

Judicialization and shortage of places in Brazilian public daycare centers: an analysis of academic production in education (2014-2024)

Judicialização e déficit de vagas em creches públicas brasileiras: uma análise da produção acadêmica em educação (2014-2024)

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Abstract

This article discusses the effects of judicialization on the shortage of places in public daycare centers in Brazil, based on academic theses and dissertations in the field of Education published between 2014 and 2024. This is a qualitative bibliographic study. The research empirically demonstrated adherence to the legitimacy of the Judiciary to intervene in this educational issue; however, judicialization leads to a series of distortions in the implementation and execution of public policy. The study highlights the judicial preference for individual actions over collective ones, resulting in a high volume of litigation; overcrowded classrooms; the need for adaptations and the vulnerability of under-dimensioned school environments; the outsourcing of basic education through agreements; the overburdening of managers; and the precarization of teaching work. This scenario calls for collaborative articulation among the actors involved, aimed at managerial and financial planning to ensure the effective realization of this constitutional guarantee.

Keywords: early childhood education; public daycare; educational law; judicialization.

Resumo

O presente artigo discorre sobre os efeitos da judicialização no déficit de vagas em creches públicas no país, constatados por teses e dissertações acadêmicas na área de Educação publicadas entre 2014 e 2024. Trata-se de uma pesquisa bibliográfica de abordagem qualitativa. O estudo evidenciou, empiricamente, adesão à legitimidade do Poder Judiciário para atuar sobre a referida questão educacional; entretanto, a judicialização acarreta uma série de distorções à implementação e execução da própria política pública. Destaca-se a preferência judicial por ações individuais em detrimento das coletivas, o que acarreta alta carga de litigiosidade sobre a matéria; a superlotação das salas de aula; a necessidade de adaptações e a vulnerabilidade do ambiente escolar subdimensionado; a terceirização da educação básica (convênios); a saturação dos gestores e a precarização da atuação docente. O cenário exige articulação colaborativa entre os atores envolvidos, em prol de planejamento gerencial e financeiro para a efetivação dessa garantia constitucional.

Palavras-chave: educação infantil; creche pública; direito educacional; judicialização.

INTRODUCTION

The right to education in Brazil is established in the Federal Constitution of 1988 (Brasil, 1988) and further detailed in the National Education Guidelines and Framework Law (LDB) No. 9,394/1996 (Brasil, 1996). In addition to this legislative framework, other normative documents reaffirm and regulate this constitutional precept, among them the Statute of the Child and Adolescent (ECA) – Law No. 8,069/1990 (Brasil, 1990), and the National Education Plan (PNE) – Law No. 13,005/2014 (Brasil, 2014).

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The Access to Brazilian public education is guaranteed, among other means, by the assurance of compulsory and free basic education for individuals aged four to seventeen. With regard to early childhood education, it must be provided in daycare centers and preschools for children up to five years of age (Federal Constitution, art. 208, IV) (Brasil, 1988).

Thus, basic education is a public right, of collective interest and social aspect, vertically related to the State, mainly responsible for its provision and expansion in a continuous way (Araújo; Santos, 2012).

Despite the legislative requirement regarding the real implementation of this public policy according to pre-defined technical parameters, the reality of Brazilian municipalities is far from ensuring it to a large part of the population. In this context, the remark of Saviani (2013) on the fundamental importance of distinguishing between the proclamation of rights and their implementation.

Although there has been progress over the years, the National Institute of Educational Studies and Research Anísio Teixeira (INEP) points out that in 2024, only 41.2% of children between zero and three years were enrolled in the official education system. To achieve the target set in the National Education Plan (PNE) 2014-2025, the Ministry of Education (MEC) and INEP estimate that Brazil needs to move from the current 4.2 million to about 5.4 million enrollments in daycare centers (Brasil, 2025). According to the Movement All For Education, in the research entitled "Panorama of access to Early Childhood Education in Brazil", 2.3 million children up to 3 years old are out of kindergarten due to lack of access, which reflects, in a continental country and different regional realities, the size of the challenge to full enrollment in this educational phase (Todos pela Educação, 2025).

