


Judicialization of deaf education: the path towards effectiveness?

*Judicialização da educação de surdos:
Caminho para sua efetivação?*

*Legalización de la educación de sordos:
¿camino para su efectividad?*

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Abstract: This article sought to analyze the referrals referring to the judicialization of educational policies already defined, but not implemented, for deaf students in municipalities in the State of São Paulo, based on the decision taken by the Court of Justice of São Paulo among 2005 and 2018. With the possession of the nine actions resume, it was conceived that in five of them the tonic of the deponents was the guarantee of the presence of the professional Translator and Interpreter of Brazilian Sign Language (TILS) in the process of schooling of deaf students. It was noted that the judgments consolidated TILS's offer as a right of the latter and were promptly served at first instance. Despite the current legislation, the search for the enforcement of a proclaimed but unfulfilled right was executed through the judicialization.

Keywords: Judicialization. Deaf education. Education rights.

Resumo: Este artigo buscou analisar os encaminhamentos referentes à judicialização de políticas educacionais já definidas, mas não implementadas, aos estudantes surdos em municípios do Estado de São Paulo, a partir do levantamento de decisões proferidas pelo Tribunal de Justiça de São Paulo, no período de 2005 a 2018. De posse das nove ementas, foi concebido que em cinco delas a tônica dos depoentes foi a garantia do direito da presença do profissional Tradutor e Intérprete de Língua Brasileira de Sinais (TILS) no processo de escolarização de estudantes surdos. Observou-se que os acórdãos consolidaram a oferta do TILS como um direito deste alunado, e foram prontamente atendidas em primeira instância. Apesar da legislação vigente, a busca pela efetivação de um direito proclamado, mas não cumprido, foi executada por meio da judicialização.

Palavras-chave: Judicialização. Educação de surdos. Direito à educação.

Resumen: Este artículo buscó analizar los encaminamientos referentes a la judicialización de políticas educativas ya definidas, pero no implementadas, a los estudiantes sordos en municipios del Estado de São Paulo, a partir del levantamiento de decisiones dictadas por el Tribunal de Justicia de São Paulo, en el período de 2005 a 2018. En posesión de los nueve resúmenes de las acciones, fue concebido que en cinco de ellas la tónica de los depoentes fue la garantía del derecho de la presencia del profesional Traductor e Intérprete de Lengua Brasileira de Señales (TILS) en el proceso de escolarización de estudiantes sordos. Se observó que las sentencias consolidaron la oferta del TILS como un derecho de este aludido, y fueron rápidamente atendidas en primera instancia. A pesar de la legislación vigente, la búsqueda por la efectividad de un derecho proclamado, pero no cumplido, fue ejecutada a través de la judicialización.

Palabras clave: Legalización. Educación de sordos. Derecho a la educación.

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Introduction

Brazil's Federal Constitution of 1988 (CF/1988) (BRASIL, 1988), the Statute of the Child and Adolescent of 1990 (ECA), Law No. 8,069/1990 (BRASIL, 1990) and the National Education Guidelines and Framework Law of 1996 (LDBEN) – Law No. 9,394/1996 (BRASIL, 1996), declare the duties of the State to guarantee the right to education for all.

Concerning people with disabilities, the Specialized Educational Services (AEE) are a Constitutional guarantee, according to Article 208, subsection III, of CF/1988 (BRASIL, 1988), and shall be held, preferably, in the regular educational system.

The **National Policy on Special Education from the Perspective of Inclusive Education** (BRASIL, 2008, p. 1) comprises the inclusive educational processes as a “political, social, cultural and pedagogical action, unleashed in defense of the right of all students to be together, learning and participating, without any sort of discrimination”. Based on the viewpoint of human rights, that “combines equality and difference as inseparable values”, the document also understands that educational action shall overcome the logic of exclusion inside and outside of school (BRASIL, 2008, p. 1).

