

LEI 12.796/13 E A OBRIGATORIEDADE NA EDUCAÇÃO INFANTIL

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LAW 12,796/13 AND THE OBLIGATORINESS IN EARLY CHILDHOOD EDUCATION

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RESUMO: O objetivo deste artigo foi identificar as concepções de profissionais da Educação Infantil (gestores, professoras, funcionárias), de escolas municipais de uma cidade do interior paulista, e suas opiniões a respeito da Lei 12.796/13 – que trata acerca da obrigatoriedade escolar. O pano de fundo da investigação foi evidenciar questões a respeito do direito e da obrigatoriedade, com foco no ciclo das Políticas Públicas da Educação Infantil (EI). Conforme a pesquisa, a Lei 12.796/13 teve grande aceitação por parte dos profissionais da educação, sendo que alguns se manifestaram sobre o assunto, mesmo tendo pouco conhecimento e reflexão sobre as modificações na EI. Um grande marco foi o esclarecimento que tinham quanto à responsabilidade dos municípios em ofertar vagas para as crianças de 4 a 5 anos de idade.

PALAVRAS-CHAVE: Educação infantil. Concepção de profissionais da educação. Políticas públicas educacionais. Direito e obrigatoriedade escolar.

RESUMEN: El propósito de este artículo fue identificar las concepciones de niños profesionales de la educación (gestores, profesores, empleados), a las escuelas públicas en una ciudad en el estado de São Paulo y sus opiniones acerca de la Ley 13/12.796 – que se trata obligatoria a la escuela. El fondo de la investigación era resaltar las cuestiones de derecho y la obligación, con un enfoque en el ciclo de las políticas públicas de educación infantil. Según la investigación, la Ley 13/12.796 tuvo gran aceptación por parte de profesionales de la educación, y algunos expresaron sus opiniones sobre el tema, incluso con poco conocimiento y reflexión acerca de las modificaciones en educación infantil. Un hito importante fue la aclaración que había con respecto a la responsabilidad de los municipios para ofrecer lugares para niños de 4 a 5 años de edad.

PALABRAS CLAVE: Educación infantil. Concepción de profesionales de la educación. Políticas educativas públicas. Derecho y obligación.

ABSTRACT: The purpose of this article was to identify the conceptions of Early Childhood Education professionals (managers, teachers, employees), from public schools in a city in the

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State of São Paulo, and their opinions about Law 12,796/13 – on educational obligatoriness. The background of the research was to highlight issues regarding rights and obligation, with a focus on the cycle of Public Policies of Early Childhood Education (ECE). According to the research, Law 12,796/13 had great acceptance on the part of education professionals, and some expressed their views on the subject, even with little knowledge and reflection on the modifications in ECE. A major milestone was the clarification they had regarding the responsibility of the municipalities to offer vacancies for children of 4 to 5 years of age.

KEYWORDS: *Early childhood education. Conception of education professionals. Public educational policies. School right and obligatoriness.*

Introduction

The aim of this article was to identify the conceptions of Early Childhood Education professionals (managers, teachers, employees), from municipal schools in a city in the countryside of São Paulo, and their opinions about Law 12,796/13 – on educational obligatoriness. The background of the investigation was to highlight issues regarding rights and obligation, focusing on the cycle of Public Policies of Early Childhood Education (ECE). The theme has been recurrent in Brazilian public policies, especially regarding the schooling of Basic Education, the fight against child mortality and protection programs.

In this context, two important perspectives are considered: the first refers to the different conceptions of childhood, and how they were characterized in different periods of history and cultures. The second concerns the need and importance of public policies for early childhood education to be implemented by the state in today's society, understanding the child as a subject of social rights.

To reflect on children and childhood, this study uses the concept of Sociology of Childhood, in which children are seen as producers and transformers of cultures in their social contexts and not only subjects inserted in society (OLIVEIRA, 2008).

Children are perceived as part of a generation and participate in the mutual relations between: children-adults, children-children and children-society. It is also understood that they must have their rights guaranteed in the different social spheres, so in order to conceptualize them or seek reflections on ECE it is important to be based on educational and social public policies.

