

## LEGAL UPDATE

### **Education does not fall within scope of Youth Act**

Date: 17 August 2018

On 11 July 2018, the District Court of The Hague [ruled](#) on the relationship between education and individual youth assistance services under the Youth Act.

The following facts and circumstances are central to this judgment. The claimant's son was born with a rare chromosomal condition, due to which he has multiple disabilities. Because of these problems, he experiences limitations in daily life and cannot attend a regular school.

The claimant's son attended a special class where he received a combination of education and care. In November 2016, a report was made to the municipality's Youth and Family Team about the situation of the claimant's son. A problematic situation had arisen. Because of his aggressive behaviour, the claimant's son could no longer go to the special class where he received a combination of education and care. In view of the above, on the basis of the Youth Act, the claimant requested a personal care budget for his son to pay for home education. The respondent in the present proceedings temporarily granted the personal care budget as an emergency solution.

The claimant's appeal was not directed against the amount of the granted personal care budget, but concerned the fact that in practice he is unable to arrange tailored secondary education for his son. The appeal was also directed against the temporary nature of the granted personal care budget. The claimant wanted a solution for the future, so that his son's education is guaranteed. On appeal, the respondent stated that the requested service does not actually fall within the scope of the Youth Act, since 'home education' is not a service that can be provided within the framework of the Youth Act. Due to the urgency of the situation, the services were temporarily provided as an emergency service.

The court considered that various laws (regarding care) apply at the interface of education and care. These include, for example, the Chronic Care Act, the Health Insurance Act, the Youth Act and the Tailored Education Act. The court considered that only funding for guidance and personal care at schools qualifies for reimbursement on the basis of the Youth Act. Additional educational support is provided by schools within tailored education. Within this partnership, schools make agreements about the deployment of the funding for additional support to young people.

The court then ruled that education does not fall within the scope of the youth assistance services referred to in Section 2.3 of the Youth Act. Tailored education is regulated by the Tailored Education Act and falls under the responsibility of the partnership. This means that the Youth Act does not provide a legal basis for granting services aimed at accomplishing education. Because of the absence of a legal basis, the contested decision was annulled by the court.

Finally, the court considered that it can only express an opinion on the lawfulness of the contested decision. The court holds that it cannot render a declaratory judgment on the way in which the education of the claimant's son is organised and accomplished at present and in future, irrespective of this decision. The court does not consider itself competent to give a legal opinion on principle or a general legal opinion. The court realises that this judgment does not arrange the provision of the tailored education that is necessary for the claimant's son. Under the Tailored Education Act, it is up to the claimant, the respondent and the partnership to accomplish the provision of this tailored education to the claimant's son.

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The judgment discussed in this Legal Update clarifies the relationship between the various laws (regarding care) that affect education. Individual services requested for the purpose of accomplishing education do not fall within the scope of the Youth Act. It is up to the partnership to accomplish tailored education.

This is a Legal Update from Wouter Koelewijn and Bastiaan Wallage (thanks to Michelle Lieverse, intern focusing on health law).

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