


## THE REQUIREMENT OF HIGHER EDUCATION FOR THE POSITION OF JUDICIAL TECHNICIAN OF THE JUDICIARY OF THE UNION: AN ANALYSIS FROM THE PERSPECTIVE OF HIGHER EDUCATION IN BRAZIL

 <https://doi.org/10.56238/arev6n3-266>

Submitted on: 10/20/2024

Publication date: 11/20/2024

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### ABSTRACT

This article investigates the recent requirement of higher education for the position of Judicial Technician of the Federal Judiciary, introduced by Law No. 14,456, of September 21, 2022, analyzing its implications for the democratization of access to public office. The study examines the challenges faced by the population in obtaining higher education in Brazil, highlighting the inequalities that may arise due to this new requirement. Using a qualitative methodology, based on documentary analysis and data from official bodies, the work contextualizes the evolution of public tenders and inequalities in higher education, in addition to discussing the current impact of public policies aimed at educational inclusion. It is concluded that the requirement of higher education, although its primary objective is to improve the technical and professional qualification of civil servants, presents, at the same time, a significant potential to deepen the existing structural inequalities in access to public office. This scenario ends up negatively impacting the implementation of the principle of equality, which is one of the fundamental pillars of the Federal Constitution, compromising democratic access to public office.

**Keywords:** Access to Higher Education. Public Tenders. Educational Inequality. Meritocracy

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## INTRODUCTION

Bill No. 3,662/2021 amended Law No. 11,416/2006, which regulates the careers of civil servants of the Federal Judiciary, including the position of Judicial Technician, whose education requirement was, until then, high school. With this amendment, the completion of a higher education course was required to enter this position, changing a requirement that had been in force for decades (Brasil, 2021).

In this sense, considering that the public exam is the essential means for entering public office, it is important to highlight, as discussed by Nohara (2024), that this process must guarantee equal conditions for candidates, enabling the Public Administration to select those who present the best performance during the contest. However, the increase in the level of education required for the position of Judicial Technician, although it aims to improve the qualification of civil servants, may have the effect of restricting the access of candidates who, due to the educational inequalities existing in Brazil, have not been able to reach the level of higher education.

Thus, the present work focuses on making the requirement of higher education for public exams, especially for the position of Judicial Technician of the Judiciary of the Union, compatible with the reality of access to higher education in Brazil. The research seeks to analyze how this requirement can impact the democratization of access to public office, considering the deep educational inequalities that still permeate the country. The central question is to understand whether the increase in the schooling criterion, despite aiming at the greater qualification of civil servants, can end up creating barriers that exclude a large part of the population that faces difficulties in entering higher education.

The general objective of this study is to analyze whether the increase in the education requirement for the position of Judicial Technician is in line with the constitutional principle of equality, considering the current panorama of access to higher education by the population. Specifically, the work intends to investigate the fundamental legal concepts that govern the public tender, its historical evolution and the applicable legislation; to examine inequalities in access to higher education in Brazil, and to evaluate the role of public policies, such as affirmative action and student financing programs.

The methodology of this work is qualitative, with emphasis on documentary and interpretative analysis. The research is based on legislative and academic documents, such as Bill No. 3,662/2021, the Federal Constitution of 1988 and specialized doctrines in administrative and constitutional law. These legal and doctrinal texts serve to explore the fundamental concepts of the civil service exam, the principles of isonomy and meritocracy,

and the legal impact of the change in the education requirements for the position of Judicial Technician.

In addition, secondary data from the Higher Education Census, provided by INEP, are used to contextualize inequalities in access to higher education in Brazil. Although the study presents numbers related to education, the main focus is qualitative, analyzing how these inequalities affect the entry of candidates into public exams. The interpretation of the data is made in the light of constitutional principles, especially the principle of equality, evaluating how the requirement of higher education can negatively impact the democratization of the public service.

The work is structured in order to gradually address the main aspects related to the increase in the education requirement for the position of Judicial Technician. Initially, the study explores the historical and legal context of public tenders in Brazil, examining how legislation has been developed over time to regulate entry into public office. This segment seeks to provide a solid understanding of the principles and norms that govern access to public service, informing the subsequent analysis of the proposed legislative change.

Then, the focus turns to the issue of educational inequalities in Brazil, with a detailed analysis of access to higher education. The research is based on data and studies that reveal the barriers faced by a large part of the population, especially the most vulnerable layers, to enter and complete higher education. These inequalities are evaluated in relation to the impact they may have on participation in public tenders and in the search for greater democratization of public service.

Finally, the work discusses the role of public policies aimed at educational inclusion, such as affirmative action and student financing programs, evaluating whether these initiatives are sufficient to mitigate socioeconomic barriers in access to higher education. Based on this analysis, the study reflects on how the requirement of higher education for the position of Judicial Technician can increase these inequalities and compromise the constitutional principle of equality, proposing alternatives to ensure greater equity in access to public office.

## **HISTORICAL EVOLUTION**

Throughout its historical trajectory, Brazil has witnessed multiple administrative reforms that have promoted profound changes in public administration, covering various aspects of its structure and functioning. Among the most significant transformations, the evolution of the mechanisms for entering the public service stands out, reflecting a

continuous improvement of the criteria and selection processes for the public service (Lima Junior, 1998).

Initially, as exposed by Nohara (2024), the Brazilian Constitution of 1824, under the aegis of natural law, which defends the idea that there are natural and universal rights that every human being has, regardless of the laws made by governments, established in article 179, XIV, that "every citizen may be admitted to civil, political, or military public offices, with no other difference than that of their talents and virtues." However, while the Constitution guaranteed that citizens could be admitted to public office on the basis of their merits, in practice, the Emperor had the power to appoint or delegate these functions.

It should be noted that, in Brazil, until the 1930s, oligarchic relations prevailed in which the distribution of positions of power was reserved for a select group of people who maintained direct ties with the colonels. During this period, the practice of "halter voting" was common, especially after the promulgation of the Federal Constitution of 1891, which guaranteed political rights and suffrage. To sustain this practice, public office was offered on a discretionary basis, along with public financial resources and police control, in order to influence the rural population and ensure control of political office (Nohara, 2024).

The promulgation of the 1934 Constitution brought the effective institutionalization of public examinations in Brazil. In which, Article 170, § 2 determined the requirement of medical evaluation that had the objective of verifying whether the candidate is able to occupy the position, in addition to competitions of tests or titles, conditioned to the existence of a statute of the civil service, that is, the creation of specific legislation that regulated the rights and duties of public servants, working conditions, among other aspects related to public service (Nohara, 2024).

A few years after the promulgation of the Federal Constitution of 1934, the Administrative Department of the Public Service (Dasp) was established, a body that played a decisive role in the construction of a more professional, efficient and impartial public administration, as technical criteria began to guide the choice of the occupants of the positions, breaking with the tradition of appointments based on political indications (Nohara, 2024).

Also according to Nohara (2024), the Federal Constitution of 1967 consolidated the requirement of a public exam as a mandatory requirement for filling all positions, with the exception of those of a free appointment and dismissal nature.