For Behring and Boschetti (2006), there is no precise date for when social policies for children emerged, but it is believed that the Industrial Revolution was an important milestone in which the theme was considered. During this period when capital exploitation over labor was

very strong, public and social policies were remote, as well as the state's little concern with the social issue. According to the authors (2006), social policies expanded gradually in different countries – according to social classes –, but only intensifying at the end of the 19th century, due to the action of the capitalist State.

For Gonçalves (2010), social public policies aim to establish a link between the state and civil society, so there is a subjective dimension in their formulations and executions, since the very notion of social rights is subjective. The ideas of individual and collective well-being represent transformations and present themselves as social rights, according to certain periods of history, with the acceptance of each society.

According to Filho (1982), the rights of human beings elucidates an ideal of justice built by subjects and transformed throughout the different societies and history. Enacted laws in this sense become human rationalization capable of allowing the creation of structures with the function of realizing rights. Thus, by enacting a certain law – the subjective right of a subject or group – the State becomes responsible for ensuring its compliance, and the society charged with enforcing this guarantee through actions and public policies created by the government (Executive Branch). It can be said that it is this feature that turns rights from a paper to the reality of relations within a society.

Education, unlike other social rights, is linked to rights and obligation, according to the Federal Constitution (FC) of 1988, in its articles 205 and 208. The right to education is only effective when its legal recognition is being driven by the will of public authorities to make it effective. Thus, the State can guarantee education (as law), but it is the Executive Branch (government) that must adopt public policies with concrete actions to guarantee the educational perspective, and the Brazilian society that must organize itself, claiming its rights before justice.

The State, alongside society, should be responsible for creating mechanisms that oblige the government and, consequently, the subjects to comply with the terms of the legislations. It is understood that the cycles of Public Policy represent the set of actions taken by the Executive Branch, with the guarantee of the Legislative Branch (State), in order to meet the demands proposed by civil society. This means that these political moments must comply with existing legislation, enforcing the rights and the obligation for all Brazilian citizens.

Public Policies for Early Childhood Education in Brazil

Unfortunately, the recognition of Early Childhood Education institutions as capable of providing a good education for children only appeared in the 1960s, with the expansion of the

female workforce to the middle sectors of society. In Kuhlmann's (2010) view, day care centers originated from influences from various sectors of society, such as: police-law, religious and medical-hygienist. The police and legal sector understood that workers were deserving of beneficiary actions due to their social situation, but were not someone with rights. The religious sector preached its dogmas to the less favored classes, with the intention of making them accept their economic and social conditions, contributing to the control over them. The medical-hygienist sector was concerned with the underprivileged in infrastructure and urban planning issues, with the aim of preventing diseases and major epidemics for all of society.

For the author (2010), day cares and kindergartens began their process of expansion in Brazil with a welfare and discriminatory profile. The rulers offered day care centers for the underprivileged social classes as a benefit and protection. Its affiliation with government social service agencies extended this welfare conception for a long period. According to Sousa, Pedroza e Sousa (2014):

[...] Both developed and underdeveloped countries followed two institutional models, primarily, being day care centers designed exclusively or mainly for poor children, and kindergartens not specifically designed for them. There was social and political segregation, depending on the economic class of the people (SOUSA; PEDROZA; SOUSA, 2014, p. 651).

Thus, public policies were directed to the creation of day care centers near to industries, as well as scientific congresses indicated the importance of regulating labor relations and the recognition of female labor. The origin of these institutions was directly related to the development of industrialization and the insertion of women in the labor market.

Only from 1980, the Brazilian public education policies began to consider linguistic and cultural diversity in educational practices (KRAMER, 2006). Miranda (2012) describes that in the 1970s and 1980s, organized social movements put Early Childhood Education on the agenda in their claims, mainly for the social awareness that, at this stage in life, children would need to have their rights guaranteed.

In São Paulo, in the same period, unlike the day cares that were conceived as assistentialist, there appears a school attached to the Caetano de Campos Normal School named Kindergarten (“Childhood Garden” in a free translation of the term in Portuguese), with a specific educational proposal for the elite, and a curriculum organized based on the proposals of Froebel and the *Kindergarten* (KUHLMANN, 1986). The demand promoted a re-characterization of Early Childhood Education institutions, reducing the discrepancies between

schools for the rich and the poor, so that the institution of ECE was seen as important for all social classes.

