



THE RIGHT TO EDUCATION AND INTEGRATION OF CHILDREN WITH SEVERE DISABILITIES IN ITALY

ANALYSIS OF ITALIAN CASE LAW

In **Italy**, mainstream education rules and regulations ensure the right to education for everybody. Pupils with difficulties in learning and difficulties related to their disability have the right to study, just like all other pupils. No school can deny access and an adapted education programme to any pupil on the grounds of disability.

These principles mean that schools must be able to accept any pupil, whatever the degree of their learning impairment. Nevertheless, mainstream education can represent a challenge for children with severe disabilities, mainly when sufficient, adapted support is not ensured. For this reason, many families have lodged petitions with the Public Administration, in particular with the Ministry of Education, Universities and Research (MIUR), in order to obtain more support at school for their severely disabled children.

In numerous decisions having been rendered since 2002, petitioners considered the limited allocation of hours of support conceded as insufficient, inadequate and above all an abuse of the right to education and health. They claimed the right to an appropriate number of hours of support during school time, as recognized by Law 104/92, framework law for the integration of disabled citizens and, in this respect, appealed to the inviolability of the right to education and training, to the full development of the child's personality as recognized by the Italian Constitution and international normative texts. On these premises, they requested the adoption of suitable measures to guarantee their children the full allocation of hours of support.

On the basis of existing rules and regulations, the presiding judges issued an ordinance of allocation or reinstatement of the hours of teaching support, claimed by the petitioners, whilst observing the following principles:

- Not only damage to the physical and mental integrity of the person but also damage caused by the violation of an inalienable and fundamental human right, fall within the concept of damage to the person.
- Withdrawal of the educational support of a specialised teacher or the allocation of an inadequate number of hours of teaching support to the disabled child does not encourage teaching or learning. They unjustifiably jeopardize a fundamental right of the person to an education, to integration in a mainstream school and to the development of his/her personality as guaranteed by the Constitution and national and international legislation and they cause serious and irreparable damage to the child and his/her family (whose moral and economic efforts are totally thwarted).
- The organisation of support activities by schools cannot, in any event, restrict or violate any right of the person recognized by international sources, by the Italian Constitution or by law.
- The justification adopted concerning the insufficiency of available financial resources or the current support needs of other pupils are irrelevant in the face of inviolable subjective rights; eventual financial claims invoked by the Administration cannot, in any event, justify the restriction of the right to education or integration in mainstream schooling since the same law that establishes the limit, determined by the ratio between the total able pupil population and support teachers, allows for its revocation in the case of severe disabilities.
- The fact that the disabled child attends the kindergarten or upper secondary school, which are not included within compulsory education, is deemed entirely irrelevant in relation to the right to education.
- The appeals of the Public Administration against the ordinances issued by the presiding courts of law providing for the allocation of more adequate support have been duly rejected and the first-degree ordinances confirmed in the second degree on the basis of the same normative texts cited in the first degree.

As evidenced by the ordinances issued by the Italian judges in response to the petitions lodged against the national Public Administration in defence of the right to education of children with severe disabilities, the national and international rules and regulations available, guaranteeing the right to education of disabled citizens, are rendered effective.

EXAMPLES OF CASE LAW RELATIVE TO THE RIGHT TO EDUCATION AND INTEGRATION OF CHILDREN WITH SEVERE DISABILITIES IN ITALY

	CASE	LAW COURT	PETITIONER	AGAINST	STATE SCHOOL	COMPLAINT	ORDINANCE	REFERENCES
1	18.12.2002	II Civil Court of Rome	Parents with parental authority over a child with psychomotor retardation	MIUR, State school	Kindergarten (not compulsory)	Reduction in number of hours of teaching support	Allocation of a specialised teacher for 25h/week	L.104/92 art.12 para. 2 & 4, art. 13 para. 3 Italian Constitution art. 2 para. 3, L. 449/97 art. 40 para. 3, D lgs. 297/94 art.99 & 110 Universal Declaration of Human Rights, 1948 art. 26 European Social Charter (rat. 1999) arts. 15 & 17 Charter of Fundamental Rights UE (appr. 2000) art.26
2	23.10.2003	XI Civil Court of Naples	Parents with parental authority over a child with cerebropathy, mental retardation and verbal and non-verbal communication deficit	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (13 h/week)	Allocation of a specialised teacher for 25h/week.	L.104/92 art. 13 para. 3 Dlgs. 297/94 art. 110 Italian Constitution art.3 para. 2, art. 34 & 38 European Social Charter (rat. 1999) art.15 & 17 Charter of Fundamental Rights UE (appr. 2000) art. 26
3	16.12.2003	XI Civil Court of Naples	Parents with parental authority over a child with global developmental retardation	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (2 h/week)	Allocation of a support teacher for entire school timetable, adequate assistance for entire school timetable	L.104/92 art. 12 para. 2, art. 3 & 4, art. 13 para. 3 D. lgs. 297/94 art. 110 L. 449/97 art. 40 para. 1 D.P.R. 616/77 art. 42 Italian Constitution art. 3 para. 2, art. 34 & 38 European Social Charter (rat. 1999) art. 15 & 17 Charter of Fundamental Rights UE (appr. 2000) art. 26

