

Notice: This slip opinion has not been certified by the Clerk of the Supreme Court for publication in the permanent law reports. Until certified, it is subject to revision or withdrawal. In any event of discrepancies between this slip opinion and the opinion certified for publication, the certified opinion controls. Readers are requested to bring errors to the attention of the Clerk of the Supreme Court, PO Box 502165 Saipan, MP 96950, phone (670) 236-9715, fax (670) 236-9702, e-mail SupremeCourtClerk@justice.gov.mp.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROSELLE D. CALVO,
Plaintiff-Appellant,

v.

NORTHERN MARIANA ISLANDS SCHOLARSHIP ADVISORY BOARD,
Defendant-Appellee.

SUPREME COURT NO. 2008-SCC-0018-CIV
SUPERIOR COURT NO. 07-0026E

SLIP OPINION

Cite as: 2009 MP 2

Decided February 20, 2009

Robert T. Torres, Esq., Saipan, Northern Mariana Islands, for Plaintiff-Appellant
Braddock J. Huesman, Assistant Attorney General, Commonwealth Attorney General's Office,
for Defendant-Appellee

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Justice Pro Tem

MANGLONA, J.:

¶ 1 Appellant Roselle D. Calvo appeals the trial court’s decision affirming the Northern Mariana Islands Scholarship Advisory Board’s (“scholarship board”) methodology for selecting honor scholarship recipients. She argues that the scholarship board failed to comply with the plain language of the CNMI Honor Scholarship Act, 3 CMC § 1342, in selecting honor scholarship recipients. We hold that the scholarship board’s selection process for awarding honor scholarships is arbitrary and capricious, as their regulations fail to implement all five statutorily-mandated criteria set forth in 3 CMC § 1342(b). Accordingly, the trial court’s decision is VACATED, and we REMAND this matter to the scholarship board to 1) promulgate rules and regulations consistent with the statutory language of 3 CMC § 1342; and 2) reevaluate the entire set of applications for the 2006 honor scholarships, and award the scholarships based on the statutorily-mandated criteria set forth in 3 CMC § 1342(b).

I

¶ 2 Each year, the scholarship board awards twelve honor scholarships to Commonwealth students graduating from high school. Eight scholarships are awarded to Saipan students, two are awarded to Tinian students, and two are awarded to Rota students. The honor scholarships are awarded based on scholastic achievement, and pay for students to attend United States colleges or universities. Scholarship recipients may receive up to \$15,000 annually for up to five years, so long as the scholarship funds are used to pay for education-related expenses.

¶ 3 The honor scholarship program was created by the CNMI Honor Scholarship Act of 2004, which sets forth the criteria by which the applicants are evaluated. 3 CMC §§ 1341-1342. Pursuant to 3 CMC § 1342(b), the five “criteria to qualify for the scholarship” include the following: “(1) [h]ighest grade point average; (2) [h]ighest SAT and/or ACT score;¹ (3) [c]onsideration of applicant’s extracurricular activities; (4) [e]valuation of the difficulty of courses taken by the applicant during high school; and (5) [c]onsideration of at least two letters of recommendation.”

¶ 4 Calvo graduated from Marianas Baptist Academy in May 2006 as salutatorian of her class. She was one of twenty-nine Saipan high school students who applied for an honor scholarship. After compiling all the applications, the scholarship board administrator (“administrator”) ranked all applicants according to their respective grade point averages and

¹ The SAT Reasoning Test was formerly named the Scholastic Aptitude Test and the Scholastic Assessment Test. The ACT examination was originally known as the American College Testing Program before it was shorted to ACT. Both are standardized tests for college admissions.

SAT or ACT scores. She then removed all names and other identifying information from the rankings and presented the calculations and rankings to the scholarship board. The scholarship board reviewed the administrator's calculations to ensure all applicants were properly ranked in accordance with their grades and test scores. The scholarship board then selected the honor scholarship recipients based solely on those rankings.

