the necessity of agreement, adjustment, contract or binding decision, meaning deposit in a specific checking account;

II. The financial resources that are referred to in (I) will be included in the budgets of States, the Federal District, and Municipalities attended and will be used exclusively for the acquisition of food products;

III. The balances of financial resources received in the PNAE account as of the 31st of December should be redirected for the following exercise, with a strict observance to the destination of their transferal, in the terms stipulated by the Deliberative Council of FNDE;

IV. The sum of financial resources that refer to in (I) will be calculated with a basis on the number of students officially matriculated in basic public education in each of the governmental entities conforming to official matriculation data obtained in the school census conducted by the Ministry of Education;

V. For the means of this article, the criteria of FNDE, will be considered as part of the state, municipal and district network, furthermore, the students matriculated in the following institutions:

i. Crèches, pre-schools, elementary and middle schools certified as philanthropic entities or maintained by organizations certified as such, including special education;

ii. Crèches, pre-schools, and community elementary and middle schools connected to States, the Federal District or Municipalities;

**Art. 6:** It is left to States, the Federal District and Municipalities to distribute the financial resources received in the PNAE account to the executing units of schools of basic education within their school zone, observing this law, as it fits;

\*The FNDE Deliberative Council will expedite norms relative to the resource allocation criteria and per capita values, as well as for the organization and functioning of executing bodies and other orientation and instruction necessary for the execution of PNAE.

**Art. 7:** States will be able to transfer the responsibility for students enrolled in state educational establishments located in their respective areas of jurisdiction to their municipalities, and, in this case, explicitly authorize the direct transfer to the municipality on the part of FNDE the corresponding parcel of resources calculated in accordance with Art.6\*.

**Art. 8:** States, the Federal District, and Municipalities will render their accounts to FNDE of all resources received.

1: The authority responsible for the rendering of accounts that attempts to falsify or encourages the falsification of documents or statements, with the intent to alter the truth of those statements, will be held accountable to law.

2: States, the Federal District and Municipalities will maintain in their archives, in an organized and secure manner, records of previous accounts rendered and approved, from the past 5 (five) years, documents that refer to this caput, together with receipts of payments made with those financial resources transferred in accordance with this law, although the execution is the task of the respective schools, and will be obliged to make this information available, as solicited, to the Brazilian Court of Audit (TCU), to the System of Internal Control of the Federal Executive Power and to the School Feeding Council – SFC.

3: FNDE will audit the application of resources in States, the Federal District, and Municipalities, for each financial application, by the sampling system, allowing for the requisition of documents and other necessary information, or delegating this competency to another body or state entity to do so.

**Art. 9:** FNDE, those entities responsible for educational systems and external and internal federal, state and municipal control bodies will create, according to their own competencies or in an integrated fashion, mechanisms adequate for the inspection and monitoring of the execution of PNAE.

\* Those bodies included in this Article will develop cooperative agreements or accords to support and optimize the control of the program.

**Art. 10:** Any physical or juridical body or person can make a complaint to FNDE, the Brazilian Court of Audit (TCU), internal control mechanisms of the Executive branch, to the Federal Attorney Generals Office or to the School Feeding Council (SFC) and report irregularities identified in the application of resources destined for the execution of PNAE.

**Art. 11:** The technical responsibility for school feeding in States, the Federal District, and Municipalities, will be attributed to the responsible nutritionist, who should respect those guidelines outlined in this Law and in the pertinent legislation, where his/her tasks are determined.

**Art. 12:** School feeding menus should be developed by the responsible nutritionist with the use of basic foodstuffs, respecting nutritional value of those goods, as well as local eating habits, culture and traditions, seeking to achieve sustainability and agricultural diversification of the region, in healthy and adequate feeding.

\*Under effect of this Law, basic foodstuffs are those goods that are indispensable for the promotion of health eating, observing the applicable regulations.

**Art. 13:** The acquisition of foodstuffs, in the context of PNAE, should follow the menu planned by the nutritionist and will be achieved, if possible, in the same federative entity where the schools are located, observing the guidelines that are outlined in Art. 2 of this Law.

**Art. 14:** Of the total sum of financial resources distributed by FNDE for PNAE, a minimum of 30% (thirty percent) should be used for the purchase of foodstuffs directly from family agriculture or rural household entrepreneurs or from their organizations, prioritizing land reform settlements, traditional indigenous communities and *quilombola* communities.

1: The acquisition process described by this article may be undertaken without the procurement (bidding) process, if prices are comparable with those in the local market, but still observing the principles inscribed in Art. 37 of the Federal Constitution and those goods must meet the quality control parameters established by norms that regulate these materials.

2: The observance of a percentage outlined in the caput will be disciplined by FNDE and can be dispensed of when the following circumstances are present:

- i. Inability to issue the corresponding fiscal document;
- ii. Inability to provide regular and consistent amounts of foodstuffs;
- iii. Inadequate hygienic-sanitary conditions.