4	7.02.2004	II Civil Court of Rome	Parents with parental authority over a child with severe mental retardation and behaviour disorder	MIUR	Lower Secondary School (compulsory)	Reduction in number of hours of teaching support (from 13 to 4,5 h/week)	Reinstatement of a specialized teacher for 12 h/week	L.104/92 art.12 , L. 449/97 Italian Constitution art. 2, 34 & 38 Universal Declaration of Human Rights, 1948 art. 26 Charter of Fundamental Rights UE (appr. 2000) art. 26
5	9.02.2004	II Civil Court of Rome	Parents with parental authority over a child with severe mental retardation and behaviour disorder	MIUR	Primary School (compulsory)	Reduction in number of hours of teaching support (to 15 h/week)	Allocation of a specialised teacher for 25h/week	L.104/92 art.12 L. 449/97 Italian Constitution art. 2, 34 & 38 Universal Declaration of Human Rights, 1948 art. 26 Charter of Fundamental Rights UE (appr. 2000) art. 26
6	12.02.2004	II Civil Court of Rome	Parents with parental authority over a child with dystonic tetraparesis and impaired vision and speech	MIUR, State school	Kindergarten (not compulsory)	Allocation of insufficient number of hours of support (12.5 h/week)	Allocation of support teacher for maximum number of hours allowed per day and per week	L.104/92 art. 12 para. 2 & 4, art. 13 para. 3 L. 449/97 art. 40 Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 e 4 Universal Declaration of Human Rights, 1948 art. 26 European Social Charter (rat. 1999) art. 15 & 17 Charter of Fundamental Rights UE (appr. 2000) art. 26
7	16.02.2004	II Civil Court of Rome	Foster mother of a child with moderate-severe intellectual deficit and absence of verbal speech	MIUR, State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (4.5 h/week)	Allocation of support teacher for maximum number of hours allowed per day and per week	L.104/92 art.12 para. 2 e 4 art. 13 Para. 3 Italian Constitution art. 2, art. 3 Para. 2, art.34 Para. 1, art. 38 Para. 3 & 4 L.449/97 art. 40 para. 1 & 3 Universal Declaration of Human Rights, 1948 art. 26 European Social Charter (rat. 1999) art. 15 & 17 Charter of Fundamental Rights UE (appr. 2000) art. 26
8	2.03.2004	III Civil Court of Venice	Snals (National Union of School Workers) Venice on behalf of a child with pervasive developmental	MIUR	Kindergarten (not compulsory)	Reduction in number of hours of teaching support	Allocation of a specialised support teacher for 25h/week	L.104/92 art. 3, 4 & 12 para. 2, Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38, European Social Charter (rat. 1999) art. 15 & 17, European Convention on the

		disorder					Exercise of Children's Rights (signed in Strasbourg on 25.1.1996) art. 7	
9	4.03.2004	II Civil Court of Rome	Parents with parental authority over a child with mental retardation and learning deficit	MIUR	Not specified	Reduction in number of hours of teaching support to 4.5 h/week	Presence of a support teacher for the maximum number of hours allowed in relation to the type of course attended by the child	L.104/92 art. 12, Italian Constitution art. 2, 34 & 38, L. 449/97, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26
10	16.03.2004	Civil Court of Ancona	Parents with parental authority over a child with an autistic syndrome and pervasive developmental disorder	MIUR, State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a support teacher for the entire weekly school timetable	L.104/92 art. 12 para. 2 & 4, art. 13 para. 3, Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38 L.449/97 art. 40
11	18.03.04	Civil Court of Rome	Parents with parental authority over a child with psychomotor retardation and Down's Syndrome	MIUR, State school	Kindergarten (not compulsory)	Allocation of insufficient number of hours of support (10 h/week)	Presence of a support teacher for the maximum number of hours allowed in relation to the type of course attended by the child	L.104/92 art. 12 Italian Constitution art. 2, 34 & 38 L. 449/97, Charter of Fundamental Rights UE (appr. 2000) art. 26, Universal Declaration of Human Rights, 1948 art. 26
12	25.03.2004	Civil Court of Rome	Parents with parental authority over a child with dystonic tetraparesis, impaired vision and speech	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (15 h/week)	Allocation of a support teacher for 22h/week	L.104/1992 art. 12 Italian Constitution art. 34 & 38, L.449/97 art. 40 para. 3
13	31.3.2004	Civil Court of Rome	Parents with parental authority over a child with dystonic tetraparesis and deambulatory difficulties	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a support teacher for 22h/week	L.104/1992 art. 12 Italian Constitution art. 34 & 38, L.449/97 art. 40 para. 3

