Allowing for segregation in ECEC? Legal conditions, administrative structures and enrolment practice in Germany

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Abstract: Supposedly children are to learn together in surroundings mirroring the overall democratic and diverse make-up of society. Segregation in ECEC is undesirable. However, substantial segregation exists - even in systems designed for universal, high-quality ECEC provision. While some research has already carved out the role of parents´ choice of institutions, little is known about how children are selected by institutions. This article attempts to shed light on institutional choice as a variable for segregation. Including a detailed picture of the German ECEC system and pointing out administrative relations between municipalities and providers in Germany, this article will depict enrolment. It will draw an empirically based 'tryptich', focusing on municipalities´, provider organisation managers` and ECEC centre managers` views on enrolment. Findings will lead to a call for providers and municipalities to join efforts in order to design and implement enrolment procedures that prevent segregation.

Introduction

> *"It is a system that first strikes me as strange,*
> *and eventually as utterly unfair..."*
> *(Okwonga, 2021, p. 28)*

In his 2021 novel "One of them. – An Eton College Memoir." author Musa Okwonga gives insight into his five years at Eton College and Oxford. Despite having been an insider of most prestigious schools he feels that he stayed an outsider in British society. – He feels that - coming from a Ugandan immigrant family, being a person of colour – he has to work harder, achieve more, even be more. Only slowly it dawns on him that this is not to do with him personally but instead with the distribution of wealth, systemic racism and other wider social questions in Great Britain. The more he reflects on different starting points and paths towards social positions classmates attained, the more he becomes irritated with the system he used to refer to as *normal*. It "first strikes" him "as strange and eventually as utterly unfair". As a researcher, focusing on segregation in the Early Childhood Education and Care (ECEC) system I found myself most intrigued in particular by this short statement. Because, indeed, at first it struck me, too, as rather strange that in Germany enrolment[2] practices should be in place, that potentially lead to segregated ECEC services[3]. The deeper my empirically based knowledge of conditions, structures and practices of child care distribution grew, the more I came to understand that the legal conditions and administrative structures indeed allow for ECEC enrolment procedures that, albeit on the surface might appear "utterly unfair", from a micro perspective, must be considered neither fair nor unfair but perhaps are worthy of improvement.

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[2] Enrolment procedures is the term that will be used to describe actions and interactions between individuals regarding an aspired use of an ECEC service. Clearly, it is defined by its end point which is the actual conclusion of a service contract between the child´s legal representatives and the child care provider organisation. Besides that it potentially comprises a multitude of possible encounters between municipality-, provider- and centre-staff and can involve artifacts such as documents, forms etc.

[3] In the following out-of-home education and care for children aged one year to their school entry in youth welfare institutions will mainly be termed Early Childhood Education and Care (or - for readability reasons - the abbreviation ECEC), day-care centres, day-care services, ECEC settings and early education. Those terms will be used synonymously.

In this article I will present readers with empirically based findings that underpin the latter and might inspire administrative levels such as municipalities as well as provider management to tend to enrolment procedures. Therefore, after introducing data and methods of the research, I will, first, give an overview of the German ECEC system in place. Also, a schema will be introduced – coined the "child care distribution triangle" – which helps to better understand the relations between parents, municipalities and ECEC providers/centre managers. Furthermore, aiming to give a detailed description of enrolment, I will depict an 'enrolment tryptich': enrolment will be described as it emerged from interviews and other data gathered on the municipality level, the provider level and the centre management level. I will discuss the findings presented accentuating the overall question of 'how segregated ECEC programmes happen' c.f.:(Frankenberg, 2016, p. 21) and therefore link the depicted enrolment procedures to administrative and legal conditions in the German ECEC system. At last, the conclusion will suggest that the system might 'allow' for segregation but at the same time, in general, it demands responsible decisions preventing segregation. Tending to (re)shaping decision-making processes accordingly is urgent challenge municipalities and ECEC providers (including centre management staff) must master collectively.

Segregation in ECEC in Germany

'Beneficial for all', 'inclusive', 'most effectully influencing positive development of children', helping 'reverse disadvantage' (European Commission, 2011, p. 3–4) – those are only a few, yet, paradigmatic beliefs about the positive influence of ECEC regarding inclusion and educational equality. In particular, since peer groups are believed to have great impact on children´s, the composition of child care settings is held important, too (Vandenbroeck, 2015a, p. 107; 2015b). Positive effects are in particular linked to mixed groups. However, homogenous groups or groups with high concentration of children from disadvantaged and under-privileged families negatively influence children´s learning composition effects regarding language development (Hogrebe, Pomykaj et al., 2021).

Segregation, defined by Hogrebe, Pomykaj et al. (2021) as "an unequal distribution of population groups resulting from spatial differentiation, sorting, and separation processes" (p. 37) is an issue that has been on the core of urban sociology for decades. Here in particular two of the main issues - ethnic and social segregation – have been studied (Farwick, 2012, 2018). Taking into account what has been said regarding negative effects of homogenous peer groups, it is clear that ethnic as well as social segregation are relevant issues in childhood research, too. Besides, since attendance of ECEC in most cases is a child´s first step into society it is held important (Vandenbroeck, 2015a) as to "mirror" (p. 109) society regarding plurality and democracy. Segregated ECEC, "contradicts (…) the idea of social inclusion and democracy" (Hogrebe, Pomykaj et al., 2021, p. 37).

However, research on the issue is alarmingly insufficient. What we do know, though, is: high concentrations of children with disadvantages are found in particular in urban agglomerations in West-Germany (Autorengruppe Bildungsberichterstattung, 2020) and lower concentrations can be found in rural areas in East-Germany (Olszenka & Meiner-Teubner, 2020). We also know that it is more likely for children from migrant backgrounds to have peers from migrant backgrounds (Gambaro, 2017; Gambaro et al., 2020). Interestingly, segregation in ECEC services in certain neighbourhoods is not directly linked to residential segregation. It goes beyond; the composition of neighbourhood does not always carry over to ECEC clienteles (Hogrebe, 2014). There is some indication to ECEC segregation being linked to provider specifics – here in particular parent initiatives are remarkable examples, as Hogrebe showed (Hogrebe, 2016b). Some research, in addition, gives first evidence of the relevance of enrolment procedures that are in place in segregation (Hogrebe, Mierendorff et al., 2021; Nebe, 2021).

In general, research on segregation in ECEC is scarce internationally, too. Research on segregation in the U.S. focuses on racial segregation and partly on social segregation, results cannot easily be transferred to the German system, due to historic and structural differences (Hogrebe, Pomykay et al., 2021). However, that research should problematize segregation in ECEC is underpinned by results of a study undertaken in the study of Oslo: Drange and Telle indicate on the basis of extensive data about the enrolment procedures in the municipality of Oslo, that even in an inclusive and universal ECEC system as

the Norwegian substantial segregation exists. They, also, point to certain procedures that make it for example less likely for disadvantaged families to have their child enrolled in certain ECEC services (Drange & Telle, 2021). If – and to what extent and due to which structures and legislative conditions - segregation in ECEC exists internationally, is yet to be researched.

The Role of Parental and Institutional Choice

As to the question of how observed segregation in ECEC was actually 'done' or from what practices it results, we cannot draw on much research, either. Hogrebe, Pomykaj et al. (2021) rightly state, it "seems immediately understandable that local population and supply structures influence the demographic makeup of ECEC settings" (p. 37). To them it is far "less clear to what extent" other levels (Hogrebe, Pomykaj et al., 2021, p. 37) are involved. Furthermore, in 2020 the National Education Report stated that too little is known about the effects provision plurality in Germany actually has on the structural, organisational and conceptual configuration of ECEC (Autorengruppe Bildungsberichterstattung, 2020, p. 87), at the same time stating, that providing organisations and their strategies regarding enrolment and parent fee regulation are strongly suspected to "possibly have segregating effects" (ibid.).

While there is not much research to be found on segregation in ECEC in Germany in general, the existing body of research on segregation in the educational system sets one focus on parents selecting educational institutions for their children. Focusing on parents and their role in segregation consistently leads to questions of the choices they make for their children´s education (Ernst, 2018; Hogrebe, 2016a; Mierendorff, 2021). Segregation researched from that perspective is viewed as resulting from parents´ desire for distinction (Ernst, 2018; Hogrebe, Mierendorff et al., 2021; Lobato, 2021; Ramos-Lobato & Gross, 2019). However, shedding light on parental choice only has been critiqued as far from sufficient, too (Vandenbroeck, 2015b, p. 173). Because: while parents indeed do select an institution (or more institutions), after all it is the institution offering the conduct of contract to families. Institutions, hence, select from the total number of families who would like their child to attend the service, those children that are taken in. So, not only parental choice but 'institutional choice', too, is rightly suspected to cause segregation (see above).