The characterization of Early Childhood Education institutions as part of the state's duties towards education was expressed in the 1988 Constitution (BRASIL, 1988), and was the result of many struggles for the implementation of day care centers and preschools that respect the rights of children and families. The right to education is then understood as an integral part of the rights that every citizen has, and it is up to the state to secure such rights.

Articles 3rd and 4th of the Statute (BRASIL, 2007) refer to full protection and emphasize the responsibilities of the family, the State in guaranteeing rights.

Article 3. The children and the adolescents enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection provided for in this Law, ensuring by law or by other means all opportunities and facilities in order to provide them with physical, mental, moral, spiritual and social development in conditions of freedom and dignity.

Article 4th. It is the duty of the family, the community, society in general and the Public Power to ensure, with absolute priority, the realization of the rights related to life, health, food, education, sport, leisure, professionalization, culture, dignity, respect, freedom, and family and community life (BRASIL, 2007).

Article 53 of the same law refers to education indicating how it can contribute to the construction of citizenship, the qualification of work and also highlights the conditions for access to public school. Article 54 deals with the obligation of the State in the care of children from zero to six years old.

Art. 53. Children and adolescents have the right to education, aiming at the full development of their person, preparation for the exercise of citizenship and qualification for work, ensuring them:

I - equal conditions for access and permanence in school;

II - right to be respected by their educators;

III - right to challenge evaluation criteria, and possibility to appeal to higher school instances;

IV - right of organization and participation in student entities;

V - access to the free public school near their residence.

Article 54. It is the duty of the State to assure to the children and adolescents:
I - elementary, obligatory and free education, including for those who did not have access to it at their own age;

II - progressive extension of obligatoriness and gratuity to High School (BRASIL, 2007).

The Law of National Guidelines and Bases for Education (LDB, Portuguese initials) no. 9394 of December 20 (BRASIL, 1996) promulgates that early childhood education is inserted as a stage of Basic Education, along with Elementary School, considered a great achievement, once that it is now understood as the right of every child. For Campos (2002), the

pedagogical work with children from zero to six years old was recognized and acquired a broader dimension in the educational system, meeting the specificities of childhood.

In addition to LDB, other public policies were designed for Early Childhood Education, including the Early Childhood Education Policy in Brazil (BRASIL, 2009), a law that gathers items such as: access to Early Childhood Education for children from zero to six years old; participation of education professionals in the elaboration of the pedagogical proposal; continuing education; expansion of budget resources and expansion of infrastructure. This document is based on the principles established at the Jomtiem International Conference, held in 1990 in Thailand, bringing together various countries around the world. Brazil had an important role at the time, as it subscribed to the document referring to early childhood, with the aim of expanding and improving care for children, especially the disadvantaged.

The Bill 8,035/10 (BRASIL, 2010), in the scope of ECE, created the National Education Plan (PNE, Portuguese initials) – approved in June 2014, to be in effect in the period of 2014-2024 – sent by the Federal Government to Congress on 15 December 2010. The PNE set the universalization of education for children from four to five years old in Early Childhood Education, and for children from zero to three years old, with 50% of the population being served by 2016 (BRASIL, 2014).

Law 12,796/13: Educational obligatoriness

Rosemberg (2009) presents some notes on bills passed in the National Chamber and Senate on the obligatoriness of Early Childhood Education. The author explains some items referring to the Proposed Constitutional Amendment (PEC, Portuguese initials) 277/08; noting that this was not the first attempt to make ECE compulsory.

In 2000 Senator Heloisa Helena championed the Proposed Constitutional Amendment 40/2000, addressing the obligatoriness of Early Childhood Education for children from 0 to 6 years. The author (2009) also emphasizes another document, the Proposed Constitutional Amendment 487/2002 made by Leo Alcatra, then congressperson, proposing the alteration in the article 8 of the Federal Constitution, disposing on the obligation of the Early Education for the children from 4 to 6 years old. She also discusses the Proposed Constitutional Amendment 277/2008, noting that it did not address the compulsory education of the age group of four to seventeen, which was only later incorporated in the text. This proposal had the prospect of happening gradually, with the purpose of finishing the untying of the Union Revenue.