14	13.04.2004	Civil Court of Potenza	Parents with parental authority over a child with severe intellectual deficit	Regional Education Office, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher on a 1:1 basis throughout the ordinary school day	L. 449/97 L 289/2002
15	23.04.2004	Civil Court of Rome	Parents with parental authority over 2 children with autistic-type pervasive developmental disorder	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (10 h/week)	Allocation of a support teacher for the maximum number of hours allowed	L. 104/92 art. 3, 5, 12, & 13 L.449/97 art. 40
16	6.05.2004	Civil Court of Rome	Parents with parental authority over a child with cognitive retardation and autism	MIUR	Upper Secondary School (not compulsory)	Allocation of insufficient number of hours of support (9 h/week)	Allocation of a support teacher for 18h/week	Italian Constitution art. 34 & 38 L.104/92 art. 12 L.449/97 art. 40 para. 3 L. 616/1977 art.42 Sentence of Constitutional Court of 3 June 1987, n. 215
17	30.09.2004	Civil Court of Campobasso,	Parents with parental authority over a child with pervasive developmental disorder	MIUR, Regional Education Office of Molise, Provincial Education Office (CSR) of Campobasso	Primary School (compulsory)	Reduction in number of hours of teaching support (from 24 to 18 h/week)	Reinstatement of support for 24 h/week	L.104/92 art. !2 para. 2 & 4, art. 13 para. 3, Italian Constitution art. 3 para. 2, art. 34, art. 38, para. 3 & 4, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26
18	29.10.2004	Civil Court of Rome	Parents with parental authority over a child with microcephaly and Robertsonian translocation	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for the maximum number of hours allowed	Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, L.104/92 art. 12 para. 2 & 4, L.449/97 art. 40 para. 1 & 3

19	29.10.2004	II Civil Court of Rome	Parents with parental authority over a child with tetraplegia and other severe neurological disorders	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for the maximum number of hours allowed	Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26 L.104/92 art. 12 para. 2 & 4, art. 13 para. 3, L.449/97 art. 40
20	30.10.2004	Civil Court of Rome, II Sec.	Parents with parental authority over a child with tetraplegia, mental retardation and epilepsy	MIUR, State school	Kindergarten (not compulsory)	Reduction in number of hours of teaching support (to 8 h/week)	Allocation of a support teacher for 25h/week	L.104/92 art. 12 para. 2 & 4, art. 13 para. 3, L.449/97 art. 40 para. 3 Italian Constitution art. 2, 34 & 38, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26
21	4.11.2004	II Civil Court of Rome	Parents with parental authority over a child with cognitive retardation and relational disorder within global development disorder	MIUR, State school	Lower Secondary School (compulsory)	Reduction in number of hours of teaching support (from 14 to 8 h/week)	Presence of a support teacher for 14 h/week	Italian Constitution art. 2, 34 e 38, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art. 12 L. 449/97
22	16.11.2004	Civil Court of Rome	Parents with parental authority over 2 children with cerebral ataxia	MIUR, State school	Primary School (compulsory)	Insufficient number of hours of support when reduced to 8 h/week)	Allocation of a support teacher for the maximum number of hours allowed	L.104/92 art. 3 para. 3, art. 8 (m), art. 12 para. 2, 4 & 14 L.449/97 art. 40 para. 1 D.lgs. 297/94 art. 312 ss. Universal Declaration of Human Rights, 1948 art. 26 Charter of Fundamental Rights UE (appr. 2000) art. 26 European Social Charter art. 15 & 17 Italian Constitution art. 2, 3 & 34 para. 1