Regarding deaf students, Federal Law No. 13,005/2014, which constitutes the **National Educational Plan (PNE) for 2014-2024** (BRASIL, 2014), provides the deaf with the possibility to opt for three different models of schooling: bilingual schoolsⁱ, bilingual classrooms in regular schools, in which teaching is conducted in Portuguese, with the support of an interpreter and translator of Brazilian Sign Language (Libras) and by offering of Specialized Educational Services (AEE) in after school programs. However, as Câmara and Souza highlight (2017), despite the fact that this legal document states that schools and bilingual Libras-Portuguese classes are legitimate schooling methods in educating deaf persons, in practice, deaf students are usually inserted in regular schools. Bär, Santos and Souza (2017) go a step further in affirming that this lack of support is due to the fact that the Ministry of Education prioritizes the transfer of resources from the Fund for the Maintenance and Development of Basic Education and Teachers' Valorization (Fundeb) to the municipalities and states whom adopt inclusive education with Specialized Educational Services in after school programs (BRASIL, 2011).

It should be noted that the current educational politics on inclusion adopted by municipalities and states shall dialogue with other two documents that formalize Brazilian Sign Language: Federal Law No. 10,436 of 2002 (BRASIL, 2002), that recognizes Libras as a “legal mean of communication and expression” of the deaf (Article 1) and its regulation by Decree No. 5,626 of 2005 (BRASIL, 2005) that, in its article 22, establishes the presence of professionals designated to work specifically with deaf students in the educational scenario. In said Decree, we read:

Article 22. Federal educational institutions responsible for basic education shall guarantee the inclusion of deaf or hearing impaired students, through the institution of: I – bilingual schools and classrooms, opened to both deaf and hearing students, **with bilingual teachers, in early childhood education and in the first years of elementary education**; II – bilingual schools or regular schools from the regular

educational system, opened to both deaf and hearing students on their last years of elementary education, secondary education or professional education, **with teachers from different areas of knowledge, aware of the linguistic singularity of deaf students, as well as the presence of translators and interpreters of Libras – in Portuguese language.**

§ 1º **Bilingual schools or bilingual classrooms are those in which Libras and the written form of Portuguese language are the languages used in teaching during the whole process of education** (BRASIL, 2005, our emphasis).

In addition to discussing the importance of a translator and interpreter of Libras (TILS) in multiple educational contexts concerning deaf students, Decree No.5,626/2005 (BRASIL, 2005), in its Chapter 5, Article 17, mentions the need for the interpreter and translator to hold a graduate degree on Translation and Interpretation, with qualification in Libras-Portuguese Language.

It is worth mentioning that the profession of Translator and Interpreter was regulated by Federal Law No. 12,319/2010 (BRASIL, 2010). This legal document states that:

Article 2. The translator and interpreter shall have competence to interpret both languages simultaneously or consecutively and shall hold proficiency in translating and interpreting Libras and Portuguese Language.

[...]

Article 7. The interpreter shall exercise his profession with technical precision, taking care of the ethical values inherent to it, and through respect for the human person and deaf culture and, in special:

[...]

VI – through the awareness of the specificities of deaf community (BRASIL, 2010).

Brazil's Disability Inclusion Act (Statute of Persons with Disabilities) – Federal Law No. 13,146/2015 (BRASIL, 2015), among other measures, has established that deaf people have the right to have sign language, as means of accessibility, in mediatic, social, educational and health scenarios, among others.

Despite current legislation, linguistic and cultural specificities of the deaf students are not always met. Such proclaimed rights, if not fulfilled, are sought judicially by deaf students or those responsible for them, as set forth on CF/1988, in its Article 5, subsection XXXV, which states that “the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power” (BRASIL, 1988).

According to Cury and Ferreira (2010, p. 77), “Judicial Power has had more significant functions in the enforcement of legal rights, establishing a new relationship with education, the **Judicialization of Education**”, referred to by authors as “the intervention of Judicial Power in educational issues as means to fulfill the protection of this right, and even to fulfill the constitutional functions of the Public Prosecutors Office and other legitimate institutions”.