Segregation research in ECEC therefore needs to focus on structures, conditions and practices across the ECEC system makeup levels that allow for ECEC institutions to sort, choose and select children according to their ethnic, religious, social (and other possible) characteristics. While it has been stated that it is well documented that (Vandenbroeck, 2015a) "priority criteria as well as enrolment procedures might unwittingly create thresholds that discriminate against poor and migrant families" (p.107), so far not much research has been undertaken to underpin that.

The insights and results to be shared here were gathered in a research project that set out to start filling this gap. Its title is "Preschool provision and segregation. A quantitative-qualitative study on the investigation of social and ethnic segregation in centre-based child care"[4] and it was launched in January 2019. It produces knowledge about the interrelatedness of the highly pluralistic provider structure in Germany with social and ethnic segregation. This is done in two indepentently operating subprojects, one taking a macro perspective and using a structural analysis approach to look at provider specific segregation patterns. Project titled "ECEC provider specific segregation patterns in Germany" (SET:ID)[5] uses nationally representative data from the National Educational Panel Study (NEPS) and the Socio-Economic Panel Study (SOEP). The subproject titled "Provider specific organisation cultures and practices"[6] has generated qualitative data in conducting in-depth-interviews and gathering documents. While generally working independently, researchers from both subprojects collaborated, e.g. discussing each others research results, posing questions, presenting papers together etc. This article presents results from research undertaken in subproject SET:OHA only, taking into account that in collaborative research projects findings accrue in collaboration and are hence stipulated by many conversations, fruitful discussions and critique with

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[4] In German: "Segregation und Trägerschaft. Eine quantitativ-qualitative Studie zur Untersuchung von sozialer und ethnischer Entmischung in Kitas. SET.

[5] In German: "Segregation und Trägerschaft: Trägerspezifische Segregtionsmuster in Deutschland. SET:ID"

[6] In German: "Segregtion und Trägerschaft: Organisationskulturen und Handlungspraktiken. SET:OHA"

colleagues from subproject SET:ID.

Method

Sub-project SET:OHA, the qualitative research part of the project SET, followed a general grounded theory approach in data gathering and analysis. In this section the issues of theoretical sensitivity and the theoretical sample/sampling will be addressed.

Sample and Data (gathering)

As mentioned, the research body is insufficient so far; but observed disparities between Western and Eastern agglomerations and rural regions in ECEC lead to the decision to conduct research in two regions accordingly: One situated in West-Germany, the other in East-Germany. Since both German states had very different ECEC systems it was the aim to make sure to potentially integrate persisting differences. Also, in each region one major city and one rural municipality were selected, taking into account that demand and supply of child care capacities differ in areas with dense population (cities) and rural areas. In each of the four selected municipalities – West/rural, West/city, East/rural, East/city - interviews were conducted with participants from three different groups of actors involved in ECEC distribution: (1) municipality´s staff assigned to/ responsible for child care organisation and planning, (2) ECEC providers and (3) managers of child care centres. The sample consists of 30 interviews in total (six interviews with staff on municipal level, eight interviews with provider managers and 16 interviews with centre managers). In addition, five interviews with different stakeholders in the municipalities were included. A general interview guide was applied, making sure that the same areas of information were part of the interviews and the focus in each interview was kept on child care distribution and enrolment procedures. All interviews were semi-structured in-depth interviews (Scanlan, 2020) with the exception of four focus group interviews: Interestingly, in all four municipalities the responsible authority the researcher contacted preferred group interviews over individual interviews and strongly suggested to include responsible staff instead of interviewing only the head of department. This resulted in focus group interviews with numbers of participants ranging from two to six interviewees. Accepting this meant accepting a free flowing discussion between participants, only moderated to some extent by the interviewer(s) (Morgan, 1997) and it proved fruitful. Due to the nationwide lock down and strict visitor regulations in child care centres in 2020 and 2021 because of the Covid 19-pandemic most interviews had to be conducted as telephone interviews. Interviews lasted between 35 and 120 minutes; they were recorded, transcribed and anonymized. When reporting results the author is in addition paying attention to securing interviewees` anonymity. This is especially crucial taking into account that some German regions as well as providers are very distinctive according to their legal structures and conditions.

In addition to interviews data gathering included the collection of institutional and organisational documents. Those documents comprised for example brochures and information websites published by the municipalities in the sample and articles in newspapers about child care distribution in the municipalities. Also, brochures, documents, forms and lists that were subject of discussion in the interviews were collected.

Theoretical Sensitivity

Unsurprisingly and in line with Corbin and Strauss (Corbin & Strauss, 2015) theoretical sensitivity became and remained a major issue in research. - The author/ researcher is experienced in the field of ECEC, having studied in a European Masters course on ECE as well as worked as a child care centre consultant, teacher in vocational training and lecturer in advanced training courses for child care staff. It was therefore necessary to become aware of one´s own theoretical knowledge about the research field in order acknowledge it as well as suspend it at times - in order not to force theory on data (Corbin & Strauss, 2015; Kelle, 2005)

What will be presented in this article as the "ECEC distribution triangle" in particular is a result of taking theoretical sensitivity (Corbin & Strauss, 2015) seriously. – The schema emerged early in the research process, resulting from the necessity to pin point previous theoretical knowledge and it evolved while

analysing data. Later in the research progress it continuously proved to "help see relevant data and abstract significant categories from (…) scrutiny of the data" (Glaser & Strauss, 1976). Also, it helped the researcher to avoid drowning in data (Kelle, 2005), stay focused. The schema not only fostered a better understanding of the positions of actors involved in child care distribution processes in Germany. It also facilitated and stimulated questions that were posed during the data gathering process, but at the same time fostered the analysing and data coding processes by making possible to map arguments of interviewees and data according to the general outline of the triangle. In that sense, it was one of the first results as well as a precondition for findings) presented in this article.

Data Analysis

In data analysis coding and sorting methods were applied following the goal of breaking up and describing the data (Corbin & Strauss, 1990). Revising the data gathered (documents only at first, transcripts of interviews later in the research process) time and time again, taking notes about particular remarks and observations (Bryman, 2001) slowly a coding system emerged and developed. Coding, memoing helped posing the general question "what is going on here?" and kept the researchers permanent dialogue with the field in general and her data in particular alive. Sticking to a rather free coding practice (which did not necessarily rely on coding every line) data was abstracted into categories, making intertextual analysis possible. This, in effect, made it possible to flesh out commonalities and isolated events and therefore made it possible to group data and build a first theoretical framework. What will presented here as the 'enrolment tryptich' stems from data analysis applying the general grounded theory approach. Memoing, coding and intertextual analysis was facilitated by the software "F4 analyse".

Findings

ECEC Provision in Germany

ECEC is an integral part of Germany´s child and youth welfare system. It is – despite extensive discussions about necessary reforms not part of the educational system (Franke-Meyer, 2016). In the following section a detailed insight will be given – based on literature and in parts on own calculations based on public statistics.

The Universal Right to Child Care

ECEC is not compulsory. Yet, in September 2021 nine out of ten children aged 3 to 6 years and 34,4% younger than three attended child care (Statistisches Bundesamt, 2021). With the introduction of legal entitlement to child care Germany follows a universal approach to ECEC (Scholz et al., 2019). Children´s right to child care is regulated in book VIII of the social welfare code, §24 underpinning entitlement for every child from their[7] 1rst birthday onwards. It grants access to ECEC, legally provided for by the body responsible for youth welfare in the municipality. The right is universal in that sense, that it applies to every child fulfilling the only condition of having turned one.

The Child Care Market: Providers

In total 3.8 million children attended 58500 ECEC services[8]. in Germany (Statistisches Bundesamt, 2021) in 2021. All these institutions are under patronage of a legal body, be it a registered association, a church or religious community, a non-profit organisation, a for-profit limited organisation, a municipality or an owner-operated municipal enterprise. Those legal bodies are in German called "Träger" and in youth welfare they bear responsibility for planning, funding, providing, ideally promoting and conceptually developing social work in youth welfare (Bieker, 2011; Merchel, 2018). There are three types of ECEC providers: (1) public providers, (2) private non-profit providers and (3) private for-profit providers. To

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[7] Throughout this article I will use the gender neutral singular pronoun "they" (them, their) when referring to individuals whose identified pronouns are not known or when the gender of a generic or hypothetical person is irrelevant within the context. I will do so according to guidelines for inclusive and respectful language given by the American Psychological Association APA (2019, 2020).

[8] Those could be supplying ECEC only for children younger than 3 years – Kinderkrippe (creche), institutions taking in children aged 3 until school entry – Kindergarten or day care centres (Kindertagesstätten) which take in children from birth until school entry. Furthermore, there are child care centres that take in children under three until school entry and beyond for after-school-care.

become a private non-profit provider in ECEC legal bodies have to undergo examination processes, usually carried out by the state youth welfare office. Approved providers become part of the ECEC system in the municipality, including public funding etc. (see also: Olk, 2018). The three types of providers share the ECEC market which has therefore been referred to as a mixed economy (Hogrebe, 2016b).

By March, 1rst in 2022 the share of organisations engaged in ECEC working for-profit is low, specified with 1663 institutions across Germany (Statista, 2022a). - In contrast, almost two thirds (or 37 543) of ECEC institutions are operated by private, non-profit providers (Statista, 2022a, 2022b). Public providers take a big share of one third (or 19 294) in total (Statista, 2022a). Providers vary widely, e.g., regarding the number of services they provide as well as regarding their standing in the welfare system: Some providers operate child care services only, some operate a multi-faceted portfolio of youth and welfare services (e.g., stationary care, educational consultancy etc.). Some are operating one or two services in a small area, others 'spread' widely across one municipality or even municipal borders, operating a multitude of services. Some providers have existed for decades and have run ECEC services for a very long time, other providers have just been approved.

Funding, Governance, Responsibilities: The "Multi-Level Structure"

"Funding mechanisms are rather complex and characterised by large regional differences" in Germany (Scholz et al., 2019) due to an "interdependent multi-level structure" (ibid.). - Regarding governance there are four levels in the ECEC system: (1) the federal level, (2) the state level, (3) the local/municipal level and (4) the provider level. All four levels of governance have different and differing responsibilities and competencies within the system (see Table 1). Regarding funding, all four levels share the responsibility – in differing and different amounts plus the child´s parents share the responsibility for funding child care (parental fees). According to calculations from 2018 the greatest share of ECEC funding (51,3%) in Germany lies with the municipalities/, followed by a funding share of 28,6 % by the state (Scholz et al., 2019). A share of 19,6% in total is mutually paid for by parents' fees and the providers (ibid.). The federal level´s quota is as low as 0,5% (ibid.)

Responsibilities for child care provision in Germany are shared across a multi-level system based on the general federal organisation of German welfare (Fuchs-Rechlin & Bergmann, 2014; Scholz et al., 2019). Regarding ECEC provision governance, there are the federal level, state level and municipal level, each bearing particular legislative as well as legal and administrative responsibilities, as comprised in Table 1, below. The fourth level in the multi-level system, the provider organisation level, operates child care services according to standards formulated by superordinate levels but also sets standards for the service delivered in its centres. Provider organisations are responsible for the general organisation, administration and management necessary for the actual child care service. The latter, then, is the fifth level: the level of pedagogical practice, the level of service delivery and day-to-day-routines. However, centre managers´ responsibilities are not to be underestimated: The provider level can assign centre managers with tasks such as developing a pedagogical concept for the centre and staff roster issues etc. Also, crucial issues like personnel recruitment and service addressee recruitment and responsibility for enrolment procedures can be delegated downward to the centre level.

Table 1. Actors in German ECEC: responsibilities, competencies, tasks(Scholz et al., 2019, p. 46, extensively augmented by the author)

Level	Responsibilities, competencies, tasks
Federal government level (Federal government: Bund)	Responsible for guidelines specified in federal law : (Social Code Book VIII; Child and Youth Services Act as the legislative framework, specifying e.g., the entitlement to child care, standards etc.)
	Stimulatory competence: programmes and initiatives
	Funding only in the form of project funding
State government level (State government: 16 Bundesländer)	Regulatory competence: ECEC legal framework regarding service provision in each of the 16 states individually (state law)

	Regulatory competence comprising: setting service provision standards, licensing provider organisations (Träger) as well as individual child care institutions, setting and examining/evaluating provision standards, development and implementation of curricula, staff qualifications
	Funding: targeted funding as investment programmes, federal programmes, tax reduction
Municipal government level (ca. 11 000 municipalities & districts)	Planning, organising of ECEC service
	Ensuring sufficient provision in the municipality/district according to entitlement to ECEC for each child (in case the local levels fail to ensure sufficient provision: compensation of parents´ loss of earnings)
	Funding: municipalities decide about the finance volume according to their priorities as well as their overall budget/indebtness (Besides, municipalities can take on the role of ECEC provider/public provider, too.)
Provider organisation level (Approved legal bodies assigned with the task to deliver provide)	Service provision according to standards = service operation
	Participation in ECEC planning/organisation in the municipality/district (represented on local youth welfare boards)
	Co-funding (in 12 of the 16 states providers contribute financially to the service they are providing for, ratios differ widely)
	Professional management of child care services, including contracting staff, general management of facilities, contracting service users, personnel management, management of funding issues such as regulations regarding parents´ fees etc.)
Service centre level	Service delivery according to general (federal, state, municipal/district) - and the provider organisation´s standards, including
	Actual service delivery: education and care practice with children and their families service management and organisation (e.g., staff roster issues, staff meetings, management of contact to potential addressees and potentially: management of recruitment and familiarisation of incoming children etc.)

Diversity/Plurality[9] & Subsidiarity: Two Principles Shaping Child Care Provision

Rooted in the long corporatist welfare history, there are two interwoven principles in place that shape child care provision: the so-called principle of diversity for one and also the principle of subsidiarity. Many of the German ECE system´s characteristics are owed to them.

The principle of diversity refers to the concept of parents´ choice: Social Code Book VIII (Section 5) guarantees addressees of youth welfare choice in service as well as in pedagogical approaches in place in the services in order to make sure the service meets their and their child´s needs and preferences. Provision plurality as such is also guaranteed in Social Code Book VIII (Section 3). Specifically, in youth welfare – and accordingly in child care - those providers are to be "favoured, which allow addressees of their services a high degree of influence" - (Olk, 2018). In principle, private providers are believed to act in line with what their addressees want (or need) and because of that they are trusted to supply the best possible, locally confectioned service. For doing so providers are granted the remarkable high degree of autonomy. Taking into account that administrative regulations, standards and concepts on governance levels have to be transferred into sufficient supply and practice on service level, the role of providers in the ECEC system is crucial: They implement administrative regulations existing at federal, state and municipal level; they are the ones to 'translate' legal regulations into actual practice.

They, also, enjoy a remarkably high degree of autonomy in molding ECEC, which partly is owed to the principle of plurality but besides that, to subsidiarity. Subsidiarity is fundamentally woven into the system; it is the "principle that a central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more local level" (Oxford English Dictionary, n.d). Hence, municipalities only are to operate services only, if no other providers are willing to do so. When there are approved organisations offering provision, they should be assigned the task. So, despite substantially

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[9] In German: Trägerpluralität. Authors translate it either as 'principle of diversity' or 'principle of plurality'. Both terms will be used synonymously in this article.

funding provision, due to the principle of subsidiarity, municipalities are not substantially in charge or control of the actual shape of provision.

Both principles promote a remarkable diversity. The sheer unnumerable quantity of different providers in the field acting to a high degree autonomously determining most aspects of practice naturally results in a huge variety of ECEC practice, regarding e.g., service centres´ values and religious/philosophical/political orientation, but also in opening hours and holiday closing times, pedagogical approaches and concepts and parents´ fees and many practical aspects more.

