

**RIGHT TO EDUCATION AND JUVENILE COURT JURISDICTION AT THE  
BRAZILIAN STJ: AN ANALYSIS OF THESE JOURNALS 245 AND 250**

**DIREITO À EDUCAÇÃO E COMPETÊNCIA DA INFÂNCIA E JUVENTUDE NO  
STJ: ANÁLISE DAS JURISPRUDÊNCIAS EM TESES 245 E 250**

**DERECHO A LA EDUCACIÓN Y COMPETENCIA DE LA INFANCIA Y  
JUVENTUD EN EL STJ: ANÁLISIS DE LAS REVISTAS DE JURISPRUDENCIA  
245 Y 250**

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**ABSTRACT**

Considering the centrality of the fundamental right to education in the 1988 Brazilian Constitution and in the Child and Adolescent Statute (ECA), this article critically examines recent case law of the Superior Court of Justice (STJ) consolidated in Theses Journals nos. 245 and 250, focusing on decisions concerning education/teaching. A qualitative, documentary review was conducted to analyze the theses and leading precedents (e.g., Theme 1,058 on the Juvenile Court's absolute jurisdiction over school enrollment claims; and the recognition of a subjective right to elementary education for children under six and the suitability of public civil actions). Findings indicate that the STJ underscores the non-waivable nature of the right to education, the primacy of the best interests of the child, and the ECA's special protective regime, including rules on competence (immediate forum) and procedural tools. We conclude that these guidelines constrain education policies and direct institutional action (Public Prosecutor's Office, Public Defenders and government agencies), strengthening effective judicial protection and the implementation of adequate conditions for access to and permanence in school.

**Keywords:** Child and Adolescent. Education. ECA. Public Policies. STJ.

**RESUMO**

Considerando a centralidade do direito fundamental à educação na Constituição de 1988 e no Estatuto da Criança e do Adolescente (ECA), objetiva-se analisar criticamente a jurisprudência recente do Superior Tribunal de Justiça (STJ) consolidada nas edições 245 e 250 da Jurisprudência em Teses, com foco nos julgados que tratam de educação/ensino. Para tanto, procedeu-se a uma pesquisa documental e qualitativa, examinando as teses e precedentes paradigmáticos. Observou-se que o STJ reforça a indisponibilidade do direito à educação, a prevalência do melhor interesse da criança e a especialidade do microssistema protetivo do ECA, inclusive quanto à competência (juízo imediato) e instrumentos processuais. Conclui-se que tais diretrizes vinculam políticas públicas educacionais e orientam a atuação institucional, por exemplo, do Ministério Público e da Defensoria Pública,

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**Palavras-chave:** ECA. Educação. Infância e Juventude. Políticas Públicas. STJ.

## **RESUMEN**

Considerando la centralidad del derecho fundamental a la educación en la Constitución de 1988 y en el Estatuto de la Niñez y Adolescencia (ECA), el objetivo es analizar críticamente la jurisprudencia reciente del Superior Tribunal de Justicia (STJ) consolidada en las ediciones 245 y 250 de la Jurisprudencia en Tesis, con foco en los fallos relativos a educación/enseñanza. Para ello se realiza una revisión documental cualitativa de las tesis y precedentes paradigmáticos (p. ej., Tema 1.058 sobre la competencia absoluta de la Infancia y Juventud en demandas de matrícula; y los entendimientos sobre el derecho subjetivo a la educación primaria para menores de seis años y la pertinencia de la acción civil pública). Se observa que el STJ refuerza la indisponibilidad del derecho a la educación, la primacía del interés superior del niño y la especialidad del ECA, incluso en materia de competencia (juez inmediato) e instrumentos procesales. Se concluye que tales directrices orientan las políticas públicas educativas y la actuación institucional, fortaleciendo la tutela judicial efectiva y la implementación de condiciones adecuadas de acceso y permanencia en la escuela.

**Palabras clave:** ECA. Educación. Infancia y Juventud. Políticas Públicas. STJ.

## 1 INTRODUCTION

The Constitution of the Republic (articles 205–214) and the Statute of the Child and Adolescent (ECA) (Law No. 8,069/1990) structure a microsystem of integral protection that elevates education to a fundamental right that is unavailable and of a priority nature. In recent decades, the judicialization of educational policies has intensified, especially in matters of access, permanence and quality of teaching conditions.

In this context, the Superior Court of Justice (STJ), guardian of the standardization of federal legislation, consolidated relevant understandings in editions 245 (Rights of Children and Adolescents) and 250 (Rights of Children and Adolescents II) of the Jurisprudence in Theses, updated until 09/20/2024 and 11/14/2024, respectively, with direct effects on educational governance and the performance of the bodies of the Justice System. In summary, these newsletters systematize understandings that dialogue directly with the field of basic education, such as: (i) the absolute competence of the Child and Youth Courts to process and judge demands for enrollment in daycare centers and schools (Topic 1,058); (ii) the affirmation of elementary education as a subjective right even for children under six years of age, with legitimacy of collective protection by public civil action; (iii) the prevalence of the principle of immediate judgment (ECA, art. 147, I and II) over the general rules of the CPC; (iv) the delimitation of the ECA's appellate regime to special procedures, with supplementary application of the CPC in other cases; and (v) the recognition that the inadequacy of the physical facilities of schools violates, in itself, the substance of the right to education, imposing structural obligations on the Public Power.

This article offers a critical-systematic reading of these decision-making axes, seeking to explain their normative foundations, their scope and limits, and their practical implications for educational managers, the Public Prosecutor's Office, Public Defender's Offices, and public and private lawyers.

## 2 THEORETICAL FRAMEWORK

The Constitution of the Republic of 1988 consolidated a legal regime for education that converted it into a subjective public right, assuring the inhabitants the power to demand educational services from the State, with the responsibility of the omitted authority. In classic formulation, "the 1988 Constitution establishes the legal regime of education [...] converting it into a subjective public right", making it possible to "request the State to provide education" (Vieira, 2001), with the responsibility of the competent authority.

This subjective and provisional nature is reaffirmed by contemporary doctrine: access

to compulsory education is "fully effective and of immediate applicability" (Afonso, 2010), including judicially enforceable in case of spontaneous non-provision. According to Paiva, Cabral and Souza (2020), such right is supported not only by arts. 205 to 214 of the Constitution, but also in its system of fundamental rights and in the infra-constitutional legislation that operationalizes the guarantees.

On the dogmatic level, the relationship between state duty and the enjoyment of educational law is structured in administrative law and its principles (legality, impersonality, morality, publicity and efficiency), which binds normative and executive action: the regulatory power cannot contradict the law, under penalty of abuse; regulates "within" the law, which limits and conditions it (Vieira, 2001). Therefore, Educational Law, as a specialized public law, submits both public and private institutions to the constitutional principles that govern education, reinforcing the primacy of the public interest and the enforceability of educational services in favor of the individual.

The Law of Guidelines and Bases of Education (LDB) occupies a central place in the constitutional realization of the right to education and the literature emphasizes its structuring role: although formally ordinary law, its materiality is complementary and constitutional, densifying principles (articles 205 and 206 of the FC), policies (article 208 of the FC) and instruments of effectiveness, to the point of being treated as a constitutive norm of the rules of the federative game and of the ways to contest the violation of the right to education. In the theoretical level of public policies, the LDB is described as the main law for the implementation of the law, with the distribution of competences between the Union, States and Municipalities, reduction of bureaucratic ties and reinforcement of freedom of content and form (without ideological neutrality), while enshrining duties of respect, protection and promotion typical of indivisible fundamental rights (Viecelli, 2015).

The catalogue of article 208 of the Federal Constitution, which includes compulsory and free basic education (4 to 17 years old), specialized educational services, early childhood education, access to the highest levels according to the capacity of each one, supplementary programs, etc., binds the public authorities and informs the entire infra-constitutional architecture (Silva, 2018). In turn, the LDB is born "from the joint action of the constitutional text and the context" to regulate formation, organization of networks and use of resources, composing the daily life of educational policy and planning (Moreira; Tonial, 2021).

Also according to Moreira and Tonial (2021), the LDB concretizes and densifies constitutional norms, while defining channels of judicial protection (e.g., public civil action,

writ of mandamus) and distributing intergovernmental competences. In this environment, judicial decisions function as regulatory mechanisms that sometimes unlock implementation bottlenecks, sometimes demand budgetary and administrative responses, reflecting the intertwining between normative text and political context. (Viecelli, 2015). From another angle, the doctrine warns that the bet on social regulation promoted by the LDB presupposes continuous institutional reform and denies the ideological neutrality of education, subjecting the educational arena to what Bobbio defines as a "democratic political game" (Ragetelles; Galvão, 2020), which makes the judicialization of sensitive issues (access, permanence, quality, inclusion, freedom of education, federative organization, etc.) predictable.

### **3 METHODOLOGY**

A qualitative approach is adopted, of a descriptive-analytical nature, with a documentary procedure. The corpus examined comprises editions 245 and 250 of the "Jurisprudence in Theses" of the STJ, updated, respectively, until 09/20/2024 and 11/14/2024, in addition to the precedents indicated in these compendiums, when necessary for the understanding of the theses. It is not intended to exhaust the subject, but to offer a useful interpretative framework for decision-making, in the area of education, based on the consolidated understanding of one of the main courts in the country.

### **4 RESULTS AND DISCUSSIONS**

#### **4.1 ABSOLUTE COMPETENCE OF CHILDREN AND YOUTH IN ENROLLMENT DEMANDS (TOPIC 1.058)**

The establishment, by the STJ, of the absolute competence of the Child and Youth Courts to process and judge cases involving the enrollment of minors in daycare centers and schools (ECA, arts. 148, IV, and 209), carried out through Theme 1,058, in 2021, represents a milestone in judicial organization with a clear protective bias. Absolute jurisdiction, in addition to removing doubts about the appropriate forum, concentrates expertise in specialized courts, favoring faster decisions, informed by technical teams and sensitive to the principle of best interest (Brasil, 2021).

In practice, this guideline corrects distortions previously observed, such as the pulverization of litigation between Public Treasury and Civil Courts, mitigating conflicts of jurisdiction and reducing processing times in cases of high urgency (e.g., vacancies in daycare centers for children in vulnerable situations).

Among the operational implications, it is noted that the administrative flows of secretariat and distribution must identify, a priori, enrollment and educational demands with the plaintiff child/adolescent or the Public Prosecutor's Office in their favor; it is recommended the creation of unified registries of repetitive demands in Childhood and Youth, favoring management by precedents and the exchange of good practices; municipalities must structure centers for compliance with decisions with an interface with the Childhood Courts, integrating education, social assistance, and health (BRASIL, 2021).

#### 4.2 PRINCIPLE OF IMMEDIATE JUDGMENT AND BEST INTEREST

The prevalence of the immediate judgment (ECA, art. 147, I and II) over the general rules of the CPC reaffirms the territorial and community bond as a component of the right to protection itself. In the educational field, the guideline reduces barriers to access to jurisdiction (travel costs, response time, adequacy of monitoring by the network), allowing urgent measures, such as the guarantee of vacancies, school transportation, food and multiprofessional support – to be decided by a proximity judge, with better insertion in the local protection network (CRAS, CREAS, CAPSij, Tutelary Council) (Brazil, 2024).

From a systemic point of view, the rule strengthens collaborative arrangements and local service plans, stimulating customized solutions (number of parking spaces per neighborhood, transport routes, specialized educational service). Jurisdictional proximity favors periodic monitoring and replanning, consistent with the dynamics of enrollment and school movements throughout the school year (Brasil, 2024).

Among the precedents that led the STJ to adopt this understanding, the following stand out: AgInt in CC 201362/SP, EDcl in CC 171371/SP, AgInt in AREsp 1822318/SP, AREsp 2656732/SP, and CC 207939/SP and 199043/CE (Brasil, 2024).

#### 4.3 SUBJECTIVE RIGHT TO ELEMENTARY EDUCATION FOR CHILDREN UNDER SIX YEARS OF AGE AND COLLECTIVE GUARDIANSHIP

JT n. 250 (Brasil, 2024a) affirm the unavailability of primary education for children under the age of six and recognize the public civil action (ACP) route as an appropriate instrument for the protection of homogeneous and transindividual rights. The recognition of the homogeneity of the law solves classic dilemmas of access to justice in this field: it avoids the need for thousands of individual lawsuits, promotes isonomy, and allows the adoption of

staggered structural remedies (plans to expand vacancies, half-yearly goals, prioritization by objective criteria, financing, and interfederative cooperation).

The practical consequence is the transition from a predominantly atomized model (writs of mandamus and individual actions) to a model of strategic and structural litigation, capable of attacking root causes (planning, infrastructure, personnel). This requires, on the part of the Judiciary, the use of institutional dialogue techniques (hearings, monitoring committees, verification cycles) and, on the part of the entities, the presentation of diagnoses, schedules, verification milestones, and indicators (attendance rate, average waiting time, coverage by age group and territory) (Brasil, 2024).

#### 4.4 MATERIAL CONDITIONS AND A SAFE ENVIRONMENT AS A CONTENT OF THE RIGHT TO EDUCATION

The jurisprudence that rules out the possibility of maintaining public schools in inadequate physical conditions, provided for in JT n. 245 (Brasil, 2024b), densifies the essential content of the right to education: it is not only a matter of formalizing the act of enrollment, but of ensuring a safe, accessible and apt environment for learning. This includes, at a minimum, compliance with fire and panic protection standards, accessibility, health, sanitation, vector control, adequate furniture, pedagogical equipment, and hygiene and food safety conditions.