Moving forward to the 1990s, according to Nohara (2024), the Ministry of Federal Administration and State Reform (Mare), created by the government, brought as one of its

initiatives a set of policies that were "suggested" by several international financial institutions. The means used for regularization was Constitutional Amendment No. 19/98, which incorporated ideas of privatization of public companies, deregulation of markets and reduction of state bureaucracy.

## **PUBLIC COMPETITION**

One of the points covered by Constitutional Amendment No. 19 was in Article 37 of the Federal Constitution, which deals with the principles of Public Administration and entry into the public service. The changes were mainly aimed at ensuring that access to public positions is isonomic, where item II establishes that investiture in public positions and jobs depends on prior approval in a public examination (Brasil, 1988).

Article 37, II of the Federal Constitution Investiture in public office or employment depends on prior approval in a public examination of tests or tests and titles, according to the nature and complexity of the position or employment, in the manner provided for by law, except for appointments to a position in commission declared in a law of free appointment and dismissal

For Nohara (2024), public tender is the instrument by which the State ensures access to public positions and jobs to anyone, without distinction, prioritizing the criterion of merit. That is, the most qualified and prepared candidates to occupy the most prestigious positions are selected.

In the same sense, Di Pietro (2024) states that public tender is a selection procedure accessible to all citizens, with the objective of ensuring equal opportunities and respect for the principle of isonomy. The author adds that it is not possible to hold internal competitions, restricted only to civil servants. In addition, the practice of transposition, which consisted of the promotion of a civil servant to a higher position, as well as readmission, which allowed the reinstatement of a civil servant without the requirement of a new public tender, is prohibited.

This understanding is also consolidated in Binding Precedent 43 of the Federal Supreme Court, which establishes the public tender as the only legitimate form of access to public positions and jobs. The occupation of a position by a civil servant without prior approval in a public competition is considered unconstitutional, as well as the transfer or promotion to another position that is not part of the same career.

## PUBLIC POSITIONS AND JOBS

According to Di Pietro (2024), the expressions public office and public employment are directly related and defined as units of attributions in the public service, being differentiated by the type of bond that civil servants maintain with the State. Public employment refers to a contractual relationship, governed by the Consolidation of Labor Laws (CLT). On the other hand, public office applies to functions that are performed under a statutory legal regime, where the civil servant's bond with the State is regulated by specific rules provided for in a specific law.

Carvalho Filho (2023) defines the statutory regime as the set of rules that regulate the legal relationship between the public servant and the State, establishing the rights, duties, obligations, and sanctions applicable to this public servant. Within the scope of the Federal Union, which adopted the statutory regime for its employees, the functional statute is regulated by Law No. 8,112, of December 11, 1990, which establishes the guidelines that govern this functional relationship.

Couto and Capagio (2022), when addressing the definition of public office, is based on the understanding of article 3 of Law No. 8,112/1990, which conceptualizes it as the set of attributions, duties, and responsibilities inserted in the organizational structure, being intended for public servants governed by the statutory regime.

Article 3 Public office is the set of duties and responsibilities provided for in the organizational structure that must be entrusted to a public servant.

Sole Paragraph. Public offices, accessible to all Brazilians, are created by law, with their own name and salary paid by the public coffers, to be filled on an effective basis or on commission.

Di Pietro (2024) also adds one last concept and this would be related to a residual concept, that is, a set of activities or attributions that a person must perform, but does not necessarily correspond to a formal public position or job, such a definition is defined as a public function.

It should be noted that, according to Di Pietro (2024), public positions and jobs are occupied by public servants, who are part of a subcategory within the broader group of public agents. These are characterized as all individuals who perform activities for the State and Indirect Administration entities. Based on this definition, it is possible to distinguish four main groups of public agents: political agents, public servants, military personnel, and private individuals who collaborate with the public power.

## PUBLIC SERVANTS

Public servants are defined by Di Pietro (2024, p. 600) as "[...] individuals who provide services to the State and to the entities of the Indirect Administration, with an employment relationship and remuneration paid by the public coffers". This category of civil servants can be subdivided into statutory servants, civil servants and temporary servants.

According to Di Pietro (2024), the Statutory Servants and Public Employees who would have public positions and jobs. On the other hand, temporary servants are a modality that would be assigned functions that in turn would be related to a residual concept, that is, the set of attributions to which a position or job does not correspond.

For the effectiveness of public positions and jobs with civil servants, the Public Power needs to carry out the provision and investiture. In this sense, Di Pietro (2024, p 678) points out that, in order to hold public office, the first step is to comply with all legal requirements, which constitutes the act of provision. Once the person meets these requirements, investiture occurs, which involves taking office, when the public servant assumes the position, and the exercise when he begins to perform his duties.

## REQUIREMENTS FOR INVESTITURE

As previously mentioned, access to positions and jobs through public competition is universal. However, the Federal Constitution in Article 37, item I, dictates that public positions, jobs and functions are accessible to Brazilians who meet the requirements established by law, as well as to foreigners, in accordance with the law. Such a requirement would be in accordance with the provision and subsequent investiture of the public servant. (Brazil, 1988)

As a rule, the necessary requirements for approval of the public tender for judicial technician are those established by Law 8.112/90, which provides for the Legal Regime of Federal Public Servants.

Article 5 The basic requirements for investiture in public office are:

- I - Brazilian nationality;
- II - the enjoyment of political rights;
- III - the discharge of military and electoral obligations;
- IV - the level of education required for the exercise of the position;
- V - the minimum age of eighteen years;
- VI - physical and mental fitness.

§ 1 The duties of the position may justify the requirement of other requirements established by law.

Currently, there is a trend of modification in the educational requirements for various public positions, in which, previously, only the secondary level was required, and now

higher education is required. One of the main changes in this regard stems from Bill No. 3662/2021, which proposes to amend Law No. 11,416/2006, which regulates the Careers of Employees of the Federal Judiciary. This bill establishes the requirement of higher education for entry into the position of Judicial Technician, which, until then, required only the secondary level (Brasil, 2021).

#### BILL NO. 3.662/2021

On October 5, 2021, the judge and president of the Court of Justice of the Federal District, Romeu Gonzaga Neiva, presented a Draft Bill with the objective of carrying out a significant transformation in the structure of the court's positions. The proposal aimed to convert vacant positions in the careers of Judicial Assistant and Judicial Technician into positions of Judicial Analyst, all belonging to the Permanent Board of Justice of the Federal District and Territories (Brasil, 2021).

During the processing of the bill in the Chamber of Deputies, an amendment was presented with the objective of amending Law 11.416/2006, which regulates the careers of the Judiciary of the Union (PJU). The focus of this amendment was to modify the requirements for the position of Judicial Technician, proposing the requirement of a higher education course to enter this career, which required only a high school level (Brasil, 2021).

"Article XX. Item II of article 8 of Law 11,416 of December 15, 2006, is now in force with the following wording: Article 8.....  
..... II. For the position of Judicial Technician, complete higher education course. (NR)".

Deputy Erika Kokay, when proposing the change in the level of education for the position of Judicial Technician, justified her proposal by highlighting that the Federal Justice has undergone a continuous process of improvement, with the aim of making the jurisdictional system more efficient (Brasil, 2021).

According to his justification for the change in the educational requirements in the position of Judicial Technician, he argues that the traditional view of the function of this position is outdated. She points out that, with regard to human resources, considered the most valuable asset of any institution, the legislation remained static, that is, it did not keep up with the changes and advances that occurred over the years (Brasil, 2021).

