



By the order of the court, Judge David A Wiseman



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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ROSELLE DEMAPAN CALVO,) **Civil Action No. 07-0026E**
)
 Plaintiff,)
)
 vs.) **FINAL DECISION AND ORDER**
)
)
 THE NORTHERN MARIANA ISLANDS)
 SCHOLARSHIP ADVISORY BOARD,)
 by and through its Administrator Merissa)
 Seman and its Board Members,)
)
 Defendants.)
)
 _____)

I. INTRODUCTION

THIS MATTER came for final hearing on October 18, 2007. Counsel Robert Tenorio Torres appeared on behalf of Plaintiff Roselle Demapan Calvo (“Calvo”). Assistant Attorney General Braddock J. Huesman appeared on behalf of Defendants, the Northern Mariana Islands Scholarship Advisory Board (hereinafter referred to as the “Scholarship Board”). At the hearing both parties made final oral arguments on the merits of the case. The Court took the case under advisement at the conclusion of the hearing. After considering the oral and written arguments of the parties, legal authorities, and the material facts, the Court renders its final ruling on the matter.

II. UNDISPUTED MATERIAL FACTS

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3 ¶1 Plaintiff Roselle D. Calvo graduated from Marianas Baptist Academy in May of 2006 with a
4 GPA of 3.90, as Salutatorian of her class. She timely applied for a CNMI Honor Scholarship
5 Program under PL 14-37 to pursue her post-secondary education.

6
7 ¶2 The Northern Mariana Islands Scholarship Board (the “Scholarship Board”) has promulgated
8 agency regulations governing the process of considering applications and awarding scholarships
9 pursuant to the Post-secondary Education Act of 1990, P.L. 14-37.

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11 ¶3 Under the Honor Scholarship Program, the Board awards up to eight (8) Honors Scholarships to
12 eligible recipients from Saipan based on their scholastic achievement.

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14 ¶4 Recipients of the 2006 CNMI Honor Scholarships were selected on a blind basis, with names
15 and other identifiers withheld.

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17 ¶5 On June 28th the Scholarship Board received Ms. Calvo’s application packet.

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19 ¶6 Pursuant to Scholarship Board Regulation 3.2.2, Administrator Seman reviewed and calculated
20 the rankings of all applicants in late July.

21
22 ¶7 Scholarship Board Regulation 3.2.2 requires the Board to credit only an applicant’s cumulative
23 grade point average and ACT/SAT test score in ranking the applicant.

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25 ¶8 On August 23rd, the Scholarship Board was presented with the calculations and rankings.

- 1 ¶9 The Board recalculated or double checked the calculations and agreed with the findings.
2
- 3 ¶10 Scholarship recipients were selected on the basis of the rankings
4
- 5 ¶11 On August 28, 2006, Ms. Seman sent a letter informing Ms. Calvo that she was not awarded an
6 Honor Scholarship.
7
- 8 ¶12 As grounds for denying Ms. Calvo's application, Administrator Seman stated that Ms. Calvo
9 ranked eleventh among the applicants.
10
- 11 ¶13 On August 29, 2006, Ms. Seman sent the governor a letter informing him of the students who
12 were selected
13
- 14 ¶14 After learning of the Board's decision to deny her application, Ms. Calvo filed her petition for
15 review on October 9, 2006, pursuant to section 10.1 of the Scholarship Board's Regulations.
16
- 17 ¶15 On November 11, 2006, Ms. Seman informed Ms. Calvo that she would keep Ms. Calvo posted
18 on the date for her appeal.
19
- 20 ¶16 On November 19, 2006, an employee of the Scholarship office sent an email to Ms. Calvo
21 informing her of the date of the next Scholarship Board meeting and, hence, her hearing.
22
- 23 ¶17 The November 19th email listed the date of the meeting as October 28th instead of November
24 28th.
25

1 ¶18 Ms. Calvo did not reply to this email.

2

3 ¶19 On November 28th the Scholarship Board met and rejected Ms. Calvo's appeal.

4

5 ¶20 A letter dated December 5, 2006 issued from the Administrator to Ms. Calvo (the "December 6,
6 2005 Letter).

7

8 ¶21 The December 5, 2006 Letter stated that Ms. Calvo placed 11th of the 29 applicants, and that
9 only eight (8) slots were available for Saipan.

10

11 ¶22 The December 5, 2006 Letter stated that the names of the applicants were not presented to the
12 Scholarship Board.

13

14 ¶23 The December 5, 2006 Letter stated that "only a chart that displayed where [the applicants]
15 ranked with their cumulative grade point average. SAT/ACT scores, and their overall placement"
16 was presented to the Scholarship Board.

17

18 ¶24 The December 5, 2006 Letter stated: "Once the numbers were recalculated and confirmed, the
19 names of the applicants who placed in the top eight (8) were then given to the Board."

20

21 ¶25 Attached to the December 5, 2006 Letter were the Scholarship Board's Rules and Regulations.

22

23 ¶26 The Regulations furnished to Ms. Calvo were the Emergency Regulations, promulgated by the
24 Scholarship Board in October of 2004 and published in 26 Com.Reg. No. 11 23084 (November
25 30, 2004).

1 ¶27 On December 6, 2006, Ms. Calvo renewed her appeal and offered a new way to calculate the
2 Honor Scholarship rankings.

3
4 ¶28 On December 12, 2006, the Scholarship Board notified Ms. Calvo that it would consider her
5 request for reconsideration at the next Board Meeting on January 11, 2007.

6
7 ¶29 Ms. Calvo was later informed the meeting was changed to January 9th.

8
9 ¶30 On January 9, 2007, Ms. Calvo appeared at the rescheduled Scholarship Board meeting, and the
10 Scholarship Board heard her case.

11
12 ¶31 The Scholarship Board recommended that the method for calculating honor scholarship awards
13 should be examined further, but that any examination would not affect Ms. Calvo's status.

14
15 ¶32 The Scholarship Board rejected Ms. Calvo's request for reconsideration on January 11, 2007.

16 17 **III. STANDARD OF REVIEW**

18
19 1 CMC § 9112(f) prescribes the standard of review the Superior Court must apply when
20 reviewing agency actions within the Administrative Procedure Act. *Camacho v. Northern Marianas*
21 *Retirement Fund*, 1 N.M.I. 362 (1990). In her administrative appeal, Plaintiff asks this Court to overturn
22 the Scholarship Board's decision not to award an Honor Scholarship to Plaintiff before and after
23 Plaintiff filed her appeal.

24 Specifically, Plaintiff supports her challenge of the Scholarship Board's determination by
25 alleging that 1) "the Board's regulations directing the calculation of applicant rankings and the Board's

1 attendant award of Honors Scholarships were arbitrary, capricious, an abuse of discretion, or otherwise
2 not in accordance with the law of the Commonwealth and particularly Public Law 14-37;” that 2) “a
3 decision to condition selection for an Honor Scholarship on the approval or recommendation of the
4 Governor violated Public Law 14-37, the CNMI Scholarship Act of 2004, as amended, and is arbitrary,
5 biased, capricious, an abuse of discretion, and not otherwise in accordance with law;” that 3) “the
6 calculation of certain GPAs in excess of a 4.0 ceiling was entirely arbitrary and capricious and
7 unsupported by substantial evidence ...;” and that 4) “the [Scholarship Board’s] decision to reject her
8 request for reconsideration was without observance of procedure required by law pursuant to 1 CMC §
9 9112(f)(2)(iv).” *See* Plaintiff’s Opening Brief at pages 11-12.

10 Section 9112(f)(2), mandates that a court set aside agency action if it finds the action is found to
11 be “(i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, (ii)
12 contrary to constitutional right, power, privilege, or immunity..., (iii) in excess of statutory jurisdiction,
13 authority, or limitations, or short of statutory rights, or (iv) without observance of procedure required by
14 law.” 1 CMC § 9112(f)(2)(i-iv). Because the first three of four of Plaintiff’s complaints challenges the
15 Scholarship Board’s actions as “arbitrary and capricious,” the Court shall review the Scholarship
16 Board’s actions under the arbitrary and capricious standard. Under CNMI case authority an agency
17 action is deemed arbitrary and capricious “if the agency has . . . entirely failed to consider an important
18 aspect of the problem.” *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993). However, an agency
19 action challenged under the arbitrary and capricious standard will normally be upheld if the action is
20 found to be supported by “substantial evidence.” *See In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37
21 (1993).

22 Here, Plaintiff argues that this Court should confine its’s review to the arbitrary and capricious
23 standard because much of its complaint argues that the Scholarship Board’s actions which resulted in
24 denying Plaintiff an Honors Scholarship award was not in accordance with the law. The Court agrees in
25 part, with respect to the standard of review. Plaintiff’s first and third complaints simply allege that the

1 Scholarship Board's regulations promulgated to create a methodology for awarding Honors Scholarship,
2 and the Scholarship Board's use of weighted GPAs to rank candidates for the Honors Scholarship, were
3 inconsistent with Commonwealth law. Because the background facts surrounding these Scholarship
4 Board actions are undisputed, the Court only needs to determine whether the Scholarship Board's
5 actions are in accordance with Commonwealth law. Different standards of review, however, must
6 logically be employed to review Plaintiff's remaining complaints.

7 First, Plaintiff's second complaint, that the Scholarship Board improperly conditioned its award
8 of the Honors Scholarship on the Governor's approval is factually disputed by the Scholarship Board.
9 Therefore, the Court will examine the record to determine whether the Scholarship Board's position is
10 supported by substantial evidence, or inversely whether Plaintiff's complaint is substantiated by any
11 evidence in the record. Secondly, Plaintiff's fourth complaint, which alleges that she received
12 inadequate process during her appeal of the Scholarship Board's initial decision, calls only for this
13 Court to examine whether she received adequate process of law in light of Plaintiff's interest in
14 receiving an award. The Court will therefore analyze Plaintiff's property interest in receiving the
15 Honors Scholarship to determine what degree of process she was due, and then determine whether the
16 Scholarship Board's treatment of Plaintiff's appeal
17 provided adequate process.

18 19 **IV. ISSUES FOR REVIEW**

20
21 **1. Whether the Scholarship Board Improperly Failed to Award Plaintiff a Scholarship, when the**
22 **Scholarship Board's Method of Ranking Students Relied on Only Some the Criteria Listed Under**
23 **Public Law 14-37 as Qualifying Criteria for the Scholarship?**

24
25 **2. Whether the Scholarship Board's Use of Weighted Grade Point Averages to Rank Honors**

1 **Scholarship Candidates is Consistent with the Criteria Listed Under Public Law 14-37?**

2
3 **3. Whether the Scholarship Award's Were Conditioned on the Approval of the Governor?**

4
5 **4. Whether Plaintiff's Constitutional Due Process Rights Were Violated By the Scholarship**
6 **Board's Conduct of Plaintiff's Appeal Proceedings?**

7
8
9 **V. DISCUSSION**

10
11 **A. The Methodology Employed by the Scholarship Board to Rank Eligible Applicants Was**
12 **Consistent with the Requirements of Public Law 14-37.**

13
14 Plaintiff bases her complaint for review chiefly on her objection to the Scholarship Board's
15 adopted methodology for ranking eligible applicants for the Scholarship. Specifically Plaintiff
16 complains that by using only the weighted GPAs and SAT/ACT scores to rank applicants the
17 Scholarship Board unlawfully deviated from the selection criteria provided in Public Law 14-37 (PL 14-
18 37). By contrast, the Scholarship Board maintains that its methodology for ranking applicants followed
19 the letter and spirit of PL 14-37 despite its employment of less than all of the criteria set forth in PL 14-
20 37. For the following reasons the Court agrees with the Scholarship Board's interpretation of PL 14-37.