**Art. 15:** The Ministry of Education must propose educational interventions that are coordinated with the school curriculum that address themes of healthy eating habits and nutrition, in the perspective of food and nutritional security.

**Art. 16:** The Union, by means of FNDE, autarky responsible for the coordination of PNAE must;

- I. Establish general norms of planning, execution, control, monitoring and evaluation of PNAE;
- II. Transfer financial resources for the execution of PNAE in States, the Federal District, Municipalities and federal schools;
- III. Promote inter-agency dialogue between federal entities directly or indirectly involved in the execution of PNAE;
- IV. Promote the adoption of guidelines and goals established in pacts and international accords, to improve the quality of life of students in public schools in basic education;
- V. Provide general technical guidance for States, the Federal District and Municipalities for the proper functioning of PNAE;
- VI. Cooperate in human resources training for those involved in the execution of PNAE and in social control;
- VII. Promote the development of studies and research that evaluate the actions of PNAE, which can be made in cooperation with public or private entities;

**Art. 17:** States, the Federal District, and Municipalities in the area of their respective administrative jurisdictions, have the following responsibilities, according to the 1<sup>st</sup> clause of Article 211 of the Federal Constitution:

- I. Guarantee that the provision of school feeding is undertaken in conformity with the nutritional needs of students, during the school year, observing the guidelines established in this law, as well as in accordance with section VII of Article 208 of the Federal Constitution;
- II. Promote studies and research that permit the evaluation of school feeding programs, developed in the respective schools;
- III. Promote food, nutrition, hygiene and environmental education in schools, under their administrative responsibility, as a way to develop healthy eating habits in enrolled students, on application of the joint action by education professionals and responsible technicians that is outlined in Article 11 of this Law;
- IV. To undertake, in partnership with FNDE, human resources training for those involved in the execution of PNAE and in social control;
- V. Provide information, as solicited, to FNDE, to SFC, to the bodies of internal and external control of the executive, in respect to the execution of PNAE, under its responsibility;

- VI. Provide the proper physical environment and human resources that allow for the correct functioning of the SFC, facilitating access of the population to this body;
- VII. Promote and execute basic sanitation activities in the school environment under its responsibility, in accordance with the pertinent legislation;
- VIII. Share information in public localities concerning the quantity of financial resources received for the execution of PNAE;
- IX. Render accounts of financial resources received to the PNAE account, in the manner established by the FNDE Deliberative Council;
- X. Present the annual PNAE Management Report to the SFC, in the required manner in accordance with established deadlines, as determined by the FNDE Deliberative Council.

**Art. 18:** States, the Federal District, and Municipalities will establish, in the realm of their respective administrative jurisdictions, School Feeding Councils (SFCs), entities that have a supervisory role, are permanent, deliberative and provide support, are composed in the following manner:

- I- 1 (one) representative indicated by the Executive power of the federated entity;
- II- 2 (two) representatives from entities of education professionals and the student body, indicated by its respective representative body, to be chosen by means of a specific assembly;
- III- 2 (two) representatives of parents of students, indicated by School Councils, Parent-Teacher Associations or similar entities, chosen by means of a specific assembly;
- IV- 2 (two) representatives indicated by entities of organized civil society organizations, chosen in a specific assembly;
  - 1. States, the Federal District, and Municipalities, are permitted, according to their criteria, to increase the composition of members of SFC, as long as it obeys the proportionality as noted in the clauses of this Article.
  - 2. Each titular member of the SFC will have 1 (one) substitute from the same representative entity.
  - 3. Members will have a mandate of 4 (four) years, and are able to be renewed in accordance with the indication of their respective groups.

4. The Presidency and Vice-Presidency of SFC may only be occupied by those representatives described in sections II, III, and IV of this Article.
5. The exercise of the mandate of the members of the SFC is considered a non-compensated public service.
6. States, the Federal District, and Municipalities must inform FNDE of the composition of their respective SFC, in the manner established by the FNDE Deliberative Council.

**Art. 19:** The SFC must:

- I- Accompany and supervise conformity with guidelines established in such a form of Article 2 of this Law;
- II- Work to improve the quality of foodstuffs, especially in regards to hygienic conditions, as well as with the suitability of menus offered,
- III- Receive the annual PNAE Management Report and emit a conclusive document of proof to this respect, approving or rejecting the execution of the Program.

\*SFCs may fulfill their responsibilities in cooperation with state and municipal Food and Nutrition Security Councils and other councils, and should observe those guidelines established by the National Food and Nutrition Security Council – CONSEA.