The deputy criticizes the idea that Judicial Technicians perform only functions of medium complexity, a thought that, according to her, would be stagnant in time. This view could have been adequate for the reality of the 1990s, when the Judiciary and its

operational functions were simpler and less dependent on advanced technologies. At that time, the tasks performed by technicians were, in fact, more basic and required less qualification (Brasil, 2021).

After being processed in the Chamber of Deputies, the text followed the procedures of the legislative process and was forwarded for analysis in the Federal Senate, where Senator Jorge Kajuru presented an opinion arguing that the proposed constitutional amendment to Article 4 suffers from a defect of initiative, based on Article 96, item II, paragraph "a" of the Federal Constitution, which confers exclusive competence on the courts to propose changes in positions within their spheres. The senator argues that the original proposal of the Court of Justice, referring to the transformation of positions in the TJDF, was legitimate, but the amendment by Deputy Érika Kokay went beyond the original scope by proposing changes that would affect the entire Judiciary of the Union, becoming non-compliant with the initial project (Brasil, 2021).

Kajuru also highlights budgetary concerns arising from the amendment, especially the possibility that Judicial Technicians seek salary equalization with Judicial Analysts, claiming that they perform functions beyond what is provided for their positions. He cites Precedent 378 of the STJ as a precedent, stating that, if the performance of more complex functions by Technicians is proven, this could result in lawsuits and generate significant financial impact for the Judiciary and the public treasury (Brasil, 2021).

After debates in the Federal Senate, the bill was approved and sent for analysis by the President of the Republic, who was responsible for its sanction or veto. During the consideration by the Chief Executive, a veto was issued to the proposal to change schooling, and the grounds presented by the President are in substantial consonance with the opinion issued by the Federal Senate, especially with regard to the issue of initiative defect. However, when it was reconsidered by the National Congress, the presidential veto was overturned, which resulted in the definitive enactment of the text of the law, giving it full force in the legal system (Brasil, 2021).

Subsequently, the National Association of Judicial Analysts and the Federal Public Prosecutor's Office (ANAJUS) filed a Direct Action of Unconstitutionality (ADI). However, on June 15, 2023, the Federal Supreme Court (STF) denied follow-up to the ADI, alleging ANAJUS's illegitimacy. The decision was based on Article 330, item II, of the Code of Civil Procedure, which allows the preliminary dismissal of an action when the plaintiff does not have standing to file it. ANAJUS, representing only the Judicial Analysts, did not have the legitimacy to question a rule that directly impacted the Judicial Technicians, since there is

no connection between the interests of the entity and the topics discussed in the lawsuit (Brasil, 2023).

However, it is pertinent to highlight that the Attorney General's Office (PGR) proposed a new Direct Action of Unconstitutionality (ADI), challenging the requirement of completion of a higher education course as a requirement for investiture in the position of judicial technician of the Union. In this context, Justice Cristiano Zanin, rapporteur of ADI 7709, decided to submit the case directly to the Plenary of the Federal Supreme Court, giving greater relevance to the issue and allowing the deliberation to take place in a collegiate manner (Brasil, 2024).

## **MERITOCRACY AND EQUALITY IN ACCESS TO PUBLIC OFFICE**

The change in the educational requirements for the position of judicial technician by Article 4 of Law 14,456/2022, although it can be seen as a way to raise the qualification of public servants, may raise questions regarding the violation of the principle of equality provided for in the Federal Constitution of 1988, more specifically in Article 5, caput, which establishes: "All are equal before the law, without distinction of any kind" (Brasil, 1988).

As Padilha (2020) points out, the concept of article 5, caput, is related to the concept of formal equality, that is, a "cold" equality, which does not take into account concrete inequalities between individuals. Padilha explains that there is an important distinction between formal equality and material equality. Formal equality is purely legal and ignores the socioeconomic differences between individuals. Material equality, on the other hand, requires differentiated treatment for people in different situations, with the aim of correcting inequalities and providing fairer conditions for competition and coexistence.

Nohara (2024) emphasizes that the civil service exam is structured based on meritocracy, that is, on the principle that public positions should be held by those who demonstrate greater merit, competence, and qualification, and not by the influence of external factors such as personal, political, or economic connections. However, although meritocracy, in theory, ensures that the most prepared access public office, it is necessary to consider the unequal social and economic conditions that characterize Brazilian society.

In a society like Brazil's, marked by deep economic, social, and educational inequalities, the strict application of meritocracy can end up reinforcing these inequalities, rather than correcting them. This is because, for many, the starting point is not the same. People who do not have access to quality education, for example, are at a disadvantage compared to those who have access to the best schools and universities. Therefore, the

meritocratic ideal, which presupposes competition under equal conditions, does not match the reality of a large part of the population (Favero, 2022).

The requirement of higher education for the position of Federal Judicial Technician can be seen, at first glance, as an effort to make the public administration more specialized and qualified. However, this change may also have the effect of creating an additional barrier for those who have not had access to quality higher education, reinforcing the argument that meritocracy, in a context of inequality, does not necessarily guarantee justice and equity in access to public office.

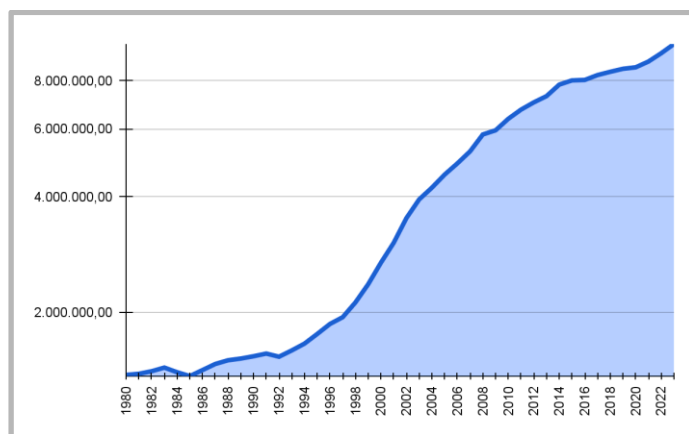
At this point, the relationship between meritocracy and material equality is put to the test. The increase in educational requirements can be interpreted as a way of "selecting the fittest", but it can also result in the exclusion of individuals who, for social and economic reasons, did not have the same opportunities to achieve a higher degree. Bourdieu and Passeron (1992), in their work on cultural capital, points out that education often serves as an instrument for the reproduction of social inequalities, since access to quality education is generally reserved for those who have privileged socioeconomic conditions.

Thus, the requirement of a higher education degree for positions such as Judicial Technician can, paradoxically, harm the meritocratic ideal itself, by reducing the opportunities for participation for those who come from less favored environments. Meritocracy, then, by ignoring these structural inequalities, ends up perpetuating a cycle of exclusion, contradicting the principle of material equality.

## ACCESS TO HIGHER EDUCATION

To consider equal opportunities at higher education, we observed the data produced by the last Higher Education Census, carried out by the National Institute of Educational Studies and Research Anísio Teixeira (INEP) which, according to Saleme (2022, p. 392) "[...] it is the autarchy responsible for the adoption of educational policies". In this sense, it is possible to notice that higher education in Brazil is much more accessible compared to the last decades. Graph 1, which shows the number of active enrollments in undergraduate courses in the country between 1980 and 2023, clearly shows this evolution.