23	25.11.2004	II Civil Court of Rome	Parents with parental authority over a child with spastic tetraparesis	MIUR, State school	Primary School (compulsory)	Reduction in number of hours of teaching support (from 22 to 11 h/week)	Reinstatement of support teacher for 22 h/week	Italian Constitution art. 2, 34 & 38 Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art. 12
24	16.12.2004	Civil Court of Rome	Parents with parental authority over a child with impaired vision due to brain damage, psychomotor and speech retardation	MIUR, State school	Primary School (compulsory)	Reduction in number of hours of teaching support to 12 h/week	Allocation of a support teacher for 24h/week	Italian Constitution art. 34 & 38, L.104/92 art. 12 L.449/97 art. 40 para. 3
25	3.12.2004	Civil Court of Brescia	Parents with parental authority over a child with severe autism syndrome	MIUR, State school	Primary School (compulsory)	Reduction in number of hours of teaching support to 12 h/week	Allocation of a support teacher for a further 7h/week	Italian Constitution art. 3 & 38, L.104/92 art. 12 & 13
26	16.12.2004	Civil Court of Naples	Not specified	MIUR	Lower Secondary School (compulsory)	Reduction in number of hours of teaching support (from 18 to 10 h/week)	Allocation of a support teacher for more hours than previously obtained	European Constitution adopted in Rome on 29 October 2004
27	20.12.2004	II Civil Court of Rome	MIUR, State school	Parents with parental authority over a child with severe disability	Kindergarten (not compulsory)	Appeal against decision to provide a support teacher for the maximum hours allowed	Appeal rejected	L. 104/92 art. 13 L. 449/97 art.40
28	20.12.2004	II Civil Court of Rome	MIUR, State school	Parents with parental authority over a child with severe disability	Not specified	Appeal against decision to provide a support teacher for the maximum hours allowed	Appeal rejected	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38, European Social Charter (rat. 1999) art.15 & 17, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art.3 para. 3, art. 4(m), art. 8 (d), art. 13 para. 3 & 14, L.449/97 art.40 para. 1 & 3

29	20.12.2004	II Civil Court of Rome	MIUR, State school	Parents with parental authority over a child with tetraplegia and moderate mental retardation	Primary School (compulsory)	Appeal against decision to provide a support teacher for the maximum hours allowed	Appeal rejected	L. 104/92 arts.2, 3, 12 e 13, L. 449/97 art.40
30	20.12.2004	II Civil Court of Rome	MIUR, State school	Parents with parental authority over a child with severe disability	Lower Secondary School (compulsory)	Appeal against decision to provide a support teacher for the maximum hours allowed	Appeal rejected	L. 104/92 art.3 para. 3, art. 4 (m), art. 8, art. 12 para. 2, 4, 5 & 8, art.13 para. 3 & 14, Universal Declaration of Human Rights, 1948 art. 26, European Social Charter (rat. 1999) art.15 & 17, Charter of Fundamental Rights UE (appr. 2000) art. 26, Italian Constitution art. 38 para. 3, L.449/97 art. 40 para. 1 & 3
31	21.12.2004	Civil Court of Rome	Mother with parental authority over a child with mental retardation, hyper kinesia, attention deficit, comitial syndrome	MIUR	Upper Secondary School, Catering, Hotel and Tourism (not compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a specialised support teacher for the maximum number of hours allowed	L. 104/92 art.2, art. 3 para. 2, art. 12 para. 2, 5, 6 & 7, art. 13 para. 2 & 4, L.449/97 art. 40 para. 1 & 3
32	19.01.2005	II Civil Court of Ancona	Parents with parental authority over a child with severe disability	MIUR, State school	Upper Secondary School (not compulsory)	Reduction in number of hours of teaching support (from 24/week to 6/week)	Allocation of a support teacher for 18h/week	L. 104/92 art. 3 para. 3 & 12, Italian Constitution art. 3 & 34
33	4.02.2005	Civil Court of Naples	Parents with parental authority over a child with psychomotor retardation and impaired vision	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (15 h/week)	Allocation of a support teacher for 24h/week	Italian Constitution art. 3, 34 & 38, L.104/92 L.449/97 art. 40