Parental choice as well as institutional choice are reflected in, owed to and backed by the two interwoven principles of welfare provision diversity and provider autonomy. When targeting 'institutional choice' in researching segregation in ECEC, the issue of ECEC distribution and capacity allocation in general and enrolment procedures in particular are to be looked at as part of the practice diverse ECEC providers mold autonomously as well as from a general system make-up perspective. In the following section the general distribution principles are comprised in the schema 'ECEC distribution triangle'.
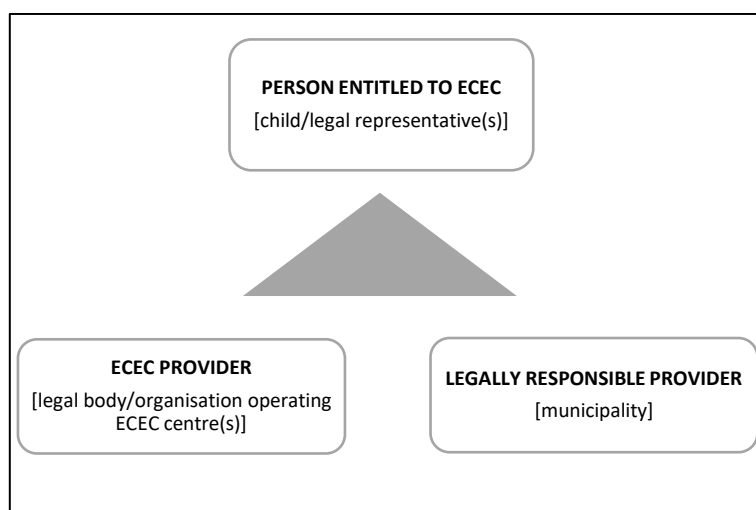
The "ECEC Distribution Triangle"

Figure 1: ECEC distribution triangle - actors

In Germany welfare services` distribution is organised as an interplay between three actors: the person entitled to a service, the legally responsible provider and the service providing organisation. This triangular interrelatedness is commonly referred to as the 'welfare triangle'. In the sphere of social legislation it illustrates the legal relations between actors involved in provision, production, regulation, funding and use of social -, health, and other right based services. In ECEC, figure 1 illustrates, the distribution of the service: the triangle includes the (potential) user (addressee) of the service (the entitled child), the legally responsible provider for ECEC (the municipality) and the ECEC provider. Those three actors are interconnected by different and manyfold relations.

Person Entitled to Child Care, Legal Provider, Service Provider

The person entitled to child care, addressee and potential user of ECEC service is the child. Since 2013 every child aged one year or older has the right to child care (see above). Because a child, though, is not in possession of neither the legal right nor capacity and ability to enrol or sign a contract. It is therefore legally represented by their parents who can claim the child´s right.

While legal entitlement to ECEC is granted by federal law and juridically specified on federal state level, implementation of the legal claim is assigned to the administrative level of a regional authority. That means that the municipality is the legally responsible provider of ECEC. Municipalities have to ensure, plan for and organise sufficient supply of ECEC in the region. Also, when municipalities lack sufficient

supply and fail to provide a child with an adequate child care spot, the child´s legal representatives[10] are can file a distribution is law suit against the legally responsible provider: if, due to not returning to an employment because of the lack of ECEC, they can claim compensation of their loss of earnings.

ECEC provider by definition is any legal organisation, certified for- and assigned with the task of operating services providing early childhood education and care. As mentioned above providers on the ECEC market in Germany are either private non-profit, public or private for-profit organisations

The Relations Between Child, Child Care Provider And Legally Responsible Provider: A Bermuda Triangle?
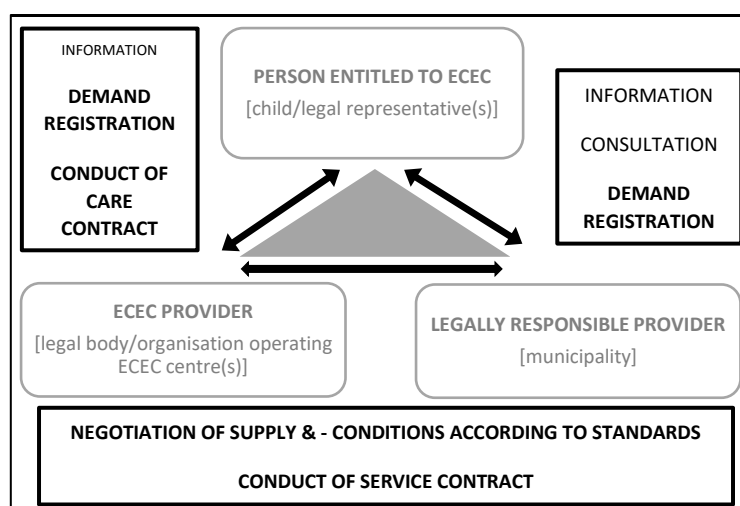

Figure 2: ECEC distribution triangle - relations (source: own)

The (legal) relations between actors in this triangle are – in particular for parents – rather confusing and often referred to as 'rather opaque'. Some authors pin point that; Kunkel even compared the welfare triangle with the proverbial Bermuda Triangle, suggesting it was possible to get lost in it (Kunkel, 2008).

In particular for parents of a child entitled to child care who wish to use ECEC services, it might appear opaque as to whom to reach out to: the legally responsible provider or an ECEC provider or one or more child care centres?

ECEC Provider – Legally Responsible Provider

The municipality has to ensure a sufficient ECEC system in the region. Calculations regarding birth rates, rates of use, ECEC supply capacity and their forecasted developments youth welfare planning is undertaken on a yearly basis. Plans include the development of ECEC capacities. Based on youth welfare planning municipalities conduct service contracts with approved ECEC providers; those contracts comprise issues such as ECEC aim and quality of the service and financial compensation for the service. ECEC providers supply ECEC service according to the covenant – regarding capacity as well as according to quality standards etc. Usually, the covenants entail agreements about regular reports of numbers and names of enrolled children; the latter is the basis for financial compensation proceedings from the municipality.

Legally Responsible Provider – Legal Representatives

Parents who wish to use ECEC service for their child have to register their demand first and foremost with the legally responsible provider. This is the necessary legal step in order to ensure the child´s formal right can be implemented and the child can – so to speak – enter the ECEC system at all. The legally responsible provider therefore has to inform parents (sufficiently) about ECEC in the region. Should parents – on their own - not be able to find a child care centre they wish their child to attend, the

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[10] Most commonly the legal representatives of a child are their legal guardians who most commonly are referred to as parents. All three terms are used synonymously in the following.

municipality is to assist them. Should parents after all not be successful in finding a service that would enrol their child and, hence, are not offered an ECEC spot for their child, parents can file a lawsuit.

Legal Representatives – ECEC Provider

Parents in search for ECEC can approach service centres in their region, making contact, gathering information that will help to select a service centre supplying a service meeting their family´s needs. Most service centres and/or ECEC providers document prospective users' information; therefore, parents register their demand with the centre, handing in a registration form made available by the service provider. Once parents succeeded in finding an ECEC centre suitable to their child´s and the family´s needs and the desired service centre offers them an ECEC spot, enrolment procedures will be finalised by conducting a service contract with the legal body operating the service centre. The contracting parties therein agree on the admission date, rights and obligations of the contracting parties and the quality of the particular service provided for by the centre.

Allowing for Choice and Selection: ECEC Allocation Principles

Ensuring sufficient ECEC provision in the region is assigned to the municipality. The latter organises and plans a system corresponding with the region´s residents` needs regarding capacity and quality. Whereas the municipality alone has to make sure that there are enough child care spots available for every child, the allocation of child care spots is decentrally organised and in principle and legally 'out of municipality´s hand'. This is reasonable and easily understandable: legally, the municipality is not in a position to decide who an ECEC provider conducts a service contract with. Since a care contract is conducted between parents and an ECEC provider, both parties are free to decide whether or not they agree on the contractual object and resulting rights and obligations. Both potential parties – parents as well as ECEC providers - are, as a matter of principle, free to choose each other. Clearly, choice and selection are principles of ECEC allocation in Germany. A funcion of the latter, it is in general sole and autonomous responsibility of the ECEC providers to make up allocation procedures: from designing forms and/or lists for demand registration, management processes regarding prospective service users, and determining key dates through to shaping processes for enrolment decision making and contract conduct. Needless to say: all those procedures have to meet legal standards and, furthermore: design and conduct of those procedures desirably have to be in accordance with the common sense of justice.

Discussion: ECEC Allocation And Enrolment Procedures-A Tryptich

In the following three sections research findings regarding child care allocation/enrolment will be presented and discussed. A picture of enrolment procedures and allocation proceedings will be drawn, which organises research results and their discussion as condensed and focused as possible in three segments: Research results will be presented and discussed focusing on the three relevant actor levels – municipality, provider, centre management. As a result readers are presented with a research result tryptich.