Graph 1 - Enrollment between 1980 and 2023



Source: INEP, 2024. Organized by the author.

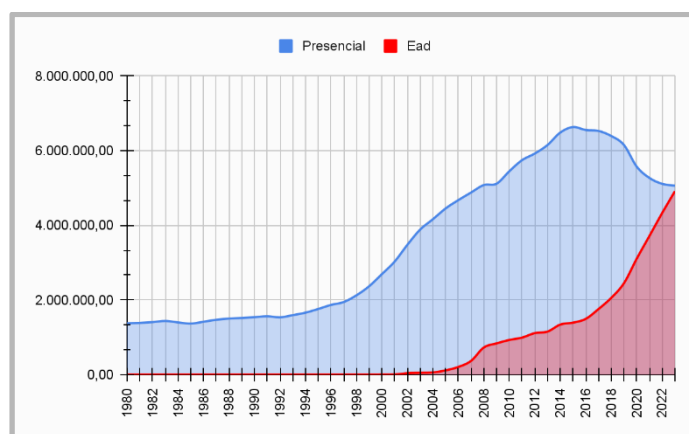
We observed that in the 1980s, the number of enrollments remained relatively stable, with a moderate growth. In 1980, 1,377,286 enrollments were registered, and by 1995 this number had gradually increased, reaching 1,759,703. This slow growth reflects the reality of the time, marked by a higher education offer that was still restricted and concentrated in large urban centers (INEP, 2024).

From 1998 onwards, a more pronounced increase in enrollments was observed, with the total reaching 2,125,958. This growth intensifies in subsequent years, especially after 2001, when the number of enrollments exceeds the 3 million mark. In 2005, the number of enrollments reached 4,567,798, demonstrating the impact of higher education expansion policies, as well as the expansion of the supply of vacancies in both public and private institutions (INEP, 2024).

Between 2005 and 2015, growth remained consistent, surpassing the mark of 6 million enrollments in 2010 and reaching 8,027,297 in 2015. In recent years, the number of enrollments has stabilized, with smaller variations, but remaining at a high level. In the latest data for 2023, the number of enrollments reached 9,976,782, the highest value recorded in the historical series (INEP, 2024).

In addition, we can attribute a large part of the increase in enrollment in higher education as a result of the adoption of the distance education (distance education) model, which until the early 2000s, represented a minimal portion of the total enrollment in undergraduate courses, with very low numbers compared to the face-to-face modality. According to Graph 2, in the year 2000, for example, the number of distance education enrollments was only 1,682, while the face-to-face modality had 2,694,245 enrollments (INEP, 2024).

Graph 2 - Face-to-face and distance learning



Source: INEP, 2024. Organized by the author.

However, from 2005 onwards, there has been an exponential growth in enrollment in distance education courses. In 2008, the number of enrollments in distance education exceeded 500 thousand, reaching 727,961, while the face-to-face modality still led with 5,080,056 enrollments. This continuous growth of distance education reflects the democratization of access to higher education, provided by the flexibility that this modality offers (INEP, 2024).

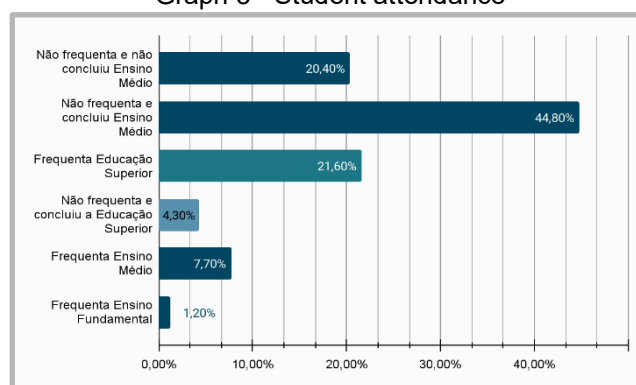
The most recent data, from 2022, show that the number of enrollments in distance education continued to grow, reaching 4,330,934, while enrollments in the face-to-face modality decreased to 5,112,663. In 2023, this trend was consolidated, with distance education reaching 4,913,281 enrollments, even closer to the number of students in the face-to-face modality, which registered 5,063,501 enrollments (INEP, 2024).

Given this scenario, the increase in the number of enrollments can be interpreted positively, as it reflects the population's greater access to this right, contributing to the promotion of equality and social justice. According to Moraes (2024), the right to education as a social right is directly linked to the conception of a Social State of Law, whose objective is, in addition to ensuring individual rights, to promote the improvement of the living conditions of those who are in vulnerable situations. The consecration of these rights as the foundations of the Democratic Rule of Law, mentioned in Article 1, IV, of the Federal Constitution, reinforces that social justice is an essential pillar for the construction and maintenance of a democratic society.

However, even considering that the number of active enrollments has reached the highest level, it is possible to verify that education has been suffering since high school, reflecting on higher education, based on the 2023 Higher Education Census, pointed out and presented a detailed analysis of the school attendance condition of young Brazilians in

the age group of 18 to 24 years, which total approximately 22.3 million, graph 3, revealing worrying data on access to higher education (INEP, 2024).

Graph 3 - Student attendance



Source: INEP, 2024. Organized by the author.

According to the information, of the 22.3 million young people, only 25.90% of young people in this age group are enrolled or have completed undergraduate courses, demonstrating that a little more than a quarter of this population has access to higher education in Brazil (INEP, 2024). This number reflects the low inclusion of young people in the university system, which may limit the opportunity to take a public exam for the position of judicial technician.

In addition, the graph reveals that 44.8% of young people aged 18 to 24 completed high school, but did not enter higher education (INEP, 2024). Based on these data, it is possible to see that, although many young people manage to finish basic education, almost half of this age group does not continue their studies.

In addition, based on the information, 74.1% of young people aged 18 to 24 did not go beyond basic education. This group is composed of those who are still attending high school and elementary school, those who dropped out of school before completing this stage, and those who finished high school but did not enter a higher education institution (INEP, 2024). This high number points to a serious flaw in the education system, which cannot guarantee the advancement of most young people to higher education, which results in a limitation of prospects for most of this generation.

Based on this analysis, the lack of access to higher education directly compromises other fundamental rights, as highlighted by Barcellos (2023), who defines education as an essential means to guarantee citizenship, extending to the full and effective participation of individuals in professional life. When young people are prevented from completing the necessary levels of education, such as higher education, to run for public positions such as

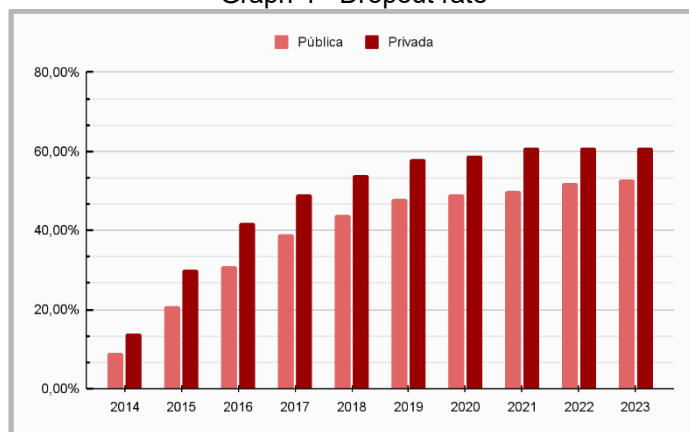
Judicial Technician, this generates an inequality of opportunities. This inequality is particularly worrying, since education is, by nature, a right aimed at social inclusion and the promotion of equality.

