

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAITLIN W., ET AL. :
 :
 : CIVIL ACTION
 :
 v. :
 : NO. 03-CV-6051
 :
 THE ROSE TREE MEDIA :
 SCHOOL DISTRICT :

SURRICK, J.

JUNE 30, 2005

MEMORANDUM & ORDER

Presently before the Court is Plaintiffs' Motion for Reconsideration (Doc. No. 15). For the following reasons, Plaintiffs' Motion will be denied.

I. BACKGROUND

Caitlin W. ("Caitlin") is the minor child of Mark W. and Louise W., residents of Newtown Square, Pennsylvania. (Compl. ¶¶ 10-11.) Plaintiff's residence in Newtown Square is in the Rose Tree Media School District ("the District"). (*Id.* ¶ 12.) Prior to Caitlin's attending school in the District, the District conducted an evaluation to determine whether it could meet Caitlin's needs. On July 26, 2001, the District completed a Comprehensive Evaluation Report on Caitlin. (*Id.* ¶ 14.) The District then developed an individualized educational program ("IEP") for Caitlin based upon the Report. (*Id.*) Caitlin's parents did not approve of the District's IEP. (Doc. No. 12 Ex. A at 7.) In fact, on July 4, 2001, before the District had completed the Comprehensive Evaluation Report and before the District had developed its IEP, Caitlin's parents had applied to the Academy at Swift River ("ASR"), an emotional growth and

therapeutic boarding school located on 650 acres in rural Massachusetts. (Doc. No. 12 Ex. A at 8, 11.) Caitlin actually started attending ASR on August 27, 2001, before the IEP had been developed. (*Id.* at 11-12.) On September 10, 2001, Caitlin’s parents requested a due process hearing regarding the IEP. (Compl. ¶ 14.) The due process hearing was not held until February 3, 2003. (Doc. No. 11 at 5.)

Plaintiffs filed the Complaint in this matter on November 3, 2003, seeking, among other relief, tuition reimbursement under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* (Doc. No. 1.) On April 19, 2004, Plaintiffs filed a Motion for Limited Judgment on the Pleadings requesting tuition reimbursement from September, 2001, to November, 2002. (Doc. No. 11.) The Motion was denied on December 29, 2004. *Caitlin W. v. Rose Tree Media Sch. Dist.*, Civ. A. No. 03-CV-6051, 2004 WL 3009027 (E.D. Pa. Dec. 29, 2004). Plaintiffs then filed the instant Motion for Reconsideration. (Doc. No. 15.)

II. LEGAL STANDARD

“The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki* 779 F.2d 906, 909 (3d Cir. 1985). Courts should grant these motions sparingly, reserving them for instances when (1) there has been an intervening change in controlling law, (2) new evidence has become available, or (3) there is a need to correct a clear error of law or fact or to prevent manifest injustice. *General Instrument Corp. v. Nu-Tek Elecs.*, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), *aff’d*, 197 F.3d 83 (3d Cir. 1999).

III. LEGAL ANALYSIS

In denying Plaintiffs’ Motion for Limited Judgment on the Pleadings, we detailed the

administrative framework which governs a parent's challenge of a proposed IEP under the IDEA. Under Pennsylvania law, a parent is entitled to an impartial due process hearing regarding the proposed IEP within thirty days of the initial hearing request. *Caitlin W.*, 2004 WL 3009027, at *3. We determined, however, that a parent is not automatically entitled to recover tuition reimbursement for a child's placement at a private school if the requested hearing is not timely held. Instead, in order to conclude that reimbursement is appropriate, a court must determine that: (1) the IEP was inappropriate; and (2) the placement of the child at the private school was appropriate. *Caitlin W.*, 2004 WL 3009027, at *4-5. Because Plaintiffs did not argue that the IEP was inappropriate or that Caitlin's placement at private boarding school was appropriate, we denied Plaintiffs' request for tuition reimbursement. *Id.* at *5.

Plaintiffs' Motion for Reconsideration argues that we committed a clear error of law when we denied their Motion for Limited Judgment on the Pleadings. Plaintiffs urge us to reconsider our decision based solely on the content of a footnote in our Memorandum. In footnote seven we stated that "Plaintiffs . . . rely on *Krawitz v. Commonwealth of Pennsylvania, Department of Education*, 408 A.2d 1202 (Pa. Commw. Ct. 1979). However, *Krawitz* is a state court case premised solely on state law and was decided prior to the enactment of the IDEA."¹ *Id.* at *4 n.7.

In support of their Motion, Plaintiffs argue that *Krawitz* should guide this Court's analysis because it was decided under the Education for All Handicapped Children Act ("EAHCA"),

¹Since *Krawitz* is a decision from the Commonwealth Court of Pennsylvania, it is not binding authority on this Court.

which later became the IDEA.² (Doc. No. 15 at 1-2.) In *Krawitz*, the school district where Minda Krawitz (“Minda”) attended school recommended to Minda’s parents that she attend “an approved private school in Pennsylvania.” *Krawitz*, 408 A.2d at 1203. Her parents rejected this recommendation and requested a due process hearing.³ *Id.* When the Pennsylvania Department of Education did not schedule a timely hearing, Minda’s parents enrolled her in a private residential school at their own expense while they continued to seek a hearing. *Id.* Even though Plaintiffs requested a hearing in mid-1976, a hearing was not conducted until October 1977. *Id.* The Pennsylvania Department of Education conceded that it failed to provide a timely hearing to Plaintiffs. *Id.* at 1204. The court concluded that this failure prejudiced the plaintiffs, stating, “we do not agree that the Department’s failure to provide a timely hearing was without consequence. Had the matter been seasonably disposed of, Minda’s parents might have accepted placement in one of the Pennsylvania schools offered by the Department.” *Id.* The court remanded the matter to the Pennsylvania Department of Education “solely for computation and payment of tuition and maintenance costs . . . in accordance with Section 1376 of the Public

