

New Jersey Commissioner of Education**Final Decision**

C.T. and P.T., on behalf of minor child, E.T.,

Petitioner,

v.

Board of Education of the Lenape Valley Regional
High School District, Sussex County,

Respondent.

Synopsis

Petitioners challenged a decision to deny their daughter, E.T., admission into the respondent Board's chapter of the National Honor Society (NHS) and sought to reverse the denial decision such that E.T. could be inducted into the NHS. E.T. subsequently graduated from respondent's high school in June 2024. The Board filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: E.T. applied for admission to Lenape Regional High School's NHS chapter in her junior year; membership in the NHS is conferred upon students who meet "four pillars of membership": scholarship, leadership, service, and character; to meet the admission criteria, students must maintain a minimum GPA of 3.75, must perform community service without compensation, must show leadership through resourcefulness and problem solving, and must establish good character through honesty, reliability, and working cooperatively with others; an applicant must meet the applicable standards for entry into the NHS; admission to NHS is not automatic and cannot be considered a right; in a February 2023 letter to E.T. from the NHS applications committee chair, E.T. was denied admission to NHS because the committee had found that she needed to demonstrate further development in the area of character; the letter encouraged E.T. to reapply for NHS membership in her senior year; E.T. did not reapply and graduated in June 2024; the Commissioner has previously recognized that NHS admissions criteria are matters to be determined locally by each school district; and the Commissioner will not substitute his judgment for that of the school district unless there is a showing that the district's actions were arbitrary, unreasonable or capricious. The ALJ concluded that the Board's actions were not arbitrary, capricious, or unreasonable; further, the petition fails to state a claim upon which relief may be granted. Accordingly, the Board's motion to dismiss was granted.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, noting that E.T. is no longer eligible for induction into the National Honor Society since she has already graduated from high school. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, for the reasons stated therein. The petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

358-24
OAL Dkt. No. EDU 04131-23
Agency Dkt. No. 103-4/23

New Jersey Commissioner of Education
Final Decision

C.T. and P.T., on behalf of minor child, E.T.,

Petitioners,

v.

Board of Education of the Lenape Valley
Regional High School District, Sussex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

In this matter, petitioners challenge the denial of E.T.'s admission to respondent Board of Education's (Board) local chapter of the National Honor Society (NHS). They seek reversal of that decision and request that E.T. be inducted into the NHS. The Board filed a motion to dismiss in lieu of an answer, which was granted by the Administrative Law Judge (ALJ).

Student admission to the local chapter of the NHS is a matter of "local determination for each school district, and the Commissioner will not substitute his judgment for that of the school district except where the District's actions are arbitrary, capricious, or unreasonable." *P.V. v. Bd. of Educ. of Twp. of Verona*, OAL Dkt. No. EDU 03920-22, Initial Decision at 6 (May 23, 2022), *adopted*, Commissioner Decision No. 168-22 (July 8, 2022). *See J.B.A. v. Bd. of Educ. of Borough*

of *Bernardsville*, 1981 S.L.D. 330 (discussing the Commissioner’s jurisdiction to adjudicate disputes concerning admission to the NHS), *adopted*, Comm’r., 1981 S.L.D. 338.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal must be dismissed. Even assuming petitioners could establish that the Board’s decision not to induct E.T. into the NHS was arbitrary, capricious, or unreasonable, the relief sought—E.T.’s induction into the NHS—cannot be granted by the Commissioner given the present circumstances. Article II, Section 3 of the NHS Constitution of Lenape Valley Regional High School states that “[t]o be eligible for selection to this chapter, students must be members of the junior or senior class.” The record reflects that E.T. graduated from high school in June 2024. Consequently, she is no longer eligible for induction into the NHS.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: October 2, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING

MOTION TO DISMISS

OAL DKT. NO. EDU 04131-23

AGENCY DKT. NO. 103-4/23

**C.T. AND P.T. ON BEHALF OF MINOR
CHILD, E.T.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
LENAPE VALLEY REGIONAL HIGH
SCHOOL DISTRICT, SUSSEX COUNTY,**

Respondent.

