

# Public Prosecution's Office extrajudicial performance and the right to early childhood education:<sup>1</sup> a case study<sup>2</sup>

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## Abstract

In this article we intend to analyze the extrajudicial performance of the Public Prosecution's Office (PPO) regarding the right to early childhood education (ECE), through the Conduct Adjustment Terms (CATs), using the case of the municipality of Telêmaco Borba (Paraná). We seek to understand the ways in which the institution impacts the enforcement of the right to ECE in this municipality. We interviewed the stakeholders, who took part in the signing and implementation of the CATs, and analyzed the interviews along with enrollment data and documental sources – regarding the signing process and other related activities in the legislative branch. Using these sources, we try to understand causes and effects of the ECE judicialization process that took place in this town. We understand judicialization as the displacement of issues usually debated by elected officials to the justice system sphere, extrajudicial activities included. The results point to the intensification of disputes between the administration and the PPO, with alleged meddling between the administrative discretion and the activities of the prosecution. Moreover, we noticed the broadening of the discussion on the access to ECE, denoting the expansion of the entitlement of local citizens regarding their educational rights.

## Keyword

Judicialization of education – Public Prosecution's Office – Early childhood education.

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## Introduction

The Brazilian context of the 1980s and 1990s was marked by a broad debate regarding children's rights and educational rights, leading to the enacting of the right to early childhood education (ECE) – among other rights – as a State's duty (SILVA, 2001; SILVEIRA, 2008). Within the process of national democratization, children become the *absolute priority* in terms of protection, rights' enforcement, and formulation of public policies (BRASIL, 1990; SILVA, 2001). Within this process, the preschool level, now understood as a right of all children, is transferred for the social assistance departments to the educational departments, consolidating the understanding that education and care are inseparable (CERIZARA, 1999; COUTINHO, 2002). However, such legal and political advancements do not translate unequivocally into Brazilian childhood's reality – low and unequal enrollment ratios show wide regional, social, and racial inequalities (ROSEMBERG, 2006). When analyzing the data on the creation of seats in this level of education, we can see the historical educational debt towards young children persists. Data from the INEP (DIRET, 2016) shows the distance towards the goal of universalizing mandatory education, since 10.4% of children between 4 and 5 years of age were still not enrolled in ECE in the year of 2014. For the preschool level we have enrollment ratios of 15% in the North; 17.9% in rural areas; 29.3% for Black and Brown population; 23.3% for the poorest quartile; 34% for the overall age population (DIRET, 2016).

As we see, despite a prioritization of quantity over quality in the expansion of services, even a part of the 4 and 5-year-olds – who should be enrolled in mandatory education according to the Constitutional Amendment n. 59 of 2009 – and a big portion of the children between 0 and 3 years of age were still not enrolled in the year of 2014. The historical national data on enrollment in this level shows progress, but also the need to keep demanding access with equal opportunities for the whole population.

The data from the state of Paraná also shows exclusions, with 39.4% of enrollment in preschool and 87.6% in pre-K in 2014. The state is beyond the country when enrollment in preschool is considered, but is ahead in terms of pre-K (DIRET, 2015). In that sense, considering the legal deadline for universalizing pre-K in 2016, Paraná will hardly enforce the mandate – even if the data on the last years is still not available<sup>5</sup>. This enrollment gaps can be understood as a justification for the involvement of the Public Prosecution's Office (PPO) in this matter.

The analysis of the ECE judicialization in Paraná shows a wide use of individual and collective lawsuits to demand seats, along with extrajudicial activities of the PPO to expand this right (SILVEIRA, 2015). Here we understand the judicialization phenomenon as the displacement of issues usually debated by elected officials to the Judiciary (BARROSO, 2009) and the justice system, extrajudicial activities included (SILVEIRA, 2015). In this process, we see as especially relevant the collective tools employed to demand the right to

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**5-** The data from the second monitoring report of the National Plan of Education, published by the INEP after this article was finalized, confirmed the non-compliance with the legal goal in the state. Such data deals with population projection using numbers from the Continuous National Research by Households' Sample (Pnad). According to this data, in 2016, 36.8% of children between 0 and 3 years of age was enrolled in preschool, while 92.5% of the children between 4 and 5 years of age was enrolled in pre-K (DIRET, 2018).

education through the justice system, since those have broader goal and can have bigger effects in educational policies. Moreover, most collective legal tools used in the state of Paraná between the years of 2008 and 2016 to demand ECE were Conduct Adjustment Terms (CATs) signed by the PPO.

CATs are extrajudicial executive bonds that can be signed by the PPO to conform the conduct of administrators and elected officials to legal norms (BRASIL, 1985), including those that protect childhood (BRASIL, 1990). In Paraná, due to a strategic project to expand the right to ECE, promoted by the Operational Support Center for Children and Adolescent Justice Prosecutions/Educational Area – named Caopcae/ Educação – there were 37 municipalities with CATs demanding new seats in this level of education. Among them, the municipality of Telêmaco Borba stands out, with the first CAT, signed in 2008, altered in 2011, and renegotiated in 2013, leading to the signing of two new CATs.

Therefore, this case study is *understood as relevant to understand the effects of the ways in which the PPO acts through the CATs to enforce the right to ECE in Paraná*. We analyzed three kinds of sources, with the CATs and legislative texts as documental sources; interviews with actor involved in the process (justice prosecutors, municipal secretary of education and president of the guardianship council); and quantitative data on enrollment.

