



Psicologia Escolar e Educacional

ISSN: 1413-8557

ISSN: 2175-3539

Associação Brasileira de Psicologia Escolar e Educacional  
(ABRAPEE)

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Fracasso escolar e conselho tutelar: um estudo sobre os caminhos da queixa escolar  
Psicologia Escolar e Educacional, vol. 24, 2020  
Associação Brasileira de Psicologia Escolar e Educacional (ABRAPEE)

DOI: 10.1590/2175-35392020217251

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## **SCHOOL FAILURE AND GUARDIANSHIP COUNCIL: A STUDY ON THE PATHS OF SCHOOL COMPLAINTS**

Gabriela de Conto Bett <sup>1</sup>; Maria Júlia Lemes <sup>1</sup>

### **ABSTRACT**

This article is the result of research conducted on the paths taken by the school complaint in the Guarantee System for the Rights of Children and Adolescents, or “Sistema de Garantia de Direitos de Crianças e Adolescentes – SGD”. The objective was to investigate the complaints brought to the Guardianship Council and their referrals. The research was conducted in 2017 in four Guardianship Councils of one of the regions of Western Paraná, and takes School and Educational Psychology of historical-critical basis as a theoretical-methodological framework. It was a research of quantitative and qualitative nature, with the adoption of document analysis and interviews with tutelary councilors. Most requests for support by guardianship councils come from education institutions. There is a significant number of complaints from schools, which are then referred to other sectors such as Social Assistance, Health, Public Prosecution and the Judiciary branch. The reasons for the referrals allowed us to deepen our understanding of responses to school complaints and to outline alternatives for coping with school failure.

**Keywords:** Educational Psychology; school failure; child and adolescent defense.

## **Fracaso escolar y consejo tutelar: un estudio sobre los caminos de la queja escolar**

### **RESUMEN**

Este artículo proviene de una investigación realizada sobre los caminos recorridos por la queja escolar en el Sistema de Garantía de Derechos de Niños Adolescentes – SGD. El objetivo fue investigar las quejas llevadas al Consejo Tutelar y sus respectivos encaminamientos. La investigación fue realizada en el año 2017 en cuatro Consejos Tutelares de una de las comarcas de la región Oeste de Paraná, y tiene como referencial teórico-metodológico la Psicología Escolar y Educativa de base histórico-crítica. Su delineamiento fue de cuño cuantitativo y cualitativo, con la adopción de análisis documental y entrevistas realizadas con consejeros tutelares. Se percibió que la mayor demanda de los consejos tutelares proviene de la educación, habiendo un número significativo de quejas escolares, las cuales son encaminadas a otros sectores como Asistencia Social, Salud, Ministerio Público y Poder Judicial. Los motivos de los encaminamientos permitieron a nosotros profundizar la comprensión acerca de las respuestas dadas a la queja escolar y dibujar alternativas para el enfrentamiento del fracaso escolar.

**Palabras clave:** Psicología Escolar e Educativa; fracaso escolar; defensa de niños y adolescentes.

## **Fracasso escolar e conselho tutelar: um estudo sobre os caminhos da queixa escolar**

### **RESUMO**

Este artigo decorre de pesquisa realizada sobre os caminhos percorridos pela queixa escolar no Sistema de Garantia de Direitos de Crianças Adolescentes – SGD. O objetivo foi investigar as queixas levadas ao Conselho Tutelar e seus respectivos encaminhamentos. A pesquisa foi realizada no ano de 2017 em quatro Conselhos Tutelares de uma das comarcas da região Oeste do Paraná, e tem como referencial teórico-metodológico a Psicologia Escolar e Educativa de base histórico-crítica. Seu delineamento foi de cunho quantitativo e qualitativo, com a adoção de análise documental e entrevistas realizadas com conselheiros tutelares. Observamos que a maior demanda dos conselhos tutelares provém da educação, havendo um número significativo de queixas escolares, as quais são encaminhadas a outros setores como Assistência Social, Saúde, Ministério Público e Poder Judiciário. Os motivos dos encaminhamentos nos permitiram aprofundar a compreensão acerca das respostas dadas à queixa escolar e esboçar alternativas para o enfrentamento do fracasso escolar.

