

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER  
OF  
EDUCATION

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**Mary and Pasquale G.**  
**For their daughter**  
**Meghan G.**

**v.**

**Cranston School Department**

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**INTERIM ORDER**

Held: Student must be returned to school program as provided in her current Individualized Education Program after an updated Health Care Plan for her is in place.

DATE: May 25, 2000

## **TRAVEL OF THE CASE**

On March 29, 2000 a Petition for Issuance of an Interim Order was filed with Commissioner Peter McWalters on behalf of Meghan G. The matter was assigned to a hearing officer for immediate hearing and decision, and a hearing was scheduled for April 4, 2000. On March 30, 2000 the Cranston School Department filed an objection to the requested interim order, and filed its own Petition for an Interim Order. Hearing on both petitions was deferred at the request of counsel for Meghan G. so that separate representation could be secured for Meghan's parents. On April 28, 2000 the hearing officer was notified of the decision to proceed without separate counsel for Meghan's parents. Hearing dates of May 4, May 9 and May 17, 2000 were held by agreement of the parties, and closing arguments were presented by counsel for both parties on May 18, 2000. Under the statute governing the issuance of interim orders, R.I.G.L. 16-39-3.2, the decision in this matter is due within five (5) working days of the completion of the hearing. Therefore, given the length of the transcript and the impossibility of its production within the time frame required by statute, the record on which the decision is based consists of the numerous exhibits entered on the record by the parties and the hearing officer's notes of the testimony and arguments presented.

## ISSUES

- Can Meghan G.'s return to school and receipt of the educational program set forth in her IEP be conditioned on her mother's signing of releases which would authorize the school doctor and Coordinator of Nursing Services to give and receive information directly from Meghan's doctors throughout the year ?
- Is the Cranston School Department obligated to make up home tutoring and other services which were not provided pursuant to a plan agreed upon in February of this year when Meghan was not able to return to school for health reasons?

## FINDING OF RELEVANT FACTS

- Meghan is an eleven year old student enrolled in the Cranston public schools.
- Meghan is a medically fragile child, whose disabilities include multiple seizure disorder and a condition which causes intractable vomiting.
- Because of her disabilities, Meghan is eligible for and receives special education and related services pursuant to an Individualized Education Program which has been in effect since April of 1999. Petitioner's Ex. 6.
- Supplementary aids described in her IEP include an alpha talker to assist in Meghan's communication with others, a service dog used to alert those around Meghan to seizure activity, a personal care attendant at all times, and a nurse to accompany Meghan while she is on the school bus. Meghan and four other students at the school she regularly attends require the presence of the school nurse in the building at all times. Pet. Ex. 6.
- Meghan's IEP also includes a Health Care Plan which details the information needed for school personnel to meet Meghan's health needs in school. It includes a summary of orders from her doctors. Resp. Ex. C.
- In December of 1999, Meghan's condition deteriorated and she was hospitalized on or about December 22, 1999. Sometime after her return home in mid-January, a doctor's note established that she was unable to attend school "for the foreseeable future" and a copy of this note was supplied to the Director of Special Education in Cranston. See Respondents Ex.H and I;
- A home tutoring program was then set up, but because of the unavailability of an appropriate tutor, this program has not been provided consistently since February 28, 2000<sup>1</sup>. Pet. Ex.10.
- On January 21, 2000 legal counsel for the Cranston Public Schools<sup>2</sup> notified Meghan's attorney that because of her complex health needs, and the fact that a new Health Care Plan would need to be developed to meet Meghan's anticipated needs in school, signed releases would be required so that information could be exchanged with Meghan's treating physicians prior to readmitting Meghan to school. Pet. Ex. 12. Counsel also stressed that medical releases were standard procedure for students who had special health care needs which required development of a Health Care Plan.

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<sup>1</sup> Cranston school officials and Meghan's mother appeared to be in agreement as to the reason the home tutoring program was inconsistent, and there was every indication at the time of the hearing that the school department would provide compensatory services as soon as it was able to locate an appropriately qualified teacher.

<sup>2</sup> A different attorney than counsel representing the school department at the hearing before the Commissioner's designee.