²The EAHCA was enacted on November 29, 1975, to amend various provisions of the Education of the Handicapped Act, Pub. L. No. 94-142, 89 Stat. 773 (1975), and required “due process protections providing for parental input into educational placement decisions.” Gary D. Fry, *Exceptional Child’s Right to an Approved Private School Program in Pennsylvania*, 84 Dick. L. Rev. 417, 422 (1980). Plaintiffs correctly note that the IDEA was formerly the EAHCA. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1206 (3d Cir. 1993).

³Under then-existing regulations, a parent was entitled to a due process hearing within thirty days of properly requesting it. 5 Pa. Bull. 1545-46 (1975). The court did not specifically cite any of the administrative provisions contained in the Pennsylvania Bulletin. These regulations were amended in June 1977 to ensure that a uniform due process procedure, which included the right to a timely hearing, applied to “all exceptional and thought-to-be exceptional” and “mentally retarded and thought-to-be mentally retarded” students. 7 Pa. Bull. 1636-38 (1977).

School Code of 1949, Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. § 13-1376.” *Id.* at 1205.

Unlike the *Krawitz* plaintiffs, the Plaintiffs in this matter have not demonstrated that they were prejudiced when they were not given a timely due process hearing. In *Krawitz*, Minda’s parents chose to place Minda in a private boarding school only after requesting a due process hearing. Here, Plaintiffs elected to apply to a private boarding school for Caitlin well before the District had even completed a Comprehensive Evaluation Report and before the District had developed its IEP for Caitlin. Caitlin had actually started attending ASR on August 27, 2001, before the IEP had been developed. (Doc. No. 12 Ex. A at 11-12.) Caitlin’s parents did not request a due process hearing regarding the IEP until September 10, 2001, well after unilaterally deciding to send Caitlin to ASR. Thus, the delay in scheduling the due process hearing did not cause Caitlin’s parents to take action which they might not otherwise have taken. As a result, even if we chose to rely on the analysis adopted by the *Krawitz* court, we would reach the same conclusion.⁴

⁴Plaintiffs also argue that the regulations at issue in *Krawitz* regarding the court’s award of tuition reimbursement “were specifically enacted to implement, and to become a part of, the federal education entitlement under the EAHCA.” (Doc. No. 15 at 3.) The state regulations on which *Krawitz* implicitly relied were promulgated prior to the effective date of the EAHCA’s procedural safeguards. Pennsylvania’s due process hearing requirements were part of a larger system of procedural safeguards which was created by the Pennsylvania Board of Education in response to a consent decree entered into in *Pennsylvania Association for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971). *Eberle*, 444 F. Supp. at 44; *see also* 5 Pa. Bull. 1540, 1545 (1975); 7 Pa. Bull. 1636, 1636 (1977). This decree served as an impetus for the procedural safeguards that were ultimately adopted by the EAHCA. *Eberle*, 444 F. Supp. at 44 (citing 2 U.S.C.C.A.N. 1430 (1975)). Thus, the evidence suggests that these state provisions were not specifically enacted to implement the EAHCA. Furthermore, the EAHCA’s procedural safeguards, which included a right to a due process hearing, applied “only to financial aid received after October 1, 1977, and are not retroactive.” Fry, 84 Dick. L. Rev. 417, 423 n.36; *see also* Pub. L. No. 94-142, 89 Stat. 773, 796; *Eberle v. Bd. of Pub. Educ.*, 444 F. Supp. 41 (W.D.

In addition, we are satisfied that our analysis in the Memorandum and Order of December 29, 2004, is the appropriate analysis. It is, of course, the same analysis used in the case of *Rose v. Chester County Intermediate Unit*, Civ. A. No. 95-239, 1996 WL 238699 (E.D. Pa. May 7, 1996), *aff'd*, 114 F.3d 1173 (3d Cir. 1997). In determining whether tuition reimbursement is appropriate even when there has been a delay in the scheduling of a due process hearing, the Court must consider the following factors: (1) whether the IEP was appropriate; (2) whether the private placement by the parents was appropriate; and (3) whether equitable considerations, including the reasonableness of the parties' positions, favor reimbursement. Each of these factors was properly considered by the Court.

An appropriate Order follows.

Pa. 1977), *aff'd*, 582 F.2d 1274 (3d Cir. 1978) (holding that the conditions of the EAHCA could not be applied retroactively). Because the *Krawitz* plaintiffs requested a hearing more than a year before the effective date of the EAHCA's procedural safeguards, it cannot reasonably be suggested that the decision in *Krawitz* was compelled by the EAHCA safeguards.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAITLIN W., ET AL.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-6051
	:	
THE ROSE TREE MEDIA	:	
SCHOOL DISTRICT	:	

ORDER

AND NOW, this 30th day of June, 2005, upon consideration of Plaintiffs' Motion for Reconsideration (Doc. No. 15, No. 03-CV-6051), and all papers submitted in support thereof and in opposition thereto, it is ORDERED that Plaintiffs' Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge