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## THE EFFECTS OF JUDICIALIZATION OF EARLY CHILDHOOD EDUCATION IN DIFFERENT SUBNATIONAL CONTEXTS

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### Abstract

*Legal intervention in early childhood education policies has facilitated the consolidation of the right to education in Brazil for children aged 0 to 5 years. Such a process, seen from the perspective of the judicialization of public policies, fosters both beneficial and adverse impacts on government actions. This paper aims to scrutinize the direct and indirect effects of the judicialization of early childhood education carried out through judicial and extra-judicial proceedings in the local context of nine municipalities scattered across four Brazilian states. The methodology adopted here is the qualitative research, approached with case studies, probing into how Public-interest Civil Actions and Conduct Adjustment Agreements changed local management and planning in the selected cases.*

**RIGHT TO EDUCATION • EARLY CHILDHOOD EDUCATION • PUBLIC MINISTRY • COUNTY**

## EFEITOS DA JUDICIALIZAÇÃO DA EDUCAÇÃO INFANTIL EM DIFERENTES CONTEXTOS SUBNACIONAIS

### Resumo

*A intervenção do judiciário nas políticas de educação infantil tem favorecido a consolidação do direito à educação das crianças de 0 a 5 anos. Tal processo, estudado no contexto da judicialização das políticas públicas, gera impactos positivos e negativos sobre as ações governamentais. Este artigo tem por objetivo analisar os efeitos diretos e indiretos da judicialização da educação infantil realizada com medidas judiciais e extrajudiciais em nove municípios, distribuídos em quatro estados. Adotou-se a abordagem qualitativa, com enfoque em estudos de caso, analisando como as Ações Cíveis Públicas e os Termos de Ajuste de Conduta alteraram a gestão e o planejamento municipal nos casos selecionados.*

**DIREITO À EDUCAÇÃO • EDUCAÇÃO INFANTIL • MINISTÉRIO PÚBLICO • MUNICÍPIO**

## EFFECTOS DE LA JUDICIALIZACIÓN DE LA EDUCACIÓN INFANTIL EN DISTINTOS CONTEXTOS SUBNACIONALES

### Resumen

La intervención judicial en las políticas de educación infantil ha favorecido la consolidación del derecho a la educación de los niños de 0 a 5 años. Tal proceso, estudiado en el marco de la judicialización de las políticas públicas, genera impactos positivos y negativos sobre las acciones gubernamentales. Este artículo tiene el propósito de analizar los efectos directos e indirectos de la judicialización de la educación infantil realizada con medidas judiciales y extrajudiciales en nueve municipios, distribuidos en cuatro estados. Se adoptó el abordaje cualitativo, con enfoque en estudios de caso, analizando la forma en que las Acciones Civiles Públicas y los Términos de Ajuste de Conducta alteraron la gestión y la planificación municipal en los casos seleccionados.

**DERECHO A LA EDUCACIÓN • EDUCACIÓN INFANTIL • MINISTERIO PÚBLICO • MUNICIPIO**

## EFFETS DE LA JUDICIARISATION DE L'ÉDUCATION DE LA PETITE ENFANCE DANS DES CONTEXTES SOUS-NATIONAUX DIFFÉRENTS

### Résumé

L'intervention du pouvoir judiciaire dans les politiques d'éducation de la petite enfance a favorisé la consolidation du droit à l'éducation des enfants de 0 à 5 ans. Ce processus, étudié dans le contexte de la judiciarisation des politiques publiques, génère des impacts positifs et négatifs sur les actions du gouvernement. Cet article vise à analyser les effets directs et indirects de la judiciarisation de l'éducation de la petite enfance, mise en oeuvre avec des mesures judiciaires et extrajudiciaires dans neuf communes, réparties sur quatre états. Une approche qualitative centrée sur les études de cas a été adoptée. L'analyse met en évidence la manière dont les Actions Civiles Publiques et le Terme d'Ajustement de la Conduite ont modifié la gestion et la planification municipales dans les cas abordés.

**DRIT À L'ÉDUCATION • ÉDUCATION DES ENFANTS • MINISTÈRE PUBLIC • MUNICIPALITÉ**

**I**N BRAZIL, THE RIGHT TO EDUCATION FOR CHILDREN AGED 0 TO 5 YEARS, GUARANTEED BY THE Brazilian Constitution of 1988,<sup>1</sup> still faces significant challenges to be fulfilled. As the expansion of coverage witnessed in recent decades has privileged pre-school (ages 4 and 5), especially from 2016 onwards, when the enrollment of children in this age group became mandatory,<sup>2</sup> the biggest availability problems were seen in daycare centers (ages 0 to 3).<sup>3</sup> In this context of juridification of the right to early childhood education by Brazilian legislation, a 2005 ruling by the Federal Supreme Court stands out, which consolidated the right to access to childcare and pre-school education as an individually and collectively enforceable right, pushing off the interpretation that the compliance with this educational stage would be simply a program-oriented guideline. Thus, the subjective dimension of the right to early childhood education was recognized as a duty of the State regarding non-compulsory education (XIMENES; GRINKRAUT, 2014). Therefore, in this context, the demands for coverage expansion are frequently taken to the court system, which is one of the main issues in dispute in the education sector (SILVEIRA, 2013, 2014; SCAFF; PINTO, 2016).

Considering the growth in educational demands brought to court, several studies analyzed the content of judicial orders on public policies related to early childhood education (CURY; FERREIRA, 2010; DAMASCO, 2008; SILVEIRA, 2012, 2014; MARINHO, 2009; SCAFF; PINTO, 2016; VICTOR, 2011; OLIVEIRA; TEIXEIRA, 2019), as well as how the Public Prosecution Office works to safeguard the right to education (CABRAL; DI GIORGI, 2012; MARTINES JÚNIOR, 2006; SILVEIRA, 2010, 2018; SILVEIRA; GONÇALVES, 2019; OLIVEIRA, 2011). In consequence, such studies generally focus on the content or outcome of court orders concerning procedural terms. The field of research aimed at verifying the effects of the operation of the court system towards policymaking and the implementation of such policies is still underdeveloped. An exception to this is the work of Viecelli (2012).

The process of enforceability of early childhood education, specifically understood in the context of the judicialization of education policies, generates “impacts on the Executive and the Legislative branches, in the form of indirect external effects which outstrip *res judicata* effect”, functioning “according to a circular logic, an interdependent cycle of court actions and public policies, which, however, is never closed, due to the lack of generalization and effectiveness of the policies provided by the State” (VIECELLI, 2012, p. 3). Thus, the implementation of judicial decisions and agreements entered into through Conduct Adjustment Agreements impacts local management and planning, as it indicates or redirects the political path of the local government (GAURI; BRINKS, 2008).

