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Family vs School: Where the Conflict Ends

A Study of Families on the Court against School in Lombardia

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FAMIGLIA E SCUOLA: DOVE FINISCE IL CONFLITTO.
FAMIGLIE CONTRO LA SCUOLA NEL TAR IN LOMBARDIA

ABSTRACT

Conflict between the school and the family has become a topic of high importance but rarely investigated. This study deals with this conflict in the Italian context, examining the legal processes in the region of Lombardia, thus the litigation between the family and the school which ended at the Administrative Court (TAR) between 2010 and 2018. This study is an exploratory preliminary research which intends to investigate the quantity of cases of litigation between the families and school and categorize the cases according to motivation for the legal action and type of the school. Although we assumed that most cases are connected to children with special needs, analysis showed that families with children without any kind of diagnosis are referring to the court more often than the families of children with special needs. There were more students from secondary schools than students from primary school and, interestingly, students of lyciums seem to be the most represented group in the litigation. The results are discussed, and new lines of research are depicted in order to recognize when and why the conflicts start and how it can be prevented.

Keywords: Conflict; Court; Disabilities; Family; School.

1. INTRODUCTION

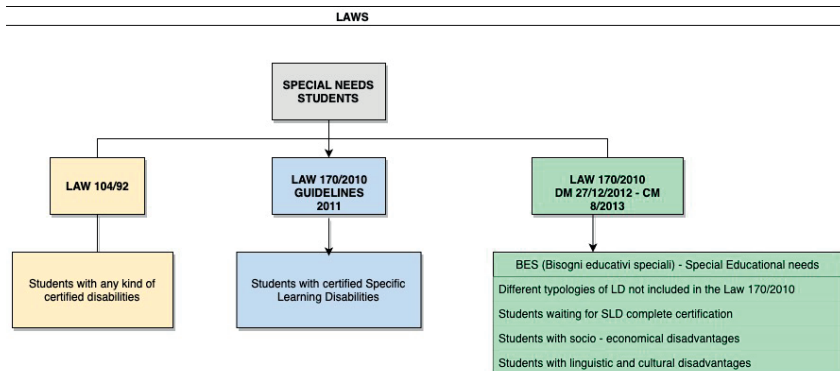
Conflict between the school and the family has become a topic of high importance in Italy in the last ten years. The increasing number of families which had to address a lawyer and the Court to solve a conflict between them and the school indicates a field which must be studied to analyze the reasons of the litigation and to understand how to prevent it.

The nature of the relationship between school and families has evolved in the past years, together with the nature of their way to cooperate, linked to the changing of socio-economic situation and political choices (Dewey, 1970, pp. 2-3; Epstein & Sanders, 2002; Nigris, 2002, p. 192; Ardone & Baldry, 2003, p. 13; Hill & Taylor, 2004, pp. 161-164; Gigli, 2009, pp. 7-17; D'Alonzo *et al.*, 2012, p. 67).

A lack of communication and a lack of trust in educational services provided by the school system is reported by many authors who were studying conflict situation (Palaiologou, Evangelou, & Tsapakidou, 2011; Perregaux *et al.*, 2011; Ruairc, 2011; Nardone, Giannotti, & Rocchi, 2015). This study deals with the conflict between the family and schools in the Italian context, examining the legal processes in the region of Lombardia. While there is a lot of research studying this process in the American school system (e.g. Fish, 1990; Lake & Billingsley, 2000), this topic is in European context surprisingly unresearched. However, it is important to underline that also American studies we found are focused on students with special needs (Lake & Billingsley, 2000; Mueller, 2015), while this study takes broader perspective.

In the European education context, the parent-teacher collaboration is examined by Dusi (2010, 2011, 2012). The author is focusing on different European countries and presents the results of international literature tapping the partnership between teachers and parents, the social, institutional and relational factors contributing to the collaboration and obstacles in their communication. As the author points out, although both sides are aware of the importance of their collaboration for the benefit of the child, this process is complex and often ends up in scarce parental participation and lack of adequate home-school communication. Present study tackles the ending point of this process – the break of communication leading to including the third party and protecting the child's interests by referring to the court.

In Italy children with special needs are protected by two laws: Law 104/92 referring to disabilities in general and the Law 170/2010 about specific learning disabilities and special educational needs (*Scheme 1*).