The national scenario points out that when educational access "[...] is not assured or is offered in an insufficient way, it becomes subject to judicial demands to ensure its effectiveness, which provokes the effect of judicialization of education" (Araújo; Santos, 2012, p. 3).

Furthermore, the constitutional guarantee of action by individual or collective (class actions) puts the Judiciary at the decision table of public education policy, making the magistrate a protagonist in the discussion and application of this collective social right (Victor, 2011).

The phenomenon of judicialization, in terms of conceptualization, occurs by the intervention of the Judiciary, through legitimized (usually the Public Prosecutor's Office or the Public Defender), in matters of educational policies, although these are, primarily by the Executive Branch and the Legislative Branch, which is responsible for the establishment of normative guidelines and supervision of the use of public funds intended for this specific area.

Thus, the judicialization of education is consolidated in the national reality by the displacement of control of political decisions to the judicial sphere, whose definition and execution would rest mainly on legislators, politicians and public managers (Cury; Ferreira, 2010).

In the broad scope of legal intervention in educational policy, it stands out the legal action of access and perpetuation in public kindergartens, leading the ranking of disputes in the pedagogical area. Callegari (2017) explains that the growing social pressure for day care centers contrasts with the financial and structural reality of many primary responsible for the provision and unable to expand the education network in sufficient quantity and speed to respond to the demand for enrollments.

It is emphasized that since 2006, the Supreme Federal Court (Brasil, 2006) legitimizes the Judiciary to act on the state obligation to provide day care and preschools for children from zero to five years, considering the provision enforceable regardless of the lifting of the principle of separation of powers and monetary and financial limitation to pay for the service. In 2023, the Supreme Court sedimented and standardized the thesis when it judged the Extraordinary Appeal (RE n. 1008166) (Brasil, 2023), in headquarters of General Repercussion (Theme n. 548), ensuring that such provision in the context of early childhood education is determined by constitutional rule of full effectiveness and direct and immediate applicability.

At this threshold, the research analyzes the results of national academic production (theses and dissertations) focused on the judicialization of early childhood education, made available electronically between 2014 and 2024 by the Graduate Programs in Education of public and

private universities. The central problematization of the study turns to the implications (positive and negative) of the question, seeking directions and unfolding of these findings.

METHOD

The present investigation is based on bibliographical research, highlighting its panoramic character and its critical and analytical externality in relation to the object of study. Consists in the survey or review of published works about the theory that will guide the scientific work, requiring an in-depth analysis of the observer to gather and examine published texts that will support the scope of the investigation (Sousa; Oliveira; Alves, 2021).

According to Gil (2002), this method is developed anchored in material already elaborated, consisting mainly of books, scientific articles and other researches of academic rigor.

Specifically, the study used a qualitative approach, managing document archives composed of theses and dissertations on the shortage of vacancies in public daycare centers in Brazil, available on the portal Coordination for the Improvement of Higher Education Personnel (CAPES) and the Digital Library of Theses and Dissertations (BDTD), published between 2014 and 2024. It was limited to the filter of the Post-Graduate Programs in Education, conditioning the research to this area of knowledge, based on the search for the descriptors "Lack of vacancies in early childhood education", "Judicialization of education" and "Right to education".

The time frame (2014 to 2024) aimed to evaluate the problem in light of the Constitutional Amendment No. 59/2009, effective from 2010 (Brasil, 2009), regulated by Law No. 12.796/2013 (Brasil, 2013), which made basic education compulsory and free in Brazil for children from four years of age. In addition, the period coincides with the validity of the current National Education Plan (PNE-2014/2024), extended until 31 December 2025 by Law No. 14.934/2024 (Brasil, 2024), which established the attendance of at least 50% of the population up to 3 years old in day care (extended to 11 years). Thus, we opted for the analysis of more recent academic research and aligned to the updated standardization on the subject.

The search in the websites of CAPES and BDTD, after several thematic and associative filters to the objectives of this work, pointed twelve scientific studies on the subject, being nine dissertations (represented by the letter "D") and three theses (represented by the letter "T"), which were organized into two categories of analysis by alignment of concepts and perspectives defended (similarity and approximation), as recorded in Chart 1 below.