This article is based on the model of analysis by Gauri and Brinks (2008) on the effects (direct and indirect) of judicialization via collective actions. The model is used to analyze such

- <sup>1</sup> The article 208, item IV of the Brazilian Federal Constitution is an unprecedented milestone for Brazilian early childhood education because it includes, for the first time in history, infant education as a duty of the State. In its original wording, infant education referred to the age group from 0 to 6 years, similarly to the provisions of the National Education Guidelines and Framework Law (*Lei de Diretrizes e Bases da Educação - LDB*). With the sanction of Law No. 11,114, 2005, and, subsequently, Law No. 11,274, both altering the LDB, elementary school is forwarded to the age of six, lasting nine years. Constitutional Amendment No. 53, 2006 gave it a new wording, setting assistance in daycare centers and pre-school facilities for children of up to five years of age (BRASIL, 1996; [2020])
- <sup>2</sup> Resulting from Constitutional Amendment No. 59, 2009 (BRASIL, 2009).
- <sup>3</sup> The coverage rates for children from 0 to 3 and 4 to 5 years old reached, respectively, 34.2% and 92.4% in 2018 (IBGE, 2019). Law No. 10,172 (BRASIL, 2001), which established the National Education Plan (PNE) from 2001 to 2010, had settled a coverage goal of 50% for daycare centers by the end of that decade. The same goal has been reiterated in the PNE currently in force - Law No. 13,005 (BRASIL, 2014).

effects regarding the judicial enforceability of early childhood education in nine municipalities, located in the Brazilian states of Ceará, Paraná, São Paulo and Sergipe, hence observing how Public-interest Civil Actions and Conduct Adjustment Agreements, respectively judicial and extra-judicial proceedings, have changed local management and planning.

Our guiding questions were the following: In what way class actions (Conduct Adjustment Agreements and Public-interest Civil Actions) have resulted in coverage expansion of the early childhood education in the municipalities evaluated, so as to contribute to reduce inequality in the provision of this right? What are the direct and indirect effects and impacts of enforceability proceedings concerning the right to education on educational policies in those municipalities, taking into consideration the extent of access and quality of its provision? That is, how the government changes its behavior in the conduct of public policies on early childhood education given the aforementioned court actions?

To answer those questions, we adopted a qualitative research approach, focusing on case studies. The methodological procedure will be detailed in a separate section of its own.

The paper is structured in five sections, in addition to its introduction. In the next section, we shall discuss the concept of judicialization of early childhood education policy and our theoretical approach to the analysis of the direct and indirect effects of judicialization on public policies. Afterwards, we present the survey methodology employed in order to gather empirical data. Subsequently, we focus on discussing the participation of the Public Prosecution Office, the main actor in the class actions analyzed herein. In section five, we deliberate on the direct and indirect effects on the cases relevant to us. In the final analysis, we produce the main conclusions of our research, as well as pose a few attention-deserving questions for future studies.

## JUDICIALIZATION OF EARLY CHILDHOOD EDUCATION: DESCRIPTION OF THE CONCEPT AND OUR THEORETICAL APPROACH

Gauri and Brinks (2008, p. 4), in a study on the consequences of the judicialization of economic and social rights in different countries – namely, Brazil, India, Indonesia, South Africa and Nigeria –, investigate this phenomenon based on what they call “the life cycle of public policy litigation.” Such cycle consists of: 1) the placing of court cases; 2) the judicial decision; 3) a bureaucratic, political, or private-party response; and, occasionally, 4) some follow-up litigation. The authors stress out that the final result of this process is what they call the *legalization* of policy, the situation in which courts, lawyers and prosecutors become relevant actors in the implementation of public policy. When the cycle is completed, “court cases can benefit, on a large scale, those who cannot afford a legal dispute” (VIECELLI, 2012, p. 10).

Considering the set of reference material on the judicialization of public policies and their effects, we define the judicialization of education as the involvement of court system in decisions on educational policies, whose design and implementation are the primary attribution of lawmakers, politicians and public administrators. The judicial or extra-judicial operation of the different players in the court system – Judiciary, Public Prosecution Office and Public Defender’s Office – and the interaction between these branches, actors and public bodies exert influence over how educational policies are shaped.

Therefore, we assume that judicialization is a process that operates in the different phases of the public policy cycle, and may interfere in its formulation, implementation and evaluation (XIMENES; OLIVEIRA; SILVA, 2019). Thus, the court system’s engagement in early childhood education policies induces local governments to formulate a new daycare center policy, implement a monitoring method, assess the course of the implemented policy and plan additional cases.

According to Gauri and Brinks (2008), the effects of judicialization of policy in claims regarding a transindividual issue can be either direct or indirect. Direct effects are those directly arising out of a judicial decision in class actions in defense of diffuse, collective and/or homogeneous individual rights. Indirect effects, in turn, are those that exceed the objective or subjective limits of a court order. Therefore, indirect effects result from a court decision, but are not provided therein; they are unexpected consequences, and yet often unavoidable, to the extent of the judgment by the court.

The above-mentioned scholars also distinguish between indirect effects that are *internal*, restricted to the court system (when non-binding precedent from high court jurisprudence exerts disciplining effect on lower court decision making, for example); and indirect effects that are *external*, which go beyond the court system, triggering what they call the *legalization* of public policy, with the generalization of a decision by the government, through a shift in the public policy (GAURI; BRINKS, 2008, p. 23).

The authors argue that class actions bringing forth indirect effects are the ones with the greatest potential to benefit those who lack legal standing or resources to pursue claims, since they promote changes in policies to its very structure. The direct effects in class actions may also benefit these subjects, but in this case, they are limited by the extent of the judicial decision. For instance, a Public-interest Civil Action that obtains a decision that a ramp must be built at a given school (direct effect), whether the demand was pursued by the Public Prosecution Office, by the Public Defender's Office or by some civil society organization, benefits the entire local community, regardless of its participation in the litigation (VIECELLI, 2012). If this sort of claim becomes recurrent, the mayor may decide to push forward an adaptation plan encompassing all schools in that municipality, providing for the construction of ramps within a limited multi-year term, and thus establishing a new public policy capable of benefiting everyone (external indirect effect). Upon becoming aware of such initiative, the litigants decide to suspend the filing of additional actions and begin to formally monitor the implementation of the plan; for this purpose, the Public Prosecution Office proposes the execution of a Conduct Adjustment Agreements (internal indirect effects). Another example of an external indirect effect is the need to hire teachers to make it possible to expand places in daycare centers and pre-school facilities funded at governmental level, as well as the negative indirect effects – through the lens of child rights – related to the lowering of the coverage standard, such as the increase in the number of children per class, for example.

The direct or indirect effects occur on the early childhood education public policy, on the organization of the public administration, on the lawmaking or the judiciary entities involved in judicialization, depending on the exchange between powers and governmental bodies at the local level. Likewise, the influence throughout the different stages of the public policy cycle occurs in different ways in different contexts, also according to the institutions' response to the claim under legalization (XIMENES; OLIVEIRA; SILVA, 2019). For these reasons, the case study is the research method that is most suitable for us to understand the foregoing effects in their respective contexts.

## METHODOLOGY

For this present study, we selected municipalities in the Brazilian states of Paraná, São Paulo, Ceará and Sergipe, all of which, according to the data available, have a relevant background when it comes to enforceability of the right to early childhood education backed by the court system (SILVEIRA, 2012, 2018; RIZZI; XIMENES, 2014; CEARÁ, 2018; TAPOROSKY, 2017; GOTTI; XIMENES, 2018).