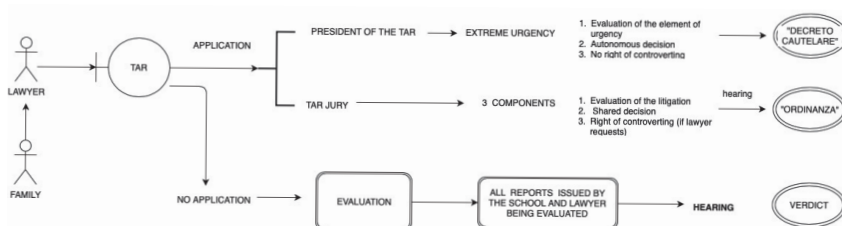


Scheme 1.

In Italy there are 21 regional administrative tribunals (Tribunale Amministrativo Regionale, i.e. TAR), one for each region (2 in Trentino Alto Adige because of its special administrative position). In the biggest regions a separated section can be found, as in Lombardia where there are two courts: Milano and Brescia. As reported by the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union ¹ the administrative courts have jurisdiction over the protection of legitimate interests against the public administration, including the protection of subjective rights concerning administrative decisions, acts, agreements or behaviors adopted by public administrations. *Scheme 2* presents (in a simplified manner) the legal process at the regional administrative tribunal, starting with the family addressing the lawyer and ending with three possible outcomes: decrees, ordinances, verdicts (*decreti*, *ordinanze* and *sentenze*), studied in this research. *Decreto cautelare* is issued by the president of the court and the *ordinanza* by a commission. The verdict is the end of the process which can be issued alone, or after *decreti* or *ordinanze*.

Whereas a lot of research about conflict of school and family has been published, to our knowledge none of them is describing the problem focusing on the actual legal action. Moreover, most of them are concentrating on families of children with disabilities, tapping only one part of families which are searching for legal consultancy. Focusing on families of children with special needs in the existing literature ignores the families where there is no obvious reason for the breakdown of communication and the motivation for the legal action.

¹ Report for Italy can be found at http://www.aca-europe.eu/en/eurtour/i/countries/italy/italy_en.pdf.



Scheme 2. – How TAR works.

This study attempts to investigate cases of litigation between the family and the school which ended at the Administrative Court and provide data about the type of the school, and the motivation for the legal action. This is the first attempt to understand the background of the litigation process and give some practical guidelines in which context the improvement of communication, teacher training and increased parental participation is most needed.

Research questions and hypotheses

This study is an exploratory preliminary research which intends to investigate the quantity of cases of litigation between the families and school and categorize the cases according to motivation for the legal action and type of school. We will explore are there more cases in the secondary schools (scuola secondaria di primo grado; scuola secondaria di secondo grado) or in the primary schools, in technical and vocational schools or in lyciums.

2. METHOD

2.1. Procedures

Lombardia was chosen for this study because of the high number of students referring to the court and because there are two Administrative Courts, Milano and Brescia. The cities of Como, Lecco, Lodi, Milano, Monza e Brianza, Pavia, Sondrio, Varese are under the control of the Administrative Court of Milano. The cities of Cremona, Brescia, Bergamo, Mantova are under the control of the Administrative Court of Brescia.

Data was collected through the official web site of the State Council of Regional Administrative Courts (<https://www.giustizia-amministrativa.it>)

using the internal search. The internal search was done by the topic, choosing the field «education» which is dealing with the litigation between citizens and public administration (in this case represented by the School system). We decided to analyze the cases between 2010 and 2018 because in October 2010 the Law 170/2010 referring to specific learning disabilities was published.

All the files issued by the court were collected: decrees, ordinances (*decreti e ordinanze*) and verdicts (*sentenze*).

Verdicts were analyzed separately from the other two types of files due to several reasons:

- Only few of them can be referred to the year when the litigation started (i.e. litigation started in 2007, verdicts was issued in 2018).
- Most of the verdicts refer to the previous period, before 2010, what means that the period taken into consideration is much longer than the one analyzed in this paper. The oldest litigation which can be found in the verdicts refers to 2001. However, the analysis of verdicts gives valuable data about the period before the law about dyslexia.

Ordinances, decrees and verdicts were divided and by the year and by the Court (Milano or Brescia). For each case following data was taken into consideration: age of the student, grade, sex, type of the school (private vs public), type of the secondary school (lyceum, technical school, vocational school, vocational and training regional school), student with or without diagnosis (if the student had a diagnosis, according to which law the diagnosis is based – Law 104/92 or Law 170/2010), motivation of the litigation. Kindergarten period were not taken into consideration.

3. ANALYSIS AND INTERPRETATION OF RESULTS

In the examined period (2010-2018) there were 857 cases in Lombardia, 681 in Milano and 176 in Brescia.

In comparing the data of the two cities, Milano and Brescia, the different size of the territories and population must be taken into account. The Court in Milano converges the most populated cities in Lombardia.

As can be seen from the *Figure 1*, we decided to show Milano and Brescia in the period between 2010 and 2018 independently (columns) and together (line). The number of cases in Milano is quite steady with a drop to the lowest point between 2012 and 2013. Brescia on the other side shows a fluctuating trend. When observing both cities together there is an increase till 2014 which is the highest point (although in Brescia the highest point is reached in 2015) and then a constant decrease till 2018.

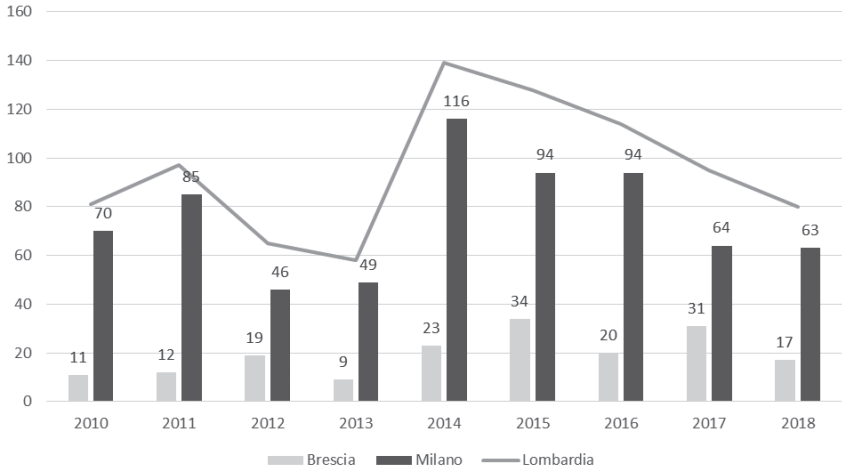


Figure 1. – Comparison of numbers of procedures in Brescia and Milano from 2010 till 2018.

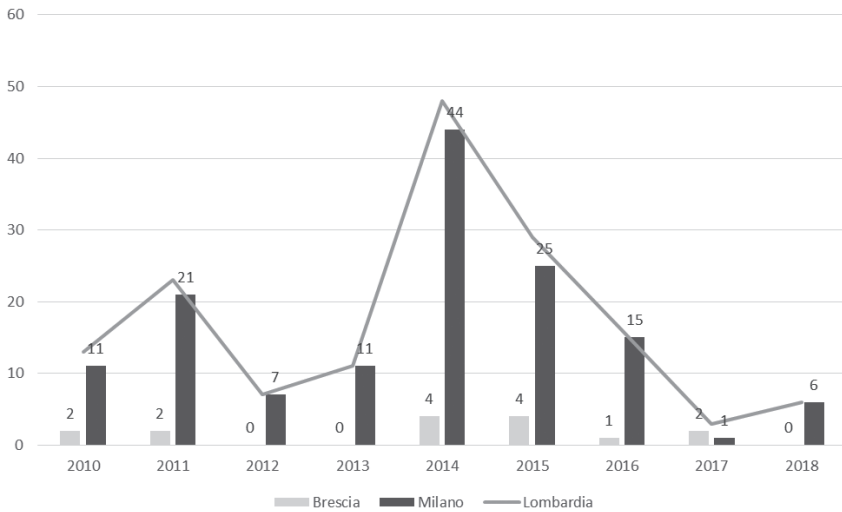


Figure 2. – Law 104/92 procedures from 2010 till 2018 in Lombardia.

Figure 2 shows all the procedures against school promoted by families with a child with disability (according to Law 104/92). As is evident from the graph, procedures in Brescia are minimal; we cannot find any procedures in 2012 and 2013. In Milano the situation is quite different, every year of the research is represented. The peak is again the year 2014, afterwards there is a fast decrease till 2017. A moderate increase seems to start in 2018. We investigated the motivation of the cases connected to the Law 104/92. All of the cases are connected to the number of hours of special needs teaching (i.e. support teachers) for the student, thus families are going to Court to require the higher number of hours of Special needs teacher, according to the diagnosis of the student.

In this case there is a considerable difference between Milano and Brescia, and it is questionable can it be totally ascribed to the vastness of the area. It can be supposed that in Brescia area, in comparison to Milano, the schools are supporting students with disability with a correct number of special needs teaching or that the school department is able to deal with the problem before the parents are referring to the Court to solve it (Fig. 3).

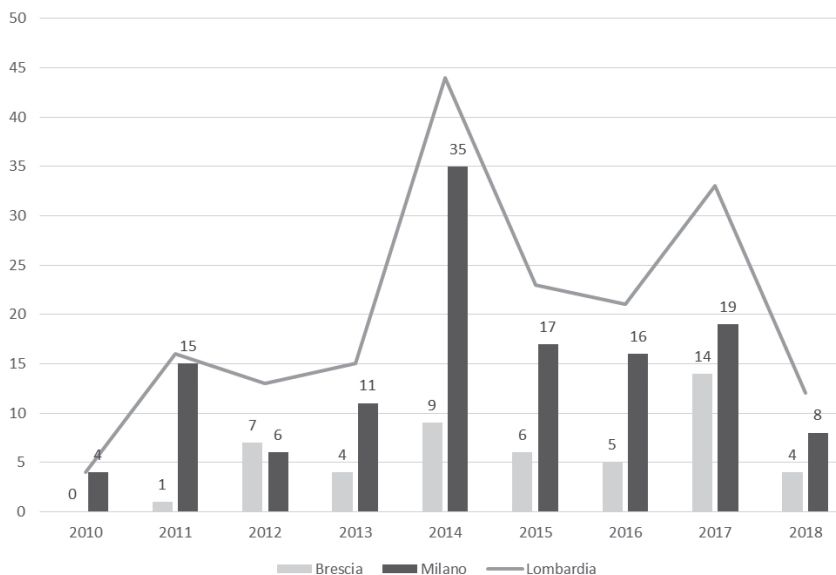


Figure 3. – Law 170/2010 procedures from 2010 till 2018 in Lombardia.

The Law 170/2010 was published in October 2010 and it refers to the specific learning disabilities. In 2011 guidelines with educational and pedagogical measures to support the teaching were promulgated. In December 2012 (DM 27/12/2012 and CM 8/2013) also other special educational needs, such as students with specific developmental disorders or with socio-economic, linguistic and cultural disadvantages, were included in the Law 170/2010.

The starting point is quite different in Milano and Brescia. In Milano there are cases of litigation focused on Law 170/2010 already in 2010, while in Brescia no cases are reported. Cases in Milano are increasing until 2014, the year with the highest number of cases. From 2014 the number of cases is decreasing, and the trend looks to level off. In Brescia the trend shows ups and downs; the highest peak is in 2015 and the lowest point is in 2011.

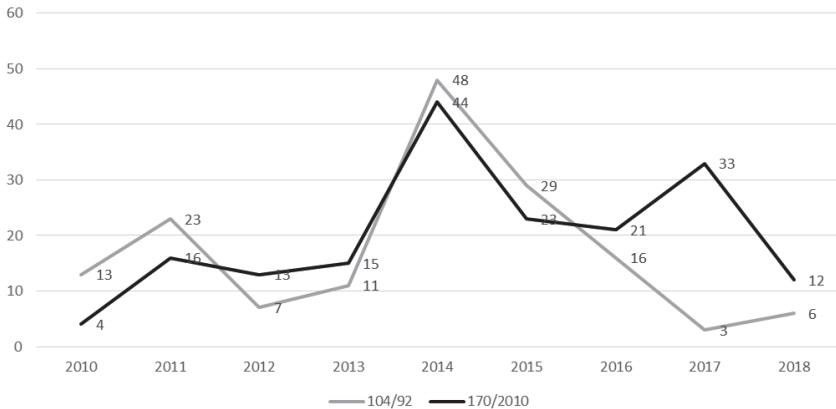


Figure 4. – Comparison between Law 104/92 and Law 170/2010 from 2010 till 2018 in Lombardia.

The graph in *Figure 4* presents the comparison between the procedures related to the Law 104/92 (disabilities) and Law 170/2010 (specific learning disabilities and special educational needs). The highest point for both laws is in 2014. The number of cases connected to the Law 104/92 decreases rapidly till reaching the lowest point in 2017. The number of cases connected to the Law 170/2010 seems to be more or less constant in the period after 2014.