21 The plain language of PL 14-37, in pertinent part, sets forth the following criteria for qualifying
22 students for acceptance into the CNMI Honor Scholarship program:

23 The criteria to *qualify* for the scholarship shall include the following: (1) Highest grade point
24 average; (2) Highest SAT/and ir ACT scores; (3) Consideration of the applicant's extra-
25 curricular activities; (4) Evaluation of the difficulty of courses taken by the applicant during
high school; and (5) Consideration of at least two letters of recommendation.
PL 14-37, codified at 3 CMC § 1342(b) (*emphasis added*).

1 As revealed in the record and the plain language of PL 14-37, the Scholarship Board was limited
2 to awarding eight (8) Honors Scholarships to Saipan residents. In order to choose eight recipients out of
3 substantially more eligible candidates, the Scholarship Board promulgated regulations to aid them in
4 ranking the candidates. These regulations set forth the following methodology which is employed to
5 rank all eligible applicants for the Honor Scholarship:

6 Process of Ranking Scholarship:

- 7 1. 80% of the rank will be determined by the applicants' cumulative
8 grade point average. SAB [the Scholarship Board] will ensure that
9 the assessments of Advance Program Courses in the applicants' grade
10 point averages are equivalent. Students will be ranked according to
11 their cumulative grade point average from highest to lowest with the
12 highest-ranking student receiving a "one."
- 13 2. 20% of the rank will be determined by the highest total SAT or ACT
14 score that the applicant received on a given testing day. ACT scores
15 will be converted to an equivalent SAT score. Students will be
16 ranked according to their highest total SAT (or converted ACT) score
17 from the highest to the lowest with the highest ranking student
18 receiving a "one."
- 19 3. Once Applicants have a rank for their grade point average and SAT
20 score, the rankings will be multiplied by the appropriate percentage
21 and totaled. The applicants with the ranking closest to ["one"] will
22 receive the awards in order until all available scholarships under the
23 program are provided.
- 24 4. [Displays an example table demonstrating how criteria 1-3 are to be
25 employed]
5. Applicants' extra curricular activities shall be applied as a
determining factor for the purpose of a tiebreaker. The Scholarship
Advisory Board will consider both the quality and quantity of extra
curricular activities when making this determination. The extra
curricular activities in which students participate both inside and
outside of their school may be considered.

Rules and Regulations Governing the Public Law 14-37 CNMI Honor Scholarship Program,
§3.2.2 (Scholarship Regulations)

21 As can be observed by comparing the Scholarship Regulations with the plain language of Public
22 Law 14-37, the Scholarship Regulations places heavy emphasis on three of the criteria listed in Public
23 Law 14-37, i.e. grade point averages, SAT/ACT scores, and difficulty of coursework. Specifically, the
24 Scholarship Regulations instructs that 80% of the ranking of Honors Scholarship candidates shall be
25 determined by the ranking of the candidates' cumulative grade point averages (GPAs). The difficulty of

1 coursework was evidently quantified not in the Regulations, but rather in practice by the Scholarship
2 Board's acceptance of weighted GPAs.¹ And, lastly, the Scholarship Regulations accorded 20% of the
3 ranking of Honor Scholarship candidates to the candidates' SAT/ACT scores. Further, under the
4 Scholarship Regulations, analysis of the candidates' extracurricular activities is only to be employed as
5 a tie-breaker, i.e. if more than eight candidates rank in the top eight slots according to their GPAs and
6 SAT/ACT scores. Letters of recommendation carry no weight under the regulations.

7 Though it is evident that the language of Scholarship Regulations' ranking system differs
8 substantially from the plain language of section 1342 as amended by PL 14-37, the pertinent question to
9 be asked here is whether the ranking system created under the Scholarship Regulations is fundamentally
10 at odds with the letter and spirit of PL 14-37. The Scholarship Board asserts, and the Court agrees, that
11 this question turns on the interpretation of the word "qualify" as it is used in section 1342 of PL 14-37.
12 Because the Post-secondary Education Scholarship Act, as amended by PL14-37, fails to provide a
13 definition for "qualify" the Court will accord the word its ordinary meaning. *See, e.g., Estate of Faisao*
14 *v. Tenorio*, 4 N.M.I. 260 (1995).