In the first stage, we conducted a survey of the class actions aimed to enforce the right to early childhood education pending before state appellate courts and/or agencies of the local



prosecution offices, comprehending those with published decision or an already executed Conduct Adjustment Agreement and made publicly available<sup>4</sup> from January 2005 to July 2016.<sup>5</sup>

Searches were carried out in the courts' jurisprudence systems, made available on their websites, using the keywords "daycare center", "pre-school" and "early childhood education". Afterwards, we read the syllabus of all court decisions found, and singled out those deemed pertinent to the object of our research, as well as the ones that would require further examination before being duly labeled. Once the selection was made, we proceeded to a thorough review of the judicial dispositions in their entirety and ruled out any demands other than the collective access to childhood education, e.g., individual claims concerning childcare shortage or aspects of teaching work.

For the identification and survey of Conduct Adjustment Agreements, different data gathering procedures were employed for each surveyed state, given that there are no standardized search systems or even a unified structure of action on the theme encompassing all states. For the state of Paraná, the search was carried out on the Transparency Portal of the Public Prosecution Office and on a platform designed for the Filing, Monitoring and Organization of Extra-judicial Activities of the Paraná State Prosecution Office (*PRO-MP*); this agency of the prosecution office also provided information regarding the existence of proceedings and their related documents.<sup>6</sup> In the case of Sergipe, we sent an official letter directly to the Operational Support Center for Education Rights (*Caop*), through the Citizens Information Board accessible on the Prosecution Office Transparency Portal. The specialized *Caop*, in turn, notified all local prosecutors responsible for the education sector, and provided us with all the information collected. Considering the state of São Paulo, we requested, via Public Prosecutor's Citizens Information System, a list of all judicial and extra-judicial procedures registered with the terms "early childhood education", "daycare center" and "pre-school" filed between 2005 and 2016. Based on this information, another request was sent directly to the Prosecutor's Collective Relief and Civil Operational Support Center (*CAO Cível*) in order to make such Conduct Adjustment Agreements available to us. Regarding the state the Ceará, the local research team tracked down extra-judicial proceedings in direct partnership with the Ceará State Prosecution Office.

In possession of relevant, attainable judicial and extra-judicial procedures, a database for the selected municipalities and their respective state was compiled, with or without judicial or extra-judicial proceedings identified along our defined timeframe, including not only their legal information but also population size and monthly income per capita (IBGE, 2010); this item of data was categorized, for the analysis, into ranges based on the value of the federal minimum wage in 2010. Other pieces of data from the Municipal Human Development Index (MHDI) were also incorporated, according to the ranges set by the Atlas of Human Development in Brazil (2013).

The municipalities were initially grouped into "municipalities with no collective actions" and "municipalities with collective actions", the latter being subdivided into judicial or extra-judicial proceedings and into "contextualized" or "non-contextualized" proceedings according to the local reality. We considered contextualized proceedings all the cases seeking to intervene on their local lack of places, in dialogue with their local context, embodying aspects of the specific needs of public policy when either judicial or extra-judicial proceedings were executed. Non-contextualized proceedings, on the other hand, are those that do not take into account the local context, the public policy adopted, the coverage rates or the specific characteristics of that given municipality. In these cases, the court system usually spurs into action based on pre-conceived and formally or informally

4 It is not possible to confirm that all decisions in these class actions have been found, since the publication criteria vary according to the specific rules of each state appellate court. There are, for example, cases under closed proceeding.

5 The data on extra-judicial proceedings have been updated until May 2016; and on court cases, until July 2016.

6 This data collection is part of Feldman's Master's degree thesis (2017).

disseminated models, or decisions are made on the grounds of enforceability and duty of the State jurisprudential canons in a generalist manner, without due attention, for instance, to the local capacity to meet the demand for daycare center places in the period set forth by such judicial or extra-judicial decision. Most often, there is an order to create a large number of places, and hefty fines are imposed in the event of non-compliance.

When choosing municipalities for the case studies, small municipalities were excluded, as we believe it is more difficult to identify the effects of court system’s participation, since sometimes one single measure may cause a dramatic impact on local indicators, such as the opening of a new unit or the execution of an agreement with the private sector to increase coverage. In medium and large-sized cities, to the contrary, tackling the problem of lack of places requires complex political action, with various measures and a longer implementation process.

Considering the aforementioned criteria of municipality size and categorization of collective actions, the cases selected for analysis are as follows:

**TABLE 1**  
**MUNICIPALITIES SELECTED FOR CASE STUDIES**

	Paraná	São Paulo	Sergipe	Ceará
Contextualized Public-interest Civil Action		São Paulo	Nossa Senhora do Socorro	
Non-contextualized Public-interest Civil Action	Araucária	Mauá / Caieiras		Fortaleza
Contextualized Conduct Adjustment Agreement	Telêmaco Borba	Paulínia		
Non-contextualized Conduct Adjustment Agreement	Pato Branco			

Source: Elaborated by the authors.

In each case study, key players in the judicialization process were interviewed in order to understand different local contexts from different perspectives better. Therefore, semi-structured interviews were carried out with prosecutors, child protection counselors, local secretaries of education and early childhood education coordinators (or other equivalent positions), members of the local education board and the legislative, members of the district attorney’s office and public defender’s office, when existing in the municipality.

In addition to the appeal decision from Appellate Court and the Conduct Adjustment Agreement, the following documents were also considered, when available: the corresponding court case in its entirety, the Municipal Education Development Plan, the Multiyear Plan, the Budget Directives Law, the Annual Budget Law, the accounting of education-related resources, the pertinent matters dealt with by the legislative and local information on waiting lists and registration of children out of childcare and education coverage.

In addition, we also handled the following education indicators, mostly obtained from the Education Data Laboratory<sup>7</sup> (FEDERAL UNIVERSITY OF GOIÁS – UFG; FEDERAL UNIVERSITY OF PARANÁ – UFPR, 2019), for the analysis of early childhood education offer: coverage rate for early childhood education, daycare and pre-school (IBGE, 2010), percentage of enrollment growth between 2010 and 2016, number of enrollments (full-time and part-time, public and private, public-private partnership, urban and rural, between 2010 and 2016), evolution in the number of daycare

<sup>7</sup> Education Data Laboratory. Retrieved from <https://dadoseducacionais.c3sl.ufpr.br> on June 23, 2019.

and pre-school classes between 2010 and 2016, number of students per class, teacher's profile and number of early childhood education centers categorized by kind.

The data collected from a wide range of sources (State Appellate Courts, Public Prosecution Office, Municipal Plans, Multiyear Plans, Budget Directives Law, Annual Budget Law, local education data and interviews) were analyzed from a descriptive-analytical approach in each case study (for each municipality), using criteria established from the evaluation of the literature on the topic, casting light on the effects of enforceability of early childhood education. After a separate analysis for each municipality, these cases were also grouped by their state, thus allowing a comparison not only among municipalities but also among states.

## THE PROSECUTION OFFICE AND THE JUDICIALIZATION OF CHILDHOOD EDUCATION THROUGH CLASS ACTIONS

In the municipalities of the states under scrutiny, the participation of the Prosecution Office towards enforceability of the right to early childhood education could be felt, to a greater or lesser extent, by means of court cases or extra-judicial proceedings.

In Paraná state, all of the 71 measures identified were submitted by the State Prosecution Office: 39 Conduct Adjustment Agreements, one amendment to a Conduct Adjustment Agreement, 29 Public-interest Civil Actions and one collective writ of mandamus. These procedures are present in 60 of the 399 municipalities in state of Paraná. The geospatial distribution is not uniform across the different regions of the state, with greater concentration in the West and North regions, as well as in the metropolitan area of the capital city, Curitiba. Procedures were found in about 15% of the municipalities in Paraná in the period; among them, 58% of the cases bear a Conduct Adjustment Agreement, and 36% had judicial decisions in class actions.

The data indicates that the priority given to out-of-court settlements in Paraná may be a reflection of the induction promoted by the Operational Support Center for Children, Adolescents and Education prosecutors. In this sense, the central role of the Paraná State Prosecution Office had already been evidenced in a research by Silveira (2018), in which the author highlighted the performance of the Operational Support Center for Children, Adolescents and Education prosecutors<sup>8</sup> (*Caopcae*) regarding this subject. For this purpose, the Public Prosecution Office relied on a strategic plan carried out between 2011 and 2016, called "Participation of the Paraná State Prosecution Office to create places in early childhood education". This plan provided prosecutors with step-by-step guides and procedure models in order to monitor the offer of places in early childhood education facilities, especially for children aged 4 and 5, aiming to unify and enhance their work, with guidelines and essential issues in its execution.

The prosecutors in Paraná also received a statistical survey on the estimated population (0-3 years old and 4-5 years old), daycare center and pre-school enrollment data and the estimated deficit (real value and percentage) of each one of the Paraná municipalities for the years 2012 and 2014. The guidelines included templates of official communication to be sent to the mayor, city councilors and child protection counselors to inform about the existence of the State Prosecution Office's procedure, in addition to a request of information on municipal planning for the progressive implementation of places in early childhood education for all children aged 4 and 5 living in the municipality until the beginning of the 2016 school year. A Conduct Adjustment Agreement draft was sent, suggesting an out-of-court agreement to be signed with the municipal government in order to expand the number of places available.

<sup>8</sup> The Operational Support Center for Children, Adolescents and Education, created by the Paraná State Attorney General Office in 2002, works as a support agency for prosecutors in the Paraná State Prosecution Office concerning education issues.



Lastly, members of the Prosecution Office were also instructed, if a Conduct Adjustment Agreement was not reached, to file a Public-interest Civil Action to achieve universal access to education for the 4 and 5-year-old population (SILVEIRA; GONÇALVES, 2019). Therefore, we could see that there was an orientation towards keeping the issue out of the court system, and a Public-interest Civil Action should be considered only if it became impossible to have a Conduct Adjustment Agreement executed. This orientation may be related to the understanding that this instrument tends to bring results in a more agile and efficient manner. Furthermore, unlike demanding in court, its terms are entirely determined by the interested parties. In this case, Caopcae played the role of an inducing agent to increase the number of Conduct Adjustment Agreements actually signed.

In the case of Paraná state, the only institution identified as responsible for the collective procedures aimed to enforce the right to early childhood education was the State Prosecution Office.

In São Paulo state, its Prosecution Office also prevails, although we could find the intervention of other parties withstanding in the legal decisions analyzed, as will be specified in the case study on the municipality of São Paulo. In this state, the research identified an institutional policy of the Prosecution Office to promote the enforceability of the right to early childhood education, driven by the Collective Relief/Education and Civil Operational Support Center (*CAO Educação*). In 2015, a document entitled “Operational Dossier: State Prosecution Office in defense of access to early childhood education, its quality and the municipal education plan” was published and forwarded to all prosecutors (SÃO PAULO, 2015). In this publication, among other guidelines, there is a draft ordinance to a civil investigation to ascertain the quality of early childhood education in daycare centers, which points to the existence of concerns about the impacts of their participation on the conditions for the development of early childhood education policies (SÃO PAULO, 2015). Since this measure is relatively recent, it was not possible to verify to what extent it boosted the local operation of the Prosecution Office agencies. Before this initiative, however, there were formal guidelines for Prosecution Office’s members to prioritize the “childhood education” theme, apparently without the same level of engagement verified in Paraná, given the reduced number of extra-judicial proceedings carried out by the São Paulo State Prosecution Office.

In the Sao Paulo state, 91 judicial and extra-judicial proceedings were identified and analyzed, distributed in 61 of its 645 municipalities, less than 9.5% of the total. These proceedings can be categorized by kind as follows: 62 Public-interest Civil Actions, 11 Collective Writs of Mandamus, three referring to execution for noncompliance with Conduct Adjustment Agreements terms and 15 Conduct Adjustment Agreements, including one amendment to an agreement. There is a great concentration of judicial actions in the state capital, as 26 adverse rulings in class actions against this municipality were found (both Public-interest Civil Actions and Writs of Mandamus). In two municipalities, both court cases and Conduct Adjustment Agreements were found. Nevertheless, 12 of them had Conduct Adjustment Agreements only.

In São Paulo, the lower proportional presence of judicial initiatives, with a small presence of Conduct Adjustment Agreements, combined with the fact that we can find, in a lesser amount, other claimants (civil society organizations and Public Defender’s Office) among the plaintiffs of Public-interest Civil Actions, may indicate a less widespread performance in the theme, when compared to Paraná. The capital city case, in turn, may denote an effect of the structuring process to act on the theme, since, during the period studied, it was the only municipality to have an executive body specialized in education: the Special Action Group in Education (*Geduc*), created in 2010, with similar duties to the specialized prosecutor’s Office in Ceará, which are examined below.

Finally, an aspect of the data that draws attention is that, in São Paulo state, it was not possible to find any tendency towards regionalization of greater participation of the Prosecution Office, except for its capital city. Also, there is apparently no correlation between the existence of class actions in certain municipalities of São Paulo state and their respective coverage rates or a percentage increase in enrollment in daycare centers and pre-schools between 2010 and 2016.

In Ceará, the process of specialization of the State Prosecution Office for the defense of the right to education had its breakthrough with the establishment of the Defenders of Education Prosecution Offices in 2001, amending the Ceará State Prosecution Office charter (CEARÁ, 2011). Based on their specific duties, such prosecutors, who operate only in the state's capital city, have been signing Conduct Adjustment Agreements towards the improvement of specific educational units. However, researching the collective proceedings – both judicial and extra-judicial – aimed to enforce the right to early childhood education, we did not find collective proceedings with impact on educational management and planning in the municipalities of the state of Ceará, since the claims were denied or no agreement was reached between the Prosecution Office and the municipal government. Notwithstanding, we chose to maintain a case study for the municipality of Fortaleza, capital city of Ceará, in which we could probe into the State Prosecution Office's performance, since it enjoys the participation of a specialized board for the defense of the right to education. It also plays a relevant role in the Center for the Defense of Children and Adolescents (*Cedeca-CE*), a civil society organization which have been developing pioneering initiatives, on a national scale, along with the court system in favor of the right to education since the second half of the 1990s (CEARÁ, 2018).