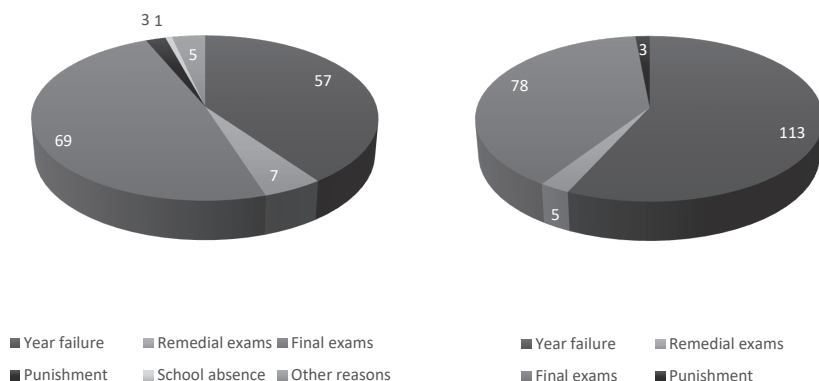


Figure 5. – Motivation of procedure – students without diagnosis (DC – OR)² from 2010 till 2018.

We decided to analyze the motivation to go to the court of students without diagnosis and students with diagnosis separately. All the data connected to the final test for Italian school system were classified as *maturità* (final exams), including the cases where students were not admitted to take part in the final test.

The pie chart (Fig. 5) indicates that the biggest number of court cases are connected to the final tests (i.e. *maturità*), then the year failure. As the graphic shows, procedures focused on disciplinary sanctions are minimal and not relevant.

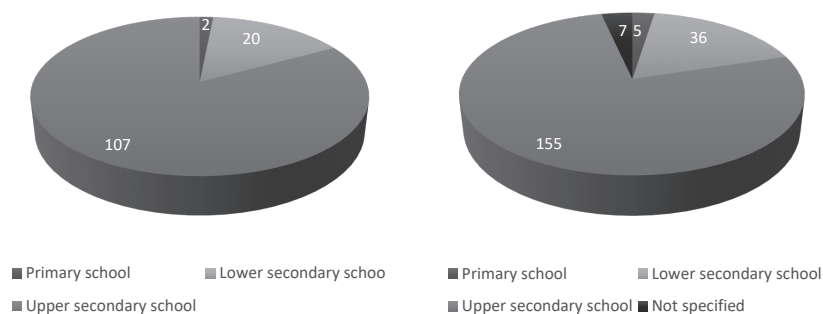


Figure 6. – School level – students without diagnosis (DC – OR) from 2010 till 2018.

² DC means *Decreti cautelari* – OR means *Ordinanze*.

Figure 6 evidence that the majority of litigation takes part in the secondary school, mostly in the Upper secondary school. This may be caused by different way of communication than the one parents were used to in the primary school: more teachers responsible for the child, more official way of communication with teachers (both for children and parents), less time for individual child/parent. It can be speculated that during the Lower secondary school parents are trying to find a way to communicate with teachers, if failing to solve to problem, in the Upper secondary school they are moving towards another solution and referring to a legal consultation. Taking into consideration that the second main reason to search legal help is year failure, there are less court cases in the primary school because schools are reluctant to stop the child (Decreto legislativo 62 del 2017, art. 3, comma 1, <https://www.gazzettaufficiale.it/eli/id/2017/05/16/17G00070/sg>; Regolamento n. 122 del 2009).

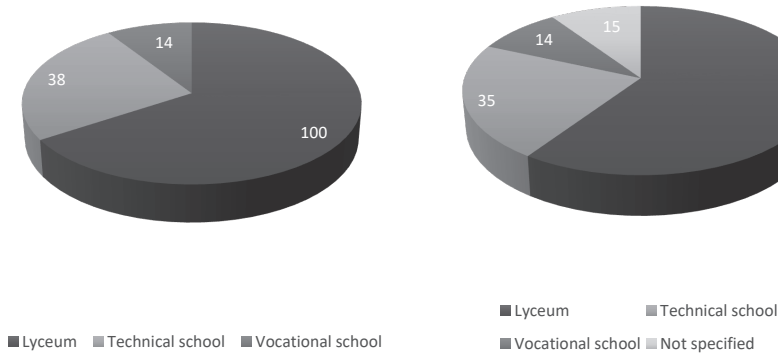


Figure 7. – Type of secondary school – students without diagnosis (DC – OR) from 2010 till 2018.

When observing the type of the school, from the Figure 7 we can conclude that the majority court cases are connected to lyceum, and then to technical schools. Vocational schools are the least represented. These results might reflect differences in socioeconomic status between the students of lyceum and vocational school, where students from lyceum usually belong to medium upper social classes (Checchi, 2010; Ballarino & Panichella, 2014; Triventi, 2014) which are more prone to search for legal help (because of economic and educational reasons).