Starting in 2011, the aim was to increase the financial resources invested in education, which is also indicated in the PNE as the need to set targets for the application of public resources in education, as a proportion of gross domestic product. This Proposed Constitutional Amendment provided subsidies for the elaboration of Constitutional Amendment n. 59/2009 (BRASIL, 2009), also modifying the wording of article 208 of the Federal Constitution:

Article 208. The State's duty to education shall be made effective through the guarantee of:

I- Obligatory and free Basic Education from 4 (four) to 17 (seventeen) years of age, including free provision for all who did not have access at the proper age;

[...]

IV- Early Childhood Education, in daycare and preschool to children up to five (5) years old;

This Amendment further established that:

Article 211. The Union, the States, the Federal District and the Municipalities shall collaboratively organize their education systems.

[...] § 4º In the organization of their education systems, the Union, the States, the Federal District and the Municipalities shall define forms of collaboration in order to ensure the universalization of obligatory education.

Through the changes made, and according to Cury and Ferreira (2010), finally obligatory education is no longer just Elementary and Middle School, but rather, Basic Education – Early Childhood at preschool, Elementary and Middle School and High School – for those from 4 to 17 years old, including ensuring a free offer for all who did not have access to Education at the proper age. Congress approval of the Amendment made school attendance compulsory from four to seventeen years of age.

The change gave Brazil, as in other countries, the longest time of compulsory school. But, unfortunately, it was not consensual in the educational field, because the extension of the obligatoriness for Early Childhood Education generated different reactions especially by: specialists, researchers and activists from the field of study and political action of Early Childhood Education and the leaders of education, especially municipal ones.

Article 6th of the Constitutional Amendment refers to the provisions of Article 208, item I, "it shall be implemented gradually by 2016, with the technical and financial support of the Union". This fact is also ensured in the PNE, which sets twenty Goals with action strategies in order to coordinate a National Education System. The kindergarten was contemplated in Goal I, specifying the school attendance of the 4 and 5 years old population should be universalized

until 2016, and expanded until 2020, that is, the offer of kindergarten should attend about 50% of children with up to 3 years old. years.

This principle is also reaffirmed in the base document of the National Conference of Education (CONAE, 2014) through the text referring to axis IV Quality of Education: Democratization of Access, Permanence, Evaluation, Conditions of Participation and Learning.

According to Cury, Ferreira (2010), with amendment 59 (BRASIL, 2009) Early Childhood Education (four to five years old) becomes compulsory. Thus, any change brought about by this amendment made it possible to extend the constitutional duty of the state in relation to education. However, this obligation does not refer to a specific teaching stage, but rather to an age range from four to seventeen. Therefore, children must enter the school at the age of four, go through Elementary School and stay in school until the age of seventeen, regardless of the stage they are in, whether Elementary, Middle or High School. That is, the quality of teaching and learning does not necessarily become effective, in the sense of these children doing the appropriate grade for their development.

According to Campos (2010), there was little attention to the change in the definition of the obligation, which the amendment sparked, as it included the reduction of resources subtracted by the Untying of Federal Revenue, and the resources linked to the maintenance and development of education, the old demand of the educational sector. According to this understanding, the amendment would guarantee to the legislators the merit of the initiative, with the justification that the greater resources destined to the education would be well used.

In this perspective, of resignification of ECE, a reflection was made on the public policies elaborated for this stage of education, and legislation is evidenced that prescribes the compulsory registration of four-year-old children: Law no. 12,796 of April 4, 2013, which provides for the amendment of several articles of the Law of National Guidelines and Bases for Education, including Article 4th:

I - Obligatory and free Basic Education from 4 (four) to 17 (seventeen) years of age, organized as follows: a) preschool; b) elementary education; c) high school; [...] (BRASIL, 2013).

The aforementioned law deals with obligatory schooling for four-year-olds. In this same law, it is also amended the article 6th of the LDB: "*It is the duty of parents or guardians to enroll children in Basic Education from the age of 4 (four)*". The compulsory access to ECE and other stages being characterized as a subjective public right.

Through this change, Education is now understood as a right and a duty of the Public Administration to the citizen. To implement the provisions amended in the Federal Constitution

of 1988, Law 12,796/13 was approved, which amends LDB no. 9394 (BRASIL, 1996), and which provides for the formation of education professionals and brings in its text substantive changes to the Law of National Guidelines and Bases, such as:

Art. 1st

Law no. 9394 of December 20, 1996, becomes effective with the following changes:

Art. 4th

I - Obligatory and free Basic Education from 4 (four) to 17 (seventeen) years of age, organized as follows:

- a) preschool;
- b) elementary education;
- c) high school;

II - Free Early Childhood Education for children up to 5 (five) years of age (BRASIL, 2013).