34	9.02.2005	II Civil Court of Rome	MIUR, State school	Parents with parental authority over 2 child with cerebellar ataxia	Primary School (compulsory)	Appeal against decision to provide a support teacher for the maximum hours allowed	Appeal rejected, the contested measure is confirmed	L.104/92 art. 2, 3, 12 & 134 L.449/97 art. 40 para. 1 D.lgs. 297/94 art. 312 ss. Italian Constitution art. 38 para. 3
35	17.02.2005	Civil Court of Naples	MIUR, State school	Parents with parental authority over a child with severe retardation in psychomotor development	Primary School (compulsory)	Allocation of insufficient number of hours of support (13 h/week)	Allocation of a support teacher for entire school day	L.104/92 art. 12 & 13, L.449/97 art. 40
36	17.02.2005	II Civil Court of Naples	MIUR, State school	Parents with parental authority over a child with Cri-du-chat syndrome	Primary School (compulsory)	Allocation of insufficient number of hours of support (10 h/week)	Allocation of a support teacher for entire school day	L.104/92 art. 12 & 13, L.449/97 art. 40
37	17.02.2005	II Civil Court of Naples	MIUR, Provincial Education Office (CSA), State school	Parents with parental authority over a child with Down's Syndrome	Primary School (compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a support teacher for entire school day	L.104/92 art. 12 & 13, L.449/97 art. 40
38	21.02.2005	Civil Court of Venice	MIUR, Provincial Education Office (CSA), State school	Parents with parental authority over a child with severe psychic disability and impaired speech	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (9 h/week)	Allocation of a support teacher for 18h/week	Italian Constitution art. 2, 3, 34 & 38, L.104/92 art. 3 & 12 para. 2, 3 & 4, L.449/97 art. 40
39	23.02.05	Civil Court of Rome	MIUR, Provincial Education Office (CSA), State school	Parents with parental authority over a child with Down's Syndrome and global cognitive retardation	Not specified	Allocation of insufficient number of hours of support (9 h/week)	Allocation of a support teacher for 18h/week	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, European Social Charter (rat. 1999) art. 15 & 17, L.104/92 art. 3 para. 3, art. 4, letter m, art. 8, 12, 13 & 14, L.449/97 art. 40

40	3.03.2005	Civil Court of Rome	Parents with parental authority over a child with profoundly impaired vision, cognitive retardation, epilepsy	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (11 h/week)	Allocation of a support teacher for the maximum number of hours allowed	L.104/92 art. 3 para. 3, art. 4 (m), art. 8, 12 para. 2 & 4, D.lgs.297/94 art. 312 ss., L.449/97 art. 40 Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, European Social Charter (rat. 1999) arts.15 & 17, Italian Constitution art. 2, art. 3 para. 2 & art. 34
41	8.03.2005	Civil Court of Cagliari	5 parents with parental authority over children with severe disabilities	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a suitably specialised support teacher for each pupil for the maximum number of hours allowed	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art.26, European Social Charter (rat. 1999) arts. 15 & 17, L.104/92 art.3, 8, 12 & 13, L.449/97 art. 40, D.lgs. 297/94, art. 312 ss.
42	10.03.2005	IV Civil Court of Naples	Parents with parental authority over a child with a developmental disorder	MIUR, Provincial Education Office (CSA), State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a support teacher for the entire period attending school	L.104/92 arts. 12 & 13, Italian Constitution arts. 2, 34 & 38, L. 449/97 art. 40, European Constitution adopted in Rome on 29 October 2004
43	11.03.2005	IV Civil Court of Naples	Parents with parental authority over a child with Down's Syndrome and learning disability	MIUR, Provincial Education Office (CSA), State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (12 h/week)	Allocation of a support teacher for entire period attending school (30 h/week)	L.104/92 arts. 12 & 13, L.449/97 art. 40
44	17.03.2005	Civil Court of Rome	Parents with parental authority over a child with profound cognitive deficit	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (5 h/week)	Allocation of support teacher for at least 20h/week on 1:1 basis	L.104/92 art.2, art. 12, art. 13 para. 3 Italian Constitution art. 38 para. 3, L.449/97 art. 40, D.lgs. 297/94, art. 312 ss.