In that sense, it is worth discussing theoretically the effects of judicialization/legalization according to Gauri and Brinks (2008). The authors affirm it is complex to measure distributive effects without knowing who was not impacted, dialoguing with the idea of repressed demand (SANTOS, 2011). The authors see equally distributed effects when there are free services to access justice, even though some services can be structured in a way that ignores demands from unprivileged groups, exacerbating inequalities. However, demands that arrive to the court's docket possibly were ignored by elected officials; therefore, preventing judicialization would not promote advancement either. In that way, the relevance of collective demands is underscored, as a possible source of wider benefits, especially for collective consumption services (GAURI; BRINKS, 2008).

Regarding indirect effects there are those within justice system, law, and jurisprudence; there is also a tendential broadening of the elected officials' concern in complying to a court ruling in advance, to prevent lawsuits, which can expand effects to other people in the same situation (the case of some drugs in Brazil). Even when lawsuits are lost by plaintiffs, they can generate a political reaction, opening spaces for negotiation and consensus. Other interesting effect in the symbolic level is the expansion of *entitlement*<sup>6</sup>, which consists in the transformation of what is socially possible. According to Gauri and Brinks (2008), this is made possible through litigation campaigns that demonstrate that specific aspirations and desires can be understood as needs that must be attended by the State.

The authors point out that such indirect effects are conceptually clear but hardly measurable (GAURI; BRINKS, 2008). We believe, however, that the case of ECE

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**6-** Expansion of *entitlement* — understood here through the lens of Pitkin (1981) — refers to a broadened comprehension, among the population, that accessing specific services is part of their subjective rights and can be demanded.

judicialization in Telêmaco Borba illustrates indirect effects in the level of political reaction and social *entitlement*. Therefore, we start with a contextualization of the municipality, followed by an analysis of the causes, contents, and effects of the CATs. Finally, we discuss the involved actors' discourses, since those compete over the responsibility for expanding access to ECE.

## The case of Telêmaco Borba

The municipality of Telêmaco Borba is in the east-central portion of Paraná state, with a majorly urban population of 76,550 inhabitants (IBGE, 2016). More than 90% of its territory belongs to Klabin, a cellulose extracting company, whose installation in the state is strongly connected to the origins of the town. In 2010 there were 4,559 children between 0 and 3 and 2,267 between 4 and 5 years of age in Telêmaco Borba (IBGE, 2016), with an enrollment ratio of 20.8% in preschool and 93.7% in pre-K (IBGE, 2016; INEP, 2016) – however, there are seasonal fluctuations in the population, connected with industrial developments (CAVA, 2014). On Table 1, we have numbers of seats in all levels of education provided by the municipality.

**Table 1** – Enrollment in educational levels in the municipality of Telêmaco Borba

	2010			2016		
	Preschool	Pre-K	Primary School	Preschool	Pre-K	Primary School
<b>Municipal</b>	821	1467	4806	576	1653	4935
<b>Private</b>	128	298	587	208	440	827
<b>TOTAL</b>	949	1765	5393	784	2093	5762

Source: organized with data from INEP (2016).

Among the 37 municipalities with CATs in Paraná, Telêmaco Borba was the first to have it signed, in 2008. Regarding the first signing process, no information was gathered, since the justice prosecutor and administrators in charge were no longer in office. We used narratives by the involved actors when the data was collected (2016) and the prosecutor that signed the CAT in 2013. We seek to understand how things were after the 2008 CAT, which led to what the municipal secretary of education understands as a renegotiation process in 2013 (OLIVEIRA, 2016).

**Figure 1** – Timeline of the CATs' signing in Telêmaco Borba

YEAR	2008	2009	2010	2011	2012	2013	2014	2015	2016
Mayor in office	1 <sup>st</sup> administration	2 <sup>nd</sup> administration			One administration				
	Eros Danilo Aratijo (PMDB)			Luiz Carlos Gibson (PPS)					
CAT signing	CAT		CAT adjustment		2 CATs				
CAT's demand	1340 seats 200/year		1340 seats 100/year		Overt demand from 0-3 Absolute demand from 4-5				
Signing prosecutor	Information available		Ana Carolina P. Franceschi		Thiago G. Cava				
Signing secretary of education	Information not available		Claudia Maria da Cruz		Celso A. S. de Oliveira				
Prosecutor in charge	Information not available				Thiago G. Cava		Two other prosecutors		<u>Diogo A. Russo</u>

Source: developed with data collected in the interviews.

The first CAT, in 2008, demanded the creation of 1,340 seats, with a minimum of 200 seats a year. The request did not differentiate sub-levels of ECE and defined a high fine, when compared to other CATs analyzed in the state. However, the CAT lacked a deadline and was renegotiated in 2011, changing the annual minimum to 100 seats. However, we can see that after the signing there was a seat expansion, but never in the level defined by the CAT (PARANÁ, 2008; 2011).

**Table 2** – Number of public seats created yearly in Telêmaco Borba's ECE in parallel with the CAT's demands

CAT's demand	Yearly increase of 200 seats			Yearly increase of 100 seats		
	2008	2009	2010	2011	2012	2013
Years	2008	2009	2010	2011	2012	2013
New seats	-188	-29	209	20	43	-91

Source: organized with data from INEP (2016) and Paraná (2008; 2011).