Law no. 12,796/2013 means a significant change to LDB 9394/96, since through Constitutional Amendment No. 59/09, it extends the obligation of the age group from four to seventeen years old, determining that 2016 was the deadline for this universalization. Attendance and financial resources are increased, but, unfortunately, not including daycare centers. In addition, the Common Curriculum National Base – BNCC in Portuguese initials (BRASIL, 2018) includes the ECE, but does not reformulate and integrate this stage of education, and also fails to claim for better training for Early Childhood professionals – who teach classes for young children, and to the directors responsible for school management, where the demands of childhood are met.

Methodological procedures

To carry out the research three schools were chosen, taking into consideration their geographical location. The municipality surveyed had 36 Early Childhood Education units, meeting a demand of 8,576 enrolled children, with 1,774 children queued in the waiting list. The city is divided into six regions, according to the neighborhoods in which they are located. The school names are fictitious and were created to keep the real names confidential: first, The Ugly Duckling school is located on the outskirts; another, the Hansel and Gretel school, is in the center; and a third, The Three Little Pigs school, is in the northern region.

Semi-structured interviews were conducted with four participants from each school, divided as follows: one director; two teachers – one teaching in phase 4 (four-year-old children) and another teaching in phase 6 (six-year-old children) with students who have not attended phase 4; and an employee.

Table 1 presents the characterization of the managers participating in the research:

Table 1 - Identification of the director segment

	Director The Ugly Duckling	Director Hansel and Gretel	Director The Three Little Pigs
Gender	Female	Female	Female
Age	38	39	32
Formation	Teaching Mastership, Pedagogy	Physical Education, Pedagogy Specialization in Special Education	Teaching Mastership, Pedagogy Specializations: Educational Law, Psychopedagogy and School Management
Participates in some Collegiate?	Parent-Teacher Association (PTA), School Council (SC)	SC, PTA	SC, PTA
Function/Position	Effective Early Childhood Teacher and Director since 2013	Effective Physical Education Teacher and Director since 2013	Effective Early Childhood Teacher and Director since 2013
Service Time	12 years	15 years	8 years

Source: Own authorship.

Table 2 refers to the teachers working in phase 4:

Table 2 - Identification of the teachers of children in phase 4 segment

	Teacher The Ugly Duckling	Teacher Hansel and Gretel	Teacher The Three Little Pigs
Gender	Female	Female	Female
Age	40	32	35
Formation	Pedagogy, Specialization in Early Childhood Education Special Education	Pedagogy, Specialization in Special Education	Teaching Mastership, Nutrition
Participates in some Collegiate?	No	PTA	No
Function/Position	Effective Teacher of Early Childhood Education	Effective Teacher of Early Childhood Education	Temporary Teacher of Early Childhood Education
Service Time	6 years	8 years	3 years

Source: Own authorship.

The criterion for choosing teachers from Phase 6 was to have students who started attending school from the age of 5 or 6, without passing through phase 4. Table 3 refers to the characterization of teachers working in phase 6:

Table 3 - Identification of the teachers of children in phase 6 segment (with students without having attended phase 4)

	Teacher The Ugly Duckling	Teacher Hansel and Gretel	Teacher The Three Little Pigs
Gender	Female	Female	Female
Age	34	28	31
Formation	Teaching Mastership, Pedagogy, Specialization in Early Childhood Education, Educational Management and Psychopedagogy	Mathematics Teaching Degree, Pedagogy, Specialization in Special Education	Teaching Mastership, Pedagogy Specialization in: Early Childhood Education, School Management and Psychopedagogy
Participates in some Collegiate?	SC	No	No
Function/Position	Effective Teacher of Early Childhood Education	Effective Teacher of Early Childhood Education	Effective Teacher of Early Childhood Education
Service Time	8 years	1 year	8 years

Source: Own authorship.