The researches are located in ten public universities (nine federal and one state) and two of the private network, with predominance for the South-east region (6) and South (5) of the country, which concentrate most of the Graduate Programs in the area of Education (Silva; Jacomini, 2016). The Center-West region applies with a survey (Goiás). The period of theses and dissertations collected in the collection embody from 2017 to 2022, coinciding with the compulsory basic education established by Law No. 12.796/2013 (Brasil, 2013) and the goals defined in the current PNE.

The two thematic categories of analysis were organized by investigative similarity and not by period/year, geographic concentration or other criteria. The first category groups the implications of the justice system on the shortage of places in public daycare (and preschools when evaluated together) considering the observance of the phenomenon by the documentary scope and the empirical aspect of each municipality. Following, the second category reflects the judicialization of early childhood education from the perspective of the actors involved, notably by the bias of managers and teachers directly impacted by the decisions of magistrates. It should be noted that, although the works are organized by categories, the results of the research may present interlocutions, since all productions point to the effects of judicialization on the shortage of places in public daycare centers within the scope of registered studies. Through the analysis of data, assessments and propositions were elaborated regarding the enforceability of the right to basic education, focusing on the daycare stage, by the incidence of tax rulings on school enrollments.

Chart 1. Categories of analysis of theses and dissertations (2014 to 2024).

Category 1. Empirical effects of judicialization in Brazilian federated entities				
Year	Type	Title	Author (a)	Institution
2017	T	Daycare: from the right to education to the judicialization of the vacancy	Maria José Poloni	UNINOVE/SP
2018	D	Judicialization of early childhood education: an analysis of the dynamics of the phenomenon in the city of Curitiba	Izabela Frenza Neiva de Macedo	UF/PR
2019	D	The interference of judicialization in public policies of access to early childhood education in the city of Rio de Janeiro	Eline Moreira Ferreira de Oliveira	UNIRIO/RJ
2020	D	Effects of the judicialization of preschool education: an analysis from the context of the city of Ribeirão Preto/SP	Danieli Rocha Chiuzuli	USP/SP
2020	D	Lack of places and judicialization in daycare: consequences, limits and possibilities	Carmelita Coppola Meningue	UNINOVE/SP
2021	D	Patterns of variation and determinants of the judicialization of early childhood education in the municipalities of the state of Rio Grande do Sul (2011-2016)	Ana Paula Boessio	UFRS
2021	D	Judicialization of the day care center and the argument of scarcity of resources: an analysis of the phenomenon in the city of Londrina/PR	Aline de Barros Vidal Gonçalves	UFPR
2022	T	Judicialization of early childhood education in the State of Goiás in the period 2009-2019: analysis and challenges	Elka Cândida de Oliveira Machado	UFGO
2022	D	Access to basic education for children from 0 to 3 years: from the proclaimed right to judicialization of places in public kindergartens in Florianópolis	Carla Cristina Britto	UFPR
Category 2. Effects of judicialization on managers and teachers				
Year	Type	Title	Author (a)	Institution
2018	D	The teaching work facing the judicialization of vacancies in kindergartens: teachers' meanings	Fabiana Aparecida Pereira Jochi	UF/SC
2020	D	The judicialization of access to daycare in the city of Santo André/ SP: challenges of managers for a quality service	Juliana Andrade Vieira	USCS/SP
2022	T	Teaching working conditions and judicialization of vacancies in daycare centers	Edmílson Antônio Hubert	PUC-Campinas

Source: Authors, 2025.

EMPIRICAL EFFECTS OF JUDICIALIZATION IN FEDERATED ENTITIES

Poloni's (2017) study focused on the mismatch between the legal text (ECA and LDB) and the reality experienced by early childhood education in the city of Mauá/SP, especially regarding the shortage of places in public daycare centers. The author concluded that the insufficiency of educational institutions led to the judicialization of the problem, an extreme and necessary workaround, but only of an emergency character given the deficient scenario of local education policy.

The researcher found that, being education a process of reconstruction of experience and contributing attribute of human personality, before the state inertia in this essential area, it is up to the judicial proactivity, by constitutional shelter, promote its effectiveness. The study ratifies the interventional legitimation of the Judiciary in public policies in the face of possible distortion or government omission, a peaceful issue in our country, unrelated to major doctrinal detour as to its possibility, according to the researcher herself.