Only in 2010 the established number is accomplished, but that is followed by a slower pace in expansion, straight after the reduction of the number demanded yearly. That does not mean that the CAT did not generate effects, especially because before its signing, there was a significant decrease in the number of seats, between the years of 2007 and 2008. Reverting such a scenario in 2010 seems relevant and might stem from the CAT signing. That said, we will focus in the case as it presented itself in the year of 2013, when the new CATs were signed, and currently, when the CATs effects seem to be ongoing.

## The context of Telêmaco Borba, before and after the Conduct Adjustment Terms

Even if the 2008 CAT does not present the expected effects in seat expansion, by the end of the second Araújo (PMDB<sup>7</sup>, 2009 a 2012) administration we see an interest in expanding enrollment in this level of education. That is noticeable through eight laws approved by the municipal legislative in 2012, allocating supplementary budgetary credits in the educational area. Six of those laws also refer to ECE, amounting a total of R\$ 6,270,086.07 invested in education, with a part of its investment in ECE. Two of those laws, that amount a total of R\$ 1.5 million are exclusively aimed at building or expanding Municipal Centers of Early Childhood Education (MCECEs).

We underscore that all those laws were voted due to requests from the Executive branch, during the last months of administration, denoting and electoral interest in the matter. Apparently, there was an organized demand by citizens that could consider the simple allocation of resources a breakthrough – since at this moment there was not enough time to actually create seats before the elections. Nevertheless, electoral process lead other group to power, with the election of Gibson (PPS<sup>8</sup>). It was not possible to find Gibson's campaign material, but when the candidate sought reelection in 2016 we found the affirmation of education as a priority, emphasizing constructions and 'heavy' investment in education.

Therefore, educational issues seemed to have centrality when the CATs were signed in 2013, which can stem from the previous judicialization cycle and the citizens' *entitlement*. *In this context, the arrival*<sup>9</sup> of a new prosecutor, Cava (2014), appears to be another cause for the CATs' signing. The prosecutor is seen by the other interviewees as a relevant actor in the process, one that performed his tasks adequately (SILVA, 2016; OLIVEIRA, 2016; RUSSO, 2016). The actors external to the PPO see him as available to dialogue (SILVA, 2016; OLIVEIRA, 2016), while Cava (2014) himself underscores his relationship with municipal officials and employees as based in confidence and proximity.

Therefore, the profile of the justice prosecutor seems relevant to explain the process, dialoguing with Silva's (2001) discussion. Moreover, the prosecutor affirms that the municipal employees were interested in dealing with educational issues, which allowed them to "enhance the public service" (CAVA, 2014). According to Cava (2014), the main PPO demand was on ECE seats, whereas the waitlist had 1,200 children in 2013. The previous CAT demanded the creation of 1,340 seats in 2008 and 1,630 in 2011 (PARANÁ, 2008, 2011), while 241 have been created since then (INEP, 2016). However, we must keep in mind the seasonal fluctuations in the town's population. "The list of 1,200 children did

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**7-** Translator's comment: Party of the Brazilian Democratic Movement, a centrist party whose origin derives from the moderate opposition during Brazilian military dictatorship.

**8-** Translator's comment: Popular Socialist Party, a social democratic party that originated from the Brazilian Communist Party after the collapse of USSR.

**9-** Translator's comment: When we mention the arrival of a prosecutor, or the high prosecutors' turnover, that refers to the organization of most state PPOs in Brazil. The prosecutors are hired through civil service examinations and must move between counties in the first years, going usually from smaller to bigger towns, where they can remain with job stability.



not represent a real number, since many parents got there, signed their children in the list [...], left the municipality, and did not inform the secretary of education” (CAVA, 2014).

Such matter seems to explain partially the oscillation in the expansion of seats during the validity of the three CATs. However, Cava (2014) underscores that the 2008 CAT was not solving the problem, with parents demanding seats daily to the prosecution. According to the prosecutor, the priority criteria for enrolment were a hamper, while defining priority for children at-risk; families with incomes below three minimum wages; socioeconomic situations considered as emergencies by the social assistance department; and only then the chronological criterion (PARANÁ, 2008). According to Cava (2014), such criteria made many families reach out to the PPO, leading him to act.

In this context, the prosecutor sought the Municipal Secretary of Education (MSE) to verify the compliance to the CAT. The secretary of education affirms he only signed the new CAT because the previous one was already in force, having been signed by the previous administration and obligating him to comply.

From the moment you sign a conduct adjustment you compromise yourself, even if there is no law forcing, as is the case with 0 to 3 [...]. The Constitution says it is a universal right, a subjective right, from the age of 4, so, from 4 to 5 we universalized. The goal of the National Plan [of Education] says that in 10 years we must accomplish half of the waitlist. That we already accomplished today. So, the idea is not following the law strictly, but solving the waitlist issue. [...] That is the PPO’s understanding, and they could not force it through legislation, but they are able to force it from the moment the CAT is signed. (OLIVEIRA, 2016).

We notice that the municipal secretary of education implies that the legal framework projects the enrollment of only half the children who demand seats in preschool. In reality, it establishes that 50% of the population in this age range must be enrolled by 2024, being an obligation of the administration to offer seats to any children demanding it. In any case, the CAT for preschool enrollment does anticipate the deadline established by law, when it determines 2017 as the deadline for compliance. “As I could not defer from taking responsibility over this CAT [...], we talked so that it would be in feasible conditions. For this reason, this third CAT was signed. Just to make the goals in the CAT more suitable to reality” (OLIVEIRA, 2016).