Students attending vocational school are less expected to succeed in school and to have good results. Therefore, families are less sensitive to school failure. Furthermore, it is more probable to find non-recognized

students with special educational needs in vocational schools than in lycées. On the other hand, technical and vocational schools are also more informed and educated regarding special education due to the higher number of diagnosed students attending those schools.

It should be kept in mind that nowadays the trend in Europe is changing and the relevance of technical and vocational school is rapidly increasing, although in Italy vocational schools are still considered to be less-demanding schools, suitable for students whose schooling will stop at the least mandatory level. In conclusion, it is not surprising that families with students in vocational schools are the ones who are less represented on the court.

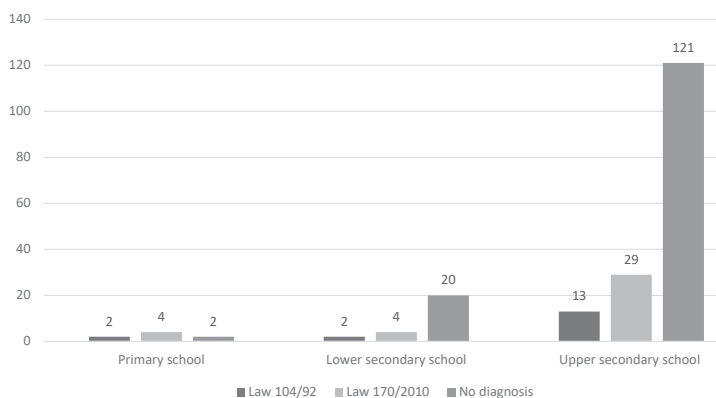


Figure 8. – Comparison between laws and students without any diagnosis – Decreti cautelari School/Law from 2010 till 2018.

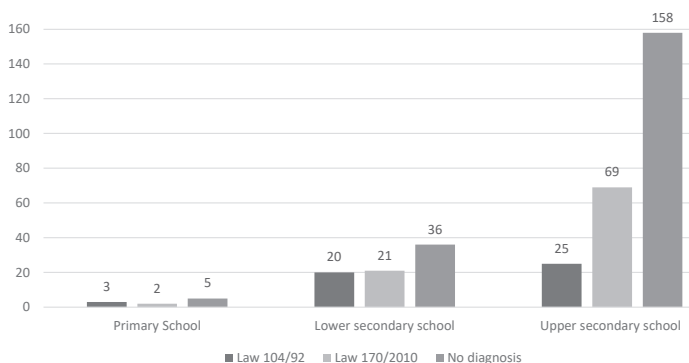


Figure 9. – Comparison between laws and students without any diagnosis – Ordinanze School/Law from 2010 till 2018.

Figures 8 and 9 are showing the distribution of litigation in different grades of school, separately for the students with (according to Laws 104/92 and 170/2010) and without diagnosis. Our data shows surprising results: the most represented in the court are the families of student without any diagnosis, and the trend is markedly and dramatically increasing from primary school to the Upper secondary school.

It is not surprising the steady trend connected to the Law 104/92 (disability) starting with the lower point in the primary school and increasing till reaching the same point in the Lower secondary school and the Upper secondary school. As was remarked before, those are the families requiring more hours of special needs teaching. Families with student with SLD and special educational needs are increasing steeply from primary school (where they are supposed to get their first diagnosis at the end of the third year of school).

4. VERDICTS DATA ANALYSYS

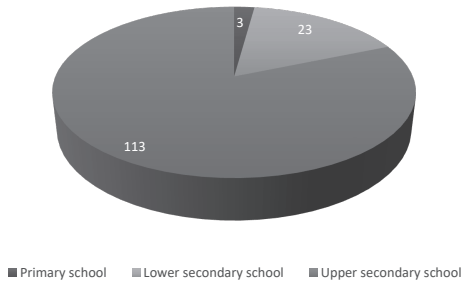


Figure 10. – Distribution of the verdicts according to age – students without diagnosis.

The Figure 10 is confirming the result of the previous analysis. Most cases of litigation are happening in the secondary school system. Since verdicts are collecting data which are starting from 2001, this analysis shed light on the school – family relationship in the last 20 years.

As in the period between 2010 and 2018 (represented by *decreti* and *ordinanze*), also verdicts which are covering the longer period show the same results: *maturità* is the biggest motivation for the legal action, followed by the year failure (Fig. 11).