In turn, Macedo (2018) analyzed the performance of the Court of Justice of the State of Paraná (TJPR) against the movement of judicialization of children's education in the city of Curitiba, between 2015 and 2017, ascertaining if the Paranaense Judiciary is configured as a determining political actor in this scenario. The study found a curious brickery of the respective Court, "[...] although the Court guarantees the effectiveness of individual demands for confirmation of favorable sentences in 98.4% of the analyzed decisions, it does not support this resolute posture in collective demands" (Macedo, 2018, p. 7).

The study found that it is not unknown the role of the Judiciary in guaranteeing constitutionally guaranteed rights - same finding of Poloni (2017) - however, concludes that judicial decisions are analyzed by the pragmatic aspect of enforceability, "[...] aiming to cover the universality of the guarantee to positively impact on the policy of offering places in daycare centers in the city of Curitiba" (Macedo, 2018, p. 107-108).

In his turn, Oliveira (2019), investigating the municipality of Rio de Janeiro found out how judicialization in access to children's education interferes with public policies for expansion of municipal day care centers before a queue of 40,000 children waiting for vacancies per year.

The research pointed out the relevance of the Judiciary as a guarantor of rights - strengthening the positions of Poloni (2017) and Macedo (2018) -, but highlighted that this action has not effectively contributed to expand the offer of vacancies in the evaluated municipality, because the main strategy used by the public authorities to attend court orders "[...] involves the addition of students per classroom and the partitioning of attendance in some regions, to the detriment of the full-time shift" (Oliveira, 2019, p. 8).

In terms of contribution, the researcher called the citizens involved in local child education to dialog and periodic meetings with the Public Prosecutor's Office, aiming at the gradual expansion of care for children and the reduction of school dropout rates, problem in the municipality evaluated.

Oliveira (2019, p. 105-106), noting the impact of judicial decisions on increasing the number of students per classroom without proper pedagogical planning, proposes the creation of a specialized Education committee within the Rio de Janeiro Court of Justice, "[...] along the lines of what already exists with Health, to grant decisions on the matter that do not compromise the quality of the service".

In turn, Gonçalves (2021) directly linked judicialization to the difficulty of implementing full-time hours in public daycare centers, the so-called particularization of care — a perception similar to Oliveira (2019). The research in question addressed the phenomenon of judicialization in the municipality of Londrina/PR, from 2005 to 2019.

The researcher concluded that, given the scarcity of financial resources to meet the demand, coupled with the continuous flow of court orders for enrollment in public daycare centers, the path adopted by the municipality focused on allocating the largest possible number of places, without much consideration for the essence of good pedagogical practices, operating only on the quantitative aspect, to the detriment of the qualitative condition of educational provision (Gonçalves, 2021).

In order, Chiuzuli (2020), upon concluding the investigation into the shortage of places in public daycare centers in the municipality of Ribeirão Preto/SP, pointed out, as did Gonçalves (2021), the compromise of the quality of local early childhood education due to the indiscriminate granting of court decisions, without considering the qualitative aspect of teaching.

The preceding researcher pointed out that the case study (municipality of Ribeirão Preto/SP) points to the permanent intertwining between judicialization and educational public policies in the face of the inability of the local Executive Branch to resolve the issue effectively and circumstantially. The incidence of the Judiciary in the matter would then be natural, being a legitimate actor in the configuration of the aforementioned policy — conclusions of Poloni (2017) and Macedo (2018) — "[...] and it is necessary to seek, from this reality, structural strategies to achieve accessible and equitable early childhood education" (Chiuzuli, 2020, p. 177-178).

In turn, Meningue (2020) analyzed the phenomenon of judicialization resulting from the lack of vacancies in public daycare centers in the metropolitan region of São Paulo/SP. The

interventions of the Judiciary and the Public Defender's Office, during the research period, would have occurred regularly to enforce this constitutional prerogative. The investigation used a case study approach through visits and observation of a school unit (nursery) called "Creche Pedra Preciosa". In addition to observing the administrative and pedagogical routine, the researcher conducted semi-structured interviews with teachers and the management team. From the outset, Meningue (2020) found overcrowding in the nurseries (an indirect consequence of judicialization), implying a serious compromise of school practice due to the non-execution of the primary tasks proposed in the pedagogical planning of the educational institution.