Such adaptations, mentioned by Oliveira (2016) and Cava (2014), are related to the possibility of offering half-day services and a lower number of seats to be created every year. According to the municipal secretary of education, full-time services are widely available in the town, with high-quality standards. With this framework, it would not be possible to expand enrollment in the pace the PPO desired. Regarding deadlines, the prosecutor underscores those were expanded until 2017 for children between 0 and 3 years of age, which was defined in a public audience<sup>10</sup> (CAVA, 2014).

To this public audience was allegedly “invited all the population to participate, [...] to make a new agreement with the municipality” (CAVA, 2014). According to the prosecutor,

**10-** Translator’s comment: Public audiences are meetings used to involve citizens, associations, and other groups in the decision-making processes. Those parallel the concept of a town hall meeting.

the turnout was low, despite the advertising of it in mass social medias. In the secretary's narrative, the public audience would have been an initiative of the administration. We should add that a law from 2008 established that public audiences on education happen every three months, whereas this frequency was changed to six months by a law approved in 2016, by request of the Executive branch (TELÊMACO BORBA, 2008; 2016a). It was not possible to verify if the 2008 CAT's negotiation process had any relation with this law, but the law was approved two months prior to the CAT.

In any case, a public audience happens, besides the negotiation between the PPO and the MSE, leading to the signing of two CATs in October 2013. Both Cava (2014) and Oliveira (2016) attribute to themselves the initiative for signing two separate CATs, since there was a constitutional deadline for 4 and 5-year-olds in 2016, while with 0 to 3-year-olds the deadline could be expanded. The first of those CATs aims at universalizing enrollment for 4 and 5-year-olds, with 2014 as a deadline for overt demand and the end of 2015 as a deadline for the absolute demand<sup>11</sup>, establishing that all children should be enrolled by the beginning of 2016 schoolyear. The second CAT implicates the municipality to serve all children between 0 and 3 years of age that express interest in enrolling, with the determination to enroll 15% of the overt demand by the end of 2014, other 20% by 2015, 30% by 2016, and the rest of it by the end of 2016 (PARANÁ, 2013; 2013a).

Regarding the formulation of the CATs, two elements should be underscored in its content: the periodic refiling of the waitlist and the priority criteria, which differ from those in the previous agreement. First, because they put children with disabilities along with those at-risk, as a top priority. Moreover, they change the socioeconomic criterion, including only families with *per capita* incomes below half a minimum wage. According to Cava (2014), such a change in the criterion was suggested by representatives from the Reference Centers for Social Assistance, adapting it to the standards of federal programs. Finally, it is determined that children that fit into the socioeconomic criterion should be deferred in case of other children who are in the waitlist for longer than a year (PARANÁ, 2013; 2013a).

Regarding the waitlist, the CAT establishes there must be an initial refiling, during which the parents/guardians should receive a record establishing that they should renew the registry every six months, being removed from the waitlist otherwise. Another highlight is the obligation of the secretary to publish the updated waitlists in a website and in the MCECEs. According to Cava (2014), that stems from the previous MSE decision of publishing their waitlists in a *blog*<sup>12</sup>, whereas the prosecutor decided to "make it overtly defined, so they would keep it". In fact, those lists started to be published in the beginning of 2013, showing an attention to the issue before the CATs.

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**11-** Translator's comment: The concepts of overt demand and absolute demand are widely used in the discussions surrounding social rights in Brazil. When education is concerned, the first refers to waitlists, or children whose parents explicitly required the access to a service. The second refers to the whole population in a specific age range, that according to law should be enrolled. Santos (2011) discusses such concepts, along the idea of repressed demand, mentioned in the first session of this article. Repressed demand refers to those who are not requesting the access to public services, because they lack knowledge, tools, or power to do so.

**12-** Available at: <<http://smetelemaco.blogspot.com.br/>>.



In that sense, we can say the CATs were formulated through dialogue and with an understanding of the local reality, which appears clearly in the clauses that discuss priority criteria, waitlist periodic refiling, waitlist publication in the internet and the MCECEs, and the negotiated deadlines for compliance.

As for indication of effects, we notice an interest from the administration in investing in the educational area, through the resources predicted in the Pluriannual Plan (PAP), approved by the administration in the beginning of 2014. In the actions by units and departments, we see that the MSE prediction is higher than any other municipal department of the executive branch (TELÉMACO BORBA, 2014). It is interesting to point out that, when the plan was approved, the 2013 CATs were already signed. Is such prioritization due to the PPO's pressure, to the citizens' demands, or an option made in advance by the administration? We shall return to this discussion, but an interweaving between the three factors seems possible.

Cava (2014) states that after the CAT signing, guardians of children with no seat kept reaching to him. However, the guidance was that the MSE services should follow the CATs' criteria and. Therefore, the guardians were referred to the MSE to learn about their position in the waitlist and the enrollment criteria. According to the secretary of education, the procedure simplified the work, making the process more transparent through the publicization of the waitlist and its criteria (OLIVEIRA, 2016).

Oliveira (2016) states he had problems previously, with attempts from parents and elected officials to interfere in the order of the waitlist, which was solved after the CATs' signing. The president of the guardianship council, Silva (2016), states there was an increase in their workload, since most families brought their demands to the council and no longer to the PPO. Silva (2016) criticizes the priority criteria and the evaluation of at-risk children cases, which ignore the situation of working mothers that also need the service. Nevertheless, he sees improvements following the CATs' signing and other initiatives by the administration. The municipal secretary of education believes the CATs' signing improved and made the waitlist system less unfair (OLIVEIRA, 2016).