#### WITHDRAWAL, PERMANENCE AND CONCLUSION

One of the critical points covered in the 2023 Higher Education Census was the data on the monitoring of the trajectory of a higher education entrant throughout his or her trajectory, which can remove the dropout, permanence, and completion rate (INEP, 2024).

The Accumulated Dropout Rate (TDA), that is, the dropout of what refers to the student's significant entrance course over the years. The analysis of data from incoming students in 2014 shows that, by 2023, during the course of the course, especially after 5 years, approximately 50% of students who started an undergraduate course dropped out before completing it (INEP, 2024).

Graph 4 - Dropout rate

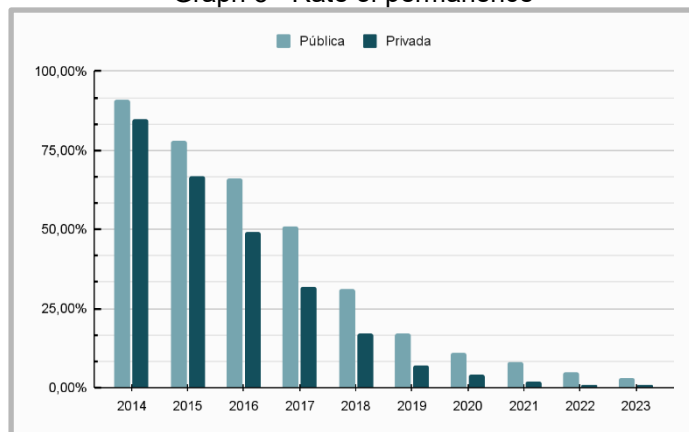


Source: INEP, 2024. Organized by the author.

Still, another point covered by the census was the permanence rate, measuring the percentage of students who remain enrolled in a course without having yet completed or dropped out, allowing the evaluation of student retention over the years (INEP, 2024). This indicator is important in a scenario where school dropout is a constant concern in higher education, directly impacting both course completion rates and the quality of professional training in the country.

Analyzing graph 5, which follows the trajectory of new entrants over 10 years, it is possible to observe that the retention rate drops sharply in both public and private institutions. Over the years, we have observed a significant drop in the permanence rate (INEP, 2024).

Graph 5 - Rate of permanence

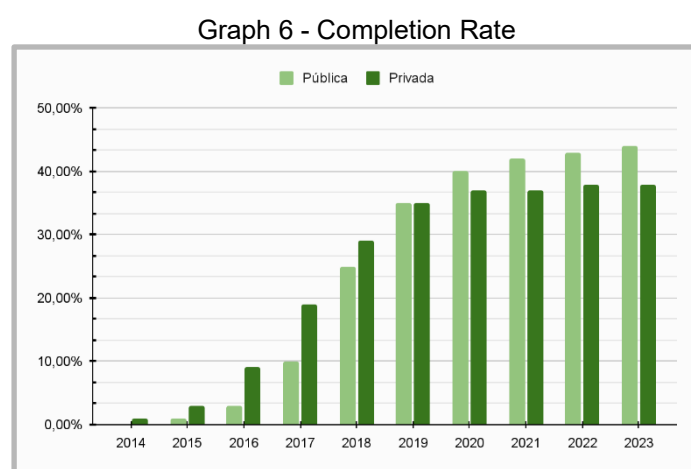


Source: INEP, 2024. Organized by the author.

At the beginning of the period, in 2014, the permanence was quite high, with 91% for public institutions and 85% for private institutions. This high initial rate is common, as most students are still at the beginning of their academic journeys, for the year 2023 in the graph

it is 3% for public institutions and 1% for private institutions. This means that, after the monitoring period of students who entered in 2014, only 3% and 1% of students were still enrolled in the course, without having completed or dropped out (INEP, 2024).

The cumulative completion rate in higher education is an important indicator to evaluate the success of students in completing their undergraduate courses. It represents the percentage of students who entered in a given year and managed to complete the course over time. Graph 6 shows the evolution of this rate for students who entered in 2014, both in public and private institutions, in the period from 2014 to 2023 (INEP, 2024).



Source: INEP, 2024. Organized by the author.

In the first years after admission, the completion rate is naturally low, since students are still at the beginning of their academic careers. In 2014, the completion rate began to appear very discreetly, with 1% in private institutions and 0% in public institutions, which is expected, given that few courses have such a short duration and students have just entered. (INEP, 2024).

From 2016 onwards, a more significant growth in the completion rate began to be observed. In public institutions, 3% of students who entered in 2014 had completed their courses by that year, while in private institutions this number was slightly higher, 9%. This reflects a greater trend of completion in courses at private institutions (INEP, 2024).

In 2018, the completion rate continues to rise, reaching 25% in public institutions and 29% in private institutions. However, it is from 2019 onwards that there is a more significant jump, with 35% completion in both public and private schools, which indicates that a large part of students completed the course within the standard five-year period (INEP, 2024).

Between 2020 and 2023, the completion rate stabilizes at higher levels, although there is still a gap between public and private institutions. In 2023, the cumulative

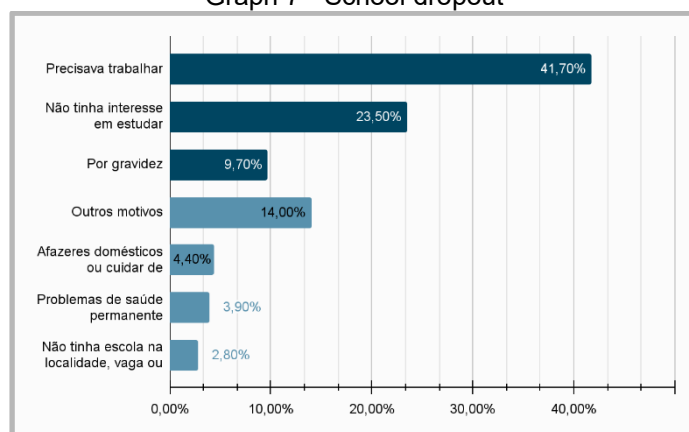
completion rate reaches 44% in public institutions and 38% in private ones. This means that, after nine years of monitoring, less than half of the students who entered in 2014 completed their courses. Despite being a significant number, it also shows that a significant portion of students faced difficulties in completing their studies or dropped out of the course before completion (INEP, 2024).

These empirical data highlight the need for public policies that promote not only access, but also permanence and completion in higher education. As Barcellos (2023) argues, the Federal Constitution of 1988, since its original text, already recognized the importance of ensuring quality education, accessible to all citizens in a universal and equitable manner. This means that the Magna Carta established that education should be for all, without distinctions, and that the State should act to ensure equal opportunities in access and permanence in education, with a focus on reducing social inequalities.