Damiano Fracasso, Esq., for petitioners

Jacob K. Mintun Esq., Senior Attorney (Comegno Law Group, attorneys.) for
respondent

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner's parents (C.T. and P.T./petitioners) challenge the denial of their child E.T.'s admission to the National Honor Society (NHS). The Department of Education transmitted the matter to the Office of Administrative Law, on May 10, 2023. Respondent (Lenape High School/BOE) filed a Motion to Dismiss in lieu of an Answer.

Briefs and Certifications in support of same and in opposition thereto were received and on argument before me was heard on January 31, 2024, and the record closed. I now grant the Motion to Dismiss the petition.

MOTION UNDER CONSIDERATION

Petitioners claim that E.T. was wrongfully denied admission to the National Honor Society. Respondent moves for dismissal claiming several reasons why petitioners are barred from its claim. First, it claims the BOE has no authority to overrule a final decision concerning membership in the NHS. Second, it claims that although there is a BOE policy (Policy # 133) and Regulation (Regulation # 540) which mention appeals to the National Honor Society, neither grants the right of a student or parent to appeal a final decision by the NHS or its appeals committee. Finally, the controversy does not involve school disciplinary processes nor a statutory or constitutional right of a student to become a member in the NHS.

FACTUAL DISCUSSION

The respondent is a comprehensive high school serving three municipalities located in one of two counties in Morris and Sussex, (Certification provided by Michael A. Rossi, Jr, PHD, Superintendent of Lenape Valley Regional High School, hereinafter "Rossi Cert.") It "established and actively maintains a chapter of the National Honor Society (NHS)." (Rossi Cert. para. 3.) Applicant students must meet four "pillars of membership"-scholarship, service, leadership and character. Academically students must maintain a minimum GPA of 3.75 and are further evaluated on academic credentials. For service, students have to make contributions without compensation, such as by community service. Leadership is established by the student being "resourceful, good problem solvers and idea contributors." The character standard is met by students who "work cooperatively and demonstrate high standards of honesty and reliability." (Rossi Cert. Paras 4 and 5).

E.T. applied for admission to the NHS in her junior year at the high school. On February 13, 2023, the NHS through its applications committee leader, Colby Bird,

wrote to E.T. and informed her that she was not accepted to the Lenape Valley Regional High School Chapter of the NHS. The letter said the NHS Faculty Council made this decision and had found, during its review process, that E.T. needed “further development in the area of character.” The letter encouraged E.T. to reapply in her senior year. (Attachment to Petition to the NJ State BOE, page P007). Soon thereafter, P.T. wrote to Colby Bird and asked for further explanation, specifically about the character criterion. Ms. Bird explained the NHS decision and how it concluded E.T. met just three of the four pillars. Regarding the fourth, the character criterion, she advised the Faculty Council in assessing E.T., relied on a survey of teachers and staff. Of the eleven who responded to the survey, six of them advised they found E.T.’s character to be below average or average among other students at the high school. She noted concerns of E.T.’s lack of independence in completing tasks, and her lack of sociability with teachers and students. Ms. Bird’s reply dated February 17, 2023, welcomed an appeal of the Faculty’s Council’s decision.

E.T.’s parents appealed the decision to the appeals Committee of the NHS Lenape Valley Regional High School Chapter. On February 24, 2023, Committee members met with P.T., C.T. and E.T. to allow both parents and the student to advocate for her admission. The Superintendent Dr. Rossi certified, per his March 9, 2023, letter to the parents, that during this appeals process E.T. “engaged in very little self-advocacy.” (P 0011) The process, stated Dr. Rossi, seemed driven by the parents’ frustration, rather than E.T.’s desire to be admitted.” Further during the process, the Committee attempted to explore E.T.’ leadership capacities, noting there were “multiple pathways to NHS membership.” However, E.T.’s parents decided that the Committee’s inquiries were “inappropriate” and made E.T. leave the room.

The parents then brought the present action against the High School. I find that the above stated facts were either not refuted or not reasonably refuted. Further, I find they are the only germane material facts.