The secretary adds that the dismemberment of the request allowed solving the issues of 4 and 5-years-olds, whereas the waitlist for this age no longer exists. However, the problem was bigger with children between 0 and 3 years of age, since the work is differentiated and adapted to the needs of very young children, being necessary to keep the maximum number of pupils per teacher stable (OLIVEIRA, 2016).

According to Oliveira (2016), the prosecutors turnover was a supplemental source of unnecessary workload for the MSE, since the newcomers requested information already provided by the administration to previous prosecutors. The prosecutor in office when data was collected has arrived in the county<sup>13</sup> in March 2016, after the 4 and 5-year-olds issue was solved. This actor incisively affirms that his work is based in a relationship with society, being consequential to previously existing demands. He reinforces the idea that the PPO and the society are intrinsically connected, which is discussed in part of the

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**13** - Translator's comment: County here is used as a translation for "comarca", which is a juridical term for a geographical area. Those are the jurisdictions of prosecutors and judges and are usually comprised by one or two municipalities, or a group of small municipalities.

existing theory (FRISCHEISEN, 2000; SILVA, 2001; SADEK, 2009). In that sense, he affirms to still receive constant requests regarding ECE, direct or indirectly, leading him, at his arrival, to organize a public audience to verify the compliance to the CAT (RUSSO, 2016).

The prosecutor states the relationship among the PPO, the administration, and the society have been of compliance oversight, concerned with the creation of new seats in the established deadlines. He indicates his own availability to work collectively to solve issues, understanding obstacles in creating seats with high-quality standards. “So, we are trying, never interfering, of course, in the administrative discretion, but [...] through conversation, in a relationship through this civil inquest” (RUSSO, 2016). However, according to Oliveira (2016), there is a process of meddling in his administrative discretion; he appears to be distressed with the paperwork generated and the whole relationship with the PPO.

Therefore, we see an intensification of disputes between the administration and the PPO, regarding the compliance to the CATs, despite the agreement that the first of them was already accomplished and second is being monitored. In this sense, we examine ECE enrollment, but considering the caveat that the seats reported as preschool are only full-day seats in MCECE, while those reported as pre-K are the half-day seats in schools<sup>14</sup> (OLIVEIRA, 2016). Such discrepancy in data reporting, along with seasonal fluctuations in the population, leads to an unusual expansion of seats, for a municipality that is allegedly adjusting the scope of ECE services.

Therefore, the number of seats does not allow conclusions, despite a significant expansion right after the CAT signing. Moreover, we see bigger expenditures in preschools in the years of 2013 and 2014, while in 2015 the expenditures are more significant in pre-K (SIOPE, 2013-2015)<sup>15</sup>. As for the drops in enrollment, the secretary states they are due to the seasonal fluctuations in population and to parents that waive their children’s position in waitlist to enroll them in private institutions (OLIVEIRA, 2016). Indeed, the enrollment in private ECE in Telêmaco Borba has been raising in a relatively constant fashion since 2010 (INEP, 2016), even if those numbers are not equivalent to the 2015 decrease in public enrollment.

**Table 3** – Number of public and private seats expanded in Telêmaco Borba by year since the 2013 CATs

Year	2014	2015	2016
Public seats created	106	-82	-55
Private seats created	32	42	39

Source: organized with data from INEP (2016).

Noticeably, when considering the number of seats created, the data is contradictory; however, there is an agreement between the stakeholders that the pre-K issue was solved, while the preschool issue is improving gradually. We understand that the lack and

**14-** Translator’s comment: The standard is to report seats occupied by children between 0 and 3 years of age as preschool (*creche*), and children between 4 and 5 years of age as pre-K (*pré-escola*).

**15-** The numbers were corrected using the IPCA-E (IBGE) index for December 2016 (BANCO CENTRAL DO BRASIL, 2016).

imprecision of data since 2016 is relevant for this research, since the compliance with the first CAT happened in the beginning of this year, according to Oliveira (2016). Moreover, the way data is reported and the seasonal fluctuations in population must be considered. Therefore, considering all actors agree the situation is improving (OLIVEIRA; 2016; RUSSO, 2016; SILVA, 2016; CAVA; 2014), we accept that there is a compliance process in progress, even without unequivocal data.

Oliveira (2016) sounds satisfied to say that he was contacted by a secretary of education from the western portion of the state, referred to him by the prosecutor Cava, since the town was a case of success in dealing with waitlists and priority criteria. Nevertheless, the waitlist in 2016 contained 573 children between 0 and 3 years of age waiting for a seat<sup>16</sup>. Silva (2016) considers this a high number – considering the town's size and the money invested – and complains about the pace of the expansion. He also underscores that the deadlines established tend to be renegotiated without no punishment for non-compliance.

Notwithstanding, the preschool issue appears to be in process of streamlining. The goal of compliance by 2017 does not seem out of reach, with the current construction of a new MCECE and open bidding processes for other three (TELÊMACO BORBA, 2016). As for the alleged slow pace in compliance, Oliveira (2016) and Russo (2016) seem to agree that it is necessary to maintain high-quality standards; the secretary of education highlights this constantly, focusing on the challenge of maintaining full-day services.