Regarding the characterization of the employee segment, we note that the selection criterion was made by each director of each participating school:

Table 4 - Identification of the employee segment

	Employee The Ugly Duckling	Employee Hansel and Gretel	Employee The Three Little Pigs
Gender	Female	Female	Female
Age	36	50	25
Formation	Incomplete Middle School	Pedagogy	Pedagogy
Participates in some Collegiate?	No	SC	No
Function/Position	General Services Effective	Cook/Server Effective	Educational Agent Effective
Service Time	15 years	6 years	1 year and 8 months

Source: Own authorship.

Out of the three employees, only one was a member of the School Board. As for the roles of the participants, we can list: general services, cook/server and educational agent – all effective in their functions. The length of service in the Municipal Network ranged from one year to fifteen years.

Public Policies for Early Childhood Education: Right and Obligation

It is our understanding that Law 12,796/13 (BRASIL, 2013) did not come about by chance, even because its perspectives were linked to economic and social conditions, that is,

conditioned on the possibility of existence of financial, administrative, pedagogical resources, etc., for obligatoriness to occur, and from a social point of view schooling was linked to the issue of the right of children to enter ECE from the age of 4.

According to Moss (2011), the global discourse on access to Early Childhood Education comes about because of its contribution to the fulfillment of normative standards and the guarantee of advantage for children when they enter the obligatory stage, as they would be favored through behaviors and educational development. For the author (2011), this discourse has propitiated the action of policy makers in several countries, and was established from the relationship with compulsory education.

It is noteworthy that when we asked the education professionals about current legislation, various segments of the different schools revealed that they had no knowledge about Law 12,796/13, as well as others related to this stage of education. According to the *The Ugly Duckling*'s school director:

So... So far I didn't know. I only knew it because of the media, but I never read it, I never got to read it, I'm getting to know it now (Director of the *Ugly Duckling* school, 2014, our emphasis).

The Phase 4 teacher at *Hansel and Gretel* said she did not know much about law, although she recalled that when she studied, she had more access and knowledge about legislation, but she did not remember:

I am a little outdated (...) I studied, but, (...) I know the obligation and everything, but, the name of the law, these things... I already forgot a lot (Phase 4 teacher at *Hansel and Gretel* school, 2014, our emphasis).

Unfortunately, meeting the goals of access to Early Childhood Education in response to educational legislation is just one of many others. We know that issues such as: Higher Education for teachers, the organization of physical spaces that serve children (often quite inadequate), the difficulty of municipal education systems in defining a curriculum policy formed from the National Curriculum Guidelines for Early Childhood Education, among others, are on the agenda of the difficulties of those responsible for children's institutions.

Another important point was announced by the employee of the school *The Three Little Pigs* who, despite knowing the law, criticized the lack of discussions about its implementation:

Well, I know there's this obligatoriness, and it will take this child to school now, and until 2016, which seems to me to be the deadline. Just like nine years ago, it was a thrown law, it was thought, it was questioned, but like, it just surged. I, for example, saw it on a news site, April 5th. A day later it was promulgated, and it was simply thrown. I did not see discussions and

congresses before, and... I don't know... Works that could possibly do research to see if this was possible, if it fit within Brazilian law, within the big documents themselves, so that all of this was possible (Employee of the school *The Three Little Pigs*, 2014, our emphasis).

Rosemberg (2009) describes that the adoption of compulsory education was incorporated into Proposed Constitutional Amendment 277/08 regarding the gradual end of the mechanism of untying the Federal Revenue, thus, obligatory education from four to seventeen did not have a specific proposal with defined objectives. It is noteworthy that there was no disclosure and debate on these issues so important to ECE.

For the education professionals who indicated having knowledge about the general laws, such as the LDB, we heard from the same director:

Just the LGB. What does it guarantee? I don't think it guarantees... Does it ensure? From my point of view, it ensures that the child can come to school (Director of the *Ugly Duckling* school, 2014, our emphasis).

The Phase 4 teacher had knowledge about LDB:

[...] **Now I do not know if this is a formality, a law that guarantees this for children of six months or more, the education**, a place to stay, a free education, now with this new law with the obligation of four years, the municipality has to offer day care for children of six months. The municipality is obliged to give this, this service (Phase 4 teacher of *The Ugly Duckling* school, 2014, our emphasis).

In their speech, some doubts and lack of knowledge about the issue of vacancies in Early Childhood Education appear. The obligation has been extending, encompassing the ECE, so it is important to state that the admission of children from zero to three years is optional, but it is the municipality's **obligation** to offer such service.