The author in question pointed out that the secondary effects of judicialization (impacts resulting from excess enrollments) undermine the routine of care for babies due to the high workload of teachers in an environment unsuitable for school activity, thus negatively affecting the institutional climate itself. The professionals began to relate to each other "[...] as if they were not in a daycare center with the same common goal, but rather in a way that each segment tries to fulfill its work schedule amidst a climate of tension, seeming as if they were on opposite sides" (Meningue, 2020, p. 200).

Among the professionals at the school unit, dissatisfaction with the overcrowding of classrooms was the main theme pointed out during the interviews, an issue highlighted as a warning by Meningue (2020).

Boessio (2021) focused on the legal actions granting places in daycare centers in the municipalities of Rio Grande do Sul/RS, investigating factors associated with the reach of judicialization in early childhood education in the state between 2011 and 2016.

The data regarding the legal actions were extracted from the website of the State Court of Justice (TJRS). Other important official data were collected by the researcher, including: the number of actions filed annually in the municipalities during the analyzed period; enrollment rates in daycare centers by municipality; presence of the Public Prosecutor's Office and the Public Defender's Office in judicial proceedings; existence or not of a judicial district and the number of public prosecutors by region; population estimate and population aged 0 to 3 years by municipality; number of public and private educational establishments; Gross Domestic Product (GDP) per capita and the Economic Development Index of Rio Grande do Sul (IDESE). Arithmetic calculations used two regression models: the negative binomial model with inflated zeros and the ordinary least squares model (Boessio, 2021).

The research displayed two important conclusions. First, among municipalities with similar levels of job provision vacancies and socioeconomic development, there is greater litigation by the fact of holding public judicial institutions (Public Prosecutor's Office and Public Defender's Office, for example). For Boessio (2021, p. 67), "[...] there seems to be greater litigation caused by the mere presence of judicial institutions at the level, as if the mere offer of a service contributed to its requirement".

The second conclusion of the study: the impact of GDP per capita suggests that litigation is more prevalent in municipalities with greater economic development. According to Boessio (2021, p. 68), "[...] this goes against the initial hypothesis that the largest number of lawsuits would be present in municipalities with lower economic development". The researcher explains that lower GDP per capita figures appear in smaller municipalities, with a low number of lawsuits. The municipalities with the highest GDP per capita, generally surrounding medium or large cities, have a greater number of actions proportionally to the number of inhabitants (Boessio, 2021).

On the other hand, Machado (2022) analyzed the mode and extent of action of Goiás Judiciary in relation to the right to early childhood education in the period from 2009 to 2019. The study showed that the Court of Justice of Goiás (TJGO) regularly granted judicial measures guaranteeing access to daycare and preschool in the evaluated period, whether individually or collectively. However, due to the complexity of collective processes (multiplicity of plaintiffs, procedural appeals, etc.), sometimes the judicialization did not result in the enrollment of children who were on waiting lists for vacancies.

Highlighting the conclusions of Machado (2022) and Macedo (2018) regarding the performance of the TJGO (Court of Justice of Goiás) and the TJPR (Court of Justice of Paraná) in judging collective actions in the area of early childhood education, respectively. The first points to a tendency to comply to the merits of these actions, and the second, on the contrary, indicates a contrariness in granting the request for this type of process. However, the result of both narrows in the same direction due to the untimely resolution of these demands by the TJGO. In terms of the materialization of the law, Machado's (2022) investigation indicated progress in the implementation of the public policy on daycare in the state, mainly regarding the discussion and evaluation of the issue by the litigants (search for consensual solutions). However, judicialization is inserted into the pedagogical scenario as an emergency, mitigating, not definitive instrument for solving the problem, since this educational dilemma is composed of complex and non-linear variables that escape the immediate and imposing character of the judicial sentence.

