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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.E., et al.,

Plaintiffs,

v.

SEATTLE SCHOOL DISTRICT,

Defendant.

CASE NO. C15-1659JLR

ORDER DENYING MOTION
FOR RECONSIDERATION

I. INTRODUCTION

Before the court is Plaintiffs N.E., C.E., and P.E.’s¹ (collectively, “Plaintiffs”) motion for reconsideration of the court’s May 16, 2017, order of dismissal and judgment.

(See MFR (Dkt. # 34).) The court has reviewed Plaintiffs’ motion, the relevant portions

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¹ Plaintiffs C.E. and P.E. are N.E.’s parents. The court refers to them as “the Parents.”

1 of the record, and the applicable law. Being fully advised,² the court DENIES Plaintiffs’
2 motion for the reasons set forth below.

3 II. BACKGROUND

4 On October 16, 2015, Plaintiffs filed this interlocutory appeal from an
5 administrative law judge’s (“ALJ”) decision regarding N.E.’s “stay-put” placement under
6 the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* (*See*
7 *Compl.* (Dkt. # 1) ¶ 1; 1st Hruska Decl. (Dkt. # 3) ¶ 7, Ex. 7 (“ALJ Decision”).)

8 N.E. is a male child who attended third grade at Newport Heights Elementary
9 School in the Bellevue School District (“BSD”) for most of the 2014-15 school year. (*See*
10 *ALJ Decision* at 2.) During most of that year and in the prior years, N.E.’s individual
11 education plan (“IEP”) placed him in general education classes with paraeducator support
12 (“general classes”) for the majority of the school day. (*See id.*; 1st C.E. Decl. (Dkt. # 4)
13 ¶ 1.) The most recent IEP reflecting that arrangement is dated December 2014 (“the
14 December 2014 IEP”). (*See ALJ Decision* at 2; 1st C.E. Decl. ¶ 2, Ex. 1 (“12/14 IEP”).)

15 N.E. had significant difficulties during the 2014-15 school year. (*See ALJ*
16 *Decision* at 2; 1st C.E. Decl. ¶ 3.) Certain BSD officials and teachers, the Parents, and
17 their respective counsel attended an IEP meeting on May 26, 2015. (*See ALJ Decision* at
18 2; 1st Hruska Decl. ¶ 5, Ex. 4 at 10-13 (“Landwehr Decl.”) ¶ 5.) At the meeting, the BSD
19 proposed a new IEP that would place N.E. in specialized classes for students with
20 behavioral and emotional disorders (“separate classes”). (*See Landwehr Decl.* ¶ 5; 1st

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22 ² Plaintiffs do not request oral argument, and the court concludes that oral argument
would not be helpful to its disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 C.E. Decl. ¶ 3.) The Parents objected to this proposal. (*See* ALJ Decision at 2; 1st C.E.
2 Decl. ¶ 3; Landwehr Decl. ¶ 5.)

3 At the meeting, BSD officials and the Parents also discussed where to place N.E.
4 for the remainder of the school year. (*See* ALJ Decision at 2.) When the meeting
5 occurred, N.E. was subject to an emergency expulsion and the Parents were
6 uncomfortable with N.E. returning to Newport Heights. (*See id.*; Landwehr Decl. ¶ 6.)
7 The BSD and the Parents agreed that N.E. would finish the final weeks of the 2014-15
8 school year at a different school in the district. (*See* ALJ Decision at 2.) At that school,
9 N.E. would spend the majority of the day in a one-on-two setting that included N.E., a
10 teacher, and a paraeducator, but no other students (“individual classes”). (*See id.*; 1st
11 C.E. Decl. ¶ 4; Landwehr Decl. ¶ 6.)

12 One day later, on May 27, 2015, the BSD produced a final IEP for N.E. (“the May
13 2015 IEP”). (*See* ALJ Decision at 2; 1st C.E. Decl. ¶ 5, Ex. 2 (“5/15 IEP”).) The May
14 2015 IEP had two stages: (1) N.E. would finish the end of the 2014-15 school year in the
15 agreed-upon individual classes, and (2) N.E. would be placed in separate classes at the
16 start of the 2015-16 school year. (*See* ALJ Decision at 2-3; 1st C.E. Decl. ¶ 5; 5/15 IEP
17 at 15-16.) The Parents did not file an administrative due process challenge to the May
18 2015 IEP and instead allowed N.E. to continue attending the individual classes until the
19 school year ended on June 22, 2015. (*See* ALJ Decision at 2-3; 1st C.E. Decl. ¶ 7.)