- On January 24, 2000 Meghan's attorney responded to the January 21<sup>st</sup> request that Mrs. G. sign long-term releases to permit the exchange of information between the school department's nursing staff and Meghan's doctors and indicated that Mrs. G. would not sign the releases requested, but would execute short-term releases to permit direct communication with Meghan's doctors. Pet. Ex. 13.
- On or about March 9, 2000 one of Meghan's doctors filled out a written form indicating that Meghan was medically cleared to return to school and this form was provided to the school department. Pet. Ex.1.
- On March 29, 2000 Meghan's attorney supplied counsel for the school department updated information with respect to her medical status and her medication needs. Pet. Ex.15.
- The following day counsel for the school department responded in writing and indicated that the only impediment to Meghan's return to school was the refusal of Meghan's parents to sign releases permitting school staff to verbally exchange information with Meghan's doctors. Pet Ex.14. Counsel also indicated that upon the signing of such releases, it would also be necessary for the school physician to verify Meghan's condition with her doctors. Pet.Ex.14.
- Subsequently, the physician for the Cranston School Department talked to Meghan's pediatrician to discuss her medical condition and her current medication needs. He determined that she was able to return to school, that she was not infectious, and that everything was being done to address the incidents of vomiting from which Meghan suffers. He recommended that the staff at school and Meghan's doctors collaborate to find additional practical solutions to the problems presented by her vomiting. While a release permitting only his direct communication with Meghan's doctors would be a "compromise", he testified that the more effective communication to facilitate solutions to this situation would be between the nursing staff of the school department and Meghan's doctors.
- Both the school doctor and the coordinator of nursing services for the Cranston School Department confirmed that it is the practice to have releases authorizing the school nurse to communicate directly with the physician of a student who has complex medical needs and/or a Health Care Plan.
- The Coordinator of Nursing Services testified that the purpose of such communication in Meghan's case would initially be to clarify orders requiring the school nurse to administer a certain medication to Meghan during the school day.<sup>3</sup>

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<sup>3</sup> Meghan currently is prescribed a drug which would be administered just prior to lunch. The Coordinator of Nursing Services testified that she is aware that the drug has potentially serious, sometimes fatal, side effects and is "contraindicated" for a patient with Meghan's other conditions. Therefore, in her professional judgement, she needs to "explore the reasons" why Meghan is taking this medication and determine if its administration could be timed so as to avoid the need to administer it at school.

Nursing staff could also better plan accommodations for Meghan at school, make suggestions for her medical care and overall better meet her health and safety needs. Of special concern to her and members of the school nursing staff was their inability to directly communicate to Meghan's treating physicians their observations regarding her medical status. In December of 1999, at which time her condition deteriorated to the point that she was hospitalized on December 22, 1999, school staff had sent Meghan home a week earlier, believing her to be too ill to attend school; they then received a doctor's note on December 17, 1999 (Resp. F.) indicating she could return to school and she did.

- Meghan's mother testified she is willing to sign short term releases which would permit a verbal exchange of information between the Cranston school physician and all of Meghan's primary and consulting physicians. (See for example Pet. Ex.3, 4, 5, and 18.)<sup>4</sup> She is also willing to submit any specific questions that may arise from the nursing staff to Meghan's doctors and have the doctors answer those questions "with haste". Pet.Ex.13.

## **POSITIONS OF THE PARTIES**

### Mary and Pasquale G. on behalf of Their daughter, Meghan G.

On behalf of Meghan, her counsel argues that her entitlement to issuance of an interim order under R.I.G.L. 16-39-3.2 has been demonstrated on this record. An interim order requiring her immediate entry into school, and the provision of the educational program described in her IEP, is needed to ensure that she receives an education in accordance with applicable state and federal laws. The home tutoring provided during the months of March and April was a temporary program for which Megan was eligible under state special education regulations because of her extended absence from school.<sup>5</sup> Now that her condition has stabilized, and she has notified the school department of her ability to participate in her in-school program, she is entitled to re-enter school and receive the program outlined in her individualized education program. This, counsel argues, is her status quo placement.<sup>6</sup>

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<sup>4</sup> Meghan's counsel takes the position that the information obtained by the school physician could then be transmitted as necessary and appropriate by the school physician to the nursing staff without the execution of any additional releases and without violation of any confidentiality provisions of state or federal law.

<sup>5</sup> See Section III, 3.1 of the Regulations of the Board of Regents Governing the Special Education of Students with Disabilities (August 1992)

<sup>6</sup> Despite the reference to "status quo" placement, neither of the parties took the position that her placement as set forth in her current IEP (April 1999) should be changed.

Issuance of an interim order to return Megan to school will obviate the need for any further hearings, due process or otherwise, because there is no underlying dispute that the program outlined in the current IEP provides Meghan with a free appropriate public education. It is the school department's denial of access to that program by placing illegal and unacceptable conditions on her access, which has necessitated the interim order hearing.