Enrolment Tryptich, Part 1: Steering (almost) Impossible? – The Municipal Level

Interviews with municipal staff in general revealed tensions between the legal responsibility for child care provision and providers´ autonomy. As interviews were conducted in 2020 and 2021 urgent lawsuits regarding child care provision were still an issue. - After the universal entitlement to child care was enforced in August 2013 some municipalities faced a flood of lawsuits filed. In particular big cities had to deal with being charged (Collins, 2017; Deutschlandfunk, 2013; Gröger, 2014; Staeubert, 2018) by parents who claimed the legal provider of child care had not supplied them with adequate child care spots in time. As a result of those lawsuits municipalities in Germany were sentenced to compensate parents´ loss of earnings (Kaufmann, 2016); high debits on fiscal accounts then, were to be managed. For municipalities child care distribution can indeed, be a most critical issue; one municipality´s staff reported tensions and

tasks resulting from many cases of parents charging the municipality; the other three municipalities´ staff referred to the possibility of being charged.

Ensuring "Sufficient" Provision and Efficient Capacity Allocation

Basically, since the implementation of the right to child care, for municipalities the task of ensuring sufficient provision partly has become a matter of preventing lawsuits. Municipalities, hence, not only substantially promote non-profit and for-profit providers in their expansion efforts. Besides, many municipalities expanded the numbers of centres under their own management in order to make child care demand and child care supply meet. Furthermore, local authorities identified the need to ensure that already existing child care capacities are managed more efficiently. So, vacant child care spots were to be allocated as soon as possible which led municipalities across Germany to developing and implementing software. Most municipalities have therefore launched websites, so-called child care portals, in recent years (Nebe, 2021, 2022). For municipalities those portals are a tool for bringing together parents and child care centres, and moreover a tool for keeping track of the demand for child care and of free capacities. In general, the need to map the child care capacity occupation status across the municipality and to keep this 'map' up-to-date, was emphasized as an important tool for better and more efficient administration and planning (Nebe, 2022). So, by making parents use the portal for mandatory demand registration with the legally responsible provider (indicating name, birth date, occupation address of their child and the date they wish to start using ECE) and by assigning ECEC providers not only to keep their centres´ profiles on the website up-to-date but more importantly, to report vacant spots in the service, municipalities can accomplish a good overview over demand and supply. Mostly, portals include the possibility for parents to register their priorities for certain service centres; if they use this function their demand is forwarded to the centres. For municipalities it is most important, as was stated by interviewees, to gain a good overview over supply and demand because that is the essential basis for the endeavour of ensuring sufficient ECEC provision.

(No) Control Over Capacity Allocation? – Steering Impossible?

However, relying on software or not, for municipalities any direct influence on the actual allocation of child care capacities is not at hand, as interviewees stated. Interviews revealed that local authorities partly seem to struggle with providers´ autonomy regarding capacity allocation as it is referred to as significantly limiting the municipalities´ steering opportunities. While this is referred to as a given, steering ideas seem to be linked with somewhat directly taking action So, interviewees at municipal level generally linked their opportunities for steering to the degree of being able to dispose child care capacities according to the responsible providers´ agenda or need. The role of public provision is especially intriguing, as the municipality in its double-role as legal provider of ECEC *and* provider operating services seems to entail options to 'convince' centre managers to take in children when particularly needed - from the 'municipality´s-as-legal-provider'-perspective. It was expressed that while the public provider of course was granted provider autonomy and hence were to decide freely, and yet, - as one interviewee said public ECEC centres "belong to us" and hence, could be made liable to a certain extent.

Nevertheless, regarding group composition in certain child care centres, municipal staff made the point that that was an issue they were not at all in control of. One municipality´s (big city/West) manager for child care quality for example, pointed out that she knew of two centres operated by the same provider, both centres homogenous in clientele. According to the interviewee one centre was almost exclusively attended by children from families with high social status, the other one by children coming from families with very low social status and migrant background. The interviewee said that from her perspective this was of course undesirable and yet, it was something she (respectively the municipality) could not control or influence due to the child care provider´s autonomy. Municipalities' staff, however, expressed different perceptions of the relation between providers/child care centres and the municipality regarding ECEC capacity allocation and, in particular of options to influence child care spot allocation processes. Whereas in one municipality staff declined any possibility of influencing providers in their enrolment decisions, staff in another municipality claimed to "at least have a say" in centre composition. The latter emphasizing

that when staff found that the composition of clientele was disadvantageous/too homogenous they would contact centre managers and/or provider managers in order to stipulate amendments enrolment procedures and decisions.

In general, municipalities´ staff´s ideas regarding steering of ECEC capacity allocation seemed restricted to the potential of actually enrolling or influencing enrolment of children in certain service centres, directly determining clientele composition. The tenor of all six interviews was ambiguous and rather negatively toned regarding municipalities` position in ECEC capacity allocation. Interviewees reviewed the municipalities´ position rather weak and discussed it critically. Particularly when they reported lawsuits filed or impended by parents, the 'municipality´s weakness' issue surfaced: Being made legally responsible for supplying sufficient ECEC, then, seems to be looked upon as contradictious to not having control over capacity allocation.

Enrolment Tryptich, Part 2: "We Are Not the Ones to Favour Anyone; We Mustn't Do That and We Don't Do That!" – The Provider Level

In this section some of the facets of child care allocation will be presented as they emerged in particular from interviews with service provider managers and supplement document analysis. Data reveals on the one hand, that child care allocation procedures are (only) one of many issues providers have to tackle – and especially among the search for staff (there is an overall lack in workforce in the field in Germany), funding and contract issues it is referred to as 'not the most urgent one'. It showed that, to providers, the enrolment procedures are - perhaps predominantly - an instrument for taking good care of capacity utilisation leading to balanced finances. Furthermore, the variety of enrolment procedures reflects the plurality of providers. – In general, every provider and sometimes even each centre operated by the same provider seems to implement their very own procedures. To some provider managers enrolment procedures were an issue important which they willingly discussed with the researcher and to some it seemed an issue unnecessary to discuss at all. Some facets of enrolment practice will be carved out focusing on enrolling children under conditions of excess demand, responsibility for the process, the 'paper work' and personal encounters involved and lastly, idea of group composition.

Enrolling Children Under Conditions of Excess Demand

Overall, providers emphasised that at the moment any enrolment still is done under conditions of excess demand. Thus, providers stated that they usually have (a lot more) registered children wishing to be enrolled than they have actual spots to distribute. Understandably, since the balance of finances is at the forefront of providers´ attention and the latter is linked to the degree of capacity utilisation, providers find themselves in a rather comfortable situation: they know, that technically speaking competition lies in the field of consumers, not of the suppliers. Enrolment for providers, from that point of view appears a rather easy task.

Responsibility Spheres

Clearly, ECEC providers in principle uphold their autonomy; interviewees insisted that the allocation of ECEC spots was an issue of their concern only, rejecting the possibility of the municipality interfering with enrolment decisions. At the same time, though, providers mentioned that regarding municipalities´ pressing cases (e.g., parents claiming urgent demand for child care) collaborative relations between municipality and providers made way for making capacities ad hoc accessible, if needed - and if there were vacant spots. So, for one responsibility for ECEC allocation was certainly claimed by providers; nevertheless, granting municipalities´ requests as gestures of goodwill.

Besides that, data revealed a great variety to whether taking responsibility for providers was a matter of actually practically getting involved in ECEC allocation or whether responsibility was delegated down to centre manage level: While some providers leave enrolment entirely up to the centre managers, others take it into their sphere e.g., by structuring enrolment procedures, suggesting processes, bindingly implementing the use of forms, lists or enrolment management software. None of the providers in our sample tackled the task of enrolling children in their centres centrally or without at least consulting the

centre managers. Delegating responsibility for enrolment procedures and to the sphere of responsibility of centre managers seems most common. Data also reveals that providers express great trust in the centre management's capability to best ensure that enrolment procedures go smoothly with the effect of balanced capacity utilisation and also of smooth routines regarding the organisation of familiarisation phases for incoming children etc. All the same, some providers expressed it was their task to make sure that enrolment procedures do not get too time-consuming and hence it was up to them to work out effective and efficient procedures. One provider for example emphasized it had been necessary to implement new application forms and enrolment processes in the centres in order to reduce the vast amount of time centre managers spent organising and managing enrolment processes. Also, the same provider claimed, it was indispensable to make the whole enrolment process transparent for parents, making sure that even under conditions of excess demand, all parents – even those whose children could not be taken in at a certain date – were content with the process as such. He said, he made sure that descriptions of the enrolment procedures, forms and processings were made public by centre managers as well as on the provider´s website. Before making the process 'less tenuous', as he called it, it had sometimes happened that long waiting lists and the way these were managed, became issues of discussion among parents and even reason for complaint. (Some parents felt they had registered their demand before someone else who, however, was enrolled before them.)