20 The Parents and N.E. moved to Seattle in the summer of 2015 and contacted the
21 Seattle School District (“the District”) to enroll N.E. for the 2015-16 school year. (*See*
22 ALJ Decision at 3; 1st C.E. Decl. ¶ 8; Landwehr Decl. ¶ 7.) The Parents requested that

1 the District place N.E. in classes similar to the individual classes. (*See* ALJ Decision at
2 3; Landwehr Decl. ¶ 7.) The District reviewed N.E.’s records and decided to place him in
3 separate classes similar to those contemplated in the second part of the May 2015 IEP.
4 (*See* ALJ Decision at 3; 1st C.E. Decl. ¶ 8; Landwehr Decl. ¶ 7.)

5 The Parents objected and filed an administrative due process challenge to the
6 District’s decision. (*See* ALJ Decision at 3; Hruska Decl. ¶ 2, Ex. 1 (“DP Hearing
7 Req.”)); 20 U.S.C. § 1415(f). The due process challenge sought a declaration that the
8 District had denied N.E. a free appropriate public education (“FAPE”), an IEP providing
9 for the individual classes contemplated in the first part of the May 2015 IEP, and
10 reimbursement for private placement. (DP Hearing Req. at 4-5.) At the same time, the
11 Parents filed a motion for “stay put,” arguing that N.E.’s stay-put placement is the
12 general classes described in the December 2014 IEP. (*See* ALJ Decision at 3; DP
13 Hearing Req. at 3; 1st Hruska Decl. ¶ 3, Ex. 2 (“Stay-Put Mot.”)); 20 U.S.C. § 1415(j)
14 (stating that pending a due process challenge, “the child shall remain in the then-current
15 educational placement of the child”). The District contended that the separate classes
16 described in the May 2015 IEP represented the appropriate stay-put placement for N.E.
17 (*See* ALJ Decision at 3; 1st Hruska Decl. ¶¶ 4-6, Exs. 3-5.) Following testimony and oral
18 argument on the stay-put motion, the ALJ sided with the District and concluded that
19 separate classes were N.E.’s stay-put placement. (*See* ALJ Decision at 1, 4.)

20 Plaintiffs’ interlocutory appeal sought reversal of the ALJ’s stay-put decision and
21 a declaration that the District is required to place N.E. in a general education setting
22 consistent with his December 2014 IEP pending the outcome of Plaintiffs’ due process

1 challenge to the District’s intended placement. (Compl. at 5.) Upon filing this appeal,
2 Plaintiffs sought a temporary restraining order (“TRO”) and preliminary injunction
3 ordering the District to place N.E. in general classes pending the due process challenge.
4 (See Compl.; TRO Mot. (Dkt. # 2); 10/27/15 Order (Dkt. # 11) at 5.) The court denied
5 Plaintiffs’ motion because the court found no support for Plaintiffs’ theory that the court
6 could “ignore any unrealized stages of a multi-stage IEP or treat such stages as distinct
7 IEPs.” (10/27/15 Order at 9.)

8 Plaintiffs appealed the court’s decision to the Ninth Circuit Court of Appeals. (See
9 Not. of Appeal (Dkt. # 15).) On November 11, 2016, the Ninth Circuit affirmed the
10 court’s denial of the TRO and preliminary injunction. See *N.E. by and through C.E. &*
11 *P.E. v. Seattle Sch. Dist.*, 842 F.3d 1093, 1098 (9th Cir. 2016) (holding that “[s]tage two
12 of the May 2015 IEP . . . was N.E.’s stay-put placement”). On February 3, 2017, the
13 Ninth Circuit issued its formal mandate, returning the case to this court’s jurisdiction.
14 (Mandate (Dkt. # 23).)