With the Federal Constitution of 1988 (BRASIL, 1988), the basic educational system was stipulated as duty of the State, in an integrated and re-signified way, giving rights to children. The director of the *Hansel and Gretel* school, seemed to us, to know certain laws that specify the number of students per classroom, for example, as the PNE, and also the Resolution of the Municipal Education Council 002/2006:

Yes, the laws, in this case, number of students, obligatoriness, what should and what should not be done (Director of *Hansel and Gretel* school, 2014).

The Phase 4 teacher at *The Ugly Duckling* school declares that the obligation was promulgated by Federal Law, but the duty is of the municipality:

So, what I heard now is that children from four years old are required to be inserted into the school environment, and that, on the part of the municipality? It's the municipality that has to offer it, it's neither state nor federal. And, like Early Childhood and municipal education, it is the municipality that has to offer it, but this is a federal law, as far as I know (Phase 4 teacher of The Ugly Duckling school, 2014, our emphasis).

It is specified in the LDB (BRASIL, 1996) that the municipalities are responsible for Early Childhood Education, regarding schools: teaching staff, pedagogical material, food, among others:

Art. 11

V – to offer Early Childhood Education in day cares and preschools, and, with priority, the elementary education, being allowed to work in other levels of education only when the needs of their area of competence are fully met and with resources above the minimum percentages linked by the Federal Constitution to the maintenance and development of education (BRASIL, 1996).

The teacher raises an important question, since the law can be promulgated by the federal government, but will be part of the reality of Brazilian municipalities, even if they present very diverse situations.

The *Hansel and Gretel* school employee, as well as the Phase 4 teacher of *The Ugly Duckling* school, mentioned that the legislation binds the municipality:

Like really remember, I do not remember the Laws. I know what is Early Childhood Education. It is the responsibility of the municipality (Hansel and Gretel school employee, 2014, our emphasis).

The Phase 6 teacher at *Hansel and Gretel* school affirms the importance of Early Childhood Education and the Municipal System in fulfilling such obligation.

[...] The Law was put in place because Early Childhood Education is fundamental, it is the basis of everything, and it is through it that we have the rules. The family has an obligation to enroll the student in the network, no matter what, but in the Municipal Network. I think it's important. Without it, as I said, the gap would be very large, it already is, but it would be much worse! (Teacher of Phase 6 of the Hansel and Gretel school, 2014, our emphasis)

This teacher believes that the teaching and learning of children are currently outdated and, if an educational work in the Municipal Networks was not to be done, it would aggravate the situation even more. This controversy makes us reflect on ECE, which today, even being included in Basic Education, does not meet the goals of the LDB, in its art. 62, which deals with the initial formation of teachers – which should complete Higher Education to attend the

children of BE. On the contrary, it shows a worrisome reality in which it is possible to have a minimum formation in medium level, in the Normal mode. According to the Synopsis of the Teacher, published by INEP³, there are almost 370,000 teachers working at ECE with only elementary school formation and only about 50% of them have completed Higher Education.

Meeting the goals of access to ECE set by educational legislation as well as the PNE (2014-2020) should require the effort and commitment of municipal governments, and integrated work between state and federal governments. The National Program for the Restructuring and Procurement of Equipment for the ECE Public School Network (ProInfância), created in 2007, aimed to promote actions of the Education Development Plan (PDE, Portuguese initials), managing financial assistance from the federal government, with goals of expanding vacancies and access to ECE. For the school director at *The Ugly Duckling* nothing significant has changed with the law, “because parents already enroll their four-year-old children in school,” some for fear of the municipality's Tutelage Council, and others not to lose the benefit of the *Bolsa Família* Program (income distribution program):

*I believe not, I think it is necessary, but parents already enroll the children, right? I think, then, that **they already thought it was mandatory** from the age of four. I think that if **there were many children before, now it just tends to increase**, because now it is mandatory and parents are afraid of the Tutelage Council⁴ (Director of the school *The Ugly Duckling*, 2014, our emphasis).*

The director of the school *Hansel and Gretel* considered that Law no. 12,796/13 was drafted and enacted with political intentions. Thus, parents would be “required to enroll children” and benefit. For her, education is a benefit, or a charity, and not effectively a right:

*It is a law that was simply put in place to... (...) **I don't know if there is political involvement there. To take children off the street, because many mothers leave the children on the street and also have those partnerships with Bolsa Família handouts, milk handouts, handouts of everything. (...) And then it ends up forcing parents to keep their children in school to guarantee the receipt, and by the way the receipt of these financial assistances, it becomes the guarantee that the child is being well cared for and protected within the school environment** (Director from *Hansel and Gretel* school, 2014, our emphasis).*

In addition, two of them still had a welfare view, when they stressed the importance of the child being protected and well cared for in the school environment. Phase 4 and Phase 6 teachers at *The Ugly Duckling* school expressed their views on the importance of this Law for children:

³INEP - Synopsis of the Teacher 2009, updated 17/12/2012.

⁴ Would be some sort of equivalente to the north-american Child Protective Services.

*I think it's important because of some parents' views. Sometimes they don't have much access to information, I think they reckon children at this age don't need school yet. They just need to be in school in the first year, which would be at 7 years old, 6 years old now? I do not agree, I think that children of four years old will already develop a lot so the obligation makes them actually inserted in the school environment (Teacher of Phase 4 of *The Ugly Duckling* school, 2014, our emphasis).*

*I think it is important not only children but parents wake up and feel that children, **to have a cool future get into school early, and not be on the streets.** Because I see here in the region that I work, children on the street, children having negative influences, so **the school has this positive part, and I think it's important for the child to enter not only at 4 years old, but before, I think it's cool** (Phase 6 teacher at *The Ugly Duckling* school, 2014, our emphasis).*

The teachers conclude that this Law requires families to enroll their children in Early Childhood Education from the age of four. The right to education thus becomes an obligation. As described by Duarte (2004), about subjective public law, defined as a capacity recognized to subjects, due to their participation and expression of their interests.

According to Cury (2000), the school is a public service institution and distinguishes itself by offering education as a public good, thus, democratic management is, above all, an openness to dialogue and democratization. Collegiate bodies that exist in schools should be representative, focusing on the representativeness of civil society, so they can define norms and actions in their spheres of activity. Despite being a challenge, they seek to guarantee institutionality, in favor of everyone's rights, avoiding prioritizing individual wills of transitional governments.

Many issues are still open and, worse, they are not being debated with professionals, much less with society, in democratic spaces that would allow both parties to speak and listen with a view to make collective decisions, with everyone's co-responsibility.

Final considerations

This text sought to reflect on various issues that cover ECE, regarding Public Policies; educational laws etc. In addition, it identified the conceptions of professionals from municipal schools in a city of São Paulo, regarding Law 12,796/13 and the obligatory school. According to legislation, the children from 4 years of age must be in preschool, families should enroll them and be responsible for their attendance at school.

All discussions concerning the right to education are closely linked with school obligatoriness since, unlike other social rights, it is linked *to rights and obligatoriness*,

according to the Federal Constitution of 1988, in its articles 205 and 208. Reflecting on the right to Education, in today's perspective, also includes knowing the meaning of conceptions established by Public Policies such as: the universalization of free education, that is, access and permanence to education and obligatoriness of school, which are imbricated in needs and positions coming from society.

In Brazil, such distinctions are important and must be taken into consideration, especially in regard to the elaboration and promulgation of Law 12,796/13, which began eleven years earlier with the Proposed Constitutional Amendment 487/02 – which deals with the obligation of children from 4 to 6 years of age in the Federal Constitution – and which continued after six years with PEC 277/08 – which brought the obligation of children from 4 to 6 years of age in LDB 9394/96 – ; these are the decisive moments for the amendment to the Constitution in 2009, n. 59/09 in article 208, and finally in 2013, in Law 12,796/13 the amendment of the LDB in article 4.

According to the research, Law 12,796/13 was widely accepted by education professionals, and some of them expressed their opinion on the subject, even though they had little knowledge and reflection on the changes in ECE. What was distinctive in their reports was the clarification of the responsibility of municipalities to offer vacancies for children from 4 to 5 years old. This charge is in art. 11, of the LDB (BRASIL, 1996), which establishes the obligation of the municipalities in relation to their educational spheres, prioritizing the ECE, as well as promulgating that the resources destined to education must attend primarily to this level of education. These and other issues are still unresolved, as we need democratic spaces in school and society that allow a standing from citizens with co-responsibility.

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