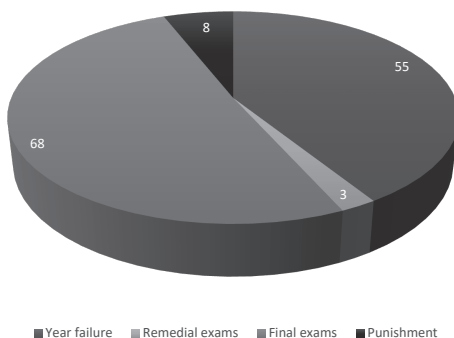


Figure 11. – Verdict since 2010 till 2018 – motivation of the litigation.

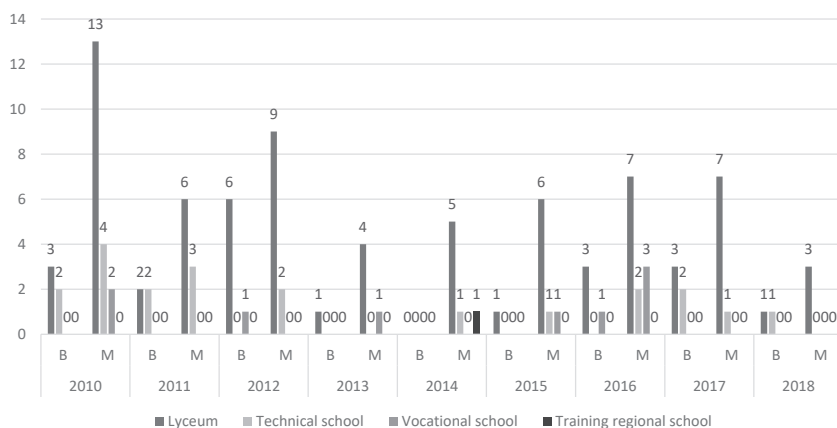


Figure 12. – Verdict from 2010 till 2018 – secondary school type in Brescia and Milano.

In the analysis of the verdicts, vocational schools are a bit more represented than in the analysis of *decreti* and *ordinanze*. They are also more represented in Milano than in Brescia where they are not present at all except in the years 2012 and 2016. Lyceum is the school with the highest percentage of court cases in the analyzed period (Fig. 12).

It is important to note that in Brescia in 2014 there are no verdicts (but as shown above, there are *decreti* and *ordinanze*).

Also, for verdicts, the biggest number of court cases are for students with no diagnosis, in the Upper secondary school. The number is increasing in Lower secondary school (*scuola secondaria di primo grado*) and in the Upper secondary school (*scuola secondaria di secondo grado*) it is almost

5 times more represented than in the *scuola secondaria di primo grado*. The number of verdicts for the Law 104/92 is increasing from primary school till the Upper secondary school and for the Law 170/2010 is, as expected, less represented in primary school when children are getting their first diagnosis. The most impressive result is the conflict between school and families in the Upper secondary school. It is again 3 times more than in the Lower secondary school (Fig. 13).

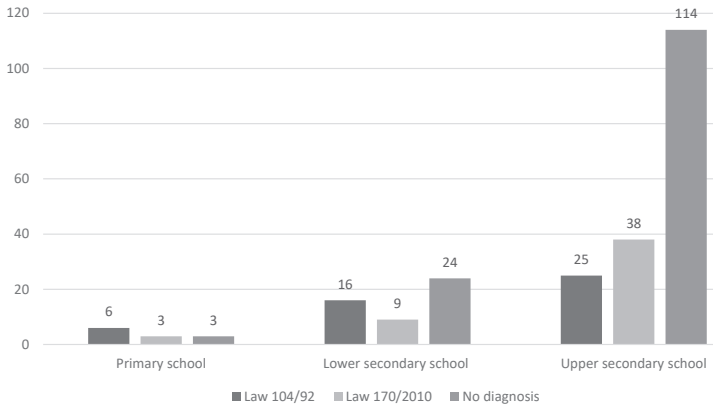


Figure 13. – Verdict from 2010 till 2018 – School/Laws – distribution of families going to the court according to school level and law.

When observing the period with the most court cases – Upper secondary school, if we compare the students with SLD and SEN (Law 170/2010) and students without diagnosis the result is impressive: it is 2 and a half times bigger. If we compare students with disabilities (Law 104/92) and students without diagnosis, the result is again stunning: it is 4 and a half times bigger.

5. DISCUSSION AND CONCLUSION

In this paper we analyzed the conflicts between school and family which were discussed at TAR of Brescia and Milano. In our hypothesis we assumed that most cases were connected to children with special needs, we were interested to explore are there more cases in the secondary schools than in primary schools, and in technical and vocational schools than in lyceums.