Finally, Machado (2022) pointed out that, in Goiás, judicialization has forced new outlines and challenges to early childhood education policy. Among the deleterious effects that have occurred, it was found that, in some cases, school units have abandoned the full-time program to meet the high demand for places (split shifts). Furthermore, judicial action has revealed that, in the impossibility of offering places directly by the public entity, resources are allocated for enrollments in private institutions, thus creating an interpenetration between the public and private sectors, with variations in the appropriation of public funds by the private sector in the face of systemic state omission in the provision of educational services.

Britto's study (2022) discussed access to early childhood education in the daycare segment in Florianópolis/SC, based on the judicialization of vacancies, especially considering the actions filed by the state Public Prosecutor's Office in 2019.

The author concluded that there was a gradual expansion of daycare services in the investigated municipality. Physical spaces were structured and new vacancies in the public and private networks were opened during the period studied (2019 and 2020). Based on this finding, the research sought to clarify whether this progress occurred due to the actions of the state Public Prosecutor's Office or due to the commendable execution of the municipal public policy. The result equally contemplated both factors (Britto, 2022, p. 87).

EFFECTS OF JUDICIALIZATION ON MANAGERS AND TEACHERS

The research by Jochi (2018) and Vieira (2020) identified and discussed one of the main problems ascending from judicialization over vacancies in public daycare centers: classroom overcrowding.

The first investigation examined the phenomenon in the municipality of Sorocaba/SP. It pointed out that the issue of excess students per classroom signals to the school staff that pedagogical and structural alternatives to the problem should be sought; however, the situation is aggravated by the insufficient number of professionals, the precariousness of teaching work, and the outsourcing of services in the municipality, mainly regarding the hiring of interns as daycare assistants. It indicated that several challenges must be faced considering the "[...] current neoliberal policies," including the progressive decrease in public investment and the privatization of educational services (Jochi, 2018).

Jochi (2018, p. 110) concludes the study by proposing the articulation of educators, managers, social movements, and the community to demand from the public authorities "[...] respect for children's rights, in addition to improvements in the provision of Early Childhood Education in the municipality".

Vieira (2020) investigated the challenges related to the quality of care in public daycare centers, pointed out by school managers in the face of difficulties generated by the insufficient number of places and the consequent judicialization in the ABC Paulista region/SP. The results indicated that, among the various dimensions of quality raised by the study, the main problems relate to the insufficiency and/or inadequacy of physical spaces, the lack of teaching materials and furniture, the deficient training of teachers, and the unsuitable working conditions of professionals, mainly in the municipality of Santo André/SP.

The main challenges identified in the surveyed municipalities relate to operational strategies for dealing with overcrowded nurseries, which result in a high child/adult ratio in adapted school environments, a factor that compromises the quality of learning experiences, social and environmental interactions that daycare centers should provide to young children.

Vieira (2020) concluded that the phenomenon of judicialization exacerbates the State's budgetary inability to fully fulfill its legal duty related to early childhood education.

In turn, Hubert (2022) focused on the implications of judicialization of vacancies in basic education, regarding the effectiveness of care for the population aged zero to three years in the municipality of Campinas-SP.

The study pointed out that judicialization needs to promote changes in the structural scope of public policies so that it ceases to result in harm to teaching work due to overcrowded classrooms. The analysis of the collected empirical material, according to the researcher, indicated "[...] that the municipal public authorities do not formulate goals for the construction of daycare centers, making judicialization a vicious cycle, causing the shortage of places to become a chronic problem" (Hubert, 2022, p. 297).

The research indicates that the Judiciary's action on the bordered issue is incipient, which causes the loss of effectiveness of its decisions in the scarcity of measures aimed at the effective construction of public daycare centers, "[...] the first condition for solving the problem" (Hubert, 2022, p. 298). Furthermore, it points to the need to create a specialized justice system to satisfactorily meet complex educational demands, similar to what occurs in some state courts that have technical judicial sections in the area of public health.

Hubert (2022, p. 305) also points out that Judiciary acts democratically through its citizens, however, influences the process of shaping public educational policies in an incipient way. In the researcher's view, "[...] judicialization over the past ten years has proven not to be the appropriate corrective instrument, but an instrument that exposes and keeps this social wound open and bleeding without ceasing".