Demand Registration: Personal Contact and/or Paper Work

Whether enrolment procedure responsibility is actually and practically taken on by the provider level or whether it lies with the centre managers – enrolment as such is characterised by a variety of practices. Including paper work as well as personal contact between parents and a certain centre´s or the provider`s staff. Regarding personal contact as part of enrolment practices most personal encounters happen between centre managers and parents. It appears that the smaller the provider (that is: the lesser centres it operates) the more probable it is that parents approach a provider manager in order to register their demand for child care. But interviewees reported that usually service staff is approached first. If parents do make contact to the provider level first, apparently, they will be informed about the different centres the provider operates and asked to make contact to centre managers.

Also, paper work is included in the enrolment procedures: It comprises notes, forms and lists of different kinds, serving different purposes. Those purposes are on the one hand the registration of the parents' demand and wish for institutional care for their child in the centre and information exchange between both parties on the other hand. The latter may comprise information brochures as well as websites the provider makes available for parents. Those contain information about child care in general, about certain centres, their pedagogical approaches, their facilities and also, essential contact dates, such as telephone numbers, email addresses etc. Websites operated by providers commonly also supply information about how to register ECEC demand, which mostly is also presented either online or via a downloadable document.

Those documents are indeed rather interesting and present a fruitful source for further research; here only few issues shall be mentioned: ECEC providers present forms to be used by parents in order to express their wish for child care either in one particular centre or in any centre operated by the provider. Furthermore, what terms providers use to title those documents varies widely and comprise "request for a child care spot with provider […]"[11], "registration notification for a child care spot in centre […] supplied for by provider […]"[12] or "application for admission to child care "[13] and others. Those terms mentioned are just three examples out of a far greater variety to be found across Germany. While this will not be discussed here, it proves fruitful to analyse those documents because they seem to represent different approaches to child care distribution: It can be assumed that it is far from trivial whether providers title those forms "application" or "demand registration", "registration notification" or "request" because the

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[11] German original title: Antrag auf einen Platz in einer Kindertageseinrichtung bei Träger […]

[12] German original title: Voranmeldebogen für Kinderbetreuung in der Kindertagesstätte […] bei Träger […]

[13] German original title: Bewerbung um Aufnahme in Kindertagesbetreuung

title as well as the information gathered with those forms can be assumed to reflect providers´ understanding of (their role in) child care allocation. Regarding documents the information gathered varies widely, too. - Some providers only ask for essential information such as the child´s birth date, address and names of parents as well as the date parents wish to start using child care. Others ask for a lot more, rather personal, information, such as the sex of the child, the number, age and sex of the child´s siblings, the family´s language, parents´ civil status and their education, religious confession, profession and employment status and more. All things considered, documents involved in enrolment appear to be at least signed off - if not designed - by providers; they are designed to serve the purpose of managing the enrolment process. According to providers´ freedom to decide on general practice issues, congruously there seem to be various approaches towards content and design, leading to various documents in place in the municipalities. As concerns documents, neither the amount of information gathered nor the question of how information is processed is negotiated or standardized across providers and centres in municipalities. Centres operated by the same provider seem to tend to use the same documents and gather the same amount of information. As to differences between providers, the least to say is, that providers design their own documents. Generally speaking, providers with strong links to churches (such as individual parish or agencies church administration unions) commonly include specification of the family´s religion while public providers and others don´t. Apart from that there are no recognisable patterns regarding to which provider asks for which information.

At least one share of 'paper work' is to be done utilizing so-called child-care portals (Kita-Portale). As mentioned above, those are operated in many municipalities across Germany. Providers apparently are obliged to use the municipalities' portals; commonly this is agreed upon between providers and local authority as part of regular revisions of service contracts. So, mostly those portals have become part of the contracts between the legally responsible provider and the child care provider; municipalities intending to map child care options as well as to display and manage available child care capacities (see above). Despite being obliged to utilization of the portals, the extent to which provider level and centre level make use and promote those portals varies widely (for further detail see: (Nebe, 2022)). Our data indicates that the implementation of those portals encountered resistance by providers, because of the latter claiming having to make use of portals interfered with their autonomy.

A Question of Making Just(ifiable) Decisions

At the moment not much is known about if and how the information gathered in those forms informs the actual admission or enrolment process. Our data indicates that some information crucially and commonly informs enrolment decisions while other information is rather irrelevant in the process. However, what information about the child and the family leads to greater likelihood for parents to actually get a child care spot stays largely obscure. While at the core of discussion, the overall existence of 'criteria lists at the provider level cannot be confirmed on the basis of the sample. Only one – public - provider in the sample mentioned guiding enrolment decisions by implementing a criteria list (see below).

The provider managers interviewed were practically not very much involved in the actual decision-making processes regarding enrolment. Still, they critiqued the ranking of children: For providers it seemed crucial to emphasize that all children entitled to ECEC had the same right and chance to be enrolled; and thus, any discrimination – be it positive or negative – was to be prevented. The idea of favouring one family over another in general was rejected, stressing that it was any provider´s duty to be welcoming each and every child, whatever the family´s language, religion, social status etc. Ambiguity, though, showed on the one hand when provider managers talked about the idea of 'helping' those in need, stressing that centre managers should always be able to prioritise for example children whose parents were attending training courses (professional or language) or children of single parents or children with special pedagogical needs over other children.

'Picking' certain children and families for their services and hence, matching incoming children to the child care provider`s as well as centre´s concept or current clientele, was in principle condemned. At the same time, though, providers held it possible that some centre managers might actually pick and match

children to the centre. In particular, giving priority to children with siblings already attending the centre seemed reasonable and justifiable, as well as picking those children who for different reasons matched the existing group. For example, some providers second the idea of picking children according to their age or sex when the centre was organised in groups and a favoured group composition was to be balanced (e.g., resulting in just as many boys as girls in the group). Having said that, one provider strictly condemned picking children because of their sex, stating that the idea of composing groups of just as many girls as boys as obsolete. Th provider manager argued that centre managers should not at all intend to compose groups or centre clientele, relying on any information about the child or their family. The only viable information – from his point of view - was to be the date of birth and the date of demand registration, because, in his opinion, it was up to the pedagogical staff´s pedagogical competence and professional ability to deal with more or less randomly composed groups. From experience the provider manager emphasised that in case there were more girls to be enrolled centre managers should not intend to favour (and enrol) boys over girls but to find professional ways of dealing with a group of girls. Interestingly, one provider upheld the possibility to pick children. She said, she looked at enrolment as one way of shaping the work environment for pedagogical staff. So, in her opinion it was legit and plausible that centre managers should chose children and families in accordance with their ideas of ECEC as well as their knowledge about the pedagogical team´s professional skills.

Back Up and Guide Centre Managers' Decision Making

Against the background of short supply, providers – despite in principle rejecting the idea of favouring families over others, cherry picking children - vindicate prioritising and ranking as a viable way for centre managers to deal with excess demand. Apparently, good reasons respectively plausible justifications for enrolment decisions seem necessary. Providers talked about the need for centre managers to work towards decisions they can fully support. As mentioned before, in particular favouring families in need over other families seems a 'good' reason for prioritising them. Furthermore, it seems justifiable to prioritise employed parents who need to get back to their job over unemployed parents. Cherry picking, on the other hand, was stated as not justifiable.

Providers seem to 'work around' the need to intricately justify enrolment decisions for example by relying on key dates only: a number of providers have implemented registration and enrolment procedures which are claimed to only take into account the date of demand registration in combination with the child´s birth date as relevant information. Therefore, by implementing 'first come, first serve' manner-procedures seem to be deemed to lift the 'enrolment decision weight' off centre managers´ shoulders. At the same time, it objectifies decisions, making them rather easy and indisputable. Those enrolment decisions are considered just because they are – in principle – made without regard to person (child/family).

Enrolment Tryptich, Part 3: "It is A Challenge, This Whole Place Allocation Process" – The Centre Management Level

In this section some of the dimensions that characterise child care allocation practice will be presented as they emerged from analysing data regarding the centre management level. Data indicates: enrolment of new children/families and all the tasks involved seem to make up a big part of the centre managers' job. It appears common in the field of ECEC that responsibility for the actual enrolment processes is assigned to centre managers: According to the project´s data, centre managers tend to be the ones whom parents encounter for first centre contact, they are the ones who inform parents about enrolment proceedings in particular and about the centre in general, who manage, order and process registration forms and possibly continuously process wait lists, keeping an eye on the centres use of capacity. Because they are the ones addressed by parents registering their demand for child care, they also most probably are the ones to inform parents about if and when their child can be taken in – or not. Centre

managers, thus, are the ones finding themselves in positions having to justify enrolment decisions if necessary.