In a general survey of class actions that demanded the right to early childhood education brought to trial in Brazilian courts of appeals, the state of Sergipe was identified as the one with the largest number of court cases judged and registered in the North and Northeast regions of the country (TAPOROSKY, 2017). Such research located 15 decisions made by the Sergipe State Appellate Court, in relation to 11 Public-interest Civil Actions claiming access to early childhood education. These civil actions were concentrated in three of the 75 municipalities in Sergipe; three of them concerning the capital city Aracaju, nine concerning the municipality of Nossa Senhora do Socorro and one pertaining to the municipality of São Cristóvão. Also in Sergipe, all cases were filed by the Prosecution Office, by means of Public-interest Civil Actions, between 2005 and 2014. The claims filed in 2005 and 2006 refer to the city of Aracaju. The most recent, concern the municipalities of Nossa Senhora do Socorro and São Cristóvão. *The Sergipe State Prosecution Office has an Operational Support Center for the Rights of Education, created in 2011, which is an auxiliary agency to prosecutors exercising the Collective Trusteeship of the Rights to Education.*

Even though this research started with a survey looking for class actions and Conduct Adjustment Agreements, instruments that are not exclusive to the Prosecution Office, we were surprised to see that prosecutors had almost a monopoly over these procedural instruments when it comes to the judicialization of public policies for early childhood education. This conclusion corroborates recent research on this body (CONSELHO NACIONAL DE JUSTIÇA, 2018) and points out the need to deepen the focus on the education sector. Therefore, it is a pivotal institution in the process of judicialization of early childhood education rights and the setting of an agenda around this phenomenon. The existence of a structured Prosecution Office with a subdivision exclusively dedicated to education issues seems to be a major element to explain the volume of judicial and extra-judicial proceedings regarding early childhood education in municipalities of at least three of the Brazilian states hereby studied. Although this research does not aim to substantiate this correlation, its findings allow us to suggest this hypothesis, to be demonstrated in other future studies. For what concerns us presently, it is worrisome that this judicialization movement, to some extent resulting from institutional operation by local prosecutors, occasionally engenders contradictory effects on public policies towards access to early childhood education and its quality, as we will see in detail in the next section.

## THE EFFECTS OF THE JUDICIALIZATION OF EARLY CHILDHOOD EDUCATION IN THE CASES STUDIED

The analysis of the direct and indirect effects of the judicialization of education, as well as the results presented here, helps us to understand better the dynamics of the interaction between public policies in early childhood education and their judicialization. The direct and indirect effects of the judicialization process of the right to education in our case studies were analyzed, when they existed, in the following areas: educational policy, municipal government, legislative and court system agencies.

However, some of the discernible effects, whether direct or indirect, are not easy to classify – for example, the effect of the universalization of pre-school education policy that results from its mandatory nature (BRASIL, 2009), in comparison with expansion of places due to judicialization. The answer, in general, stems from a qualitative analysis that encompasses the contextualization of local policies and legal actions found in each municipality. In the face of it, the effects were measured and classified qualitatively, based on an evaluation that involved the set of data collected for each municipality, added to the information obtained from interviews with key players in this process.

In regard to Fortaleza, Ceará, our analysis focused on the effects of a Conduct Adjustment Agreement signed in 2009 between the Prosecution Office, through the District Attorney's Office for Defense of Education, and the local government of Fortaleza, through its Municipal Department of Education (SME) and its Municipal Attorney General's Office. This Conduct Adjustment Agreement was aimed at the reopening of 17 daycare centers in the city of Fortaleza, with supplementary budget, among other measures. In this case, we can ascertain as a direct effect in the scope of educational policy the absorption by the municipal public education network, under an agreement, of children who would cease to be covered by the state government. Another direct effect was the amendment to Fortaleza's 2009 Annual Budget Law to increase the resources allocated to daycare centers, through subsidies to community associations. As one of the indirect effects on educational policies, it is noteworthy that the expansion of daycare services in Fortaleza through private entities contracted with the municipal government led to stagnation in the process of municipalization of daycare coverage by the public education network. As a result of the expansion of this agreement, the Municipal Department of Education, on the other hand, adopted stricter criteria for the execution of the new agreements with community associations.

In the state of Paraná, the municipality of Araucária is an extremely particular case (SILVA, 2016), because in the period under analysis it had one single Public-interest Civil Action and only one Conduct Adjustment Agreement. Conversely, from 2013 to 2015, there have been about 4,700 individual lawsuits brought to court demanding access to a place in a daycare center and/or pre-school facility, which were promptly granted by the lower court. This Public-interest Civil Action, filed in 2011, claimed 1,493 places in early childhood education; our analysis of its direct effects demonstrates that, by the end of the period stipulated therein, the compliance to its decision took place through the granting of approximately 4,700 injunctions. With regard to the Conduct Adjustment Agreement signed in 2015, the deadline imposed for expanding the offer of places, with guarantees of a budget estimate and quality service, can be seen as a direct effect.

In that municipality, the indirect effects of collective proceedings cannot be analyzed in dissociation with the high number of individual lawsuits. Thus, considering both class actions and individual cases, the following indirect effects of the judicialization of early childhood education were verified: increase in the number of pupils per class; decrease in the yearly resources spent per student; interference in the queuing policy; reduction of full-time pre-school classes, from 2016 onwards; the decision to reduce the number of enrollments in the final grades of elementary school; hiring of childcare assistants, through the Simplified Selection Process (PSS), as a measure of cost reduction.

In the municipality of Araucária, indirect effects on the local government were also identified, with an increased workload handled by the Municipal Department of Education, which called for the creation of a central child-placing division. This judicialization-induced overload of work could also be observed across the court system agencies, due to the copious amount of individual lawsuits. Another noticeable indirect effect was that the Prosecution Office's performance led the Executive Branch to pay attention to the issue of the quality of places offered in early childhood education, as well as greater awareness among the population of the instruments at disposal to demand the right to early childhood education.

The instance of Telêmaco Borba, Paraná, allows debating the causes and effects of repeated use of extra-judicial strategies, since in this municipality the Prosecution Office signed a first Conduct Adjustment Agreement in 2008, an amendment to it in 2011, and then, in 2013, two new agreements signed by a different prosecutor. Among the direct effects of such Conduct Adjustment Agreements on educational policies, we highlight the expansion of pre-school coverage and, to a lesser extent, daycare services; the creation of a waiting list monitoring system; the publication of waiting lists in a clear, efficient manner to the public; and the clarification and application of priority criteria. As indirect effects, the expansion of the mechanisms for planning public policy on early childhood education, in accordance with the Conduct Adjustment Agreement, and the sustenance of quality standards of full-time care and education.

For the monitoring of Conduct Adjustment Agreements, Telêmaco Borba Department of Education established a specific working group, which can read as a direct effect on the local government. Moreover, as an indirect effect, the development of a protocol to support parents with children on the waiting list. Also, there has been an indirect effect on the legislative, with the appearance of lawmaking matters related to early childhood education, including an emergency budget after the first cycle of judicialization. Furthermore, we verified an effect on court system agencies, with the establishment of standards in extra-judicial procedures, a model that has spread to other municipalities across the state.