**Palavras-chave:** Psicologia Educativa; fracasso escolar; defesa da criança e do adolescente.

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## INTRODUCTION

The present research focuses on everyday routine of work at the Assistance Service for Childhood and Youth of the Court of Law in the State of Paraná, or “Serviço Auxiliar da Infância e Juventude do Tribunal de Justiça do Estado do Paraná” – TJ/PR. In our communications with the Guarantee System for The Rights of Children and Adolescents, or “Sistema de Garantia de Direitos de Crianças e Adolescentes” – SGD, we observed a close relationship between the school, the Guardianship Council (GC), and Juvenile Justice.

Guardianship Councils are a result of determinations by the Child and Adolescent Statute, or “Estatuto da Criança e do Adolescente” – ECA (Federal Law nº 8.069/90, 1990), in order to “de-judicialize” the everyday life of children and adolescents. The history of legislation and assistance to childhood in the country provides many examples of the criminalization of poor children in the courts of law. The most important attribution of the statute is the safeguarding of fundamental rights of children and adolescents. The right to education is one example.

In this context, there are very few works on the topic but school complaints have been part of the routine for guardianship councils for several years, according to Souza, Teixeira and Silva (2003). The referrals sent to the councils, however, are still unexplored. That is the reason why we understand that it is necessary to investigate the income of school complaints at the GC. The relations established between education and the rights of children and adolescents might contribute to the maintenance of inequalities in education and justice. Here, such inequalities are social products, which are full of contradictions and reveal a political position that reflects the aspirations and interests of one class.

### THE RIGHT TO EDUCATION AND THE RIGHTS OF CHILDREN AND ADOLESCENTS: INTERCONNECTED LEGISLATIONS

The constitution of education as a Social Right, and as one of the Rights of Children and Adolescents, leads us to reflect on the articulation between specific legislations: the Federal Constitution of 1988, the Statute of Children and Adolescents, and the Education Law. The history of the right to education is permeated with a typically capitalist division of classes since its colonial period. Such division gains strength after the 1920s, the beginning of capitalism in Brazil (Nagle, 1976; Romanelli, 1986).

According to the discussions of Saviani and Duarte (2012), the mission of education is to develop humanity by means of appropriation of the cultural legacy produced by humanity's own history, and in which the school emerges as an indispensable institution in order

to culturally mediate human formation. Unfortunately, education does not offer equal opportunities for all classes. Thus, full development is not allowed for everyone. The school plays a pivotal role in the transformation of man. By nature, it is a space for the socialization of scientific knowledge, which is fundamental for the transition from empirical to abstract knowledge, for the establishment of mediations between knowledge and individuals, and for the resulting development of human kind (Saviani & Duarte, 2012).

In capitalist society, which is protected by liberal ideas, contradictions in the State present themselves as obstacles to the realization of an education that leads to development, especially for the working class, whose difficulties to access and stay at school are still a challenge. Such contradictions are evident in the history of Brazilian education, which has presented different levels of quality for each class ever since the colonial period. Poor people were given a utilitarian education whereas rich people had access to higher levels of learning such as universities and knowledge on arts and philosophy (Romanelli, 1986; Nagle, 1974). Those are the characteristics of an institution born out of the necessity to reproduce the system of social classes. Its fundamental contradiction lies in its limited possibilities to provide the opportunity to appropriate cultural legacies and the development of conscience (Lessa, 2012; Duarte, 2012).

In our country, the idea of education as a universal right and a State's responsibility was propelled by the necessity to produce workers. Therefore, ever since the 1930's, lawyers have promoted the mandatory character of education (Romanelli, 1986). For a long time, this obligation was an imposition to individuals that did not take into consideration their conditions of access to education. Such access demanded the presence of the State, but only after the military dictatorship of 1964, and the subsequent political openness, did the social movements gain strength to promote the safeguarding of rights. The State had always kept a distance from issues concerning social rights until the federal constitution of 1988, in which article 208 defines that it is the State's responsibility to ensure mandatory elementary education for free, including for those who are past the traditional age for school. The same principles apply for high school (Brasil, 1988). Public education becomes free for any level. Unlike other social rights, education is mandatory and consists of a public and subjective right, which is ensured by other legal devices such as the National Education Law, or “Lei de Diretrizes e Bases da Educação Nacional” – LDB; and the Statute for Children and Adolescents, or “Estatuto da Criança e do Adolescente” – ECA (Federal Law nº 8.069/90, 1990).