Under the described conditions, the present work has sought to analyze the referrals on the judicialization of educational policies already planned and defined, but not implemented, concerning deaf students in the municipalities of the state of São Paulo. The discussion of the cases here recovered was based on a survey conducted in June 2018 on decisions rendered by the Court of Justice of the State of São Paulo (TJ-SP)ⁱⁱ, in the period from 2005 to 2018, dialoguing with the legislation that deals with educational processes of

deaf individuals and with the literature that discusses the expansion of judicial action in order to achieve the right to education. In doing so, the methodology adopted was bibliographic and documental research, based on the discussion of main legal standpoints (laws and decrees), literature review and the analysis of judicial decisions regarding the right to education for the deaf. The institutional approach of this research has had the Court of Justice of the State of São Paulo as the chosen judicial body, with its judicial decisions published in electronic websites available to the public. The time cut and starting point of the research was defined in consideration of the year of publication of the Decree No. 5,626/2005 that, as previously presented, states that educational institutions must ensure, in all steps of education, differentiated care for deaf students, besides proving them with professionals, such as the **teacher or instructor of Libras and a translator and interpreter of Libras** (BRASIL, 2005).

To the selection of the judicial cases resumes used in this work, the expressions “deafness”, “hearing impairment”, “education” and “Libras” were used in order to search among existing cases on TJ-SP website database on “Law Case Search”ⁱⁱⁱ, considering the pick of abovementioned expressions have had the purpose of the present work as foundation. The cases analyzed consisted in judgments on individual and collective lawsuits (Public Civil Actions)^{iv}, rendered by different judicial districts from the state of Sao Paulo. The analysis was focused on judicial and educational bibliographic research on the topics highlighted in judicial decisions.

Data analysis and discussion

In the survey carried out on the TJ-SP website, nine resumes from judicial decisions^v were found based on the abovementioned expressions, concerning the rights of deaf individuals, which were categorized on themes brought up by the content of mentioned resumes. Four categories were identified, as shown in the following table.

Table 1. Categorizing of the resumes

Theme	Decision Numbers
Providing a Libras Interpreter in the educational context	05
Providing a Libras Interpreter in the process of obtaining the National Driver's License	02
Granting of Assistance Benefit (support allowance)	01
Writ of mandamus – appointment to work following public career entrance exams	01

Source: Prepared by the authors from the research database.

In relation to TJ-SP decisions concerning the effectiveness of public policies for the education of the deaf, after the promulgation of Decree No. 5,626/2005 (BRASIL, 2005), the analysis of the nine documents that were located highlighted the use of the Judicial Power to

require an Interpretation and Translation professional as a demand present in five cases on the set of decisions found (n=5)^{vi}, as shown in the following table. The actual number of the cases has been replaced by a sequential number, in order to facilitate organization and visualization. It should be noted that all judgments at the given analyzed period are available at TJ-SP website, which permits the selection of what kind of judgment one wishes to survey.

Frame 1. Summary of court judgments by resume category

Case #	Categorizing of resume	Decision
1	Providing a deaf student enrolled in the school network of the municipality with an Interpreter of Libras.	“Offering an interpreter of Libras in order to accompany the author of the lawsuit in the school network of the municipality” (SÃO PAULO, 2014a, p. 4).
2	Providing a deaf student enrolled in the school network of the municipality an interpreter of Libras, and offering this same student a Libras course, given by a qualified professional.	“Condemning the municipality to offer the child a Libras course and making availability for a qualified interpreter and professor, in the same Libras language, to accompany her in regular classrooms” (SÃO PAULO, 2014b, p. 2).
3	Providing a deaf student enrolled in a Higher Education Institution with an interpreter of Libras.	“Determining the hiring of a Libras interpreter” (SÃO PAULO, 2014c, p. 9).
4	Providing a deaf student enrolled in the school network of the municipality with an interpreter of Libras.	“Offering an interpreter of Libras in order to accompany the author of the lawsuit in the school network of the state of Sao Paulo” (SÃO PAULO, 2014d, p. 3).
5	Public Civil Action: guarantee of offering the availability of an Interpreter of Libras in every classroom in the school network of the municipality whenever there’s student with hearing impairment.	“Offering an interpreter of Libras to work in the school network of the municipality” (SÃO PAULO, 2012, p. 4).