¶ 5 On August 28, 2006, the administrator sent Calvo a letter informing her that she was not selected as an honor scholarship recipient. Calvo contested the scholarship board's decision by filing a petition for review with the scholarship board. During its November 28, 2006 meeting, the scholarship board rejected Calvo's petition. As grounds for rejecting her petition, the administrator noted that only eight Saipan students were eligible for an honor scholarship, and that Calvo ranked eleventh. The administrator also explained the scholarship board's process of ranking the applicants. She stated that the names of the applicants were not presented to the scholarship board.² Rather, the scholarship board received "only a chart that displayed where [the applicants] ranked with their cumulative grade point average, SAT/ACT scores, and their overall placement." Appellant's Excerpts of Record ("ER") at 4. The administrator continued by stating that "[o]nce the numbers were recalculated and confirmed, the names of the applicants who placed in the top eight (8) were then given to the Board." *Id.* A copy of the scholarship board's rules and regulations were attached to the letter.³

¶ 6 On December 6, 2006, Calvo renewed her appeal, which the scholarship board agreed to hear on January 9, 2007. In renewing and arguing her appeal, Calvo suggested an alternative method of calculating the honor scholarship rankings. After considering Calvo's arguments, the scholarship board recommended that the method for calculating honor scholarship awards should be reexamined. Nonetheless, the scholarship board rejected Calvo's appeal, noting that any reexamination would not affect Calvo's application status.

¶ 7 Calvo timely filed a petition for judicial review with the trial court.⁴ In her petition, she argued that the scholarship board disregarded the statutorily-mandated criteria set forth in 3 CMC

² It appears from the record that only the administrator, who assigned each applicant an identifying letter or number, knew the identity of each applicant.

³ Calvo received a copy of the emergency regulations promulgated by the scholarship board in October 2004, which were published in 26 Com. Reg. No. 11 23084 (Nov. 30, 2004).

⁴ The trial court considered four issues in Calvo's petition for judicial review:

“(1) Whether the scholarship board improperly failed to award [Calvo] a scholarship, when the scholarship's method of ranking students relied on only some of the criteria listed under Public Law 14-37 as qualifying for the scholarship[;] (2) Whether the scholarship board's use of weighted grade point averages to rank honor scholarship candidates is consistent with the criteria listed under Public Law 14-37[;] (3) Whether the

§ 1342(b) in selecting scholarship recipients. Calvo argued that Section 1342(b) requires the scholarship board to take into account all five criteria enumerated in the statute in awarding honor scholarships, but the scholarship board only took into account applicants' grade point averages and SAT or ACT scores.

¶ 8 The trial court held that the scholarship board did not act outside its discretion in selecting the 2006 honor scholarship recipients. *Calvo v. N. Mariana Islands Scholarship Advisory Bd.*, Civ. No. 07-0026E (NMI Super. Ct. April 25, 2008) (Final Decision and Order at 12, 14). In so holding, the trial court determined that the scholarship board was not required to consider all five criteria listed in Section 1342(b) in awarding the honor scholarships. *Id.* at 10-12. Rather, the trial court found that Section 1342(b) requires applicants to submit all five criteria to qualify for a scholarship, but allows the scholarship board to determine the weight or emphasis of the criteria in awarding the scholarships. *Id.*

II

Standard of Review

¶ 9 We review whether the trial court correctly determined that the scholarship board's methodology for selecting honor scholarship recipients complied with Section 1342 of the CNMI Honor Scholarship Act. We review de novo the trial court's review of an agency action. *See In re Hafadai Beach Hotel Extension*, 4 NMI 37, 41 (1993). However, because we are also reviewing the actions of a Commonwealth administrative agency, we are bound by the constraints of the Commonwealth Administrative Procedure Act ("APA") in our de novo review. 1 CMC § 9112; *Pac. Sec. Alarm, Inc. v. Commonwealth Ports Auth.*, 2006 MP 17 ¶ 12. "As a result, we do not give deference to the [trial court's] findings because our review of agency actions is done with the identical guidelines followed by the [trial court] under the Administrative Procedure Act." *Pac. Sec. Alarm*, 2006 MP 17 ¶ 12 (citing *In re San Nicolas*, 1 NMI 329, 333-35 (1990)).

¶ 10 Under Section 9112(f) of the APA,⁵ agency decisions are reviewed under the "arbitrary and capricious" standard. *Id.* ¶ 14. An agency action is arbitrary and capricious when it is

scholarship award's [sic] were conditioned on the approval of the Governor[;] (4) Whether [Calvo's] constitutional due process rights were violated by the scholarship board's conduct of [Calvo's] appeal proceedings[.]"