45	17.03.2005	Civil Court of Rome	Parents with parental authority over a child with Down's Syndrome and global cognitive retardation	MIUR, Provincial Education Office (CSA), State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (10 h/week)	Allocation of specialised teacher for at least 21h/week on a 1:1 basis	Italian Constitution art. 2, art. 3, art. 38 para. 3, L.104/92 art.3, 12 & 13, L.449/97 art. 40
46	23.03.2005	II Civil Court of Rome	Parents with parental authority over a child with Down's Syndrome and learning disability	MIUR, Provincial Education Office (CSA), State school	Not specified	Reduction in number of hours of teaching support (from 14 to 7h/week)	Reinstatement of support teacher for at least 14 h/week	Italian Constitution art. 38 para. 3, L.104/92 art. 2, 12 & 13, L.449/97 art. 40
47	23.03.2005	II Civil Court of Rome	Parents with parental authority over a child with spastic tetraparesis and severe psychomotor retardation	MIUR, State school	Upper Secondary School (not compulsory)	Reduction in number of hours of teaching support (from 12 to 6h/week)	Reinstatement of support teacher for at least 18 h/week	Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art. 12 para. 2 & 4, art. 13, L.449/97 art. 40
48	23.03.2005	II Civil Court of Rome	Parents with parental authority over a child with Down's Syndrome and global cognitive retardation	MIUR, State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support	Reinstatement of support teacher for 18 h/week	Italian Constitution art. 2, art. 3 para. 2, art. 34 para.1, art. 38 para. 3 & 4, L.104/92 art. 12 para. 2 & 4, art. 13 L.449/97 art. 40
49	20.04.2005	II Civil Court of Rome	Parents with parental authority over a child with autism, moderate cognitive retardation and attention deficit	MIUR, State school	Not specified	Reduction in number of hours of teaching support (from 22 to 11h/week)	Allocation of a support teacher for the maximum number of hours allowed	L.104/92 art.12 para. 2 & 4, art. 13 L.449/97 art. 40 Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26,

50	22.04.2005	II Civil Court of Rome	Parents with parental authority over a child with psychomotor retardation and a communication disorder	MIUR, State school	Primary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for the entire period attending school	Italian Constitution arts. 2, 3 para. 2, 34 para. 1 & 38 para. 3 & 4, Universal Declaration of Human Rights, 1948 art.26, Charter of Fundamental Rights UE (appr. 2000) art.26, L.104/92 arts.12 para. 2 & 4, & 13 L.449/97 art. 40
51	14.7.2005	IV Civil Court of Naples	Parents with parental authority over a child with Down's Syndrome and learning disability	MIUR, Provincial Education Office (CSA), State school	Not specified	Allocation of insufficient number of hours of support	Allocation of a support teacher for the entire period attending school	Italian Constitution art. 34 & 38, L.104/92 art.12
52	22.07.2005	Civil Court of Bologna	Mother with parental authority over a child with a profound hearing impairment	MIUR, State school	Upper Secondary School - Art School (not compulsory)	Allocation of insufficient number of hours of support (13 h/week)	Allocation of a support teacher for the entire period attending school	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, European Social Charter (rat. 1999) art.15 & 17, L.104/92 art.3, L.449/97 art.12 para. 2, 3 & 4, & art. 40
53	6.10.2005	II Civil Court of Rome	Parents with parental authority over a child with dystonic tetraparesis and speech disorder	MIUR, State school	Kindergarten (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for the entire period attending school	Italian Constitution art. 38, L.104/92 art. 2, 3, 12 & 13, L.449/97 art. 40, D.lgs. 297/94, art. 312 ss.
54	24.10.2005	II Civil Court of Rome	Parent with parental authority over a child with severe psychic disability	MIUR, State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher on a 1:1 basis for the entire period attending school	Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art.12 para. 2 & 4, art. 13 L.449/97 art. 40

55	29.11.2005	II Civil Court of Rome	Parent with parental authority over a child with neonatal cerebropathy	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (6 h/week)	Allocation of a support teacher for at least 25h/week	Italian Constitution art. 38 para. 3, L.104/92 art.2, art. 3, art. 12 & 13 L.449/97 art. 40 Universal Declaration of Human Rights, 1948 Charter of Fundamental Rights UE (appr. 2000)
56	06.12.2005	Civil Court of Taranto	Parents with parental authority over a child with severe mental retardation	MIUR, Provincial Education Office (CSA), State school	Lower Secondary School (compulsory)	Allocation of insufficient number of hours of support (7 h/week)	Allocation of a support teacher on a 1:1 basis for the entire period attending school	L.104/92 art.3, 12 & 13, L.449/97 art. 40
57	12.12.2005	Civil Court of L'Aquila	Parents with parental authority over 5 children with disabilities, 1 disabled adult	MIUR	Upper Secondary School -Social Services (IPSSS) (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher to each pupil for 18 h/week	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38 L.104/92 art. 12 para. 2 & 4, art. 13 para. 3 European Social Charter (rat. 1999) art.15
58	26.01.2006	Civil Court of Rome	Parents with parental authority over a child with Down's Syndrome with global cognitive retardation	MIUR, Provincial Education Office (CSA), State school	Upper Secondary School (not compulsory)	Allocation of insufficient number of hours of support (9 h/week)	Allocation of a support teacher for the maximum number of hours allowed	L.104/92 art.3 para. 3, art. 12 para. 2 & 4, Universal Declaration of Human Rights, 1948 art. 26, European Social Charter (rat. 1999) art. 15 & 17, Charter of Fundamental Rights UE (appr. 2000) art. 26, Italian Constitution art. 2, art. 3 para. 2, art. 34, art. 38 para. 3
59	14.02.2006	II Civil Court of Rome	Parents with parental authority over a child with severe disability	MIUR, Provincial Education Office (CSA), State school	Upper Secondary School (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher on a 1:1 basis for the entire period attending school	Italian Constitution art. 2, art. 3 para. 2, art. 34 & 38 Universal Declaration of Human Rights, 1948 art. 26, Charter of Fundamental Rights UE (appr. 2000) art. 26, L.104/92 art.3 para. 3, art. 12 para. 2 & 4, art. 13 L.449/97 art. 40