In this sense, we analyze data on full and half-day enrollment in the municipality, trying to look beyond the secretary's statement that preschool is a full-day, while pre-K is a half-day service.

**Table 4** – Historical series of enrolment in public ECE in Telêmaco Borba, by length of service

Level	Length of service	2011	2012	2013	2014	2015	2016	% growth 2011-2016
Pre-school	Half-day	47	4	2	2	0	0	-100
	Full-day	799	869	843	883	595	576	-27,9
	Total	846	873	845	885	595	576	-31,9
Pre-K	Half-day	1393	1415	1369	1417	1273	1181	-15,2
	Full-day	73	73	51	73	422	472	546,6
	Total	1466	1488	1420	1490	1695	1653	12,8
Total	Half-day	1440	1419	1371	1419	1273	1181	-18
	Full-day	872	942	894	956	1017	1048	20,2
	Total	2312	2361	2265	2375	2290	2229	-3,6

Source: organized with microdata from the Schools' Census (INEP; 2016).

We see significant numbers of full-time seats during the whole period, with an increase between 2014 and 2016, attesting there was no choice to expand half-day seats

**16-** Calculated using waitlists by MCECE, publicized by the MSE. Available at: <<http://smetelemaco.blogspot.com.br/>>. Access in: 21 Nov. 2016.

to comply faster – despite the secretary’s request that the CATs allowed half-day services. Hence, the CATs did not lead to an expansion of half-days in detriment of full-day services, as it could be an expected effect.

Another element the administration underlines to explain delays is the hiring of new teachers through civil service examinations<sup>17</sup>, without the employment of “care professional, as it is a strategy of many municipalities”. (OLIVEIRA, 2016). According to data from the Schools’ Census of 2015, 100% of the ECE teacher in town were hired through civil service examinations, while 56.4% of preschool and 45.3% of pre-K teachers had high school training only (INEP, 2016).

Another number analyzed to evaluate the alleged high-quality standards was the number of pupils per classroom and teacher. We found an average of 7.5 children per teacher in preschool, and 22 in pre-K. As for classrooms, the average number in preschool is 14 children, with 22 in pre-K. We can see that probably every classroom in preschool has two teachers, whereas in pre-K that could be happening partially too, since most pre-K seats are half-day and the professionals tend to work full day (INEP, 2016).

Therefore, the general scenario of services offered in 2015 corroborates the idea that ECE in this municipality has a level of high-quality standards, despite the lack of data to evaluate that thoroughly. Even though 573 children remained in the waitlist in 2016, the collected data – based on quantitative indicators and the contact with stakeholders – indicate Telêmaco Borba might be a case of success, with a partial streamlining of the ECE services’ reach, maintaining high-quality standards. All interviewees agree the situation was improved, but each of them underscores his own role in such advancements. That raises up questions concerning the evaluation of the CATs’ effects, being complex to determine if the expansion of enrollment is due to the CAT signing or other initiatives by stakeholders. Therefore, we analyze the different and contradictory narratives in the following session. Those narratives show disagreements regarding what caused improvements in the enforcement of the right to ECE, pointing to the intensification of disputes between administration and PPO.

## **The expansion of enrollment according to different actors**

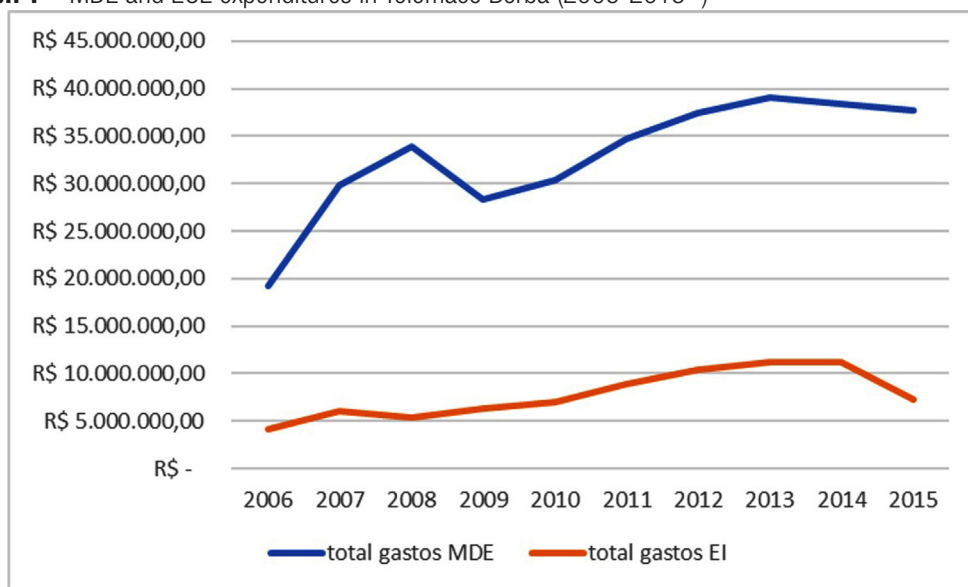
According to Oliveira (2016), the expansion of ECE services would happen in his administration anyhow, while the single contribution of the PPO was organizing the waitlist. Indeed, there are indicatives of the administration’s interest in expanding enrolment in this level. One of them is the priority of education among other expenditures and the absence of legislative requests for emergency resources, as there were in the previous administration. When analyzing executed budgets (SIOPE, 2014; 2015) – even without the full execution of the PAP – we have 31% of tax revenues invested in education in

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**17-** Translator’s note: Civil service examinations are broadly used in Brazil for public institutions, giving those hired job stability and benefits. In ECE teachers’ examinations, applicants are required to have specific training as requested in national laws (i.e.: teacher training in high school or higher education). Care professional are usually not required to have specific training and might be hired with worse labor conditions.