DISCUSSION

The academic research analyzed does not question the legitimacy of judicial decisions issued in the context of early childhood education by any qualified applicant (Public Prosecutor's Office, Public Defender's Office, private individual, etc.). In fact, the studies adopt the consolidated jurisprudential understanding of the immediate enforceability of this right, with national application guaranteed by the Supreme Federal Court (STF) itself — for example: Poloni (2017); Macedo (2018); Oliveira (2019); Chiuzuli (2020); and Machado (2022).

However, the main issue goes beyond the mere legitimacy of intervention by Judiciary, encompassing the form and effects of this action. After all, "[...] systemic problems require complex solutions" (Silva, 2018, p. 100). While judicialization may at first glance lead to an increase in enrollments by the state entity (direct effect), it produces results that are contrary to the effectiveness of the educational public policy itself (indirect effects), as it does not address the structural bases of the problem, such as the issue of investment and the quality of education.

Some of these undesirable effects were highlighted in this research. The first issue refers to the Judiciary's preference for individual actions over collective demands for vacancies. This practice is detrimental not only to the policy itself, but also to the justice system itself, which works with high demand and low resolution. This recourse, moreover, exposes a certain contradiction, with the granting of the individual request being common instead of the collective (or diffuse) claim based on the same factual and legal grounds (Macedo, 2018). The solution through individual action, although valuable to the directly interested party, does not contribute to the structural answer to the question; on the contrary, it aggravates it due to the high litigiousness of the matter (Machado, 2022).

The main obstacles ascending from constant judicial intervention regarding vacancies relate to classroom overcrowding and the partial provision of services, with the creation of part-time vacancies or a proportional reduction in the number of full-time enrollments. Overcrowding in educational units is a recurring theme in scientific research (Jochi, 2018; Oliveira, 2019;

Meningue, 2020; Vieira, 2020; Machado, 2022; Hubert, 2022). The surplus of students leads to problems with the quality of care, compromises safety due to the vulnerability of surveillance and adaptation of pedagogical environments, factors that hinder learning and the social interactions that daycare should promote (Vieira, 2020). Furthermore, overcrowding prematurely exhausts the material and human resources of the school environment, especially the teaching staff, who are overburdened and demotivated in the professional sphere (Vieira, 2020; Meningue, 2020; Hubert, 2022).

Once compelled to allocate the child to early childhood education via court order, it is common for the manager to prioritize partial care over full-time enrollment. The urgency of the demand leads to immediate and more economical solutions for the manager, resulting in the optimization of school spaces to the detriment of a better pedagogical decision regarding the extension of the educational schedule (Oliveira, 2019).

On the other hand, it is also very common in the provision of court-ordered vacancies (in daycare and preschool) to involve the private and philanthropic network through agreements. This practice often occurs without planning and without a systemic assessment of costs and the real dimension of demand, resulting in the appropriation of public funds by the private sector in the face of state inefficiency in providing services (Machado, 2022).

Enrollment via court order also violates the principle of equity, as it interferes with the waiting list policy (indirect effect), when it exists in the municipality (Meningue, 2020; Machado, 2022). Furthermore, it interferes with the organization of the identification and regulation of priority criteria, and it is up to the manager, not the magistrate, to primarily establish the objective and subjective conditions of access to public service based on the student's degree of vulnerability, such as registration in the Unified Social Registry, for example.

In this context, addressing the shortage of places in public daycare centers (and preschools) requires the adoption of a compliance strategy that, based on the real dimension of the problem, links all actors involved in building a definitive solution that is implemented gradually (Gotti; Ximenes, 2018).

The current pattern of litigation, based on individual (or homogeneous individual character) and emergency logic, proves to be ineffective, according to the data from this research and the theoretical framework on the subject. This configuration of litigation does not cause significant changes in public policy, nor does it encourage the manager to seek a structural and lasting solution to the problem. Both the financial aspect and the architecture of new school units are superseded and relegated to the background in the face of the immediacy of the demand and the lack of long-term planning.