The municipality of Pato Branco, Paraná, had a Conduct Adjustment Agreement signed in 2015 to universalize pre-school coverage. This agreement ensured places for all children aged 4 and 5 until the beginning of the following school year (2016), stating that such an agreement did not relieve the local government of meeting the manifest demand of children from 0 to 3 year of age. This formulation replicates the draft Conduct Adjustment Agreement submitted by the Operational Support Center for Children, Adolescents and Education (*Caopcae*) within the framework of its strategic plan, possibly indicating that this document has been drafted out of context. In 2016, a new agreement is endorsed, this time imbued with a more context-oriented nature, requiring children to be placed in daycare centers, including priority criteria for access it and implementing an open-access online child-placing list. Additionally, it established that the resources needed to expand the service should be obtained from the budget of the Municipal Department of Education by reallocating other resources from non-priority areas, in addition to providing for the opening, if necessary, of supplementary or special budget credits; also specifying that, if current employees were not sufficient to fulfill the obligation, a hiring process of qualified professionals should be undertaken, through a competitive civil service examination. Thus, it is evident that the second agreement is very specific and part of a diagnosis of the conditions particular to that municipality.

As a direct effect of the first agreement, we highlight the universalization of pre-school coverage; about the second one, the development of an online registration system, the amendment to the 2014-2017 Multiyear Plan and the bill for the new 2018-2021 Multiyear Plan, ensuring an increased budget percentage to be invested on public early childhood education. In that municipality, no indirect effects of the judicialization process were witnessed.



When considering the state of São Paulo, we analyzed the cases of the municipalities of Caieiras, Mauá, Paulínia and São Paulo (the capital city). For a case study focused on non-contextualized court cases, we selected the municipality of Caieiras, as it witnessed an unappealable judgment in 2012 which resulted in noncompliance and imposition of fine. The Public-interest Civil Action filed by the public prosecuting officer for Child and Youth Court of the Caieiras venue determined the enrollment of all children in early childhood education, either in public schools or in private/government-aided private schools. In 2017, the local government also received a court order that determined immediate education service coverage for children less than 4 years old queuing on the waiting list. As a direct effect on the educational public policy in Caieiras municipality, we highlight the coverage of children who judicialized their right to early childhood education and the universalization of part-time pre-school education. As an indirect effect, the decrease in the number of full-time places so as to include more children for a shorter time and the selection and recruitment of new employees in early childhood schools. With reference to the municipal administration, we can see the better structuring of the queuing management system as an indirect effect, which only occurred due to the judicialization. In the legislative sphere, there has been a clear indirect effect, namely: the sanction of a law authorizing the local government to sign agreements with non-profit entities to meet the judicialized demand – a previously-prohibited operation.

In the municipality of Mauá, a preliminary injunction issued in 2004 out of a Public-interest Civil Action prescribed a period of time of ninety days for the creation and implementation of 2,771 new places within the regional area of the residence of each child registered on the waiting list and a daily fine in case of non-compliance. In response, the local government claimed that the time limit was extremely short for the execution of bidding processes for the construction of new facilities and the selection new employees through civil service examinations, since the municipality could not, even on an emergency basis, disrespect the statutory steps in such processes. The municipal administration's case ended up being granted by the São Paulo State Appellate Court (*TJSP*), vacating the preliminary injunction until final and unappealable judgment. In the negotiation concerning the action pending before trial court, still in 2013, the local Department of Education presented an offer: in the short term, to optimize classrooms, to create alternative spaces and to relocate already existing places, such as playful learning spaces; in the medium term, to build additional classrooms at existing schools and to adopt enrollment criteria so that part-time education is possible; in the long term, to build schools and Unified Education Centers (*CEU*) in partnership with State and Federal governments, in addition to adjusting the its own resources needed for the early childhood education policy. Hence, Mauá adopted the strategy of, even with the preliminary injunction vacated by the Court of Appeals, continued deliberation with the Prosecution Office through the court system, keeping an open dialogue on the measures undertaken in order to face the deficit of places in childcare. With the establishment of a Public Defender's Office in this town, a communication channel with this agency was also created, through which claims demanding enrollment using individual lawsuits began to be preceded by an administrative communication between the parties, to prevent judicialization when the municipality deemed immediate service coverage feasible.

As indirect effects of this process on educational policy in Mauá, there were the overcrowding of classrooms and the eradication of playful learning spaces, as well as the encouragement towards enrollment in part-time education. In terms of municipal administration, there was the creation of an administrative flow regarding filing and receipt of legal procedures and the introduction of specific legal advice within the Department of Education. For the Judiciary, there was the indirect effect of the strengthening of individual lawsuits as the most efficient means of judicialization – which has been adopted more frequently since then, according to the interviews conducted.



The municipality of Paulínia signed a Conduct Adjustment Agreement in 2011, which provided that the municipal government would offer up to 4,000 free-of-charge places for children from 4 months to 3 years of age in public district facilities and, in the event it was not possible to do so, in government-funded private schools, all of which to be complied with until January 31, 2013. Furthermore, it became mandatory that all children from deprived families with a monthly household income of up to three minimum wages and all children in proven social risk situation should be enrolled in a daycare center until July 31, 2011. The action plan to increase places in public schools should be pressed ahead in the same year. In addition, the Conduct Adjustment Agreement imposed a fine of R\$ 5,000.00 per unenrolled child.

Analyzing the direct effects on Paulínia's educational policy resulting from the agreement, we can highlight the expansion of 1,047 new enrollments in daycare centers from 2011 to 2013, with the creation of 1,092 new places in government-aided facilities in the same period; that is, there has been a small reduction in the number of public places at the expense of a rapid growth in the private sector. By the end of that period, the 4,000 daycare enrollments provided for by the agreement were not reached, but the effects on the impulse and legitimization of partnerships with the private sector were evident. There were no significant changes in public service standards regarding the hour load and the number of pupils per educator, but an indirect effect identified was the emergence of public-private-partnership schools with a lower service standard, exhibiting a higher proportion of assistant professionals working at such facilities, instead of actual teachers. This situation stems from the glaring discrepancy found in terms of the average expenditure per student between state-funded schools and government-aided private schools – a hitherto unknown reality in this municipality. The Conduct Adjustment Agreements signed in Paulínia also intended to promote the origination of bills addressing this issue. Thus, in the wake of the aforementioned agreement, this municipality witnessed the creation of the Pro-Basic Education Program (*Proeb*), which regulates partnerships with private institutions for childcare offer, and the Municipal Breastfeeding Incentive Program (*Proam*). Their origination is a direct effect of the Conduct Adjustment Agreement, but their approval is an indirect effect, since the legislative had taken no part in the process.

The city of São Paulo case is particularly relevant since its deficit of places has been mobilizing civil society groups and legal agencies for more than two decades to act in order to tackle the issue via the court system. The process of judicializing the public policy for early childhood education in the municipality of São Paulo has been reinforced, however, since 2009, by several factors: on the one hand, the great difficulty of the municipality in making the amount of new places keep pace with the growing demand; on the other hand, the implementation of the São Paulo State Public Defender's Office, which relieved the demand for free access to the courts, leading to thousands of lawsuits filed each year.