In response to the Cranston school department's request for an interim order to compel Mrs. G. to sign releases permitting an ongoing exchange of information between the nursing staff and Meghan's doctors, counsel for Meghan argues that such an order would violate the basic principle that any release of confidential information from education records or disclosure of confidential health care information is authorized only when the parent has given written consent. By definition, consent is voluntary. Therefore the relief requested by the school district, i.e. compelled and non-voluntary disclosure, would violate the provisions of the Family Educational Rights and Privacy Act (FERPA) 20 USC 1232 (g) as well as the state statute governing the confidentiality of health care information, R.I.G.L. 5-37.3-1 et seq.

The reasons Mrs. G. has consistently refused to consent to the disclosure of confidential education and health care information related to her daughter in the context of the releases requested by the Cranston School Department, is that she<sup>7</sup> has the responsibility to make informed decisions about Meghan's medical care and to protect her privacy rights. She does not agree that this responsibility is shared with the nursing staff of the school department. She does not view the role of the school nurse as a participant in those decisions, nor does she want school staff to have available to them any more information than they need to know to comply with the doctor's orders and provide the services outlined in her IEP and her Health Care Plan. Mrs. G. has nonetheless offered to sign short term releases so that the school doctor can pose any questions he and/or the school staff may have, and receive information verbally from Meghan's doctors related to her health needs at school. By functioning as the conduit for

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<sup>7</sup> And, we assume, Meghan's father

all other communication between the school and her daughter's physicians, Mrs. G. is merely asserting her rights as a parent. It is her right to know the nature and extent of all such communication. She is the primary caretaker of her child and wants to remain "in the loop" of any and all communication. Federal and state confidentiality laws accomplish her objectives, by requiring her written consent to school-doctor communications regarding her daughter.

The releases she has offered to sign, together with her offer to facilitate all other communication and submit questions to Meghan's doctors as they arise, should suffice to provide the nursing staff at the school with the information they need to meet Meghan's health needs at school. Should an emergency arise, the mother has indicated that the 911 emergency number should be called and she or Meghan's father be contacted immediately. Should school officials be of the opinion that Meghan's parents are not properly caring for their child, then their recourse is to make a report to the Department for Children, Youth and their Families. It is argued that the parents' rights to preserve their child's confidentiality are not subsidiary to any determination of the "best interests" of Meghan. Confidentiality rights are not balanced against any demonstration by the school district of a need for the information. They are absolute unless the facts presented constitute an exception as set forth under FERPA or the Confidentiality of Health Care Information Act.

#### Cranston School Department

Counsel stresses at the outset that the issue in this case is health care information and the need of the nursing staff and other personnel of the school department to protect the health and safety of Meghan and that of other students. When professional staff providing medical care identify specific information or express the need for open communication with physicians, as they have in this case, their judgement should not be second-guessed, especially by those who have no medical expertise. The role of the nurse is such that open and direct communication with the patient's doctor is essential, and simply because the patient is also a student, this should not jeopardize the patient's welfare, or interfere with the nurse's performance of her professional duties. In

Meghan's case had such a direct communication link been established, those caring for her would have been able to discuss their observations as to her deteriorating condition in December of last year. If a release had been in place, the school nurse and coordinator of nursing for the district would have had the ability to speak directly to Meghan's doctor and may have averted her subsequent hospitalization. Using a conduit for such communication, be it the school doctor or Meghan's mother, does not provide the nurse-doctor communication that is essential for the adequate treatment and well-being of the patient, it is argued.

Counsel argues that the true motivation in refusing to sign releases that would permit such direct communication is not so much protection of confidentiality, but the parents' desire to retain exclusive control over the decisions related to their child's course of treatment.

The school department argues that the best interests of the child require the unhampered flow of information between nursing staff at the district level and the child's treating physicians. It is argued that the best care, the safest environment, can only be provided if the nurse has immediate access to the treating physicians. Particularly with the prospect of administering a drug with potentially dangerous side effects during the school day, nursing staff may have a compelling need to speak directly to Meghan's physicians. Although the parents are unwilling to authorize such ongoing communication, it is argued that the school officials have an independent obligation to the child to ensure that the health care she receives at school is adequate. This is also the school nurse's professional responsibility, and the parents' refusal to sign the requested releases presents an obstacle to the performance of her professional duties. It is also noted that the time involved in posing an urgent question to one of Meghan's doctors could be extended to the point where her safety would be placed in jeopardy.