**Art. 20:** FNDE is authorized to suspend resource transfers for PNAE for States, the Federal District, or Municipalities when:

- I – A SFC is not formed or the existing SFC is not achieving necessary adjustments to function properly;
- II – Rendering of accounts is not undertaken of resources previously received for the execution of PNAE, in the form and under deadlines established by the FNDE Deliberative Council;
- III – Irregularities are committed in the execution of PNAE, against norms established by the FNDE Deliberative Council.

1. Without causing detriment of those guidelines created by the caput, FNDE must communicate eventual irregularities in the execution of PNAE to the Public Prosecutors and its accompanying bodies or authorities connected to the work of the Program.

2. The re-establishment of the transfer of financial resources to the PNAE account will occur in the manner defined by the FNDE Deliberative Council.

**Art. 21:** The suspension outlined in Art. 20, where FNDE is authorized to undertake in a specific account, the transfer of equivalent resources, for the term

of 180 (one hundred and eighty) days, directly to the executing units, as outlined in Art. 6 of this Law, corresponds to those schools affected, by the supply of school feeding, allowing for the procurement process for the emergency acquisition of foodstuffs, maintained by those rules established for the execution of PNAE, including the rendering of accounts.

\*Upon the publication of this Law, FNDE will have up to 180 (one hundred and eighty) days to adhere to this material that composes the caput of this Article.

**Art. 22:** The Direct Money in Schools Program – PDDE, with the objective to provide financial assistance, in a supplementary manner, to public schools of basic education in the states, municipalities or Federal District and those schools of special education qualified as beneficiaries of social assistance or of direct and free attendance to the public, as well as schools maintained by entities of the following manner, observing that ordered by Art. 25 that is now required by the following in this Law.

1. The financial assistance to be conceded to each benefiting educational establishment will be defined annually with a base in the number of students enrolled in basic education, in accordance with data extracted from the school census conducted by the Ministry of Education, observing those sections outlined in Art. 24.

2. That financial assistance that is dealt with in section 1 will be conceded without the necessity of an agreement, accord, contract or adjustment, by means of credit value owed in a specific bank account:

I – Directly to the executing entity, representative of the school community, or that which is qualified as a beneficiary of social assistance or direct and free attendance to the public.

II – To the State, Federal District and to the Municipality that maintains the educational establishment, that does not possess its own executing entity.

**Art. 23:** Those financial resources transferred by PDDE that will be destined to cover costs, maintenance, and small investments, taken to guarantee the functioning and improvement of physical infrastructure and pedagogy of educational establishments.

**Art. 24:** The FNDE Deliberative Council will expedite norms relative to the criteria of allocation, transfer, execution, rendering of accounts of resources and values per capita, as well as about the organization and functioning of those executing units.

\*The establishment of per capita values will be determined, and allocated to those schools that offer special education in an inclusive and specialized way, to insure, in accordance with the objectives of PDDE, the adequate attendance to this type of educational modality.

**Art. 25:** The States, the Federal District, and Municipalities should inscribe, when appropriate, in the respective budgets the financial resources destined to those educational establishments to which they are connected, as well as to render accounts to of those referred resources.

**Art 26:** The rendering of accounts of resources received to the PDDE account, to be presented upon the terms and constituted by those documents established by the Deliberative Council of FNDE will be made:

I – By those executing units of municipal, state and federal district public schools to the Municipalities and the State Secretaries of Education to which they are connected, that they will be charged with the analysis, judgment, consolidation and forwarding to FNDE, as established by its Deliberative Council;

II – By the Municipalities, State Secretaries of Education and of the Federal District and by qualified entities as beneficiaries of social assistance and of direct, free attendance to the public to that Fund.

1. The rendering of accounts of transferred for attendance for those schools that do not have executing units should be made to FNDE, observing the respective educational networks, by those Municipalities and Secretaries of Education of States and the Federal District.

2. FNDE is authorized to suspend resource transfer of PDDE in the following hypotheses:

I – Omission of the rendering of accounts, as defined by its Deliberative Council;

II – Rejection of the rendering of accounts;

III – Utilization of resources in a manner against the criteria established by the execution of PDDE, as required by the analysis of documents or by auditing.

3. In case of the omission of the delivery of the rendering of accounts, in the form as section I of the caput of this Article, FNDE is authorized to suspend the transfer of resources to all the schools of the educational network of that respective federation.

4. The manager, responsible for the rendering of accounts, that permits, by the inclusion or permission of inclusion of documents or false statements or outside of that of which should be included, with the end of altering the truth of the facts, will be responsible to the Law.

**Art. 27:** The federated entities, as their own executing entities and agencies qualified as beneficiaries of social assistance or of direct and free attendance to the public will maintain an archive, in their headquarters, in an organized and orderly fashion, even if using contracted accounting services, for a term of 5 (five) years, counting data from the assessment of the annual accounts of FNDE by the agency of external control, original or equivalent fiscal documents or receipts, of those purchases made in the execution of actions for PDDE.