Allied to the filing of individual lawsuits by the families of children without service coverage, social movements in defense of the right to education began to adopt legal strategies to confront the violation of the right to early childhood education. In this process, we can highlight the participation of the movement *Creches para Todos* [Daycare Centers for All], coordinated by a non-governmental organization (NGO) called *Ação Educativa* [Educational Action]. Alongside with other civil society organizations, it filed a set of Public-interest Civil Actions, between 2008 and 2010, seeking public education services for all children from 0 to 5 years and 11 months of age residing within the jurisdiction of the civil courts. Proceedings in such matters were brought to the court, including both current and future claimants and those not registered in the Municipal Department of Education database. Likewise, these civil actions also demanded the preparation of an expansion plan for the early childhood education policy in the municipality, coupled with the enforcement of prescribed aims and quality standards, to be performed by the Judiciary, as well as the insertion

of a specific item the Annual Budget Proposal and in the Multiyear Plan so that resources from the municipality budget could be assured for such plan (RIZZI; XIMENES, 2014; GOTTI; XIMENES, 2018; XIMENES; OLIVEIRA; SILVA, 2019).

As a result of this movement, there has been an exemplary decision regarding the constant violation against the right to early childhood education in the city: the review and trial of the suit were converted into a public hearing, at which the São Paulo Municipal Government (*PMSP*) was required to create 150,000 places in public childcare facilities, as well as to put forward a daycare expansion plan for the city and to create a monitoring and assessment committee for compliance with the judicial order, in association with the São Paulo State Appellate Court.

As a direct effect on educational policy, we can point out the enrollment of children in public facilities due to these class actions and, in the legal realm, the monitoring and assessment of the public policy, nurtured by the creation of the Monitoring Committee within the Court of Appeals Office of Early Childhood. The effects are also clearly perceived in the local government, with the elaboration of a childcare expansion plan and the reassessment of the resources provided in the Annual Budget Law and the Multiyear Plan to implement the plan.

Finally, in the Brazilian state of Sergipe, the municipality of Nossa Senhora do Socorro stood out for having seven educational-policy-related class actions with an appellate decision in the Sergipe State Appellate Court (*TJSE*), in addition to other two suits that have not yet reached such procedural stage. The Public-interest Civil Actions filed by the State Prosecution Office aimed at the construction of daycare centers and pre-schools at specific locations in the municipality in an effort for public access to early childhood education, which is why we classify them as contextualized judicial requirements. As a direct effect on educational policy, we were able to see the build of the above-mentioned early childhood education facilities and its consequent expansion of service offer. As an indirect effect, the expenses increase in this stage of basic education and the boost in the number of professionals hired to work, as well as the population's awareness of the right to early childhood education. On the other hand, as an indirect effect of this strategy of collective claims with the Prosecution Office acting as lead plaintiff, focused mainly on the construction of new units to expand places, there has been an increase in popular pressure on the prosecutors, via Child Protective Councils, to demand immediate, individual enrollments in daycare centers and pre-schools.

We present in Table 2 below a summary of typical direct and indirect effects that were found in our study, as they present themselves when it comes to educational policies, organization of local government, the Legislative branch or the agencies of the court system.

Some of the effects are typically seen both as a court decisions direct result or compliance with Conduct Adjustment Agreements, as well as an indirect consequence of them. It is the case, for example, of the increase in the enrollments or places number, which can be the direct purpose of judicial or extra-judicial demand, or the outcome of the compliance with education system requirements, with the fulfilment of expansion plans or the construction of facilities in specific locations. Let us examine the following summary:

**TABLE 2**  
**OVERVIEW OF TYPICAL EFFECTS OF PUBLIC-INTEREST CIVIL ACTIONS AND CONDUCT ADJUSTMENT AGREEMENTS ON EARLY CHILDHOOD EDUCATION**

Educational policy	
Direct effects	Indirect effects
<p>a) Expansion of enrollments; b) Expansion of places in public schools; c) Universalization of places in pre-schools; d) Building of new daycare centers and pre-school; e) Increase of municipal expenditure at this stage.</p>	<p>a) Increased number of students per class and/or teachers; b) Expansion of enrollments in government-aided private daycare centers and schools; c) Increase of municipal expenditure at this stage; d) Decrease of the average municipal yearly expenditure per student; e) Increased part-time coverage, with the creation of part-time places or proportional reduction in the number of full-time places; f) Increased popular demand for places via the court system (Courts, Prosecution Office and Public Defender's Office); g) Increased demand for places; h) Expansion of places in public schools; i) Extinction of complementary pedagogical spaces to function as a classroom.</p>
Local government	
Direct effects	Indirect effects
<p>a) Priority of care for children supported by court order; b) Specific budget estimate for expansion of daycare centers and pre-school; c) Formulation, implementation and internal monitoring of plans aimed to expand the number of places; d) Accounting to the court system for public policies and expansion plans; e) Presentation of proposals for new programs to the Legislative Branch.</p>	<p>a) Interference in the queuing policy, if any; b) Formulation of demand identification and waiting queuing policies; c) Regulation of priority criteria; d) Establishment of legal counsel teams or dedicated subdivisions in departments of Education; e) Establishment of administrative work routines for prevention and compliance with court orders and Conduct Adjustment Agreements; f) Prior adaptation of the action plans to the provisions of Conduct Adjustment Agreements and court orders; g) Regulation of partnerships with the private sector; h) Hiring of new early childhood professionals; i) Increased proportion of childcare assistants in relation to the number of teachers.</p>
Legislative branch	
Direct effects	Indirect effects
<p>a) Opening of legislative processes on bills originated directly or indirectly from Conduct Adjustment Agreements and Public-interest Civil Actions.</p>	<p>a) Passing of municipal laws to regulate waiting queues, coverage criteria, authorization of agreements with the private sector (both for-profit companies and non-profit companies), and compensation programs for mothers and families; b) Passing of budget legislation providing specific expenditure on early childhood education.</p>
Court system	
Direct effects	Indirect effects
<p>a) Acceptance of technical reports on public policy; b) Establishment of interinstitutional committee for public policy monitoring and assessment; c) Mediation and renegotiation of Conduct Adjustment Agreements and compliance with court decisions.</p>	<p>a) High demand for individual lawsuits seeking immediate coverage, often enough seen as a more efficient pathway; b) Creation of routines and administrative pipeline, prior to judicialization, strengthening operating procedures regarding extra-judicial proceedings; c) Vertical and horizontal dissemination of performance standards for class actions; d) Restructuring of the Prosecution Office and the Public Defender's Office to operate on this theme.</p>

Source: Elaborated by the authors.

## CONCLUSION

A few points deserve to be highlighted in the analysis of the selected state and municipal cases, both concerning the judicialization process itself and the agencies and institutions that operate in it, and with regard to the effects it generates for municipal public policies.