2014, with 31.5% in 2015, both above the constitutionally established minimum<sup>18</sup>. Beyond the budgetary prioritization of education, we analyzed the level of prioritization of ECE among other expenditures with Maintenance and Development of Education (MDE).

**Graph 1** – MDE and ECE expenditures in Telêmaco Borba (2006-2015<sup>19</sup>)



Source: Organized with data from SIOPE (2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015).

We can notice fairly stable ECE expenditures in the previous administration, despite oscillation in the overall MDE expenditures. In the last administration, regardless of the prioritization narrative, we have a reduction in ECE expenditures between 2014 and 2015. In this context, the expenditure per-pupil in public ECE is also reduced (SIOPE, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015; INEP, 2016).

Hence, the budgetary data is also not conclusive to evaluate prioritization. However, the prosecutor that signed the CATs saw in the secretary of education's personnel willingness to solve problems, while those same employees complained about the mayor's political will to comply. The prosecutor says that "even without the involvement of the society, the municipality's personnel was really good, and hence I can see results in education and childhood" (CAVA, 2014).

Elements that corroborate this statement are the maintenance and expansion of full-day services; the administration's supplementary investment in MCECEs that were

**18**- Translator's note: The Brazilian Constitution of 1988 has some mandatory budget allocations imposed to the Federation, the states, and the municipalities. The educational minimum allocation is established in 18% for Federation and states, and in 25% for municipalities. These percentages must be invested in what is constitutionally defined as Maintenance and Development of Education (MDE), which cannot include social services, food provided for students, or infrastructure beyond the schools' buildings.

**19**- The numbers were corrected using the IPCA-E (BGE) index for December 2016 (BANCO CENTRAL DO BRASIL, 2016).

to be built with Federal resources that did not arrive (OLIVEIRA, 2016); the prompt response of the secretary of education to information requests from the legislative branch, regarding solutions to the MCECEs' waitlist issue<sup>20</sup>. But legislative discussions also suggest that organized demand from citizens was increasing. In 2013, the legislative branch recommended seat expansion and infrastructure improvement seven times to the executive branch; there are 17 recommendations and five information requests to the executive branch between the years of 2013 and 2016. Accordingly, despite reductions in ECE expenditures, there seems to be enough pressure to maintain high-quality standards and full-day services – despite significant enrollment of children in private institutions.

Such a context seems to stem from the notion of *entitlement* (PITKIN, 1981; GAURI; BRINKS, 2008), once the mobilization surrounding the CATs led to an increase on organized demand. Even without interviewing actors from civil society, we found indicatives of that in the State's reaction. The case differs from Araucária's, where there were a mediatization of the issue<sup>21</sup> and the municipal teacher's union as an expressive actor (SILVA, 2016a). Nonetheless, the issue seems to gain centrality with the two judicialization cycles. In MSE's blog, for instance, we see the new administration (elected in 2016) stated as a priority "to reduce waitlist in MCECEs and improve the quality of full-day services" <sup>22</sup>.

As for effects in seat expansion, even if the compliance is happening, we have Russo (2016) attributing it to the PPO's pressure, connected to its social representation, while Oliveira (2016) attributes it to prior administration's priorities. The secretary of education, who was also president of the Union of Municipal Leaders of Education in Paraná, indicates judicialization can have positive effects when administrators are lagging in their activities – which he alleges is not his case. We could not check the verity of these affirmations, especially since the guardianship councilor, Silva (2016), sees improvements and flaws both in the side of the PPO and of the secretary of education during the process.

We underscore, however, that the secretary of education affirmed the law does not enforce the right of enrollment for all children between 0 and 3 years of age that demand it, but only for 50% of the waitlist. Hence, we can state that, without the PPO's intervention, the administration would not be investing the same efforts in including all children in preschool. That indicates the influence of PPO's performance in the enforcement of the right to ECE, showing the intensification of disputes between these two institutions, stemming from an incomplete commitment (GAURI; BRINKS, 2008) by the administration. Analyzing the scope of responses to judicialization, we underline the comprehension of Gauri e Brinks (2008), that courts depend on the will of other stakeholders to generate compliance to their rulings; even with the support of relevant political actors, there could be barrier within the level of bureaucracy. Therefore, we see a context where a crossing of factors generated positive effects in the enforcement of the right to education. We refrain

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**20** - The municipal laws and other documents formulated by the legislative branch are available at: <<http://www.telemacoborba.pr.leg.br/leis/legislacao-municipal>>. Access in: 09 Jan. 2017.

**21** - No News were found through Google News' search tool. We used the descriptors "Telêmaco Borba" and "Educação Infantil" (ECE), but none of the 116 results were related to the issue. Available at: <<https://news.google.com/>>. Access in: 21 Nov. 2016.

**22** - Available at: <<http://smetelemaco.blogspot.com.br/>>. Access in: 29 Jan. 2017.



from attributing these effects directly to PPO's performance, but we understand apparent disputes between State actors and civil society as quite relevant in the case.