Demand Registration: Personal Contact and/or Paper Work

All in all, to the centre managers interviewed enrolment as such seemed a burden. All interviewees emphasised that in general the tasks linked to enrolment of children added up to a work load consuming a great share of their working hours. While most of them found it well worth the while, others stated they would not mind 'outsourcing' the task at all, if for example, any administrative work was in the provider´s sphere of responsibility. On the other hand, many centre managers in general seem to appreciate that being responsible for enrolment procedures also gives them the opportunity to get to know new families first. Also, centre managers emphasized that to them it was a crucial as well as rewarding task which could not possibly be tackled centrally by the provider but had to be taken care of in the centre. Some centres organise open-house-presentations regularly - as one manager stressed, in order to save time by informing many families at once. Other centre managers schedule one-on-one meetings with individual families, stressing that it was particularly good to get to know a family individually before they even handed in their registration. One 'was able to get a feeling' about the family and about what the family expects, one interviewee said.

Regarding registration forms, mostly forms provided for by providers seem to be in place. All the while some centre managers just put down names (of child and family), contact details, the child`s birth date as well as the requested date to start using child care. Some centre managers organise those dates digitally, using self-made tables, software provided for by the provider organisation or individually constructed files and some make use of ring binders, notebook and pen. Also, if the municipalities use an ECEC portal and this website included the possibility for parents to register their demand for ECEC spots in certain centres, this request is automatically forwarded to the centres. In those cases, centre managers (can) make use of this digital function and accept or reject requests, invite parents for one-on-one-meetings etc. If and how individual information about the child enters wait lists – if the latter exist at all - seems to vary widely, too. Some centre managers document each incoming registration in one file, others just file all the registration forms in a binder.

Just as interesting is, what information is targeted in those documents: Data indicates that a multitude (!) of information is potentially gathered. What information exactly is collected from parents ahead of the enrolment decision making varies widely (see section 'paper work'/provider level above); it may – among information such as name, birth date, occupation address of the child as well as name, birth date, address and telephone numbers of their legal guardians. Furthermore, the documents ask for information such as the preferred date to start service attendance and hours of care required per day. Besides, parents could be asked to specify information about the child´s sex, their siblings, the family`s language, nationality, their religious confession. Also, some of the documents ask for information about the parents´ education and employment status of parents etc. As mentioned before, there are no recognisable patterns as to what information is asked by what kind of provider or by which ECEC centre.

Processing Information about the Child and Their Family – Making Decisions

In general, the practical starting point of enrolment proceedings on the centre management´s side is the ascertainment of vacant child care spots. The actual opportunity to enrol new children occurs regularly when children enter school. So, how many children are about to leave the centre makes centre managers start working on enrolment ahead of that date. Furthermore, children might be leaving the centre due to the family moving house or any other reason.

When ECEC spots are (going to be) vacant, centre managers spring into action: then forms will be checked and information about the children will be processed. Taking into account, that – as interviewees put it – many child care spots can be 'given to sibling-children' (that is, families who already have a child attending the centre gain ECEC for their next child) and hence, calculatively many theoretically vacant spots are excluded from that, there will be vacant spots and management will have to decide whom to give

those to. Then, folders will be opened, registration forms or wait lists will be checked and more information about other children and their families will be proceeded. Rigid criteria or criteria lists don't seem to be in place. But instead, the information about different children will be weighed up against one another in situ, resulting in decisions about who will be offered a spot. As a result, the centre manager will have reduced the number of prospective users registered to a number of families who will be offered a spot. The centre manager, then, will get in touch with those families, asking, if they are still interested. Some might already have succeeded in conducting a service contract with another centres, but those still wanting their child to attend the centre in question will be invited to a one-on-one meeting to conduct the contract.

Enrolment procedures generally, seem to be based on principles rather than firm (or even rigid) systematically worked out decision-making-criteria. One of the few principles is the dictum to always enrol 'sibling children' first, another, to have an eye on the urgent need single parents or persons in training courses might have. And in addition, parents who need to return to their job after parental leave seem to be prioritised. Also, all providers in the sample said they would always try to 'make room' for 'social-work-case-children'. Furthermore, there is indication that church operated centres do prioritise parish members, but this does not seem to be generally the case. Priority, however, is given to children of company employees in company-operated centres – and the same sometimes is the case with priority regarding municipality employees in public ECEC centres and church (charity) employees in centres operated by church.

When processing information in order to guide enrolment decisions it seems that age as well as the sex were information quite commonly made relevant, too. Also, some centre managers stated they were trying to balance capacity utilisation well, which to some deciders meant that whether or not parents were entitled to all-day-ECEC because that was relevant regarding finances. This, though, does not seem to result in some deciders generally rejecting children entitled to only half-day ECEC but if balances got troublesome, this information could possibly be made relevant in the decision, too.

At large, research revealed that very different facts known about the child and the family are being weighed up against each other. Findings point to the application of prioritising procedures in the decision-making process. But those are mostly not systematically and consistently or rigidly applied. Enrolment procedures, from a general perspective, could best be considered 'in-situ-information-processing-and-balancing decision making' rather than 'criteria-based systematic decision making'. Data indicates that centre managers develop their own individual, yet, usual and common paths towards enrolment. Hence, in each service centre there seems to exist a somewhat common enrolment procedure. But even then, decisions can be made, leaving the beaten paths of decision making completely.

A Question of Making Just(ifiable) Decisions?

While data does not reveal how exactly and to what extent the decision-making process regarding enrolment of children includes *which* information about a child and their family, the centre managers seem to have a great interest in making decisions that are justifiable and acceptable – for themselves, team members, the provider and last but not least at all the parents. Rigid criteria lists seem to be rare; centre managers rather reject the idea of using those. Yet, there is information that is elevated to the status of decision criteria: Age and sex of the child is such information, for example. Both are relevant for those managers aiming at certain ideas of group composition – e.g., balanced quota of girls and boys, mixed age groups etc. So, including both characteristics of children into decision making seems justifiable according to the centre´s pedagogical conceptions. Furthermore, the registration date is justifiable firstly, because universal entitlement to ECEC grants every child whose legal representatives register demand ECEC; so, demand must be met by supply and no child should have to wait for ECEC. The interviews indicate that, the longer a family´s demand had been registered, potentially the more probable their admission became. Also, children of single parents, in particular single mothers were likely to be taken in prior to children living with both parents. This seems to be justifiable due to the idea that – if parenthood is not shared, one parent should be relieved from some work load regarding the upbringing of a child alone. Furthermore, children whose parents were studying, were in vocational training or were assigned to attend language or

further education courses were mentioned to be potentially prioritised. This is justifiable on the background of future family income prospects. Children whose siblings already attended child care in the centre are clearly ranked higher than other children; the reasoning behind that is given in the intent to help families organise their daily routines, in particular by helping keeping daily travel times low. Besides, from centre perspective the familiarisation process for children was mentioned to be easier if siblings already attend the day care centre. So, when information about siblings is elevated to the status of a decision criterion, it is justifiable, too. Also, the distance between the child's permanent residence and the child care centre was described as relevant and potentially decisive information: Children living closer to the centre were said to be prioritised, because for one, ECEC should promote neighbourhood networks and also, because parents who have to travel larger distances everyday must be expected to try and find ECEC for their child closer to their home – and hence, they would potentially leave the centre. The latter, then, from centre perspective would result in avoidable extra effort (having to enrol a new child).

Aside from that, apparently information about a family's language or migrant back ground, the child's physical handicaps, parents' attitude towards the centre's pedagogical concept or the provider's profile was mentioned to potentially to lead to either enrolling or to not-enrolling children for the very reason. Justifications regarding the inclusion of such information as relevant were manifold, sometimes contradictory. For example, one manager stated that sometimes it was reasonable to reject a child when it was clear there were neither staff members nor children going to be able to speak the child's and their family's language. So, she said, in the best interest of the child, it was the best decision not to take that child in. Another manager, in contradiction, mentioned that she had in the past taken in a child because neither the child nor the family were able to speak German and she was certain that child and parents would be able to learn the language faster when using the child care service.

So, when applying an open information-weighing-decision-making process for enrolment in ECEC, as done by our interviewees and - as it seems - by many decision makers, the crucial point with weighing information in situ is that it is almost impossible to be objectified and to be made transparent. It is, in principle, left open as to how exactly information is being weighed. As the example showed: whether or not a child speaking another language than the majority of children and staff in the centre do is being enrolled depends on the deciders assessment of the current situation, regarding the child, the group of children already attending the centre, staff members' pedagogical approaches and professional abilities, spatial and facility preconditions and also to a certain degree the provider organisations rationales.