This guideline enables decisions that determine structural corrections, partial interdictions with a contingency plan, allocation of earmarked resources and budget prioritization, resulting from the understandings that have been gradually established in the judgments Judges REsp 1635459/SP, AREsp 2097361/RJ and REsp 1898255/AM, (Brasil, 2024b).

#### 4.5 APPELLATE REGIME: ECA X CPC AND PROCEDURAL RATIONALITY

By delimiting that the ECA's appellate regime applies only to the special procedures expressly provided for (articles 155 to 197), with the CPC applying in other cases, the STJ provided procedural certainty to litigants and magistrates (Brasil, 2024).

In educational litigation without a special procedure, the deadlines, effects and techniques of the CPC (grievances, appeal, provisional reliefs, binding precedents) apply, which increases predictability and reduces nullities. In this sense, the STJ (Brazil, 2018) decided:

CIVIL PROCEDURE. STATUTE OF THE CHILD AND ADOLESCENT (LAW 8.069/90). APPEAL DEADLINE. INTERPRETATION OF ARTICLE 198 OF THE ECA. APPEAL DISMISSED. 1. Due to the rule of specialty and the objective of meeting the best interests of the child and adolescent, in order to speed up the judgment of facts in matters concerning these persons, the deadline provided for in item II of article 198 of Law 8,069/90 is applicable even to the special appeal related to the special procedures provided for in articles 152 to 197 of the ECA. 2. Internal appeal dismissed. (AgInt in AREsp No. 1.120.686/MG, rapporteur Minister Lázaro Guimarães (Summoned Judge of the TRF 5th REGION), Fourth Panel, judged on 8/7/2018, DJe of 8/14/2018.)

For public advocacy, the guideline facilitates the design of appeal matrices and the identification of cases of general and repetitive repercussion that justify national suspension.

#### 4.6 LEGITIMACY OF THE PUBLIC PROSECUTOR'S OFFICE IN CONTEXTS OF SCHOOL DROPOUT AND ATTENDANCE

Although JT 245 (Brasil, 2024b) also deals with food and health, its fundamentals (full protection, unavailability, absolute priority) are directly convergent with school permanence and success. The active legitimacy of the Public Prosecutor's Office to propose actions in favor of children and adolescents, regardless of the risk situation typical of article 98 of the ECA, strengthens the integrated defense of learning conditions (food, transportation, teaching materials, psychosocial support). The understanding is based on Repetitive Theme 717 of the STJ (Brasil, 2014):

The Public Prosecutor's Office has active legitimacy to file a maintenance action for the benefit of a child or adolescent. The legitimacy of the Public Prosecutor's Office does not depend on the exercise of parental authority, or on whether the minor is in the situations of risk described in article 98 of the Statute of the Child and Adolescent, or on any other questions about the existence or efficiency of the Public Defender's Office in the district.

The dialogue between health and education policies (e.g., provision of essential medicines to students with ASD or refractory epilepsy) is essential to avoid de facto exclusion.

## 5 CONCLUSION

This study aimed to critically analyze the Jurisprudence in Theses n. 245 and 250 of the STJ, identifying their foundations, scopes and practical impacts on the realization of the

right to education. Based on a qualitative documentary review, the main findings were: (i) the absolute competence of the Child and Youth Justice for enrollment demands (Topic 1,058), with centralization of expertise and speed; (ii) the prevalence of immediate judgment (ECA, art. 147) as a rule of proximity and protection; (iii) the affirmation of the subjective right to elementary education, including for children under six years of age, with adaptation of the ACP for homogeneous and structural protection; (iv) the incorporation of the material conditions of supply (safety, accessibility, healthiness) into the essential content of the right; and (v) the procedural rationality that articulates the appellate regime of the ECA to the special procedures and the CPC as a supplementary regime and (vi) the legitimacy of the Public Prosecutor's Office to file lawsuits in cases of school non-attendance or dropout.

The contributions of the article are both theoretical and practical. On the theoretical level, a coherent framework is systematized that densifies educational law in a constitutional-infra-constitutional key, balancing separation of powers, prohibition of insufficiency and absolute priority. On the practical level, governance and compliance guidelines are outlined: structural plans with goals and schedules, intersectoral committees, indicators and active transparency, responsibility matrices and proportional and graduated judicial monitoring.

Such vectors guide institutional action (Public Prosecutor's Offices, Public Defenders' Offices, public advocacy, educational management) and induce public policies aimed at verifiable results of access and permanence. In summary, JTs 245 and 250 offer an itinerary for the implementation of the right to education that increases predictability, reduces repetitive litigation and qualifies the effective guardianship of children and adolescents.