By examining the LDB with the ECA, we observe that: elementary education, with a minimum duration of eight years, is for free and mandatory. It also includes those who did not have access to education at the right age. Education is also mandatory for high school. People with special necessities are entitled to specialized educational service. Service at nurseries and schools is provided for children at ages zero to six. Access to higher education is guaranteed. These are all obligations of the State. (art. 54 of ECA) (Federal Law nº 8.069/90, 1990).

One of the cornerstones of the ECA is its article 4°, which introduces the “principle of absolute priority” for children and adolescents, who become individuals with their own rights according to the Total Protection Doctrine, or “Doutrina da Proteção Integral”. The former “Irregular Situation Doctrine” made it clear that children and adolescents should be the object of State intervention only when they were in irregular situations of beggary, vagrancy, homelessness, or delinquency (Sêda, 1996).

We emphasize that it was necessary to create tools in order to guarantee education as a basic right even though it is a universal, mandatory, free-of-charge right of children and adolescents. The fight against evasion becomes an urgency and the ECA has created a tool in order to prevent the violation of fundamental rights of children and adolescents: the Guardianship Council.

In article 101, the ECA defines protective measures to be applied in case of threats or violation of rights: I. Notification of parents or legal guardians by means of a term of responsibility; II. Guidance, support and temporary assistance; III. Mandatory registration and attendance at official institutions of elementary education; IV. Inclusion in official community or family-support programs for children and adolescents; V. Requisition of medical, psychological, or psychiatric treatment, in hospital or outpatient care; VI. Inclusion in official programs for assistance, guidance and treatment for alcoholics and drug addicts; VII. Institutional shelter; VIII. Inclusion in Family shelter programs; IX. Accommodation in substitute families – art. 101 of ECA (Federal Law nº 8.069/90, 1990).

Some of the attributions of the GC (art. 136 of the ECA, Federal Law nº 8.069/90, 1990), are: provide assistance to children and adolescents by applying protective measures; provide assistance and counselling to parents or legal guardians; request public services in health, education, social service, providence, work and security; report to legal authorities when its deliberations are disregarded without justification; report to the Federal Prosecutors cases of administrative, or legal infraction against children or adolescents; report to public prosecutors all cases likely to result in suspension of guardianship after trying all other possibilities for keeping a child or adolescent with the

biological family. Some of the determinations by the GC for parents and legal guardians (art. 129 of the ECA), are the obligation to keep their children at school, watch over their attendance and performance; and seek for special treatment when necessary. Administrator of elementary school institutions, after all other available solutions have failed, must report to the GC in cases of: child maltreatment, insufficient school attendance without any justification, school evasion, elevated rates of failing – art. 55 of the ECA (Federal Law nº 8.069/90, 1990). It is important to emphasize that the GC should be the last resort, after all other available solutions have proven ineffective.

Now that we better understand this Law, we will approach some aspects concerning the production of failure at school. It is evident that school complaints have been a major source of concern for the Guardianship Council, according to the research data we introduce here.

### **THE PRODUCTION OF FAILURE AND COMPLAINTS AT SCHOOL**

Brazilian society, ever since its first moves towards providing schools for the population, has traditionally suffered from problems such as access and permanence of students at school, failure. Student evasion, educational policies, and other educational aspects are evidence of the excluding logic underlying education in the capitalist system. Respectively, the rates of failure and evasion in 2016, according to the INEP indexes are 5.9% and 0.9% for the initial years; 11.4% and 3.1% for the final years; and 12.0% and 6.6% for high school.

Therefore, we must pay attention to the socio-political answers provided in order to explain student failure throughout the history of education in the country. There is no fixed chronological line concerning the theories for student failure, though the predominance of prejudiced conceptions is evident. Such conceptions are based on pragmatic fundamentals in conformity with the capitalist mode of producing ideas, of which the greatest expression is liberalism. One example is the set of racist theories propelled by eugenics, pronouncedly present in differential psychology. They reinforce the concept that human aptitudes are inherited and the student failure would result from organic abnormalities in the children (Patto, 1993).