Findings indicate, that enrolment decision making is a highly individual centre-based task. It is commonly routinely tackled by centre managers who, in general, do look upon enrolment as rather challenging: One centre manager summarised: "One really has difficulties to do a good job [here]. Yes, it is a challenge, this whole allocation process."

Conclusion: Do Legal Conditions and Administrative Structures Allow for Segregation in ECEC?

Germany has a complex and extensive system of right based, universal provision of ECEC which in general is designed to supply high quality ECEC for every child. Some authors and certainly most politicians have (had) high hopes for enhancing equality especially with regards to the implementation of universal access to ECEC. The entitlement to ECEC may at last "level the field" for all children (Cornelissen et al., 2018; Havnes & Mogstad, 2015), some emphasized. It turns out, though, there are still access barriers to be found (Klinkhammer & Erhard, 2018): While in principle all children equally enter the system (Groos et al., 2020; Klinkhammer & Riedel, 2018), those children who do enter are not equally distributed across services (Hogrebe, 2016a; Hogrebe, Mierendorff et al., 2021; Hogrebe, Pomykaj et al., 2021). Instead, substantial segregation shows. So, the field appears not as levelled as hoped for.

The question, this article pursued, is what practices, legal conditions and administrative structures make segregation possible. Light was shed on the overall legal and governmental make-up of the ECEC system in Germany, administrative structures resulting from relations between the three actors -

child/parents, ECEC provider and municipality. And, most notably, an empirically based, threefold picture of enrolment was presented.

Apparently, despite being legally responsible for ECEC, having to make sure every child entitled to ECEC is supplied with an ECEC spot and also despite taking the biggest share of funding, municipalities´ options for steering the distribution flow of children towards ECEC provision are more than limited. Most members of municipality staff rejected having any option to steer where children from different backgrounds are taken in. As could be shown by presenting the 'ECEC distribution triangle', this is due to administrative structures resulting from the common distribution principle of welfare in Germany. Municipalities are, indeed, neither more nor less than the authority promoting and ensuring sufficient provision in the region. Hence, providers as legal bodies conducting the care contracts with parents, are the ones in control of the question who is enrolled – and who is not enrolled.

At the same time, providers uphold their right to autonomy, including the right to select their service users. According to our data, providers tend to delegate the actual responsibility for enrolment down to centre managers, granting them latitude in framing procedures. Provider management levels do, in different degrees, supply centre managers with general guidance regarding enrolment procedures, papers, lists etc.

The picture of enrolment on centre level, then, is a most complex and variational one. Apparently, centre managers take the responsibility for user recruitment very seriously. Their scope for action regarding decision-making is big. The option to select prospective service users is fleshed out according to key dates and guidelines by the provider (if those exist). There apparently, are no standard enrolment procedures nor standards for criteria to include in enrolment decision-making processes. Instead, decision-making is fleshed out in consideration of parameters such as the child or family´s assumed need, the pedagogical staff´s competences, the existing clientele composition in the centre or in certain groups, personal and professional attitudes of team members and provider organisation, the centre´s facilities, etc. Enrolment decision-making routines are, above all, practices carrying an individual imprint – by the person carrying it out, the centre – its clientele, staff, pedagogical approach, history, neighbourhood etc. Enrolment, in that sense however, appears neither arbitrary nor should it therefore be looked upon as an incident of intentional and systematic discrimination or unilateral preference on the centre managers´ or providers´ side. Instead, it is a highly individualised procedure, due to the freedom to shape practice under given conditions and structures.

As was shown, legal conditions grant providers autonomy and latitude in molding provision. In combination with administrative structures that limit municipal options for steering – the make-up of the ECEC system lays the ground work for distribution flows potentially channelling children towards centres in ways that potentially result in homogenous clienteles in centres. In other words: legal conditions and administrative structures leave actors on the provider side (provider management and centre management) with the freedom to choose service users – and they, indeed, do use those options. Some providers as well as centre managers look at that choice as a duty (c.f. Ramos-Lobato & Gross, 2019), while others find it rewarding. Above all, we can see: legal conditions and administrative structures allow for different and heterogenous approaches to enrolment procedures – on provider, centre management and individual level. Interviewees are well aware of the potential segregating effect different enrolment procedures can have and yet, none of the interviewees tended to challenge procedures systematically addressing segregation.

When we keep in mind that providers shape practice they substantially determine the conditions that shape the working conditions for staff as well as the learning conditions for children (Peucker et al., 2017; Scholz et al., 2019), it might neither be strange that enrolment procedures are fleshed out so individually nor that providers and centre managers take advantage of the granted autonomy and freedom. It might appear, though, strange that neither of the actors involved in ECEC distribution tend to enrolment systematically so far. In the opening section I cited Musa Okwonga who said "It is a system that first strikes me as strange, and eventually as utterly unfair..." (Okwonga, 2021, p. 28). Concluding I would

like to ask: 'Is the child care distribution system unfair or is it strange, even?' – In light of the research presented the answer would have to be indecisively 'yes *and* no': Yes, legal structures and administrative structures indeed allow for practices that can result in segregated child care centres. But, no, the ECEC system in Germany is neither strange nor unfair as it is because it certainly does not compellingly shape enrolment practices leading to segregation at all. Furthermore, as to the decision-making process on the provider and centre management level, accountability of enrolment decisions is currently oriented on maintaining functioning child care centres. When in a position of having to select children, there is, indeed then, a possibility and probability of weighing characteristics of children and their family against one another. Desirable, then, seems composing a clientele that is 'manageable' for the staff and in general, promoting smooth operations and daily routines.

Following Frankenberg (2016) I would therefore state, that segregated ECEC at the moment "happens" more than it is intentionally fabricated by individual (centres or providers). And, by the same token, as diverse ECEC is not something that will just "happen" (Frankenberg, 2016, p. 21) but instead needs "efforts to create and sustain" (ibid.), some efforts need to be made. While segregation is in principle unintended and unwanted, enrolment practice does not account for de-segregation just yet. Hence, municipalities should join efforts with ECEC providers and centre managers in the endeavour to design child care allocation procedures that promotes equal distribution and inclusive ECEC in the territorial community. Due to legal conditions and administrative structures, only in a joint and voluntary effort providers and municipalities could negotiate and attain binding enrolment principles across all ECEC services in the community. Having said that, while steering, understood as controlling distribution flows, is not at stake for the municipality level, it is quite possible for the latter to initiate negotiations accordingly. Municipalities, in addition, should closely examine possibilities of obliging providers to join in that endeavour: If enrolment procedures were defined as part of provision quality, they could even become object of the regular negotiations between the municipality and the providers in the community.

One of the most important issues that would need to be addressed, in my opinion, are: the (amount) of information that is gathered about the child and their family and what information is to be made relevant in the actual enrolment decision process. – Why would every provider and potentially every centre design their own demand registration lists, collecting a vast amount of information about the child and their family? Would it not be more appropriate to standardise those - guided by privacy as well as antidiscrimination policies and law? Regarding the information gathered, negotiators should revise documents and forms used and examine, what information is gathered, what information is actually needed. As Drange and Telle (2021) indicated, tending to enrolment procedures applied by institutions may not entirely prevent segregation; even in a system relying on strong regulations, parental choice seemingly promotes segregation. Hence, it is important to relate findings regarding segregating effects of parental choice to findings about institutional choice in order to negotiate and decide on regulations and guidelines for fair and just enrolment.

The answer to the question posed, therefore would have to be, that legal conditions and administrative structures do indeed allow for enrolment practices making use of the freedom to 'institutional choice' in the ECEC system which in result potentially leads to segregation. But it does not, in principle, allow for segregation. Because in principle in the German welfare state any institutional choice needs to be accountable and with respect to issues of equality, diversity and anti-discrimination. Hence: research presented here accumulates in the call for providers and municipalities in Germany to design enrolment procedures that foster accountable choice, following the goal to "create and sustain" (Frankenberg, 2016; Frankenberg & Piazza, 2019) diverse ECEC. Due to highly diverse provision as well as the subsidiarity principle the ways in which this can be achieved are per se diverse. Municipalities and providers, hence, can and need to design eligible procedures appropriate to the regions´ exigencies. Crucially, the task would be to collaboratively revise procedures in place and sensibly designe new procedures that prevent segregation. Needless to say that those procedures should be based on a negotiated agreement – and be implemented as binding for all.

Declarations

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