As a perspective for future work, it is recommended to study the empirical impacts (processing time, satisfaction of demand, execution of plans) related to the STJ judgments cited, in order to measure possible benefits to the education sector due to their implementation.

## REFERENCES

- Afonso, L. de P. Z. (2010). O papel do poder judiciário na efetividade dos direitos fundamentais sociais (Dissertação de mestrado, Pontifícia Universidade Católica de São Paulo). <https://tede2.pucsp.br/handle/handle/8935>
- Brasil, Superior Tribunal de Justiça. (2014). Tema repetitivo 717: Legitimidade do Ministério Público para o ajuizamento de ações de alimentos em benefício de crianças e adolescentes. [https://processo.stj.jus.br/repetitivos/temas\\_repetitivos/pesquisa.jsp?novaConsulta=true&tipo\\_pesquisa=T&cod\\_tema\\_inicial=717&cod\\_tema\\_final=717](https://processo.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp?novaConsulta=true&tipo_pesquisa=T&cod_tema_inicial=717&cod_tema_final=717)

- Brasil, Superior Tribunal de Justiça. (2018). AgInt no AREsp n.º 1.120.686/MG. [https://scon.stj.jus.br/SCON/pesquisar.jsp?i=1&b=ACOR&livre=\(\(%27AINTARESP%27.clas.+e+@num=%271120686%27\)+ou+\(%27AgInt%20no%20AREsp%27+adj+%271120686%27\).suce.\)&O=JT](https://scon.stj.jus.br/SCON/pesquisar.jsp?i=1&b=ACOR&livre=((%27AINTARESP%27.clas.+e+@num=%271120686%27)+ou+(%27AgInt%20no%20AREsp%27+adj+%271120686%27).suce.)&O=JT)
- Brasil, Superior Tribunal de Justiça. (2021). Tema repetitivo 1058: Competência da Vara da Fazenda Pública ou da Vara da Infância e da Juventude para causas envolvendo matrícula de menores em creches ou escolas. [https://processo.stj.jus.br/repetitivos/temas\\_repetitivos/pesquisa.jsp?novaConsulta=true&tipo\\_pesquisa=T&cod\\_tema\\_inicial=1058&cod\\_tema\\_final=1058](https://processo.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp?novaConsulta=true&tipo_pesquisa=T&cod_tema_inicial=1058&cod_tema_final=1058)
- Brasil, Superior Tribunal de Justiça. (2024a). Jurisprudência em Teses (Edição n.º 245). <https://www.stj.jus.br/publicacaoinstitucional/index.php/JuriTeses/issue/archive>
- Brasil, Superior Tribunal de Justiça. (2024b). Jurisprudência em Teses (Edição n.º 250). <https://www.stj.jus.br/publicacaoinstitucional/index.php/JuriTeses/issue/archive>
- Moreira, A. R. da R. dos S., & Tonial, N. R. G. (2021). Direito à educação e as liberdades de pensamento e de religião. In A. F. Pilati & N. R. G. Tonial (Orgs.), *Temas contemporâneos do direito (2020–2021): Campus de Casca* (pp. 47–77). Editora Fi.
- Paiva, R. R. de, Cabral, A. de M., & Souza, S. A. de. (2020). A educação na constituição e a constituição na educação: Uma análise das prescrições dos artigos 205 a 214 da Constituição Federal de 1988. *Revista Ibero-Americana de Humanidades, Ciências e Educação*, 6(8), 30–38. <https://doi.org/10.29327/211653.6.8-3>
- Rageteles, J. P., & Galvão, A. C. M. (2020). Por uma educação democrática: Um olhar de luta e resistência ao movimento “Escola sem Partido”. *Revista Nuances*, número especial 1, 1–18. <https://revista.fct.unesp.br/index.php/Nuances/article/view/8292/pdf>
- Silva, M. F. (2018). *Políticas públicas para a educação básica no Brasil: Avanços e desafios* (Tese de doutorado, Universidade Federal de Minas Gerais).
- Viecelli, R. D. C. (2015). *Tribunais, educação e política: O ciclo da judicialização das políticas públicas em educação e seus efeitos indiretos externos – A análise das decisões do Superior Tribunal de Justiça e do Supremo Tribunal Federal de 1996 a 2011 sobre a Lei de Diretrizes e Bases da Educação Nacional de 1996* (Dissertação de mestrado, Universidade de São Paulo).
- Vieira, E. (2001). A política e as bases do direito educacional. *Cadernos Cedes*, 21, 9–29. <https://doi.org/10.1590/S0101-32622001000300002>