The arrangement proposed by the mother - that school officials let her know when additional information is needed from Meghan's doctors, or there is a need to supply information from the school to her doctors - has been deemed unacceptable on a practical level as well. With approximately one hundred and eighty-nine (189) students in the

district with health care plans, it would be administratively impossible for such a system to be used effectively. This is the reason the district practice is to have signed releases for all students whose complex health needs require an individual Health Care Plan.

Counsel argues that the confidentiality rights asserted here must be balanced against the compelling need that has been established for an open line of direct communication between school nursing staff and Meghan's doctors. Although the circumstances of this case do not present an exception to the confidentiality rules set forth in state and federal law, it is argued that the drafters of these statutes did not contemplate the facts of this case nor did they have in mind the predicament in which such laws place school health personnel who are responsible for health services to children with sometimes complex and serious health needs.

### **DECISION**

This case is not about whether Meghan has confidentiality rights under state and federal law which would limit direct communication between school personnel and her doctors – the posture of this case assumes the applicability of these rights and recognizes her mother's ability to exercise them on her behalf. The issue presented here is whether Mrs. G. is required to waive these rights in order for her daughter to return to school. The position of the School Department – that Mrs. G. must sign the requested releases before her daughter will be allowed to return to school – has not been supported with reference to an education statute or regulation, or even a broader provision of state or federal law. Rather, the School Department argues that direct and ongoing communication between the nursing staff and Meghan's doctors is necessary to maintain her well-being and to enable the school nursing staff to properly fulfill their professional responsibilities to their patient.

Although the School Department did establish on this record that the releases have been requested in good faith, pursuant to the established practice in the district<sup>8</sup>, and that direct and ongoing communication will facilitate the provision of the health services

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<sup>8</sup> this was not an individualized request for releases, but rather pursuant to an established protocol of the Cranston School Department.

it is required to provide, there is no legal basis on which we can respond to these facts to require Mrs. G. to waive her daughter's confidentiality rights. Even if it were our finding that the execution of the releases was in Meghan's best interests, it is not our function to determine what her best interests are. This is the role of her parents as her legal and natural guardians. Our function is to interpret and apply education laws, and as we have stated, we are unaware of any provision of education law which would require Mrs. G. to consent to the releases, or which would authorize the district to condition Meghan's school attendance on her mother's signing of the releases requested.

Just as the record demonstrates the legitimacy of the concern of school personnel and confirms their desire to perform their functions as health professionals in direct communication with Meghan's doctors, the record also establishes that Mrs. G. is exercising her best judgment as to what communication should exist between her child's doctors and school health personnel. Her assessment at this time is that it is best for her to be the conduit for routine questions, concerns, and reports between the nursing staff and her daughter's doctors. She evidently is concerned that removing herself from this loop of communication at this point will hamper her ability to make decisions about her daughter's health care. Such decisions are called for on a daily basis, and given the seriousness of her daughter's condition, the decision making process itself is undoubtedly a process to which Mrs. G. has given considerable thought. Control of the flow of information is her prerogative under the law.<sup>9</sup>

As a resident of Cranston and a child with a disability whose individualized education program places her in her local public school, Meghan G. is entitled under state and federal law to reenter school as soon as the details of her current health care needs in school can be agreed upon in a revised Health Care Plan. The step of revising Meghan's existing Health Care Plan, which is an addendum to her current IEP, is a step which both parties implicitly, if not explicitly, acknowledge must precede her reentry to school. To facilitate the revisions to the Health Care Plan, we assume that Mrs.G. will execute the releases of information that she has previously indicated she was willing to sign, so that

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<sup>9</sup> It should be noted that both FERPA and the state's Confidentiality of Health Care Information Act have "emergency" exceptions permitting direct communication under certain circumstances..

the school physician may thereupon obtain any clarification of orders and instructions provided to the school staff for Meghan's current health care together with such other information as he may deem relevant to Meghan's health care while at school.<sup>10</sup>

The request of Meghan's parents for an interim order directing her immediate return to her school program is hereby granted. Given the information in the record with respect to the reason for the district's failure to provide some of the hours of home tutoring while Meghan was home bound, and the parties' apparent preference to address the issue of make-up services by agreement, we will not enter an order on this issue at this time. If the parties are unable to resolve this issue, we will reconvene the hearing for this purpose at their request.

APPROVED:

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Kathleen S. Murray, Hearing Officer

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Peter McWalters, Commissioner

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May 25, 2000  
Date

<sup>10</sup> We do not mean to suggest that clarification of the doctor's written order, or other communication with Meghan's doctors must always be authorized by mother's release. There may be situations in which such communications either do not constitute the release of personally identifiable information contained within an education record or fall within the emergency exception found in the statutes on which confidentiality is premised.