The tension between the powers (pointed out in the research) must be overcome in favor of joint and coordinated action among those involved. This is the case of dialogical implementation in which the Judiciary forwards the public policy sub judice so that the Executive and Legislative branches can reformulate it, via an action plan, upon finding a violation of mandatory legal norms. It is a form of compositional, structural litigation, with the main characteristics listed as follows: a. litigation of collective expression and interest; b. multiplicity of authors and interests in dispute; c. structural character of the violation under analysis (multifactorial problem); d. planned solution of broad and long-range scope; e. respect for the separation of powers; f. need for supervision of the execution of the sentence aiming at the concrete achievement of the measures to be adopted, with a schedule for compliance and monitoring of the resolution stages (Gotti; Ximenes, 2018).

This proposal to change the typology and judicial action of the conflict is not just rhetoric, but can be observed empirically. There is a paradigmatic case that occurred in the Court of Justice of São Paulo (TJSP) in which "[...] the most ambitious and innovative proposal to change the performance of the Judiciary and other bodies of the justice system in the external control of educational public policies" is recorded (Ximenes; Silveira, 2017, p. 3).

This refers to the judgment of two Public Civil Actions (No. 002.08.150735-6 and no. 002.10.063099-7) filed between 2008 and 2010 against the municipality of São Paulo, proposed by non-governmental organizations (NGOs), including the Movimento Creche para Todos and Padre Josimo Tavares Citizenship Institute. In the joint judgment of the appeals in the Special Chamber of the Court presented by the NGOs, which took place in December 2013 (São Paulo,

2013a, 2013b), the municipality was ordered to create 150,000 new places in early childhood education by 2016 (105,000 of them in full-time daycare centers).

The court decision in question grouped the plaintiffs in a dialogical and conciliatory path (collective hearings between the Public Prosecutor's Office, the Public Defender's Office, NGOs, etc.), aimed at the real structuring and implementation of public education policy. The decision by the São Paulo Court of Justice (TJSP) decree the creation of an Advisory Committee within the court itself to monitor the stages of its implementation, based on a Goals and Execution Plan developed by the defendant municipality.

In December 2016, the period for complying with the TJSP's decision to create 89,249 places, with 72,817 in daycare centers and 16,436 in preschools, formally ended, addressing the problem of the waiting list at this stage of basic education (Gotti; Ximenes, 2018).

Although grasping the positive and direct effects on educational policy resulting from this strategic reorganization is not an easy task, requiring not only the construction of a theoretical framework but also fieldwork (Ximenes; Silveira, 2017), it is undeniable that the exemplary resolution adopted by the TJSP in the points of the Judgment represents an effective path for the programmed expansion of vacancies with budgetary support (Gotti; Ximenes, 2018).

CONCLUSION

The results found in Brazilian academic research during the study period (2014-2024) indicate that the judicialization of vacancies in early childhood education has repercussions on administrative and pedagogical management, altering the format of this public policy, both structurally and in terms of the professionals working in this segment of basic education. The school routine and the management of educational units are significantly impacted by receiving children without proper planning and infrastructure, often resulting in overcrowded classrooms, with all the consequent didactic detriment.

Although judicialization is recognized by researchers as a legitimate instrument of intervention in the Executive Branch, of a democratic nature, capable of restoring injustices by reinforcing the unquestionable right to quality public education, it is still insufficient to structurally solve the problem of broad access, constitutionally provided for, to basic education in the country. The study points out that access to the Judiciary favors the expansion of places in the daycare stage, although it does not do so to meet the growing demand recorded in recent years, which must be met in a rational, planned and compatible manner with the regional and socioeconomic reality of the Brazilian federative structure.

The results presented by the investigation are valuable to the educational field, as they highlight direct and indirect reflections of the daily phenomenon of judicialization in basic education, while also indicating the need for complementary research, mainly focused on the financial impacts and bureaucratic obstacles arising from this intervention, all with a view to other approaches and solutions.

So far, it is observed that the scenario described requires articulation between the main political and managerial actors involved in the subject, in a collaborative way, focused on the planning, execution, implementation and control of daycare (and preschool) policy. The mandatory ruling, especially one of an individual nature, based solely on allocation, only scratches the surface of the problem of the shortage of places and ends up distorting the foundations of a truly distributive and equitable educational justice.

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