The instance of Paraná reveals a context of strong engagement by the Prosecution Office to enforce the right to early childhood education, induced by *Caopcae's* operation. Such engagement does not occur uniformly throughout the state, but its consistency over time shows that it is related to the strategic plan undertaken by the aforementioned Prosecution Office Support Center. Thus, it is noteworthy to point out that the judicialization of early childhood education in the state of Paraná through collective actions has taken place exclusively through the performance of its Prosecution Office, although not in the same way across all of its counties, and with a greater incidence in medium-sized municipalities with a higher rate of urbanization and higher average household income. A preference for extra-judicial proceeding also stands out, with a more significant number of Conduct Adjustment Agreements than civil actions.

Also in Sergipe state, the Prosecution Office filed all Public-interest Civil Actions, where the majority of them demanded access to education bringing along some offer condition, mostly the construction of facilities or the improvement of already-existing infrastructure, in most cases, courts ordered the build of new units at specific locations. The Sergipe State Prosecution Office has an Operational Support Center for the Rights of Education, created in 2011, which acts as an auxiliary agency to prosecutors exercising the Collective Trusteeship of the Rights to Education. Among the projects carried out by them, the *Censo Educacional* [Education Census] project draws attention, which is an active, door-to-door search for children outside school.

The state of São Paulo displays the emblematic case of judicialization of early childhood education that took place in its capital city, which led to a decision that the municipality should offer 150,000 new places, in addition to being a decision that involved the participation of local government, institutional bodies of the court system and civil society actors. Furthermore, the case of São Paulo City also gave rise to a compliance monitoring group, something unprecedented in judicialization processes (XIMENES; OLIVEIRA; SILVA, 2019).

This experience in the city of São Paulo is consistent with an evident concentration of demands in this municipality, reflecting in its surroundings. However, when we look at the state as a whole, we realize that the phenomenon of judicialization is not primarily expressed via collective demands, since there are relatively few Conduct Adjustment Agreements and Public-interest Civil Actions, generally employed in particular cases only. In the interviews with the court system's actors and leaders, this panorama is expressed in the little relevance that they generally give to class actions in their professional daily life. Here, individual lawsuits are preferred, aimed to guarantee places for specific children in summary proceeding actions in which the injunction practically brings the demand to an end. Nevertheless, the effects of individual suits on public policies (a topic that deserves to be further dissected in other studies) come differently depending on the standing of the courts – immediate enrollment is ordered or prioritization is admitted in the waiting list – and on the policies in effect for registration, publishing and coverage of popular demand for early childhood education. In this scenario, the different service prioritization criteria put forward by the executive power also apply, being either negotiated between the executive and the judiciary branches or determined by the court system.

At the same time, it is surprising the fact that there are just a few class actions in defense of the right to early childhood education in a city like Fortaleza, considering that in 2016, although the pre-school coverage rate was 91.1%, childcare services served only 30.1% of the population, according to the Childhood Education Section of the Fortaleza Department of Education, with substantial waiting lists also registered. The Ceará State Prosecution Office made little use of instruments for the

judicialization of early childhood education in the period covered by this present study (another issue worthy of further studying). Instead of proposing Conduct Adjustment Agreements, their leadership pointed to the role of the Prosecution Office through periodic meetings. We can infer from the analysis of the judicialization of early childhood education, as a hypothesis, that the lack of expedition in the processing and judgment of Public-interest Civil Actions in the state of Ceará may be pointed out as a discouraging factor to the judicialization of such demand. This case helps us to recognize that the relevance of judicialization in a given context is connected with the very degree of openness of institutions and agencies within the court system to the judicial ruling over public policies.

Observing the performance of the Prosecution Office in the four Brazilian states analyzed, we can formulate the hypothesis that a well-structured, active Prosecution Office with a dedicated division for the right to education is an important variable to explain the vast number of judicial and extra-judicial proceedings applied, regardless of the demand for childcare and pre-school places in the municipalities. However, as stated earlier, this was not the focus of this article, and other research papers may test such a hypothesis.

Secondly, we can assert that greater judicialization does not necessarily represent a larger demand for rights or a more significant exclusion in education. It is also related to cultural traits, especially the comprehension of access to early childhood education as a right, and related to institutional peculiarities, such as, for example, the aforesaid structuring of the Prosecution Office, increased participation of the Public Defender's Office in the municipalities, the openness of the court system to individual demands and the greater or lesser capacity for interinstitutional exchange (executive branch, judiciary branch, public defender's office and prosecution office) – what Oliveira (2019) named “institutional knots” resulting from the judicialization process.

With regard to the *direct and indirect effects* that proved to be more widespread: in terms of effects on the public policy of early childhood education, there is the expansion of the number of places offered, achieved either by the government itself or through agreements with the private sector. The response to judicial and extra-judicial decisions led to an expansion of places, even though not always to a sufficient extent. As for the government, the judicialization engendered the need for municipal departments of education to organize their structure better to cope with the necessary interaction with the court system. The observed effects included, among others, the managing of waiting lists, the setting up of a specific service within departments of education, and the interinstitutional communication.

The court system has also felt the effects of their ever-increasing practice of engaging with early childhood education policies. The Prosecution Office has been specializing in this matter, as has the Public Defender's Office. The judiciary branch has been more and more requested and, therefore, has been in greater exchange with the government to understand the demands and responsiveness of the public manager. This relationship – more intense than in the past and not always free of conflicts – results from the judicialization process. We also realized that, in the case of collective actions (Public-interest Civil Actions and Conduct Adjustment Agreements), it is common to witness persistence or even an increase in the call for individual lawsuits or class actions with a homogeneous individual demand, with a preliminary injunction, often regarded as more efficient to meet the immediate demand of the population.

Conclusively, the legislative branch has also been called to act. In some cases, bills have been proposed and approved to enable the participation of private organizations in the provision of early childhood education services. The legislative branch can and should monitor public policies developed by the local executive branch, exercising their supervision function.

There is no doubt, therefore, that the judicialization process put these institutions and actors in interaction, triggering both direct and indirect effects on the public policy for early childhood education and the enforceability of this right. Certainly, judicialization is not and should not be the



only method in place to enforce education rights. Furthermore, it is not the way that enables more equitable and fair access to it, from a sociological perspective – after all, it guarantees access especially to those citizens who seek the court system, leaving out those who do not. Notwithstanding, avoiding to fall into a dichotomous classification of judicialization as either good or bad process in itself, the fact is that the cases studied here demonstrate that judicialization provokes diverse effects, which are determined by the public policy previously existing in each local context, by the responsiveness of the municipal executive branch and by the institutional capacity and interconnection of the court system agencies involved. The combination of these factors, on a case-by-case basis, generates varied results. What remains unchanged is its impact on politics, which is ever-present.

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All authors have contributed to this article, including the problematization and conceptualization of the research, definition of its methodology, data analysis and writing of the paper.

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#### ERRATUM

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#### CADERNOS DE PESQUISA INDICATES THE FOLLOWING CORRECTION:

In the article “The effects of judicialization of early childhood education in different subnational contexts”, with DOI number: 10.1590/198053147019, published in the journal *Cadernos de Pesquisa*, 50(177): 718-738, on the page 718:

Where it reads, in the keywords:

**COUNTRY**

It should read:

**COUNTY**

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