15 After the Ninth Circuit issued its mandate, the parties took no further action until
16 the court ordered Plaintiffs to show cause why the case should not be dismissed as moot.
17 (3/9/17 OSC (Dkt. # 24) at 5.) In Plaintiffs’ response, they contended that an actual
18 controversy regarding N.E.’s educational placement continues to exist. (Resp. to OSC
19 (Dkt. # 25) at 2.) Plaintiffs did not inform the court of the status of their underlying due
20 process claim. (See generally *id.*)

21 When the court ordered Plaintiffs to show cause, the court also afforded the
22 District an opportunity to respond (3/9/17 OSC at 5), but the District did not file a

1 response at that time (*see* Dkt.). Rather, on March 30, 2017, the District moved to
2 dismiss this matter as moot. (*See generally* MTD (Dkt. # 27).) On May 16, 2017, the
3 court granted the District’s motion, concluding that Plaintiffs’ interlocutory appeal was
4 moot because the underlying due process claim had been dismissed with prejudice.
5 (5/16/17 Order (Dkt. # 32) at 9 (“The court is no longer able to afford any relief to
6 Plaintiffs because the relief they seek relates directly to N.E.’s stay-put placement
7 pending that particular due process claim”)) The court further concluded that
8 neither Plaintiffs’ assertion that they were entitled to reimbursement of educational costs
9 nor Plaintiffs’ petition for writ of certiorari to the United States Supreme Court altered
10 the court’s mootness determination. (*See id.* at 10-12); 20 U.S.C. § 1412(a)(10)(C)(ii)
11 (“[A] court or a hearing officer may require the agency to reimburse the parents for the
12 cost of that enrollment if the court or hearing officer finds that the agency had not made a
13 free appropriate public education available to the child in a timely manner prior to that
14 enrollment.”). Finally, the court concluded that the case did not fall within the “capable
15 of repetition, yet evading review” exception to mootness because the Parents stipulated to
16 dismiss the underlying due process claim with prejudice should they not prevail before
17 the Ninth Circuit, and the case was therefore inherently limited in duration. (*Id.* at
18 14-15.) Based on these conclusions, the court dismissed this matter with prejudice and
19 entered judgment. (*Id.* at 16; Judgment (Dkt. # 33).)

20 Plaintiffs now move for reconsideration on the bases that (1) the court did not
21 consider Federal Rule of Civil Procedure 54(c) in reaching its conclusion, and (2)
22 Plaintiffs provided notice that they intended “to seek reimbursement and compensatory

1 education in their original due process hearing complaint that contained the motion for
2 stay put on appeal.” (MFR at 2.) The court turns to Plaintiffs’ motion

3 III. ANALYSIS

4 “Motions for reconsideration are disfavored,” and the court “will ordinarily deny
5 such motions in the absence of a showing of manifest error in the prior ruling or a
6 showing of new facts or legal authority which could not have been brought to [the
7 court’s] attention earlier with reasonable diligence.” Local Rules W.D. Wash. LCR
8 7(h)(1). Plaintiffs contend that the court should grant their motion to reconsider because
9 the court “failed to even consider” Federal Rule of Civil Procedure 54(c) (MFR at 3), and
10 they requested reimbursement in the underlying due process case (*id.* at 6). Rule 54(c)
11 provides that every final judgment besides a default judgment “should grant the relief to
12 which the party is entitled, even if the party has not demanded that relief in its pleadings.”
13 Fed. R. Civ. P. 54(c); *see also Ryan v. Mesa Unified Sch. Dist.*, 195 F. Supp. 3d 1080,
14 1088 (D. Ariz. 2016) (“Rule 54(c) allows the court to award monetary damages to
15 [p]laintiffs . . . if they prove facts entitling them to such relief, even though they failed to
16 plead such a request in their complaint.”). Rule 54(c) allows courts to “grant whatever
17 relief is appropriate in the case on the facts proved.” *Cal. Ins. Guar. Assoc. v. Burwell*,
18 --- F. Supp. 3d ---, 2017 WL 58821, at *10 (C.D. Cal. Jan. 5, 2017) (internal quotation
19 marks omitted).

20 As an initial matter, Plaintiffs did not raise Rule 54(c) in their response brief. (*See*
21 MTD Resp. (Dkt. # 29) at 2-3.) However, Plaintiffs do not explain why Rule 54(c)
22 provides a basis for reconsideration when they could have earlier brought this authority to

1 the court's attention with reasonable diligence. *See* Local Rules W.D. Wash. LCR
2 7(h)(1). Accordingly, Plaintiffs fail to make the showing required to justify
3 reconsideration. *See id.*