60	16.02.2006	Civil Court of Rome	Parents with parental authority over a girl pupil with mental retardation	MIUR, State school	Upper Secondary School (not compulsory)	Allocation of insufficient number of hours of support (9 h/week)	Allocation of a support teacher for at least 24h/week	Italian Constitution art.34 & 38 L.104/92 art. 12 L.449/97 art. 40
61	20.02.2006	II Civil Court of Rome	Parents with parental authority over a girl pupil with autistic-type pervasive developmental disorder	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Allocation of insufficient number of hours of support (10 h/week)	Allocation of a support teacher for the maximum number of hours allowed	Italian Constitution art. 2, art. 3 para. 2, art. 34 para. 1, art. 38 para. 3 & 4, L.104/92 art.12 para. 2 & 4, art. 13 para. 3, L.449/97 art. 40
62	27.02.2006	II Civil Court of Rome	Parents with parental authority over a child with mixed developmental disorder, attention deficit hyperactivity disorder	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)		Allocation of a support teacher for 22h/week	L.104/92 art. 3 para. 3, art. 8 (d), art. 12, 13 & 14, L. 449/97 art. 40 para. 3, Universal Declaration of Human Rights, 1948 art. 26, European Social Charter (rat. 1999) art. 15 & 17, Charter of Fundamental Rights UE (appr. 2000) art. 26, Italian Constitution art. 2, art. 3 para. 2, art. 34, art. 38 para. 3
63	27.02.2006	Civil Court of Rome	Parents with parental authority over a child with neuro-sensory hypoacusia, mental retardation & attention deficit hyperactivity disorder	MIUR, Provincial Education Office (CSA), State school	Not specified	Allocation of insufficient number of hours of support	Allocation of a support teacher for the maximum number of hours allowed	L.104/92 art. 4 (m), art. 8, art. 13 para. 3, art. 14, L.449/97 art. 40 Italian Constitution art. 2
64	08.03.2006	Civil Court of Siracusa	Parents with parental authority over a child with severe cognitive disability and behaviour difficulties	MIUR	Primary School (compulsory)	Reduction in number of hours of teaching support to 12 h/week	Reinstatement of support for 24 h/week	L.104/92 art. 13

65	22.03.2006	Civil Court of Siracusa	Parents with parental authority over a child with cognitive disability and severe behaviour disorder	MIUR, Provincial Education Office (CSA), State school	Primary School (compulsory)	Reduction in number of hours of teaching support from 24 to 12 h/week	Reinstatement of support for 24 h/week	L.104/92 art. 3 para. 3, art. 13
66	27.03.2006	I Civil Court of Salerno	Parents with parental authority over a child with autism, speech and learning disorders	MIUR, Provincial Education Office (CSA), State school	Upper Secondary School - Scientific Lyceum (not compulsory)	Allocation of insufficient number of hours of support	Allocation of support teacher for 18h/week	L.104/92 art. 12 & 13, Italian Constitution art.2, 34 & 38 L.449/97 art. 40
67	27.03.2006	I Civil Court of Salerno	Parents with parental authority over a child with Down's Syndrome, speech and learning disorders	MIUR	Upper Secondary School - Industrial Technology (ITIS) (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for 18h/week	L.104/92 art. 12 & 13, Italian Constitution art.2, 34 & 38 L.449/97 art. 40
68	27.03.2006	I Civil Court of Salerno	Parents with parental authority over a child with a learning impairment and behaviour disorder	MIUR	Upper Secondary School - Industrial Technology (ITIS) (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for 18h/week	L.104/92 art. 12 & 13, Italian Constitution art.2, 34 & 38 L.449/97 art. 40
69	27.03.2006	I Civil Court of Salerno	Parents with parental authority over a child with cognitive deficit and compromised speech	MIUR	Upper Secondary School - Industrial Technology (ITIS) (not compulsory)	Allocation of insufficient number of hours of support	Allocation of a support teacher for 18h/week	L.104/92 art. 12 & 13, Italian Constitution art.2, 3, 34 & 38 L.449/97 art. 40