Beside the effects, the analysis of this case illustrates Silva's (2001) classification of prosecutors as *Facts' Prosecutors* and/or *Office Prosecutors*<sup>23</sup>, as well as her differentiation of the performance of prosecutors allocated in smaller municipalities. We notice a town where, despite ruptures in acting patterns between different prosecutor (SILVA, 2016; OLIVEIRA, 2016), the decision to use extrajudicial tools remains. That is even highlighted by Russo (2016) as the most appropriate way the PPO has to solve conflicts in the field of childhood, being also better suited to its constitutional role. Another relevant point is that the case reinforces the inducing role of the Caopcae/ Educação; Cava (2014) highlights and praises their work, while Oliveira (2016) criticizes it, based on his view as a secretary and his overview of the state of Paraná.

Hence, we notice improvements brought up by the CATs' signing in two judicialization cycles, whit and intensification of disputes regarding the enforcement of a right. We see some effects in the enforcement of the right to ECE, with municipal administration seeing the PPO's work as an obstacle and the prosecutors seeing it as a relevant social control tool.

## Final considerations

Telêmaco Borba's case illustrates the prioritization of extrajudicial tools to enforce the right to ECE, with the PPO postulating the issue before the creation of the strategic plan by the Caopcae/Educação. The continuing use of extrajudicial tools seems to stem from a prosecutor's choice, whose profile is close to the idea of a *Fact's Prosecutor* (SILVA, 2001); that seems to reflect in the performance of other prosecutors occupying the office after him. Despite complaints on prosecutors' constant turnover, which allegedly hampered dialogue between the PPO and other stakeholders, we see no acute changes in prosecutor's acting patterns in the educational field.

Furthermore, the interviews show intensification of disputes, especially in the conflict between the administrator's discretion and the prosecutor's role. There is also a relevant indicator that these conflicts involve broader society: the constant pressure of parents within the guardianship council (SILVA, 2016), the MSE (OLIVEIRA, 2016) and the PPO (CAVA, 2014; RUSSO, 2016) – showing a population that understands its ability to demand rights. The legislative discussions also point this way, as much as the presence of the ECE seats' issue in electoral discourse – the social pressure seemed to be happening within legislative and executive branches. Hence, beyond a conflict between the executive branch and the PPO, we see a wider correlation of forces regarding the enforcement of the right to ECE in the local sociopolitical scenario.

Accordingly, we find that public audiences on education are institutionalized and legally enforced in this municipality. We understand this could be a central tool on PPO's extrajudicial role. We see both prosecutors interviewed value this role (CAVA, 2014; RUSSO, 2016). Russo (2016) reinforces the discourse that society is not completely able

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**23** - Translator's note: Translated from "Promotores de Fatos" and "Promotores de Gabinete".

to represent itself, whereas the institution can take over it. However, remains unsettled if the analyzed case reinforces such assumption or contradicts it. Were the advancements in enforcing the right to education reached without society's involvement, or stemming from society's endogenous boost? Is Telêmaco Borba's PPO only bringing forward a social demand or appropriating this discourse to consolidate its own power and control over the administration?

We do not reach these answers here, but indicate them for further research, in analyses that focus in civil society's role in the phenomenon of education judicialization. In this research we sought an understanding of the disputes between PPO and administration, seeing institutional conditions as central, both in this specific county jurisdiction and the municipal executive branch. We see an administration that is involved with educational issues and positions against the PPO. The intensification of disputes between the institutions could even be a dialogue catalyst, when the enforcement of right to ECE and the compliance – even if partial – to the CATs is considered.

In that sense, we do not see a case in which the PPO imposed public policy decisions to the administration. However, the PPO's role as a political stakeholder undeniably interferes in the administrator's work. On the one hand, the PPO amplifies its own discretion by diminishing the administrator's, whether by changing or reinforcing his policy planning. On the other hand, the prosecutor adapts his demands to the municipality's reality and the policies' feasibility. This strengthens Gauri's e Brinks' (2008) understanding that the legalization of policy is not a zero-sum game, bringing the logic and arguments from the political sphere to the justice system, while the legal logic and arguments become central in the administrator's decision-making process.

Summarizing, we notice a series of effects in the public policy arena, despite not trying to define causality as for what generated the expansion of enrollment in this level of education. Noticeably, however, during the validity of the CATs, there were positive effect in the enforcement of the right to education – which can also be attributed to longer-lasting involvement of a group of stakeholders in this issue. In this sense, we find relevant the symbolic effects on *entitlement* (GAURI; BRINKS, 2008; PITKIN, 1981).

Finally, we underscore that the CATs negotiation and signing in Telêmaco Borba was marked by dialogue between the different actors, leading to an enforcement tool that dialogues with local reality. Hence – beyond the issue of the administration's political will to solve the matter – we see that a CAT elaborated with dialogue can become a tool of public policy planning. We find efforts in the CATs to accomplish the goal established by the National Plan of Education PNE 2014-2024, using intermediate deadlines as instruments.

Concluding, we notice a context of gradual implementation of the right to ECE, in a scenario in which this right is fully enforced in the legal texts and there is social pressure surrounding the issue. We see the universalization of pre-K as a fundamental step, already taken, while there was a tendency to solve the preschool waitlist problem. Only a follow-up could evaluate advancements in the actual enforcement of the right do education of children between 0 and 3 years of age in this municipality. Advancements in this field will not necessarily be a consequence of this judicialization process, but could hardly be separated from it, since stakeholders are inter-connected in a relationship full of disputes surrounding the right to education.

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