More and more families are looking for legal procedures to solve litigation versus school. Although literature mostly points out the conflict between the families with the children with disabilities and the school, data from TAR showed different patterns. We should take into account that in the last ten years the number of diagnosis of SLD increased thanks to screenings and to a better teacher training which lead to early recognition and intervention. Surprisingly, families which are referring to the court most often are families with children without any kind of diagnosis. Students from lyceums seem to be the most represented group in the litigation and there are more students from secondary schools than students from primary school. It can be hypothesized that in the secondary school the «idea» of school is changing: school is not seen as a place where student has to learn and grow but a place where there is an important competition to reach the minimal competence required to find a place in the society and a good job. It seems also that after primary school family is less involved in the learning process: there are just two roads: success or failure. Failure is not even taken into account because it is seen like an obstacle to work career.

The changes of social context and the crisis of society are badly affecting the most important educational institutions: Family and School. Communication between the institutions is most of the time failing at the end of the primary school. We can hypothesize that this breaking point could be connected also to the different education and attitude of teachers: more emphatic in the primary school, more pragmatical from secondary school. This assumption can be confirmed by the results of the study made by Cardarello, Bertolini, Pintus and Antonietti (2017). The authors applied the Scale of Self Efficacy (TSES, also known as Ohio Scales) which is widely used in European context. It uses Likert scale of 9 levels to estimate self-efficacy of teachers in three areas of professional competence, equivalent to three subscales: Didactic Strategies, Management of Classroom, Students' Involvement. 252 teachers from secondary school of second grade were tested. Teachers were asked to declare the importance of each item for the role of teachers. Only one item on 24 used in the scale is about family. The item number 22 asks to teachers: *How much they can help families to promote good results in school for their children*. The result on this item was the lowest result in the scale (medium result 7.35, in comparison to average result of the scale of 7.82). Teachers were also asked to declare how much they find important to help the family to promote the good results in the school. In this item the result was also lower than the average of the scale (6.33 in comparison to 6.99).

We were interested in the motivation for the litigation because it gives first conclusions about the reasons that drive parents to ask for the help

at the court and protect their child's rights through the legal process. The research showed that the most frequent motivation for the litigation were the final exam and the year failure. Considering the lengthiness and the complexity of the legal processes, there is an open question, regardless of the result of the litigation, is the process itself in the best interest and beneficial for the child. For example, very frequently, due to the time needed to complete the legal process, the child anyway loses the year of schooling or the child is for the practical reasons repeating the year. The legal process puts additional psychological pressure on the child and the family which already passed through difficult experience bringing them to the court. All this strongly suggests that it is important to understand the reasons for the litigation and move our focus to the prevention: strengthening the collaboration of the school and the family and providing training for the teachers.

The results of our study encourage us to go further with the research to understand the motivation of families to solve conflict with school through a legal process, to investigate their point of view and the point of view of school teachers and in that way shed light to what confirmed as an important issue in the last 15 years. Although smaller, there is still considerable number of families with children with disabilities and SLD referring to the court and in the future, it would be important to do qualitative analysis to understand the break of communication leading to the legal process and the social context driving it. This research, although only quantitative, it is a starting point in better understanding the lack of trust and cooperation between the school and family.

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RIASSUNTO

Il conflitto tra scuola e famiglia è diventato un argomento di grande rilevanza ma è poco indagato. Questo studio lo affronta nel contesto italiano, esaminando tutti i casi del TAR della Lombardia nel periodo compreso tra il 2010 e il 2018 (ordinanze, decreti, sentenze). È una ricerca preliminare finalizzata ad analizzare la quantità dei conflitti e individuare le motivazioni del ricorso al contenzioso legale, il grado e tipo di scuola a cui appartengono i casi. Ci si attendeva che il contenzioso riguardasse in misura consistente gli alunni con qualche tipo di certificazione (BES DSA, Legge 104/92). L'analisi dei dati ha mostrato però che sorprendentemente sono di più le famiglie con figli senza alcun tipo di certificazione che ricorrono all'uso di un legale per risolvere i conflitti, che la scuola secondaria sembra essere il punto cruciale di rottura tra scuola e famiglia. Gli studenti frequentanti i licei sembrano essere i maggiormente coinvolti nei casi che giungono al TAR. Vengono esaminati e discussi i risultati di questa prima indagine e segnalate ulteriori linee di ricerca per capire i conflitti e per prevenirli.

Parole chiave: Conflitto; Disabilità; Famiglia; Scuola, Tribunale.

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