**Art. 28:** The supervision of the application of financial resources relative to the execution of PDDE is included as one of FNDE's competencies as well as of the internal and external control agencies of the Executive, and will be conducted through audits, inspections and process analyses that originate in the respective rendering of accounts.

\*Those agencies incumbent to the supervision of resources destined to the execution of PDDE will be able to establish agreements or accords, in a mutual cooperation regime, to support and optimize the control of the Program.

**Art. 29:** Any person, in physical or juridical status, may denounce to FNDE, the Brazilian Court of Audit (TCU), the internal control agencies of the Executive, and to the Federal Attorney Generals Office those irregularities identified in the application of resources destined to the execution of PDDE.

**Art. 30:** The Articles 2 and 5 of the Law 10.880, of the 9<sup>th</sup> of June 2004, will now function in the following manner:

“Article 2 institutes the National Support Program for School Transportation – PNATE, in the responsibility of the Ministry of Education, to be executed by the National Fund for Educational Development – FNDE, with the objective of offering school transport to those schools of basic public education, residents in rural areas, by means of financial assistance, in a supplementary manner, to States, the Federal District and Municipalities, observed as defined in this Law.

1. The sum of financial resources will be transferred in parcels and calculated with a base on the number of students in basic public education who are residents of rural areas that use school transport offered by those entities referred to in the caput of this Article.....” (NR)

“Article 5 The accompaniment and social control of the transference and application of resources transferred to the PNATE account will be exercised in the respective governments of States, the Federal District and Municipalities by those councils outlined in clause 13 of Article 24 of the Law 11.494, of 20 of June 2007.

1. FNDE is authorized to suspend the transfer of resources to PNATE in the following hypotheses:

I – Omission of the rendering of accounts, as defined by its Deliberative Council;

II – Rejection of the accounts rendered;

III – Utilization of resources against those criteria established for the execution of the Program, as established by document analysis or auditing process.....”(NR)

**Art. 31:** The Law no. 11.273, of 6<sup>th</sup> of February 2006, was passed with the following alterations:

“Article 1 The National Fund for Educational Development – FNDE and the Coordination of Training for Personnel of Higher Education – CAPES authorizes the concession of scholarships for study and research in the area of training programs for professors of basic education developed by the Ministry of Education, including distance learning, that aim to:

.....

III – For the participation of professors in research projects and the development of educational methodologies in the area of initial and continued training of teachers for basic education and for the system of the Open University of Brazil (UAB).

.....

4. Additionally, scholarships may be conceded to teachers that work in program of initial and continued training of school personnel and Secretaries of Education in States, the Federal District, and Municipalities, as well as in programs of initial and continued professional training as detailed in Article 2 of this Law.” (NR)

“Art. 3 The scholarships detailed in Article 2 of this Law will be conceded directly to the beneficiary, by means of a banking credit, in terms of the expedited norms by the respective conceding institutions, by means of terms of commitment in which corresponding rights and obligations are outlined.” (NR)

“Art. 4 The expenses of the execution of those actions outlined in this Law will be passed on to the specific account in FNDE’s annual budget and to Capes, observing the limitations of movement, engagement and payment of the budget programming and annual financing.” (NR)

**Art. 32:** The Articles 1 and 7 of the Law no. 11.507, of 20<sup>th</sup> of July of 2007, will be in force with the following statement:

“Art. 1 It will be established that the Support of Educational Evaluation (AAE), due to the official that, in the course of the exercise of teaching activities or research in public or private higher education, participates, in a contingent manner, in the process of educational evaluation institutions, courses, projects of the development of students conducted by the initiative of the National Institute of Educational Research and Studies Anísio Teixeira – Inep, of the Coordinating Foundation of Training of Personnel of the Higher Level – Capes and of the National Fund for Educational Development – FNDE.” (NR)

“Art. 7 Those expenses for AAE will be entered in the specific account and limits outlined in the annual budget of Capes, Inep and to FNDE in the group of expenses called “Other Current Expenses”. (NR)

**Art. 33:** It is the responsibility of the Executive power to authorize the institution of the National Program for Education in Land Reform – Pronera, to be established in the Ministry of Agrarian Development – MDA and executed by the National Institute of Settlement and Land Reform – Incra.

\*Act of the Executive power will arrange the norms of functioning, execution and management of the Program.

**Art. 34:** The following will be revoked, Articles 1 and 14 of the Provisional Measure no. 2.178-36, of the 24<sup>th</sup> of August of 2001, and the Law no. 8.913, of 12<sup>th</sup> of July of 1994.

**Art. 35:** This Law will enter into force on the date of its publication.

Brasilia, 16 of June 2009; 188<sup>th</sup> of the Independence and 121<sup>th</sup> of the Republic.

JOSE ALENCAR GOMES DA SILVA

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This text does not substitute the publication in the DOU of 17.6.2009