15 Here, the Scholarship Board suggests that the term "qualify" should be distinguished from the
16 term "award" because "qualify" connotes that an individual is eligible for something, whereas "award"
17 connotes that an individual is due something. In other words, the Scholarship Board argues that the

18
19 ¹A "weighted" GPA is a method of calculating a student's grade point average which reflects the
20 difficulty of coursework attempted by a student. A typical GPA is calculated on a four-point scale.
21 However, students who attempt coursework which is perceived to be more challenging than the average
22 coursework attempted by their colleagues, such as AP or Honors courses, are rewarded by having their
23 grades calculated on a five-point scale. For example, a student receiving an "A" in an AP U.S. History
24 class would have a "5" calculated into his/her GPA, whereas a student receiving an "A" in a normal U.S.
25 History class would have a "4" calculated into his/her GPA. The Court will further note that Plaintiff
initially questioned the Scholarship Board's use of weighted GPAs to incorporate the difficulty of
coursework into its ranking system, however, it has become evident to the Court through briefing by
both parties that Plaintiff received the full benefit of the "weighted" GPA calculation, and therefore will
not advocate the conflicting position of challenging the use of weighted GPAs while simultaneously
taking advantage of that benefit.

1 plain language of PL 14-37, section 1342, requires that applicants must submit all five criteria to be
2 considered eligible for an Honors Scholarship, but leaves the ranking, and the emphasis on the
3 individual selection criteria used to rank candidates, within the Scholarship Board’s discretion.

4 The Court finds the Scholarship Board’s reasoning highly persuasive. The terms “qualify” and
5 “award” are not interchangeable in their ordinary usage, and Plaintiff is not entitled to supplant the term
6 “qualify” with “award” to artificially impose artificial restrictions on the Scholarship Board unless
7 clearly instructed by the legislature. Furthermore, even if PL 14-37 instructs the Scholarship Board to
8 consider all of the criteria listed, it is silent on how the board is to employ such criteria. In light of the
9 law’s silence, the Court infers that the weight accorded to each criterion was left in the sound discretion
10 of the Scholarship Board.

11 The Scholarship Board’s interpretation of the section 1342 derives additional support within the
12 “Findings and Purpose” of PL 14-37. Under the “Findings and Purpose” the legislature unequivocally
13 states that it is the intent of PL 14-37 “to award all such future scholarships to students with the highest
14 overall scholastic achievement on each island.” PL 14-37, § 2(a). Moreover, section 2(b) emphasizes
15 the importance of GPAs and SAT/ACT scores in the determining the “overall scholastic achievement”
16 of a candidate:

17 The highest overall scholastic achievement is to be determined by combining the student’s
18 cumulative Grade Point Average(s) (GPA) from grades 9 to 12 and the student’s highest
19 Scholastic Achievement Test (SAT) and/or American College Testing score. The
20 Scholarship Board shall determine what percentage values to assign to both GPA and SAT
and/or ACT score when deciding to whom the scholarships should be awarded.
PL 14-37, § 2(b).

21 Here, the plain language of PL 14-37 unequivocally instructs that determination of “highest overall
22 scholastic achievement,” which the legislature found earlier as the object of awarding the Honors
23 Scholarship, should be reached by combining the candidates GPAs and SAT/ACT scores. The
24 legislature, however, includes no other criteria in its instructions to the Scholarship Board on
25 determining how the Honors Scholarship should be awarded. Nor does it give the extracurricular

1 activities or recommendation letter criteria the equal emphasis when determining which students exhibit
2 the highest overall scholastic achievement.