## CAUSES OF EARLY SCHOOL LEAVING AND OBSTACLES TO ACCESS TO HIGHER EDUCATION

According to data from the 2023 Continuous National Household Sample Survey (Continuous PNAD), school dropout among people with less than complete high school education directly reflects the difficulties in continuing studies, especially in higher education. This phenomenon is strongly linked to socioeconomic and personal factors, which play a crucial role in the interruption of the educational trajectory. The survey outlines an important overview of the educational sector, revealing that many young Brazilians face difficulties in completing their basic studies or never having the possibility of having attended school and, consequently, entering higher education. According to graph 7, three main reasons explain this phenomenon: need to work, lack of interest, and pregnancy (IBGE, 2023).

Graph 7 - School dropout



Source: IBGE, 2023. Organized by the author.

The data presented in a general context reveal that the need to work is one of the main reasons for dropping out of school or not attending school among people aged 14 to 29 with a level of education below complete high school. In 2023, 41.7% of young people in this situation said they had stopped studying to work, a percentage that shows a slight increase compared to 2019 and 2022, when the rates were 40.1% and 40.2%, respectively. This reality is particularly pronounced among men, of whom 53.4% claimed the need to work as the main reason for dropping out of school. (IBGE, 2023).

In the case of women, although the need to work is also a relevant factor (25.5%), other reasons, such as pregnancy and doing household chores or caring for people, have a greater impact on their decisions to drop out of school. In 2023, 23.1% of women reported dropping out of school due to pregnancy. In addition, 9.5% of young women cited responsibility for household chores and caring for people as a reason for leaving school (IBGE, 2023).

Another relevant factor in the 2023 data is the lack of interest in studying, mentioned by 23.5% of young people in general. Among women, this ratio was pointed out by 20.7%, while among men this number is significantly higher, 25.5% (IBGE, 2023). This lack of interest may be related to a combination of factors, such as the lack of professional prospects and the low quality of the education offered, which discourage many young people from continuing their school education.

When considering these data, we observe that educational inequality in Brazil is strongly associated with socioeconomic factors, which directly reflects on unequal access to higher education. In this sense, it can be argued, according to Moraes (2024), that unconstitutional inequality occurs when the application of a norm, even without expressly providing for discrimination, results in differential treatment that is unjustified or arbitrary for

certain people. In other words, unconstitutionality occurs when the rule, in its practical application, creates distinctions that are unreasonable, disproportionately affecting certain groups, which violates the principle of equality enshrined in the Constitution.

Ferreira Filho (2022) points out that the principle of equality does not imply the total absence of distinctions, but the prohibition of treatment that is arbitrary and lacks objective justification. Thus, legislation is allowed to make distinctions, as long as they are based on rational criteria and proportional to the objective that is intended to be achieved. In this sense, the imposition of differentiated requirements, such as the requirement of higher education for certain public functions, is valid, as long as it is based on objective reasons that justify such difference, ensuring that the measure does not result in unjustified discrimination.

In this context, barriers to access to education, such as the need to work or the impacts of early pregnancy, can constitute an unconstitutional form of discrimination, as they result in a disproportionate exclusion of vulnerable young people from the education system. This exclusion, by limiting access to higher education, ends up restricting opportunities for full participation in professional life, including the right to compete in public examinations.

However, this disproportionality can be relativized by the principle of efficiency, according to Moraes (2024), who identifies the search for quality as an essential characteristic of efficiency in Public Administration. Di Pietro (2024) also argues that the principle of efficiency guides the organization of the Administration, to achieve maximum efficiency in the delivery of public services.

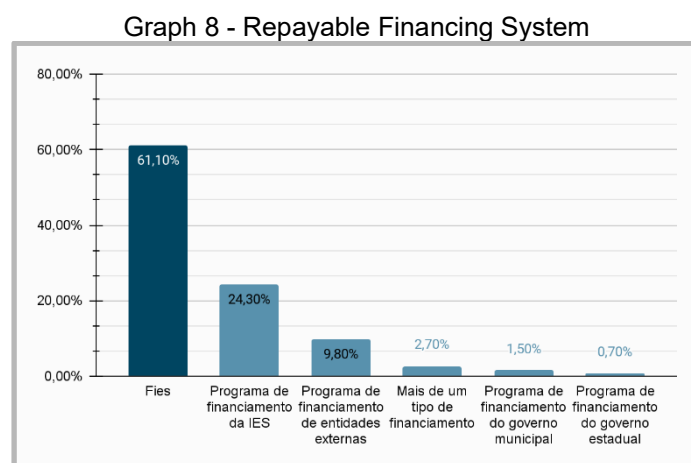
## HIGHER EDUCATION FUNDING SYSTEMS

According to the Constitution, as reinforced by Moraes (2024), social rights, especially education, are considered fundamental rights of human beings, being "positive freedoms", that is, they require effective action by the State to ensure that these rights are fully ensured. In this sense, the State has the obligation to promote public policies and ensure minimum conditions for people to enjoy these rights.

Affirmative action, according to Peña de Moraes (2022), is a relevant instrument for the realization of the right to education. An example is the University for All Program (PROUNI), which offers scholarships at private institutions of higher education for low-income students. The objective of these policies is not only to facilitate access to higher education, but also to promote the inclusion of historically excluded groups.

It should be noted that the increase in enrollments over the years also results from the various types of affirmative actions that provide student assistance for admission to higher education among the most diverse federative entities. Such programs have managed to achieve access to higher education for most people, and it is divided into two types, being reimbursable and non-reimbursable financing systems (INEP, 2023).

According to graph 8, the most adopted model of reimbursable financing system is the FIES (Student Financing Fund) representing 61.1% of enrollments financed in private institutions (INEP, 2023). Such funding was created in 2001 by Law No. 10,260/2001, as a policy of the Ministry of Education to finance non-free higher education courses (Brasil, n.d.).

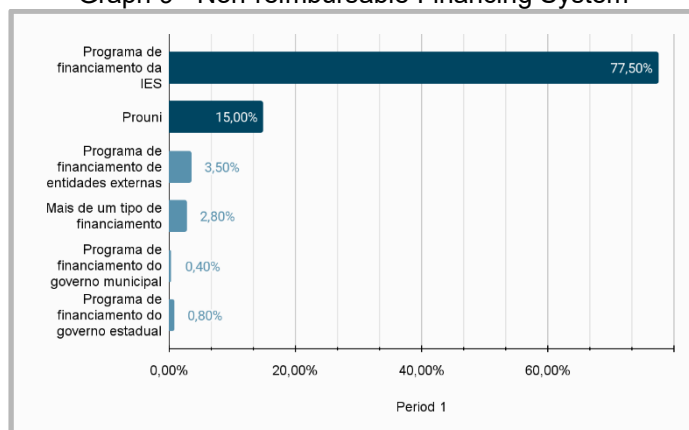


Source: INEP, 2023. Organized by the author.

In the case of non-reimbursable financing for higher education, graph 9, Higher Education Institutions (HEIs) have the greatest reach, accounting for 77.5% of funded enrollments, which is equivalent to 2,037,865 enrollments (INEP, 2023).

The second most used within the non-reimbursable financing systems is PROUNI (University for All Program), a program of the Brazilian federal government, created in 2004, which offers scholarships in private institutions of higher education for low-income students. These scholarships can be full (100%) or partial (50%), depending on the applicant's family income and other criteria (Brasil, n.d.).

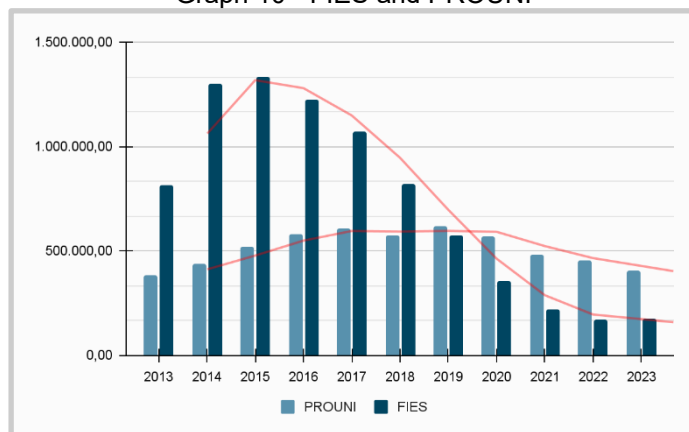
Graph 9 - Non-reimbursable Financing System



Source: INEP, 2023. Organized by the author.

However, both FIES and PROUNI have shown a downward trend over the past few years. This is evidenced by the data presented in graph 10, which illustrate the progressive reduction in the number of funded enrollments or with scholarships in both programs, reflecting a possible budget adjustment or changes in policies to encourage higher education (INEP, 2024).

Graph 10 - FIES and PROUNI



Source: INEP, 2024. Organized by the author.

In this context, it is important to highlight that, among the programs for access to higher education offered by the federal government, the FIES (Student Financing Fund) had a much more expressive performance than PROUNI (University for All Program) in the period from 2014 to 2016, in terms of the number of enrollments. During these years, FIES registered a significantly higher volume of adhesions (INEP, 2024).

However, in view of the data presented on student financing in Brazil, especially in programs such as FIES and PROUNI, a relevant question arises about the implications of the requirement of higher education for the position of Judicial Technician of the Judiciary of

the Union. The increase in demand for higher education, driven by affirmative action and financing systems, has contributed to the democratization of access to education, but also brings a scenario of over-indebtedness for many who seek to meet the new qualifications required.

This fact is based on the launch of programs aimed at helping the large number of indebted students, such as the Desenrola FIES Program. Since then, the program has had more than 351 thousand agreements signed, and there are still 844 thousand students with debts in contracts signed until 2017 and in default until June 30, 2023 who can request renegotiation (Brasil, 2024).

Thus, it is worth reflecting on whether the State is promoting adequate educational and financing policies to prevent access to higher education, necessary for professional advancement, from becoming an unsustainable financial burden for individuals. This requirement must be accompanied by more sustainable and accessible financing policies, which ensure inclusion without compromising the financial stability of future students.

## **CONCLUSION**

As previously discussed, the evolution of the criteria for investiture in public positions and jobs in Brazil, particularly with the adoption of the public examination as a mechanism for entry, constitutes a significant advance towards the promotion of impersonality and administrative transparency.

The implementation of the public tender ensured that the selection of civil servants was based on objective criteria, valuing the technical capacity and knowledge of the candidates, removing the influence of political and personal favoritism that once prevailed in access to public service. In this context, impersonality has become a fundamental pillar in the search for equity in the public sector and in the efficiency of public administration.

However, the change in the education of the Judicial Technician analyzed from the perspective of material isonomy, makes it evident that the requirement of higher education can be considered a measure that does not adequately reflect the structural social and economic inequalities of the country. Although, in theory, the requirement of a higher educational level seeks to raise the quality of the services provided and ensure that the civil servant has a robust education, in practice, this requirement limits the access of candidates from less favored socioeconomic classes, exacerbating inequalities and compromising the principle of equal opportunities among competitors.

As evidenced by higher education data and the IBGE, a large part of the population has difficulties both to enter higher education and to remain in it and complete it. It is not only about analyzing admission, but also permanence and completion of the course, considering various social and economic factors that affect the success of students throughout their academic career.

Although there are public policies aimed at democratizing access to higher education, such as scholarship programs, it is undeniable that socioeconomic conditions still exert a determining influence on educational opportunities and, consequently, on the performance of candidates in public exams.

Inequality in access to quality education, from primary to higher education, ends up creating an environment of unequal competition, where those who have better resources, whether in terms of educational infrastructure, family support, or time to dedicate to studies, have a significant advantage over those who have to deal with numerous adversities to achieve the same level of preparation.

Thus, the imposition of higher education requirements ends up working as a filter that privileges candidates with higher socioeconomic conditions, leaving aside those who, although talented and hardworking, who could contribute to public administration, did not have the same opportunities to access quality education.

Thus, the increase in the education requirement for the position of Judicial Technician, although justified by the need for greater professional qualification to meet the growing and complex demands of the public service, constitutes a considerable barrier for a large part of the Brazilian population.

It is necessary, therefore, to question whether the requirement of higher education for this position is in fact the only way to guarantee a quality public service, or if there are other ways to train civil servants that can be equally effective and more inclusive. Continuous training, for example, can be a viable alternative to ensure that civil servants acquire the necessary skills throughout their professional career, without this constituting an initial obstacle that drives away a significant portion of potential candidates.

Thus, such a measure, instead of promoting meritocracy in its fullness, runs the risk of reinforcing historical structural inequalities, harming above all those who saw in this contest a concrete opportunity for social mobility and life transformation. For many, the position of Judicial Technician represented a real chance to improve their living conditions and achieve financial stability, being a springboard to new professional and academic opportunities.

By making this path more restricted, the State may be inadvertently making it impossible for individuals who, due to their social origin, already face numerous barriers to progress, to social ascension. Therefore, it is essential to rethink the required schooling criteria, in order to ensure that the public service continues to be an instrument of inclusion and social justice, capable of providing real opportunities for all segments of society, without discrimination based on preexisting socioeconomic conditions.

## REFERENCES

1. Barcellos, A. P. de. (2023). *Curso de direito constitucional* (5th ed., rev., atual. e ampl.). Forense. <https://app.minhabiblioteca.com.br/reader/books/9786559647828/>
2. Bourdieu, P., & Passeron, J.-C. (1992). *A reprodução: Elementos para uma teoria do sistema de ensino* (R. Bairão, Trad., 3rd ed.). Livraria Francisco Alves Editora. (Obra original publicada em 1970)
3. Brasil. (1990). *Lei nº 8.112, de 11 de dezembro de 1990. Dispõe sobre o regime jurídico dos servidores públicos civis da União, das autarquias e das fundações públicas federais.* Diário Oficial da União. [https://www.planalto.gov.br/ccivil\\_03/leis/l8112cons.htm](https://www.planalto.gov.br/ccivil_03/leis/l8112cons.htm)
4. Brasil. (2006). *Lei nº 11.416, de 15 de agosto de 2006. Dispõe sobre as Carreiras dos Servidores do Poder Judiciário da União.* Diário Oficial da União. [https://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2006/lei/l11416.htm](https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11416.htm)
5. Brasil. (2022). *Lei nº 14.456, de 21 de setembro de 2022. Transforma cargos vagos das carreiras de Auxiliar Judiciário e de Técnico Judiciário em cargos vagos da carreira de Analista Judiciário.* Diário Oficial da União. [https://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2022/lei/l14456.htm](https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14456.htm)
6. Brasil. Controladoria-Geral da União. (s.d.). *Meritocracia.* <https://www.gov.br/cgu/pt-br/centrais-de-conteudo/campanhas/integridade-publica/meritocracia>
7. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (2023). *Censo da Educação Superior 2022: Divulgação dos resultados.* Inep. [https://download.inep.gov.br/educacao\\_superior/censo\\_superior/documentos/2022/apresentacao\\_censo\\_da\\_educacao\\_superior\\_2022.pdf](https://download.inep.gov.br/educacao_superior/censo_superior/documentos/2022/apresentacao_censo_da_educacao_superior_2022.pdf)
8. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (2024). *Censo da Educação Superior 2023: Divulgação dos resultados.* Inep. <https://www.inep.gov.br/powerpoint-presentation>
9. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (s.d.). *Ensino a distância cresce 474% em uma década.* <https://www.gov.br/inep/pt-br/assuntos/noticias/censo-da-educacao-superior/ensino-a-distancia-cresce-474-em-uma-decada>
10. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (2024). *Resumo técnico do Censo da Educação Superior 2022.* Inep. <https://www.gov.br/inep/pt-br/aceso-a-informacao/dados-abertos/resumo-tecnico-do-censo-da-educacao-superior-2022>
11. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (2023, 27 de setembro). *Divulgação dos resultados do Censo da Educação Superior 2022* [Vídeo]. YouTube. <https://www.youtube.com/watch?v=divulgacao-censo-2022>

12. Brasil. Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira. (2023, 27 de setembro). *Divulgação dos resultados do Censo da Educação Superior 2023* [Vídeo]. YouTube. <https://www.youtube.com/watch?v=divulgacao-censo-2023>
13. Brasil. Ministério da Educação. (s.d.). *Desenrola Fies: 844 mil estudantes ainda podem renegociar dívidas*. <https://www.gov.br/mec/pt-br/assuntos/noticias/2024/setembro/desenrola-fies-844-mil-estudantes-ainda-podem-renegociar-dividas>
14. Brasil. Ministério da Educação. (s.d.). *Programa Universidade para Todos (ProUni)*. <https://acessounico.mec.gov.br/prouni>
15. Brasil. Presidência da República. (s.d.). *Constituição da República Federativa do Brasil*. [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.html](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.html)
16. Brasil. Supremo Tribunal Federal. (s.d.). *ADI 7338*. <https://jurisprudencia.stf.jus.br/>
17. Brasil. Supremo Tribunal Federal. (s.d.). *Lei que exige nível superior para técnico judiciário: Associação não tem legitimidade para contestar*. <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=509079&ori=1>
18. Brasil. Supremo Tribunal Federal. (2015, 8 de abril). *Súmula Vinculante nº 43*. <https://portal.stf.jus.br/jurisprudencia/sumariosumulas.asp?base=26&sumula=2348>
19. Brasil. Supremo Tribunal Federal. (s.d.). *PGR questiona exigência de curso superior para cargos técnicos do TJDF e do MPU*. <https://noticias.stf.jus.br/postsnoticias/pgr-questiona-exigencia-de-curso-superior-para-cargos-tecnicos-do-tjdft-e-do-mpu/>
20. Carvalho Filho, J. dos S. (2023). *Manual de direito administrativo* (37th ed.). Atlas. <https://app.minhabiblioteca.com.br/reader/books/9786559774265/>
21. Couto, R., & Capagio, Á. do C. (2022). *Curso de Direito Administrativo* (5th ed.). Saraiva Jur. <https://app.minhabiblioteca.com.br/reader/books/9786553620452/>
22. Di Pietro, M. S. Z. (2024a). *Direito administrativo* (36th ed., 2nd reimp.). Forense. <https://app.minhabiblioteca.com.br/reader/books/9786559772827/>
23. Di Pietro, M. S. Z. (2024b). *Direito administrativo* (37th ed., rev., atual. e ampl., 2nd reimp.). Forense. <https://app.minhabiblioteca.com.br/reader/books/9786559649440/>
24. Favero, A. A., Oliveira, J. C., & Faria, T. L. de. (2022). Crítica as “medições” em educação à luz da teoria das capacidades: A meritocracia que reforça a desigualdade. *Revista Internacional de Educação Superior*, 8, e022024. <https://doi.org/10.20396/riesup.v8i0.8663142>
25. Ferreira Filho, M. G. (2022). *Curso de direito constitucional* (42nd ed.). Forense. <https://app.minhabiblioteca.com.br/reader/books/9786559644599/>
26. Gasparini, D. (2011). *Direito administrativo* (17th ed.). Saraiva Uni. <https://app.minhabiblioteca.com.br/reader/books/9788502149236/>

27. Instituto Brasileiro de Geografia e Estatística. (2023). *PNAD Contínua - Educação 2023*. <https://loja.ibge.gov.br/pnad-continua-educac-o-2023.html>
28. Lima Júnior, O. B. de. (1998). As reformas administrativas no Brasil: Modelos, sucessos e fracassos. *Revista do Serviço Público*, 49(2), 5-32. <http://repositorio.enap.gov.br/handle/1/1490>
29. Moraes, A. de. (2023). *Direito constitucional* (39th ed., 2nd reimp.). Atlas. <https://app.minhabiblioteca.com.br/reader/books/9786559774944/>
30. Moraes, A. de. (2024). *Direito constitucional* (40th ed.). Atlas. <https://app.minhabiblioteca.com.br/reader/books/9786559776375/>
31. Moraes, G. P. de. (2022). *Curso de direito constitucional* (13th ed.). Atlas. <https://app.minhabiblioteca.com.br/reader/books/9786559772827/>
32. Nohara, I. P. D. (2024). *Direito administrativo* (13th ed., rev., atual. e ampl.). Atlas. <https://app.minhabiblioteca.com.br/reader/books/9786559775934/>
33. Padilha, R. (2020). *Direito constitucional* (6th ed.). Forense; Método. <https://app.minhabiblioteca.com.br/reader/books/9788530988319/>
34. Saleme, E. R. (2022). *Direito constitucional* (5th ed.). Manole. <https://app.minhabiblioteca.com.br/reader/books/9786555766370/>
35. Tribunal de Justiça do Distrito Federal e dos Territórios. Projeto de lei n. 3662/2021. Transforma cargos vagos das carreiras de Auxiliar Judiciário e de Técnico Judiciário em cargos vagos da carreira de Analista Judiciário no Quadro Permanente da Justiça do Distrito Federal e dos Territórios; e altera a Lei nº 11.416, de 15 de dezembro de 2006, para exigir o curso de ensino superior completo como requisito para a investidura na carreira de Técnico Judiciário do Poder Judiciário da União. Brasília: Câmara dos Deputados, 19 out. 2021. Disponível em: Portal da Câmara dos Deputados ([camara.leg.br](http://camara.leg.br)). Acesso em: 06 ago. 2024.