PRINCIPLE NATIONAL PROVISIONS AND INTERNATIONAL NORMATIVE TEXTS CITED IN ITALIAN CASE LAW

ITALIAN LEGISLATION

NORMS CITED

TEXT

Italian Constitution art.2

"The Republic recognizes and guarantees the inviolable rights of man ... in the social groups where he expresses his personality"

**Italian Constitution art.3,
paragraph 2**

"It is the duty of the Republic to remove those obstacles of an economic and social nature which, really limiting the freedom and equality of citizens, impede the full development of the human person"

**Italian Constitution art.34
paragraph 1**

"Schools are open to everyone."

**Italian Constitution art.38
paragraphs 3 and 4**

"Disabled and handicapped persons have the right to education and vocational training./ The duties laid down in this Article are provided for by organs and institutions established by or supplemented by the State."

L.104/92 art. 12 paragraph 2

"The disabled shall be guaranteed the right to receive education and training in kindergartens, in the ordinary classes of schools of all types and levels, and in universities."

L.104/92 art. 12 paragraph 3

"The purpose of educational integration shall be to develop the potentials of all disabled people in learning, communication, relationships and social interaction".

L.104/92 art. 12 paragraph 4

"Exercise of the right to education and training cannot be prevented by learning difficulties or by other difficulties deriving from the disabilities connected with a handicap."

L.104/92 art. 13, paragraph 3

"... complementary activities will be guaranteed in schools of all kinds and levels by the appointment of specialized teachers".

L. 449/97 art.40 paragraph 1

Ensures "the scholastic integration of disabled pupils by means of measures appropriate to the type and severity of the disability"

L. 449/97 art.40 paragraph 3

The number of support teachers for the integration of disabled pupils is determined by considering the total number of pupils enrolled in State schools of every level in every province and dividing this number by 138. (one teacher post every 138 students enrolled in schools of every level in every province). However, in the case of extremely severe disabilities, it is possible to engage support teachers on temporary contracts notwithstanding the ratio 1:138".

Dlgs. 297/94 art.99

" ... the services provided by the support teacher shall be appropriate ... to foster the development of the personality of the disabled child attending kindergarten and to prepare him/her profitably for mainstream compulsory education."

D.P.R. 616/77 art.42

The administrative function relative to the subject "educational support" concerns all establishments, services and activities destined to facilitate the completion of compulsory education of pupils, even if adults, in public and private schools through the provision and contribution of funds or through individual or collective services. The afore-mentioned function also concerns: psychological and medical assistance; assistance for pupils with mental and physical disabilities;

L.289/2002 art.35 paragraph 7

Notwithstanding the teacher/pupil ratio, the creation of support teacher posts in the case of extremely severe disabilities, as provided for in article 40, Law n. 449 of 27 December 1997, shall be authorised by the director responsible for the regional education office, while ensuring, in any event, provision for pupils with disabilities as provided for in the afore-mentioned article 3 of Law n.104 of 5 February 1992.

EUROPEAN NORMATIVE TEXTS

NORMS CITED

TEXT

European Social Charter art. 15

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible...

European Social Charter art. 17

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed... to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

Charter of Fundamental Rights of the European Union (2000) art.26

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

European Convention on the Exercise of Children's Rights (Strasbourg, 25.1.1996) art.7

Establishes the principle by which any decision affecting a child implies the duty of the judicial authorities to act speedily
"In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable"

European Constitution (Rome, 29.10.2004) art. II-81

*Prohibits "any discrimination based on any ground such as ... disability"
"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."*

European Constitution (Rome, 29.10.2004) art. II-86

"The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community"

INTERNATIONAL NORMATIVE TEXTS

NORMS CITED

TEXT

Universal Declaration of Human Rights, 1948 art.26

*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.*