4 Moreover, although Rule 54(c) permits a court to grant monetary relief where a
5 plaintiff's complaint seeks only declaratory and injunctive relief, *see Z Channel Ltd.*
6 *P'ship v. Home Box Office, Inc.*, 931 F.2d 1338, 1341 (9th Cir. 1991), Plaintiffs no longer
7 have a live claim³ that would entitle them to reimbursement for private placement, *see*
8 *Brown v. Bartholomew Consol. Sch. Corp.*, 442 F.3d 588, 596-97 (7th Cir. 2006)
9 (holding that the parents had abandoned a claim to reimbursement "originat[ing] in their
10 rights under the stay-put injunction" when the parents failed to seek reimbursement in the
11 district court); *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 90 (2d
12 Cir. 2005) (reasoning that "it would be particularly inappropriate to read a prayer for
13 compensatory education" into the operative complaint because the plaintiff "explicitly
14 included such relief in earlier iterations of her pleadings" but failed to include the request
15 in the operative complaint). Like in *Brown*, Plaintiffs abandoned their claim to
16 reimbursement by stipulating to dismissal of the underlying due process case in which

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18 ³ At least one court has noted that reimbursement could be viewed as an additional claim
19 or as additional relief on an existing claim, but the court did not decide the issue. *See Houston*
20 *Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 598 (5th Cir. 2009) (citing Fed. R. Civ. P.
21 54(c)). Courts in the Ninth Circuit appear to treat reimbursement as a claim rather than simply as
22 a form of relief. *See, e.g., Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 890 (9th
Cir. 1995) ("The Wartenbergs' claim for reimbursement for . . . tuition is a live controversy.");
Browell v. Lemahieu, 127 F. Supp. 2d 1117, 1128 (D. Haw. 2000) (holding that an IDEA case
was moot because the "[p]laintiff has no monetary claim before this Court," which left "no relief
that this Court can give"). Accordingly, because there is no reimbursement claim before the
court, *see infra*, the court cannot determine that Plaintiffs are entitled to any relief, regardless of
whether they demanded that relief. *See* Fed. R. Civ. P. 54(c).

1 they sought reimbursement. *See* 442 F.3d at 596-97; (Hokit Decl. (Dkt. # 28) ¶ 4, Ex. 3
2 (dismissing with prejudice the due process case upon which this interlocutory appeal is
3 premised); *see generally* Compl. (failing to seek reimbursement); *see also* DP Hearing
4 Req. at 5 (requesting in the underlying due process case reimbursement of private
5 placement costs the parents incurred.) Pursuant to that stipulation, the ALJ dismissed
6 with prejudice the 2015-16 claim upon which Plaintiffs base this interlocutory appeal,
7 and there is presently no claim for reimbursement—or any other claim—before the court.
8 Therefore, Plaintiffs’ interlocutory appeal is moot (*see* 5/16/17 Order at 9), and the court
9 did not commit manifest error in reaching this conclusion.⁴

10 Because Plaintiffs fail to demonstrate manifest error in the court’s decision or new
11 facts or legal authority that could not have been brought to the court’s attention earlier
12 with reasonable diligence, the court denies their motion for reconsideration.

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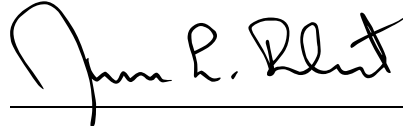
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17 ⁴ Although Plaintiffs do not raise the issue on reconsideration, the court further notes that
18 the fact that the Parents have filed a new due process claim—in which they apparently seek
19 reimbursement and a decision on stay-put placement related to N.E.’s IEP for the 2016-17 school
20 year—does not remedy the mootness problem. (*See* MTD Resp. at 5; P.E. Decl. (Dkt. # 29-1)
21 ¶¶ 4 (stating the educational costs the Parents have paid from January 2016 to May 2016), 10
22 (stating that on April 17, 2017, the Parents filed a new due process hearing request that includes
a motion for stay-put placement based on N.E.’s December 2014 IEP).) As the court concluded
in its order of dismissal, even if this newly filed claim alleges that the District has subjected N.E.
to the same actions that gave rise to the 2015-16 due process claim, Plaintiffs failed to establish
that this case falls within the “capable of repetition, yet evading review” exception to mootness.
(*See* 5/16/17 Order at 14-15.) Accordingly, any request for reimbursement in the new due
process case does not warrant reconsideration.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DENIES Plaintiffs' motion for
3 reconsideration (Dkt. # 34).

4 Dated this 29th day of June, 2017.

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7 JAMES L. ROBART
United States District Judge

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