Calvo v. N. Mariana Islands Scholarship Advisory Bd., Civ. No. 07-0026E (NMI Super. Ct. April 25, 2008) (Final Decision and Order at 7-8). However, the only issue on appeal is whether the scholarship board complied with 3 CMC § 1342 in awarding honor scholarships.

⁵ 1 CMC § 9112(f) provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions,

“willful and unreasonable . . . without consideration or in disregard of facts or without determining principle.” *Id.* (quoting *In re Blankenship*, 3 NMI 209, 217 (1992)). An agency action should be overturned only when:

the agency has relied on factors the Legislature has not intended it to consider, “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

Id. (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Moreover, agency actions are “entitled to a presumption of regularity.” *Id.* ¶ 15 (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971)). Consequently, an agency is not required to justify an action or decision unless “the presumption of regularity has been rebutted by evidence suggesting that the agency decision is arbitrary and capricious.” *Id.*

Statutory Interpretation of 3 CMC § 1342

¶ 11 Calvo argues that the plain language of 3 CMC § 1342 requires the scholarship board to take into account five criteria in selecting the honor scholarship recipients, which include the following: grade point average, SAT or ACT score, extra-curricular activities, difficulty of high school coursework, and letters of recommendation. She argues that the scholarship board failed to take into account all five statutorily-mandated criteria in selecting the scholarship recipients, as it only considered applicants’ grade point averages and SAT or ACT scores.

¶ 12 The CNMI Honor Scholarship Act sets forth the criteria all applicants must submit to be considered for an honor scholarship. It states:

and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

- (1) Compel agency action unlawfully withheld or unreasonably delayed; and
- (2) Hold unlawful and set aside agency action, findings, and conclusions found to be:
 - (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
 - (ii) Contrary to constitutional right, power, privilege, or immunity;
 - (iii) In excess of statutory jurisdiction, authority, or limitations, or short of statutory rights;
 - (iv) Without observance of procedure required by law;
 - (v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and 9109 or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (vi) Unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court.

In making the forgoing determination, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

The criteria to qualify for the scholarship shall include the following: (1) Highest grade point average; (2) Highest SAT and/or ACT score; (3) Consideration of applicant's extra-curricular activities; (4) Evaluation of the difficulty of courses taken by the applicant during high school; (5) Consideration of at least two letters of recommendation.

3 CMC § 1342(b).

¶ 13 Applicants submit their completed applications to the scholarship board, which is tasked with compiling all scholarship applications, evaluating applicants' credentials, and awarding the scholarships to applicants with the highest scholastic achievement. To ensure a uniform process in assessing applicants, the scholarship board promulgated agency regulations governing the evaluation of applicants' scholastic achievements. The scholarship board's regulations provide that applicants "must be newly high school graduates who have attained a combination of highest cumulative grade point average and highest SAT and/or ACT score. In addition, applicants' extra-curricular activities, difficulty of courses taken and at least two letters of recommendation will be used in the selection process." Rules and Regulations Governing the Public Law 14-37 CNMI Honor Scholarship Program ("Regulation") § 3.2.2.

¶ 14 Regulation § 3.2.2 also describes the methodology the scholarship board employs in ranking and selecting honor scholarship recipients. It provides as follows:

1. 80% of the rank will be determined by the applicants' cumulative grade point average. [The scholarship board] will ensure that the assessments of Advance Program⁶ Courses in the applicants' grade point averages are equivalent. Students will be ranked according to their cumulative grade point average from highest to lowest with the highest-ranking student receiving a "one."
2. 20% of the rank will be determined by the highest total SAT or ACT score that the applicant received on a given testing day. ACT scores will be converted to an equivalent SAT score. Students will be ranked according to their highest total SAT (or converted ACT) score from highest to lowest with the highest-ranking student receiving a "one."
3. Once applicants have a rank for their grade point average and SAT score, the rankings will be multiplied by the appropriate percentage and totaled. The applicants with the ranking closest to one will receive the awards in order until all available scholarships under the program are provided.
-
5. Applicants' extra curricular activities shall be applied as a determining factor for the purpose of a tiebreaker. The [scholarship board] will consider both the quality and quantity of extra curricular activities when making this determination. The extra curricular activities in which applicants participate both inside and outside of their school may be considered.

⁶ The Advanced Placement Program is a program that offers college level courses for high school students.

Regulation § 3.2.2.

¶ 15 Comparing 3 CMC § 1342(b) and Regulation § 3.2.2 shows that the scholarship board's regulations do not take into account all five of the criteria set forth in Section 1342(b). Rather, the scholarship board awards scholarships exclusively on applicants' grade point averages and SAT or ACT scores. For example, Regulation § 3.2.2 mandates that the scholarship board rank all applicants according to their respective grade point average, which comprises eighty percent of their total scholastic achievement ranking.⁷ *Id.* The applicants are then ranked according to their respective SAT or ACT scores, which comprises twenty percent of the total scholastic achievement ranking.⁸ *Id.* Once all the applicants are ranked according to their respective grade point average and SAT or ACT score, their numerical rankings are added together, and the sum comprises 100 percent of their total scholastic achievement ranking.⁹

¶ 16 The scholarship board's regulations are less clear as to whether the difficulty of applicants' coursework is taken into account in the ranking process. Regulation § 3.2.2 states that the "difficulty of [applicants'] courses . . . will be used in the selection process." Regulation § 3.2.2. The regulation also states that, in calculating the applicants' grade point averages, the scholarship board "will ensure that the assessments of the Advance Program Courses in the applicants' grade point averages are equivalent." *Id.* Moreover, the scholarship board indicated at oral argument that it took into account the difficulty of Calvo's classes, as it calculated her scholastic achievement ranking based on a weighted 3.9 grade point average.¹⁰ However, it did

⁷ In compiling the rankings, the scholarship board ranks honor scholarship candidates in the order of their respective grade point averages. Regulation § 3.2.2. Once they are listed in order, the scholarship board discards the actual grade point average and instead multiplies each applicant's numerical ranking by eighty percent, or .80, which is the weight given to the applicant's grade point average. *Id.* For the purposes of the ranking system, the applicant with the highest grade point average is awarded the lowest final number. *Id.* For example, the applicant with the highest grade point average is assigned a numerical ranking of one. That numerical ranking is then multiplied by eighty percent, which results in a score of .80. The applicant with the second best grade point average therefore receives a score of 1.60.

⁸ The scholarship board computes applicants' SAT or ACT score rank in largely the same manner as it does in ranking applicants' grade point averages. The scholarship board ranks each applicant in the order of his or her SAT or converted ACT score. Regulation § 3.2.2. The scholarship board then multiplies each applicant's numerical ranking by twenty percent, which is the weight it is assigned by Regulation 3.2.2. *Id.*

⁹ For example, if the same student had both the best grade point average and SAT or ACT score, the applicant would be ranked first in both the grade point average ranking and SAT or ACT ranking. The applicant's grade point average ranking, one, is multiplied by eighty percent, which results in a score of .80. The applicant's SAT or ACT ranking, one, is then multiplied by twenty percent, which results in a score of .20. Both scores are then added together to equal 1.0, which is the best score an applicant can receive.

¹⁰ A weighted grade point average takes into account the difficulty of a student's coursework by providing additional weight for advancement placement and honors courses. Calvo graduated from high

not indicate how it evaluated the difficulty of Calvo’s courses in relation to the courses of the other applicants. The regulations also fail to provide a methodology as to how the scholarship board evaluates applicants’ coursework, or how it ensures that honors courses “in the applicants’ grade point averages are equivalent.” Regulation § 3.2.2. Instead, it implied at oral argument that it takes into account the difficulty of applicants’ courses simply by accepting weighted grade point averages from the applicants’ respective high schools. The scholarship board did not, however, indicate whether it has defined procedures for equalizing the various methods high schools may employ in weighting grade point averages for their respective students.

¶ 17 Although the regulations state that “applicants’ extra-curricular activities . . . and at least two letters of recommendation *will be used* in the *selection process*,” they are afforded no weight in the selection process. Regulation § 3.2.2 (emphasis added). The regulations require applicants to submit a description of their extra-curricular activities. However, they do not require the scholarship board to consider the extra-curricular activities unless there is a tie between two or more applicants for the final scholarship. Regulation § 3.2.2 (“Applicants’ extra curricular activities shall be applied as a determining factor for the purpose of a tiebreaker.”). Moreover, the regulations provide no indication as to how the scholarship board should review or consider the applicants’ letters of recommendation.

¶ 18 Based on the scholarship board’s regulations, it is clear that it does not take into account all of the criteria set forth in 3 CMC § 1342(b) in ranking and selecting scholarship recipients. Consequently, Calvo asserts that the scholarship board acted outside its authority in selecting the 2006 honor scholarship recipients. The scholarship board, however, argues that it complied with Section 1342(b). It notes that Section 1342(b) sets forth “[t]he criteria to *qualify* for the [honors] scholarship,” 3 CMC § 1342(b) (emphasis added), but does not dictate the actual criteria the scholarship board must consider in selecting honor scholarship recipients. The scholarship board suggests that the term “qualify” connotes that an individual is eligible for something, whereas the term “award” connotes that an individual is due something. In other words, it argues that the plain language of Section 1342 requires applicants to submit all five criteria to be eligible for a scholarship, but allows the scholarship board discretion in determining both the criteria and the weight of the criteria in awarding the scholarships.

¶ 19 The scholarship board relies heavily on the legislative history in interpreting the CNMI Honor Scholarship Act. The legislative history states that “[i]t is the intent of this Act to award

school with a cumulative grade point average of 3.9, which was weighted by Marianas Baptist Academy to account for her honors courses.

all such future scholarships to students with the highest overall scholastic achievement” PL 14-37, § 2(a). The legislative history continues by stating that:

[t]he highest overall scholastic achievement is to be determined by combining the student’s cumulative Grade Point Average(s) (GPA) from grades 9 to 12 and the student’s highest Scholastic Achievement Test (SAT) and/or American College Testing score. The 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). The legislative history indicates that the “highest overall scholastic achievement” is calculated by combining the applicants’ respective grade point averages and SAT or ACT scores. *Id.*

¶ 20 In assessing the validity of the scholarship board’s assertions, we must determine whether its interpretation of 3 CMC § 1342 is arbitrary and capricious. In so doing, we evaluate whether the scholarship board, in promulgating its regulations, “entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency” *Pac. Sec. Alarm*, 2006 MP 17 ¶ 12 (quoting *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43). Under the arbitrary and capricious standard of review, we will uphold an administrative agency’s interpretation of a statute it is charged with enforcing, so long as the interpretation complies with the statute’s plain language. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

¶ 21 In order to determine whether the scholarship board’s regulations comport with 3 CMC § 1342, our “inquiry begins with the basic tenet that the [statutory] language must be given its plain meaning, where the meaning is clear and unambiguous.” *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 30 (citing *Estate of Faisao v. Tenorio*, 4 NMI 260, 266 (1995)). For example, in analyzing the validity of a federal regulation in conjunction with a federal statute, the United States Supreme Court stated that if a statute is “clear and unambiguous, that is the end of the matter,” as the court and the agency must “give effect to the unambiguously expressed intent of Congress.” *Id.* at 291 (internal quotation omitted). The Court noted that the “traditional deference courts pay to agency interpretation is not to be applied to alter the clearly expressed intent of Congress.” *Id.* (citing *Bd. of Governors, FRS v. Dimension Fin. Corp.*, 474 U.S. 361, 368 (1986)). Only where an agency regulation is not in conflict with the plain language of the relevant statute must a reviewing court give deference to the agency’s interpretation of the statute. *See United States v. Boyle*, 469 U.S. 241, 246 n.4 (1985).

¶ 22 Conversely, where a statute is unclear, the “Court’s objective is to ascertain and give effect to the intent of the legislature.” *Id.* (citing *Estate of Faisao*, 4 NMI at 266). “In determining legislative intent, the statute must be read as a whole, and not as isolated words

contained therein.” *Id.* (citing *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 NMI 212, 224 (1991)). The legislature’s intent “is to be sought for *primarily* in the language of the act used and when the language expresses an intention reasonably intelligible and plain, it must be accepted without modification by resort to construction or conjecture.” *Commonwealth v. Saburo*, 2002 MP 3 ¶12 (emphasis added).

¶ 23 The intent of the legislature may also be determined from relevant legislative history. *Id.* (citing *Songao v. Commonwealth*, 4 NMI 186, 190 (1994)). However, we resort to the legislative history only when the plain language of the statute is ambiguous. *Saburo*, 2002 MP 3 ¶ 14 (“Where the language is *ambiguous*, we may take instruction from the legislative history.”); *Songao*, 4 NMI 186, 190 (1995) (“In construing legislation a court may, *if necessary*, consult legislative history.”) (emphasis added); *Babauta v. Superior Court*, 4 NMI 309, 312 (1995) (“It is appropriate to turn to legislative history for guidance *where a statute may reasonable be read two ways*, or where no single path of meaning clearly appears.” (quoting *Songao*, 4 NMI at 190)) (emphasis added); *Commonwealth v. Hasinto*, 1 NMI 377, 383 n.4 (1990) (“*If necessary*, in construing legislation the courts may consult legislative history.”) (emphasis added). If the statutory language is clear and unambiguous, we have no need to look to legislative history, as legislative history is not a substantive part of a statute. See *Price Dev. Co., Ltd. P’ship. v. Orem City*, 995 P.2d 1237, 1246 (Utah 2000). Rather, legislative history merely serves as a guide in determining legislative intent where a statute’s plain language is ambiguous.

¶ 24 In analyzing Section 1342(b), we find that its plain language is clear and unambiguous, and we have no need to resort to its legislative history. The statute states that the “criteria to qualify for the scholarship *shall* include the following: (1) Highest grade point average; (2) Highest SAT and/or ACT score; (3) *Consideration* of applicant’s extra-curricular activities; (4) *Evaluation* of the difficulty of courses taken by the applicant during high school; (5) *Consideration* of at least two letters of recommendation.” 3 CMC § 1342(b) (emphasis added).

¶ 25 When we examine the statute’s language, we find that the use of the term “shall” is mandatory and has the effect of creating a duty. See *Commonwealth v. Camacho*, 2009 MP 1 ¶ 40 (citing *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 292 (1992)). “The word ‘shall’ is unambiguous and means ‘must.’” *Id.* (quoting *N. Marianas Coll. v. Civil Serv. Comm’n II*, 2007 MP 8 ¶ 9). Thus, the scholarship board has a duty to not only review the applicants’ grade point averages and SAT or ACT scores, but also evaluate the applicants’ coursework, and consider the applicants’ extra-curricular activities and letters of recommendation.

¶ 26 The scholarship board fails to demonstrate that it properly evaluated the difficulty of the applicants’ coursework. The legislature’s use of the term “evaluation” in Section 1342(b)

connotes that the scholarship board has a duty to appraise the value, significance, or worth of the applicants' coursework. The scholarship board's regulations, however, do not provide any guidance as to how the applicants' coursework should be evaluated. Additionally, the scholarship board offers no evidence that it has any procedures to equalize the various methods high schools may employ in weighting grade point averages for their respective students. Furthermore, the scholarship board does not indicate how it evaluated the difficulty of Calvo's courses in relation to the other applicants.

¶ 27 The scholarship board also fails to consider the applicants' extra-curricular activities and letters of recommendation. The legislature's use of the term "consideration" in Section 1342(b) connotes that the scholarship has a duty to weigh the applicants' extra-curricular activities and letters of recommendation. The applicants were required to submit letters of recommendation and descriptions of their extra-curricular activities. However, with the possible exception of the administrator, the scholarship board never read the letters of recommendation, or received any information related to the applicants' extra-curricular activities. The scholarship board could not have considered what it did not have. In light of the scholarship board's statutory duty to consider extra-curricular activities and letters of recommendation, we doubt the legislature would require applicants to submit such materials for the sole purpose of thickening the application files.

¶ 28 Furthermore, the scholarship board's reliance on the term "qualify" is misguided, as it interprets the term in isolation from the remainder of the statute. As already noted, the scholarship board relies on a strict interpretation of the term "qualify," while at the same time disregarding the statutory mandate to evaluate the applicants' coursework, and consider their extra-curricular activities and letters of recommendation. Moreover, the term "qualify" is not nearly as narrow as the scholarship board suggests. Although the statute's use of the term "qualify" connotes that an applicant is eligible for an honor scholarship by submitting the five criteria set forth in Section 1342(b), it does not suggest that any of those five criteria may be disregarded in the selection process. On the contrary, the fact that Section 1342(b) uses the term "consideration" in reference to the applicants' extra-curricular activities and letters of recommendation indicates that the scholarship board must afford them at least some weight in selecting the honor scholarship recipients.

¶ 29 We also find it difficult to believe that the legislature would specifically require applicants to satisfy all five criteria to be considered for an honor scholarship, only to allow the scholarship board to then disregard that criteria and select recipients based on whatever criteria it deems appropriate. Had the legislature intended the scholarship board to have such discretion in selecting scholarship recipients, it would have explicitly stated as such in the text of the statute.

¶ 30

Based on the plain language of Section 1342, we hold that the scholarship board must weigh all five statutorily-mandated criteria in selecting the honor scholarship recipients, including the applicants' grade point average, SAT or ACT score, extra-curricular activities, the difficulty of the high school coursework, and at least two letters of recommendation. We note that the scholarship board's current selection process is based solely on objective criteria, which the trial court approved of in affirming the scholarship board's methodology. *Calvo*, Civ. No. 07-0026E (Final Decision and Order at 14) (stating that it "agrees [with] the Scholarship Board's decision to develop an 'applicant blind' system which ranks all candidates solely according to GPA and standardized test scores"). We further note that requiring the scholarship board to implement elements such as extra-curricular activities and letters of recommendation adds a degree of subjectivity to the selection process. However, the CNMI Honor Scholarship Act neither states nor implies that the scholarship board is to only consider objective criteria. On the contrary, its plain language states quite the opposite.¹¹ Nonetheless, the scholarship board is free to determine what percentage values to assign the statutorily-prescribed criteria listed in Section 1342(b), so long as all of the criteria are weighed in the selection process.¹²

III

¶ 31

For the foregoing reasons, we hold that the trial court erred in determining that the scholarship board's regulations and methodology for selecting honor scholarship recipients complied with Section 1342 of the CNMI Honor Scholarship Act. Accordingly, we VACATE the trial court's decision, and REMAND this matter to the scholarship board. The scholarship board shall promptly:

(1) Promulgate rules and regulations consistent with the statutory language of 3 CMC § 1342, which requires the scholarship board to weigh the applicants' respective grade point averages, SAT or ACT scores, extra-curricular activities, the difficulty of the high school coursework, and at least two letters of recommendation in selecting scholarship recipients. In promulgating the rules and regulations, the scholarship board must assign a percentage value to

¹¹ We do not mean to imply that the administrator is required to disclose applicants' identification to the scholarship board. The scholarship board's current system of ranking applicants based on their grade point averages and SAT or ACT scores without any identifying information is permissible. Further, the scholarship board may, in its discretion, implement a similar system in reviewing subjective criteria such as extra-curricular activities and letters of recommendation by redacting applicants' identifying information. However the process is carried out, we note that the scholarship board must consider all of the criteria set forth in 3 CMC § 1342(b) in selecting scholarship recipients.

¹² For example, the scholarship board could employ a selection process whereby the applicants' uniformly weighted grade point averages account for sixty percent of the scholastic achievement ranking, SAT or ACT scores account for twenty percent, extra-curricular activities account for ten percent, and letters of recommendation account for ten percent.

all the statutorily-mandated criteria set forth in Section 1342(b). Additionally, the regulations must adequately set forth the methodology for ensuring that the scholarship board uniformly evaluates the difficulty of the applicants' coursework; and

(2) Reevaluate the entire set of applications for the 2006 honor scholarships, and award the scholarships based on the statutorily-mandated criteria set forth in 3 CMC § 1342(b).

Concurring:

Castro, J., Inos, J.P.T.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROSELLE D. CALVO,
Petitioner-Appellant,

v.

NORTHERN MARIANA ISLANDS SCHOLARSHIP ADVISORY BOARD,
Respondent-Appellee,

SUPREME COURT NO. 2008-SCC-0018-CIV
SUPERIOR COURT NO. 07-0026

JUDGMENT

Having considered the parties' arguments, and pursuant to its SLIP OPINION issued this date, the Supreme Court:

VACATES the trial court's decision and REMANDS the matter to the scholarship board.

ENTERED this 20th day of February, 2009.

/s/ _____
JONATHAN R. GRAYSON
Clerk of the Supreme Court