Source: Prepared by the authors from the research database.

The other digital cases (n=4): **Case No. 6**, which deals with insuring that the deponent (listener) is summoned, named and sworn in a public exam of the state of São Paulo, to work as teacher in Elementary Education II, to act in Special Education of students with hearing impairment (SÃO PAULO, 2018); **Case No. 7**, regarding the granting of assistance benefit (support allowance) to a deaf person (SÃO PAULO, 2016); Case No.8, whose authors are five hearing impaired persons who request the availability of an interpreter of Libras in the process of obtaining the National Driver’s License. (SÃO PAULO, 2015); **Case No. 9**, in which the deponent asks the Traffic Agency to make a qualified professional in translating Libras available during the written exam to obtain the National Driver’s License (SÃO PAULO, 2013). Those related to demands in other areas, beyond the educational sector, will not be analyzed in this work.

The discussion in **Process No. 1** referred to the claim by the person responsible for the deponent, a deaf student enrolled in school network of the municipality of a given municipality in the state of São Paulo, about the availability of a translating and interpreting professional to accompany the deponent, and the claim was deemed to be well founded. At

appeal level, in which the municipality has appealed against the person responsible for the deaf student, the judgment was maintained, with the Court adopting a favorable position in favor of the enforcement of the deponent's right.

As Lacerda, Santos, Lodi and Gurgel highlight (2016), it is also on Decree No. 5,626/2005 (BRASIL, 2005) that the guidelines to the guarantee of the right of education to deaf students can be found. In the words of the authors:

for the initial years of education (Childhood Education and first years of Elementary Education), children should have the opportunity to access school content in their language of dominance, that is, in Libras, with the presence of a bilingual teacher; and for the final years of Elementary and Secondary Education, the educational process must be carried out with the presence of translators and interpreters of Libras in each classroom where there is a deaf student using Libras enrolled, besides the need of teachers responsible for the different areas of knowledge to consider the linguistic singularity of the students, considering that in the classes there will be the presence of one more professional (a translator and interpreter of Libras, whose role and ways of acting are not always familiar to those present) and that the students will have a relationship with the Portuguese Language in a very different way from the listening students (LACERDA *et al.* 2016, p. 16).

Regarding the object of analysis of **Case No. 2**, a Public Civil Action filed by the Public Prosecutor's Office condemned a municipality of the State of São Paulo to “**offer the deaf student a Libras course** and provide a qualified teacher and interpreter in the same sign language, to accompany her, in regular school” (SÃO PAULO, 2014b, p. 2, our emphasis).

Lins and Nascimento (2017, p. 14) emphasize that the role of the school goes far beyond questions of linguistic access: “without the appropriation of a first language there is no possibility of meaningful learning in the initial years of formation”. The authors reiterate that “learning a language, guarantees the formation of an autonomous identity to the deaf and enables them to recognize themselves as complete human beings”.

Case No. 3 was written by a deaf student from a Higher Education Institution (HEI), who requested the hiring of a professional interpreter of Libras. The deponent stated that in the first semester he was assisted by a classmate “who served as an interpreter in exchange for a scholarship granted by the defendant” and that this circumstance “did not allow the simultaneous translation of the subjects taught, but only the communion of knowledge at the end of classe” (SÃO PAULO, 2014c, p. 4).