Based on Darwin's evolutionist theories, differences and inequalities were due to inherited anatomical, and physiological distinctions among races. In the 1930s, the eugenicist perspective of Galton emerged in psychology, and pedagogy, and directly influenced the Brazilian educational context. Mental tests in order to measure learning skills and aptitudes became commonplace. It was all due to an increase in demand for schools, to the necessity to explain differences in the levels of

performance, and to justify the unequal access to all levels of education (Wanderbrook Junior, 2009).

Later on, the explanations, that until then had gravitated towards individual characteristics of students, migrated to family and environment (Paula & Tfouni, 2009). Explanations were no longer biological. Attention was being paid to so-called cultural aspects, which motivated research works on family relations and childcare. The principle was the prevention of diseases in the fields of mental health and education by hygienist physicians. They believed that childhood is the best time to curb possible deviations, which might cause society problems in the future (Figueira & Boarini, 2014). Liberalism, Medicine, Psychology and Pedagogy united in order to accomplish the task of proving that the causes for student failure were either organic abnormalities or the families. A student's incapacity to learn denoted ineptitudes considered natural. Theories were built upon liberal, innatist perspectives, which were predominant in the way Brazilian education was conceived and planned in the early 20<sup>th</sup> century.

Likewise, such theories justified decisions made by the justice system, which went into a "preventive trend", took children away from "dangerous" families and sent them to institutions for the sake of social protection. It was all in the name of moralistic principles, and the supposed safety of children and adolescents (Rizzini & Pilotti, 2009). The Brazilian legislation and childcare tend to control marginalized poor children by means of individualizing perspectives, which contributed to the institutionalization of children and to the blaming of families exclusively for social problems (Patto, 1993; Rizzini & Pilotti, 2009). Only in the 1980s do we begin to hear denunciations of the classist nature of education, where discrimination and justified inequalities appear as explanations for the situation in the education system (Angelucci, Kalmus, Paparelli, & Patto, 2004). In the same decade, the government enacts the ECA, as a means to make up for previous legislations.

We describe our study as an investigation into the world of school complaints, where children become statistics of student failure.

## METHOD

The research was realized in four Guardianship Councils in one of the districts of the western region of Paraná in 2017. In order to understand and provide an explanation for the object of our research, our starting point was a Marxist theory, which demonstrates that social relations are closely connected to productive forces.

Considering that the expression of reality manifests and constitutes itself by means of objective and

subjective, quantitative and qualitative elements, intrinsically related elements and that the dialectic of Marxist epistemology overcomes formal logic (Martins, 2006), the research points at both directions. Qualitatively speaking, beyond describing the school complaint, we attempted to understand the process concerning the complaints sent to the GC, and the way expectations influence activities. In a quantitative sense, we surveyed the number of complaints that were brought to the GC as well as the referrals realized by this organ to other departments. We observed the objective movements and directions of the school complaint in the guardianship council.

The first phase involved documental research in order to survey the statistics concerning referrals realized by schools to the councils in 2016. We analyzed 250 letters, out of which 180 came from schools. In addition, considering that the letters are not the only means to communicate with public institutions (telephone communications are also used so that a public service can report to another on matters concerning a certain situation involving children and adolescents and realize procedures), we consulted 67 user files (a material means to keep information on children and adolescents), and a register in which one of the councils kept the records of daily occurrences as well as of telephone calls from schools concerning complaints. Afterwards, the councilors were asked questions about the way they handled each case, and we also analyzed the records of their procedures (98 letters).

Finally, individual, semi-structured interviews were realized with four representatives of guardianship councils in order to clarify data found in the documents and the reasons for referrals. The interview script was organized onto two axes. The first axis consisted of a survey on the profiles of councilors for information concerning gender, age, formation, professional experience and how long they had been working for the GC. The second one brought information related to professional practices and procedures for school complaints. The interviews dealt with themes such as: everyday life at the GC and its relation with education (what schools have presented as complaints and how they do it, and which protective measures are applied by the guardianship council in cases concerning education); referrals to health services, to social workers, and to public prosecutors as well as the reasons for such referrals; the councilors' perceptions concerning their own attributions and the school complaints.

The analysis of data took place in the light of the Marxist conception, in which the fundamental principle states that reality contains the historical materiality of the processes of production and reproduction of human existence. The unique expression of the trajectories of

school complaints and of their underlying conceptions reveal the immediate character of a phenomenon, which must be fully understood in its complexity and socio-historical totality.

## RESULTS AND DISCUSSION

The guardianship councilors receive diverse notifications on a variety of everyday life situations involving children and adolescents. School demands are the most representative. Out of 288 complaints sent to councilors, the most representative were insufficient attendance (55.9%), students getting sick (7.29%), "cutting" class (5.90%), and issues concerning student behavior (5.55%). The remaining 25.36% bring diverse complaints such as: Low performance, children whose parents were not there to pick them up after class, suspicions concerning family violence and sexual abuse, violence at school (bullying and racial discrimination); requests for special services (psychologists, and speech therapists); violence by teacher against student, and substance abuse.

We wish to emphasize that the category named "students getting sick" was expressive. This was due to only two councils and their particular relation with the educational community in those municipalities. In these cases, the notification of the GC was made by two nurseries who requested the councilors to go pick up the sick children in order to take them home or to the hospital. Student evasion, and low attendance are commonplace in all councils. GC notifications due to low attendance are mandatory - art. 56 of the ECA. It is the State's responsibility to provide schools and it is the parents' and legal guardians' responsibility to enroll the children and make sure they do not miss their classes (Federal Law nº 8.069/90, 1990). In these cases, we understand the school complaint as a measure to protect children and adolescents in their right to education. On the other hand, the way the complaints are presented leads to other reflections. We observed that complaints are made concerning low attendance without trying all other devices, in accordance to the LDB and the ECA. That is a symptom of the distance between school and family and of the prejudiced predominant vision in our history concerning students from poor families, who "deserve" more oppressive pressures – in this case, by means of the Guardianship Council. Such discrimination still happens in spite of the critical theories that emerged in the 1980s about the difficulties in the education process. It is important to remember that the part of the population assisted by guardianship councils is mostly considered of low income. That is not a sign of a more conscientious population. Rather, it reveals that the poor population has been denied access to education and blamed for student failure.

By analyzing school evasion, low attendance, or even rates of student failure, we observed what Patto (1993) announced as the production of student failure. According to the author, in the history of Brazilian education there is a deprecating vision of the working classes that attributes school evasion to parents' lack of commitment. The author demonstrated that evasion as well as student failure received explanations full of prejudice. These explanations blamed the lower classes exclusively for failure at school, which helped to keep bourgeois social structure (Patto, 1993).

It seems that the same conceptions keep influencing explanations for student failure. In this context, we have a legislation that legitimates the blaming of parents and legal guardians. Doesn't it sound like trying to turn social issues into individual problems? Is it really sensible to blame a poor family, whose access to education is so precarious in our society, for student failure?

According to Silva and Leonardo (2012), we must understand the educational context in which the production of success and failure take place, and their social causes. Schools are at the service of an excluding, unequal, and classist society. According to the authors, it is necessary to consider success and/or failure at school from the perspective of the social genesis of educational problems, which involves a "wide political and social context that is characteristic of an unequal society divided into classes" (Silva & Leonardo, 2012, p.74).

In addition to low attendance and evasion, common occurrences in all councils, complaints concerning behavior were also found in the four councils. In different words, all interviewees mentioned that the schools complain of something that we will categorize as "inadequate behavior" such as: indiscipline, aggressiveness, disrespect to teachers, restlessness, "classroom disturbances", vandalism, lack of interest, cutting classes, even issues concerning the use of uniforms, bad smells and girls wearing tight figure-hugging outfits.

These data reflect aspects that have emerged in research works on school complaints and the pathologization and medicalization of childhood and of the educational processes (Leonardo, Leal, & Rossato, 2012; Facci, Meira, & Tuleski, 2012). The obstacles to the appropriation of educational contents are interpreted by means of traditional paradigms centered on the individual. These paradigms attribute students' failure to their own incapacity. Thus, supposed emotional problems and behavior issues become a major justification for student failure with total disregard to the real causes: lack of investment by the state, the adoption of liberal perspectives in the theoretical-methodological field, and other aspects of economic liberalism that directly influence the formulation of educational policies

and cause difficulties in everyday life.

Likewise, such conceptions permeate the actions of the councilors, as we will see now. The collected data show that the first action is to seek for the family. In a conversation with the families, the parents of legal guardians are informed about the legal determinations of the ECA, especially concerning the statute's responsibility regarding the right to education. At the same time, councilors provide information concerning everyone's responsibilities, concerning the importance of education, on the ways to change everyday life in order to better observe legal demands, and on how to raise children (establishing limits, and how to behave in front of children according to the conceptions of each councilor). Another action consists of referral to other departments hoping that a solution is found for the family neglect problem.

We have encountered 95 referrals of complaints to the network of sectors. The total amount was 32.9% of referrals to other departments. We noticed the most expressive referrals realized were, first, to social workers (31.57%); secondly, to Public Prosecution (22.10%), followed by the police department (4.21%), and the Judiciary Branch (2.10%).

Most of the referrals go to services of social or health assistance due to the presence of a psychologist. Psychology service is the support most often requested from the GC. In the interviews, the emphasis placed on the role played by psychologists is substantial because the councilors expressed their belief that the psychology service would be able to solve the problem by means of acting on the student's emotional problems and family conflicts. At other moments, the psychologist was considered to be the one who had the skills to "convince" families about the importance of school. According to one councilor: *if the family seems unwilling to do it, we apply a protective measure... If they don't follow the determinations of course we refer the case to the psychologist or social worker so that they will try to convince the family of the importance of education.*

The demand for psychological service seems to reveal notions that it is a solver of social problems and we understand that this is based on the historical function performed by psychology and its movements of psychologization and individualization of social phenomena. The theories traditionally used in the field of education and psychology, based on modern science, converged with liberal and innatist perspectives, which were centered on the individual and disregarded the dialectic relation individual-society/society-individual (Patto, 1993; Angelucci et al., 2004; Boarini, 2012).

Children and adolescents, whose absence at school is associated with family conflicts, little financial resources, or family violence, are sent to the Reference Center of Social Assistance, or "Centro de Referência

de Assistência Social" – CRAS. Concerning health services, in addition to the priority psychological support, specialized services in speech therapy (01) and neurology (01) were requested. "Rebelliousness" and lack of interest to study were the reasons for referring adolescent girl of 16 years to the Center of Psychosocial Attention, or "Centro de Atenção Psicossocial" – CAPS. Another adolescent was sent to the CRAS, to a hospital, and to the public prosecution because, in addition to being absent, the student was supposedly abusing illegal substances.

In this scenario, it is necessary to discuss the proposals and objectives of each service and the attributions of each professional. While taking into consideration the completeness of individuals and awareness that health issues and social vulnerabilities might come up at school and interfere in the teaching-learning process, we want to highlight the fact that the belief that psychology is the solution for school complaints is anchored on individualizing perspectives that reduce the complexity of situations in the everyday life of schools to biological aspects.

Furthermore, the practices of the psychologists that provide assistance at school has been the theme for discussions because they have been reduced to psycho-diagnosis, psychological testing and referrals to physicians for pharmacological treatment, according to the studies of Souza (1997), Boarini and Borges (2009), Reis and Ribeiro (2012), Facci, Silva and Ribeiro (2012). It is the process of medicalization of student failure discussed by Collares and Moysés (2015) and by Facci et al. (2012), which afflicts families in their attempts to respond to school demands. The greatest problem is that "...when you provide medication to a child who is not learning, you miss the chance to analyze the whole situation. Explanations lack a dialectic analysis..." (Facci et al., 2012, p.171).

Again, considering that the idea that poverty and other social issues have their impact on the learning process, our intention is to draw attention to the individualization of a phenomenon which is historically and socially anchored on social inequalities, on the division of society into classes, and on the contradictions of capitalism. Actions are empty of possibilities for transforming our chaotic reality.

Most of the referrals to public prosecutors happened because of the re-incidence of absence. In total, there were 21 referrals to the public prosecutors after the complaint. Three of the referrals were realized because of suspicions of family violence against children and adolescents. One of them was due to a conflict between the principal and a student (the principal had verbally abused the student). The remaining 17 referrals were due to low attendance.

Evasion is a violation of student rights and it justifies

the application of protective measures or measures applicable to parents or legal guardians. However, we think it is curious that such measures are centered on the child or on the family, which is evidence that the legislation itself reverberates the conception that there is no need to question other factors. Also, these matters are not part of the everyday reflections of the councilors. Such ideas are based on idealist-positivist science and on the legislation. The councilors do what the law allows them to do.

However, according to Lessa (2012), everyday life is ridden by alienations. The fact that the rights are based on alienated labor shows us that we must conceive rights as a means to daily justify individuals' practices and theories. Such means essentially originates in a social and material determination of thought. This determination consists of the fact that alienated men are exploited by other men. Thus, the right to education as well as the rights of children and adolescents must be understood as having contradictions.

According to discussions by Leonardo et al. (2012), that statement can be better comprehended by verifying, in Brazil, despite the ECA, an elevated number (539.702) of children and adolescents out of school. Also, less than 70% of young people graduate from elementary school. It is estimated that only 56,1% of the children from public schools who completed the 3<sup>rd</sup> year of elementary school obtain the knowledge expected for children that age, according to the Reading Index of the Brazilian Assessment on Literacy Acquisition, or "índice de leitura da Avaliação Brasileira do Ciclo de Alfabetização - Prova ABC" (Leonardo et al., 2012). These and other data, according to the authors, are evidence that the educational practices and policies cannot reach all children who should be at school regarding permanence at school as well as successful learning, which reveals that many children are victims of a historical process of marginalization of which the consequence is the school complaint (Leonardo et al., 2012).

The referrals to the Public Prosecution, to the Judiciary Branch and to the police add up to 21% of the 95 referrals in comparison with the other two segments, which are health and social assistance. The referrals to the police and the Judiciary Branch were based on "intellectual abandonment", considered a crime in the Brazilian legislation.

Although the referrals to the judiciary branch were not expressive, it is important to ponder the judicialization of education. Referrals are also sent to the Public Prosecution in order to trigger legal devices. The councilors mentioned that they do not refer cases directly to the judiciary branch because of the protocol established for the district, which prescribes that such referrals be sent initially to the public prosecution.

Consequently, there is a search for legal devices in order to respond to school complaints that found no solution in other institutions. We saw in the interviews that the referrals to the public prosecution are accompanied by comments such as: "there is no other way", "there is no other solution", or "there is no way to fix this". Thus, there is the belief in the psychologists, and there is also the belief in a legislation that will make children and adolescents to stay at school.

In this sense, an important reflection by Lessa (2012), on the "fetishism of education" sounds adequate. It says that we worry about keeping our children at school without comprehending the fundamentals of our modern crisis, and disregarding actual learning. Considering that the school has been questioned and the solution for school complaints lie in psychology and the Justice, we might say that the mandatory nature of school is further evidence of a crises in class-divided society than of a preoccupation with learning.

The answers by the councilors also express contradictions in society. They mix a recognition of poverty with the act of putting the blame on it. They seem aware of the problems created by poverty but at the same time the refer cases to the public prosecution in order to gather evidence against neglecting parents. Most of the absent students are from poor families. Our intention is not to depreciate the work of councilors. We have observed that their interpretations result from the dominant ideology, of the social structure in accordance with the legislation's legal protection of childhood. Despite all advancements regarding previous legislations, such ideology still seems to contain hygienist characteristics, which lead society toward the ECA. It is important to remember that, according to Boarini (2012), despite all resistance in Brazil, eugenistic/hygienist ideas still "underlie the legal devices and the institutional referrals by society, and still explain the phenomenon of subjectivity in our days" (Boarini, 2012, p. 15).

We also must consider that the formation of councilors is precarious in the sense of knowledge acquisition, which will lead to the recognition of the contradictions in the legislation. According to discussions by Bazílio and Kramer (2011), the scarcity of funds, the lack of resources for the realization of even simple actions, and the phenomenon of de-professionalization (multiplication of temporary or precarious contracts; low or no investment in capacitation; excessive staff turnover) are common problems in the field of guardianship counseling.

The issue is that children and adolescents are still out of school, according to numbers on low attendance. Also, most of the children/adolescents referred to the guardianship council belong to poor families (Bazílio & Kramer, 2011). Thus, we can affirm that schools are



still selective, excluding institutions. It is important to remember that low attendance leads to student failure, which does not mean new possibilities. Rather, a new obstacle is raised.

### FINAL CONSIDERATIONS

We have noticed that most of the requests for councilors come from schools. There are diverse school complaints related to evasion, low attendance, as well as to behavior issues concerning indiscipline, refusal to participate in classroom activities, aggressiveness, disrespect to teachers, even “unpleasant smells” and dirty clothes. Low grades were also mentioned to councilors.

We also witnessed the councilors’ commitment to the right to education. An example of such commitment is their request for help from justice when they see no other solution. However, we have also perceived that such movement leads to the individualization of school complaints. Families are blamed for student failure with the support of prejudiced “competent” scientific discourses, which are historically produced in order to explain poverty, and which disqualify families, students, and teachers. The way professionals perceive parents’ negligence associated with emotional issues and lack of interest by ill-behaved students shows the ideas underlying the practices of the councilors regarding students and their families.

We want to draw attention to the fact that the material conditions of students and their families are never considered. Educational structures and organizations are never questioned either. The school complaints considered here cannot be interpreted as the cause. Rather, they are the products of an education system that does not seem to be serving its purpose.

Likewise, one of our objectives is to point at school conflicts disguised as family negligence and taken to justice institutions. School complaints, therefore, when attributed to family negligence, lead to the referral of problems, related to the everyday life of schools, to other spheres concerning the rights of children and adolescents.

Student failure must be considered a social contradiction; a deliberate problem of the Brazilian structure and social organization, which is full of mediations that aim to maintain social inequality for the benefit of the ruling classes. Thus, the focus of all efforts on the resolutions of complaints by means of interventions with families and the legislation does not seem to us an effective solution of learning problems, considering the excluding structure of education itself, with its serial disciplinary model, which generates failure and apathy.

It is not our objective to affirm that we should not search for devices in order to guarantee the

right to education, or that there are no situations of maltreatment of children and adolescents by families. On the contrary, we propose here that education is fundamental for human development, and the mechanisms must be created in order to guarantee its universality. Likewise, we defend that children and adolescents must be protected by their families so that they can have full development in terms of human formation.

However, we understand that school evasion, low attendance and the very concept of negligence demand a more comprehensive interpretation, which will consider the material conditions of individuals, the social contradictions and the movement of the State concerning social policies. Merely blaming families legally for the phenomenon of evasion and other educational conflicts sounds like reducing the phenomenon to its minimal abstractions, which would lead to the proposition of inefficient actions to fix the country’s educational problems and the maintenance of excluding relations towards the working class.

When we question the role played by justice concerning school complaints, we understand its contradiction. Justice is supposed to solve class conflicts with being partial to the ruling class. Justice cannot solve the conflict that has created it. It cannot solve the inequality problem, which is inherent to the capitalist mode of production. Thus, the legal devices supposed to protect children and adolescents tend to mask the situation and resort to palliative strategies in order to tackle student failure.

Thus we must remember that the school can be the expression of an unequal society and that there are some factors that definitely prevent families from keeping their children at school. This is a notion to be shared by all professionals in the SGD. It is the reason, presents in our research, why we believe in investment in the formation of guardianship councilors, as well as other SGD professionals, in order to change educational reality. We know that there are capacitation processes, but we advocate a critical formation that leads to the capacity to “go beyond appearances” towards the essence of phenomena. In other words, we need formation processes that recognize the contradictions of society brought out by school complaints.

We expect that this research will contribute to a rethinking of everyday practices by the diverse actors in the sectors mentioned here so we can actually guarantee the right for children and adolescents to something very fundamental: the right to become more humane. We consider that a scientific work has its own value because it opens doors to other investigations. Considering that our research does not exhaust all possibilities for investigations necessary in the area, we wish to conclude by asking two questions that emerge

during our research and point at a continuity of studies on the relation between education and legal devices to protect children and adolescents. The questions are: what is the right moment to request support by the Public Prosecution and the Judiciary Branch? and to what extent do legal devices respond the real demands?

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This paper was translated from Portuguese by Régis Lima

Received: January 11, 2019

Approved: April 10, 2019