3 Moreover, the Court agrees that the Scholarship Board’s decision to develop an “applicant
4 blind” system which ranks all candidates solely according to GPA and standardized test scores, best
5 suits the legislature’s stated purpose of awarding the Honors Scholarship to those candidates exhibiting
6 the highest overall scholastic achievement. In essence, the Scholarship Board was able to develop an
7 objective method of ranking applicants without having to reveal the identity of the candidate. Such a
8 method, which must at least initially eschew identifying criteria such as extracurricular activities and
9 letters of recommendation, ensures that candidates will be picked solely on their academic achievements
10 rather than through improper subjective considerations such as familial or ethnic identifiers.
11 Accordingly, the Court finds that the Scholarship Board’s ranking methodology as provided in the
12 Scholarship Regulations, and as exhibited in the Scholarship Board’s selection of candidates, is
13 consistent with the plain language and the overall purpose of PL 14-37.

14
15 **B. Plaintiff has Failed to Demonstrate that an Award of an Honors Scholarship was**
16 **Conditioned on the Governor’s Approval; Even if Such Consent was Sought, the Plaintiff’s**
17 **Application Had Already Been Rejected Once the Awardee Names Were Forwarded to the**
18 **Governor.**

19
20 Plaintiff further complains that the Scholarship Board deviated from the law by conditioning any
21 Scholarship Award upon the approval of the Governor. Plaintiff has submitted no evidence within the
22 record or otherwise to support this contention. The only evidence in the record demonstrates that the list
23 of candidates who would be awarded with the Honors Scholarship was presented to the Governor.
24 There is no evidence to suggest that they were presented to the Governor with the intent of obtaining his
25 approval.

1 Moreover, as the Scholarship Board has demonstrated, even if the Governor’s consent *was*
2 sought by the Scholarship Board prior to approving the list of candidates receiving the Honors
3 Scholarship, Plaintiff’s candidacy for the award had already been eliminated because ten other
4 candidates ranked higher than Plaintiff according to the rankings based on GPA and SAT/ACT scores.
5 Therefore, Plaintiff’s chances of being awarded an Honors Scholarship would not have been adversely
6 impacted by any improper gubernatorial interference. Consequently, the Court will not inquire further
7 into these largely unfounded accusations.

8
9 **C. In Light of Plaintiff’s Limited Property Interest in the Scholarship Award, the**
10 **Scholarship Board Provided Plaintiff with Adequate Due Process During the Proceedings**
11 **Involving Plaintiff’s Appeal of the Scholarship Board’s Decision Not to Award Plaintiff a**
12 **Scholarship.**

13
14 Though it is given that all individuals cannot be deprived of life, liberty or property without due
15 process of law, the amount of process due is not fixed. Rather an individual is only entitled to the level
16 of process which is commensurate with the right that individual seeks to protect. Thus, in order to
17 determine whether Plaintiff was afforded adequate process during her appeal, the Court first must
18 determine Plaintiff’s property interest in an Honors Scholarship award.

19 The Scholarship Board appropriately states the standard in determining to what degree an
20 individual has a protected property interest in a benefit: “To have a property interest in a benefit, a
21 person clearly must have more than an abstract need or desire for it. He must, instead, have a legitimate
22 claim of entitlement to it.” *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Here, as shown above,
23 Plaintiff had no identifiable property interest in being awarded an Honors Scholarship. True, Plaintiff
24 obviously exhibited high scholastic achievement, and deserved equal consideration for the award with
25 the other eligible candidates. But Plaintiff ultimately had no property interest in receiving the Honors

1 Scholarship, unless she could show that the Scholarship Board had mistakenly ranked her outside those
2 candidates to whom the Honors Scholarship would be awarded. As demonstrated, *infra*, Plaintiff was
3 unable to do so.

4 Therefore, at most, Plaintiff was owed a fair hearing to raise her complaints. And from the
5 record, it appears that the Scholarship Board afforded Plaintiff ample opportunity to be heard, and
6 impartially reconsidered her candidacy. Accordingly, the Court finds that Plaintiff was afforded
7 adequate process under the law.

8
9 **IV. CONCLUSION**

10
11 For the foregoing reasons, the Scholarship Board's 2006 award of Honors Scholarships is
12 **AFFIRMED.**

13
14 **So ORDERED** this 25th day of April, 2008.

15
16
17 /s/
David A. Wiseman, Associate Judge