Martins and Napolitano (2017) addressed legal and judicial issues that favored and inhibited access and permanence of deaf students in Higher Education. The authors found that not all universities were prepared for the accommodation of deaf students and pointed out that some HEIs remedied the absence of translating and interpreting professionals with other forms of support, such as scholarships or monitoring to university students with knowledge in Libras, to work with the deaf, a provision considered palliative, since it does not meet the requirements of the legislation, which provides for the contracting of translators and interpreters, in accordance with Decree No. 5,626/2005 (BRASIL, 2005). The authors have brought to light the difficulties of deaf students in this context:

noting that those who should be responsible for defending citizens' rights, recognizing the cause, due to the specificities involved in the subject studied - the

linguistic policies in favor of fulfilling bilingual education for university students - are the same ones that put at risk the rights earned by this same group, when they are denied the hiring of qualified professionals for the practice of interpretation of Libras/Portuguese in the actions offered by the HEIs, a necessary condition for the formation of the deaf in this stage of learning (MARTINS; NAPOLITANO, 2017, p. 118).

Also regarding the accessibility and permanence of deaf students in higher education, Lins and Nascimento (2017) verified that in the period from 2005 to 2015, 95 candidates declared themselves to be hearing impaired at the entrance exam of the State University of Campinas (UNICAMP), but only 2 have managed to enter. The authors found that the offer of translation and interpretation professionals to perform the entrance exam was insufficient. However, as an affirmative measure, the authors pointed out that in the Postgraduate Program of the School of Education of the same University, evaluation forms that respect the linguistic singularities of the deaf are used, guaranteeing the access and permanence of these students.

The availability of the translation and interpretation professional was also discussed in the lawsuit of **Case No. 4**, proposed by a deaf student of the State Education Network against the Public Treasury of the State of São Paulo. The ruling upheld the suit, but the Treasury, “unresolved”, “claimed to have difficulties in meeting this obligation, given the shortage of servers for this function (Professor and Interpreter)” (SÃO PAULO, 2014d, p. 3). The judgment was favorable to the deaf student.

Case No. 5 was a Public Civil Action, concerning the guarantee of offering an interpreter of Libras in all classrooms Education Network of the Municipality, whenever there were some deaf students, and the right was promptly met.

In this context, Santos *et al.* (2018) identified the reasons for the judicialization of a public policy regarding the fulfillment of treatment of all persons with Autism Spectrum Disorder (ASD) residing in the State of São Paulo, which should already be assured to this population, from the analysis of a Public Civil Action. The authors found that despite the current legislation, there was a great gap between the laws and the enforcement of the right, and the Judiciary became a sphere of both appeal and mandatory enforcement.

The judgments that dealt with the Judicial Power's performance regarding the judicial decisions related to guaranteeing the availability of translators and interpreters in schooling of deaf people had been supported by the legal framework of, specifically, the Federal Constitution of 1988 (BRASIL, 1988), Law No. 8,069/1990 (BRASIL, 1990), Law No. 9,394/1996 (BRASIL, 1996), Law No. 10,436/2002 (BRASIL, 2002) and Decree 5,626/2005 (BRASIL, 2005).

It is appropriate, at this stage, to retake the notion of educational public policies presented by Assis (2012), which understands it as the result of legislative discussions and promulgation of norms, administrative acts and political decisions, and the Judicial Power and the Public Prosecutor's Office as those responsible for the implementation of such policies. Assis and Vedovato (in press) explain that the laws that take care of public policies are directly linked to the purpose of the search for the common good, besides guaranteeing rules of community social living.

In this regard, Duarte (2004) emphasizes that the educational system should provide different opportunities for development and promote values such as respect for human rights, in conditions of freedom and dignity, considering that the right to education should not be reduced to the right of the individual to attend elementary school to achieve better employment opportunities. In this perspective, Assis and Rus Perez (2013) refer that assuming a broad concept of education is to understand that the right to education as a social right is one of the dimensions that form the Dignity of the Human Person.

However, in three decades of the Federal Constitution of 1988 (BRASIL, 1988), the expansion of the right of deaf students included in the regular education network to the presence of translators and interpreters is taking place, in some cases, through judicialization.

Assis (2012) understands the judicialization as the act of taking the mismatch between the right established in the law and its effectiveness in society to the judge. In this sense, the hypothesis of the transmission of meta-individual conflicts of interests through judicial actions, such as the public civil action, the writ of injunction, the collective writ of mandamus and the popular action, led these categories to take on new dimensions (DUARTE, 2004), since in recent years the number of lawsuits concerning the judicialization of public policies has increased significantly (ASSIS, 2015).

Cury e Ferreira (2010, p. 81) state that the education legalization phenomenon is verified before the occurrence of factors involving the offense to this law, namely: "(a) changes in the legislative panorama; (B) reorganization of judicial and academic institutions; (c) active community positioning in the search for the consolidation of social rights". Therefore, judicialization has been a necessary strategy for a large number of families to achieve the realization of the right to education (SILVEIRA, 2011; 2012).

With the aforementioned resumes, it was understood that the core of the demands of the deponents was to highlight the guarantee of the right of deaf students to the presence of translators and interpreters in their schooling process. The analyzes made by the Judiciary regarding the cases presented here on the demands of the provision of translators and interpreters in the educational sphere have consolidated the duty of the State, with the responsibility of the municipalities, the State or the Higher Education Institution, when deciding that the presence of this professional constituted a right of the deaf students or their responsible ones to demand their fulfillment before the Judiciary Power, and were promptly met in the first instance.

In this regard, Silveira (2012), when analyzing decisions of the TJ-SP on the right of children and adolescents to education, pointed out that actions with individual requests were met more easily, but when measures were requested to increase care or public policies, the Court did not demonstrate coherence regarding the concession, based on the argument that it is impossible for Judiciary Power to interfere in the conduct of public policies and on the State budget.

In the wake of such efforts, Silveira (2017) sought to understand the possibilities and limits of the process of judicialization for the expansion of the right to education by investigating the work of Public Prosecutor's Office and Judiciary Power in the state of

Paraná. The author identified that most of the lawsuits were filed for an individual claim, with a small percentage of collective lawsuits.

Considering the judicialization of a public policy, Assis and Rus Perez (2013) discussed demands for vacancies in public early childhood education for children from 0 to 3 years old and reported that, despite the Judiciary's power to enforce an established individual right (school vacancy) for a collective problem (lack of schools), the individualized solution (creating vacancy in an educational institution) did not enforce a right, since its implementation has created other problems (overcrowding in day-care centers). "The right to education is clear and complete in itself, it cannot and should not be made flexible, at the risk of becoming a crime against the dignity of the human person" (ASSIS; RUS PERES, 2013, p. 168).

Oliveira, Silva and Merchetti (2018) analyzed the strategies adopted by the Municipality of São Paulo concerning cases involving day care centers, in order to verify the influence of the judicial strategy on the public education policies of the municipality. From the data collected alongside the São Paulo Secretariat of Education, the authors brought to light the fact that the demand for vacancies in "day care centers had approximately 75 thousand children in "queue"" (OLIVEIRA *et al.* 2018, p. 660, quotation marks from the original). The authors affirm that "taking the case of the city of São Paulo as a reference, we can affirm that the educational agenda was impacted by judicial decisions, either by forcing the governments to do more that they would normally do, or by dictating the direction of its implementation" (OLIVEIRA *et al.* 2018, p. 666).

As a counterpoint we have the study of Amaral and Bernardes (2018), who analyzed the judicialization movement of inclusive education in elementary education in the state of Goiás. The authors found 13 decisions on the public website of the Federal Regional Court of the First Region (TRF1) and the Court of Justice of the state of Goiás (TJ-GO) regarding the issue of education as a right and pointed out that, in those decisions analyzed, situations of persons with disabilities who at some point required a provision of the local public authority to provide a special service in the school environment were brought to light, but all of them already assured in the Federal Constitution of 1988, Law No. 7,853/1989 (BRASIL, 1989) and LDBEN/1996. The authors have shown a minimal number of demands sought by people on the Judiciary for issues related to inclusive education, "which leads to the understanding of what has occurred to the guarantee of provided to the disabled, or that minorities may not be aware of their rights and be silenced by the circumstances" (AMARAL; BERNARDES, 2018, p. 171).

Such situations illustrate Assis's (2012) considerations, that the behavior of lawsuits has not been sufficient to enforce the right to education, but has injured the principle of the dignity of the human person, since this behavior does not bother to solve the problem collectively, and affirms that "unfortunately, lawsuits have caused greater harm to society than it has done in a way that contributes to an assessment of the policy, or proper enforcement of the right to education" (ASSIS, 2016, p. 275). In the case of the offer of the presence of a professional of translation and interpretation to deaf students, the legal provisions that guarantee this right represent an achievement for the deaf communities, but it

is defended that these professionals have an initial and continuous formation that enables them to their attributions regarding the quality and success in the education of the deaf, so that their insertion in the classroom is not limited to a determination through judicialization.

Final thoughts

Despite the current legislation, whenever the Judiciary Power was sought in the resumes aforementioned here, it was, for the most part, for the enforcement of a right. In this process of distancing between the laws and the enforcement of rights, when the legal guarantees do not correspond to the reality of the services offered to people by the public powers, a greater presence of individual demands is brought to light, as opposed to collective lawsuits, with individualized solutions, with this being, as appointed by Assis and Rus Perez (2013), the newest relationship established between the right to education and the Judiciary Power.

The need for a translation and interpretation professional to be present in the area of education for the deaf was explicitly stated in the resumes, but it is worth noting that, according to Silveira (2011), the analysis of judicial cases is not a standpoint for assessing the level of injustice, because a large part of the population does not know their rights and/or the process to claim these rights.

It is worth mentioning that the proper assumption of a right that is of all deaf students may still be rejected or disregarded for many of them, and that only the offer of the translation and interpretation professional seems insufficient to allow these kids to enter and remain in school. As warned by Lins and Nascimento (2017), the right to an education that assumes the linguistic peculiarities of deaf students and guarantees the strengthening of the identities of the deaf cannot be denied. Thus, it is necessary to give visibility to these students, regardless of his or her hearing conditions - a categorizing trait that these individuals still have to face, due to the disability bias, and it is also necessary that the insertion of the translating and interpreting professional in the educational scenario is not reduced to a judicial imposition. In this direction, we are in agreement with Assis (2016), which shows that the discussion on public educational policies goes beyond the legal and pedagogical universes, in order not to lose its scope, which is the better realization of the right to education (in this case, to deaf individuals), facing secondary issues.

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Notes

ⁱ The bilingual education of the deaf involves the creation of linguistic environments for the acquisition of Libras as the first language (L1) by deaf children, at the time of expected linguistic development and similar to that of listening children, with the acquisition of Portuguese as a second language (L2) (SOUZA *et al.* 2016).

ⁱⁱ The Court of Justice of São Paulo, considered to be the largest Court in the world in terms of volume of cases, has as its mission the resolution of conflicts of Society, as the scope of its competence, for the purpose of preserving rights, by judging processes or using appropriate methods. Available in: <http://www.tjsp.jus.br/QuemSomos>. Access in: 03 Jun. 2018.

ⁱⁱⁱ Available in: <https://esaj.tjsp.jus.br/cjsg/consultaCompleta.do?f=1>. Access in: 03 Jun. 2018.

^{iv} According to Assis (2012, p. 84-85), the Public Civil Action (article 129, III, CF / 88) “comes as a duty of the Public Prosecutor's Office to promote collective and diffuse rights among others, completely convergent to the judicial control of public policies in a perspective of demanding action from the Executive Power, in case of it demonstrating to be inert and uncommitted with their constitutional duties”.

^v In line with the considerations made by Silveira (2011, p. 358) when analyzing decisions of TJ-SP on the right of children and adolescents to education, we came to the conclusion that “the decisions collected in this research constitute an illustrative set, and cannot be considered as a sample of what was judged by TJ-SP regarding the

right of children and adolescents to education”, and it is important to note that the resumes presented in this work should not be considered as corresponding to the total of decisions judged by TJ-SP concerning deaf individuals.

^{vi} n= sample number.

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