ANALYSIS AND CONCLUSIONS OF LAW

The OAL has addressed a student's claims of rights involving membership to the NHS once before, although in the context of an application for emergent relief. In that case, P.V. o/b/o T.S. v Township of Verona, OAL No. 03920-22 (decided May 22, 2022), the Honorable Julio C. Morejon determined the petitioner had failed to cite any precedent for holding that there exists an "underlying legal right to admission to the [NHS]. To the contrary, the Commissioner of Education has recognized admissions criteria to the [NHS] are matters of local determination for each school district...[.] " Thus except upon a showing the District's actions are arbitrary, unreasonable or capricious, the Commissioner will not substitute its judgement for the District's. Consequently, "an applicant must meet the applicable standards for entry into the [NHS] and that admission is not so 'automatic' as to be considered a 'right'" P.V.,supra at page 6, citing J.B.A. and A.M.A. v. Bernardsville Board of Education, 4 N.J.A.R. at 152.

Although a Motion to dismiss often is narrowly focused on such threshold issues of lack of subject matter jurisdiction, lack of personal jurisdiction or improper venue, in practice the OAL regularly applies the Motion for Summary Decision standard to Motions to Dismiss. In turn, the motion for summary decision is based on the rules and practice regarding New Jersey Superior Court Rules governing summary judgement. It is particularly appropriate to note that under summary judgment standards, a Petition should be dismissed when it states no basis for relief and discovery would not yield one. R. 4:6-2 (c), See Energy Rec. v. Dept. of Environmental Protection, 320 N.J. Super 59, 64 (App. Div. 1999), aff'd 170 426 (2001) (emphasis supplied.) Further, dismissal is mandated when "the factual allegations are palpably insufficient to support a claim upon which relief can be granted." Rieder v. State of NJ Dept. of Transportation, 221 N.J. Super 547, 552 (App. Div. 1987). As noted by Judge Morejon, a board of education's actions are entitled to a presumption of lawfulness and good faith. Thus, in challenges to a Board's actions, the challenger bears the burden to prove such acts were unlawful, arbitrary capricious or unreasonable. P.V. supra at page 6 citing Schuster v Bd. of Educ. Montgomery Twp, 96 N.J.A.R. 2D (edu) 670, 676, citing Schnick v Westwood Bd. Of Educ. 60 N.J. Super 448 (App. Div. 1960) and Quinlan v Bd. Of Educ of North Bergen Twp., 73 N.J. Super 40 (App. Div. 1962)

If there is no genuine issue as to any material fact, a moving party is entitled to prevail on a motion for summary disposition as a matter of law. R. 4:46-2. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The judge weighs the evidence as though a motion for directed verdict were before him, and “apply the same evidentiary standard of proof -by a preponderance of the evidence or clear and convincing evidence -that would apply on a trial on the merits. Brill, at 533. The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Id.

In the present matter, the respondent seeks a Dismissal because it is unrefuted, or not reasonably refuted, that a) the only “right” to appeal a NHS membership decision is if the local chapter creates an appeal process b) in this case, the local chapter followed the appeals process per its charter c) the local chapter appeals process by the District’s NHS appeals committee is intended to be unappealable and thus final and such a provision violates no law.

Petitioners argue that the NHS standards, even the three pillars which petitioner met, are “arbitrary” (Petitioners Responding Statement of Material facts, Paragraphs 6, 7 and 8.) Regarding the one pillar she did not meet, according to the NHS local chapter and the Appeals Committee, petitioner simply denies the allegation that E.T. did not meet the character pillar standard and says, “Petitioner cannot prove a negative.”

Petitioners’ argument is contradictory and impossible to grant relief upon. . First, petitioners argue that the standards are arbitrary, then says she did meet the standard, but that she shouldn’t have to prove it. First, if the NHS standards are “arbitrary,” why does anyone, including the petitioners wish to join it?. Consequently, what is being denied to petitioners or any other applicant for membership if the membership’s standards are completely arbitrary? Further, even if the NHS was not a separate entity from the District of Lenape BOE and not entitled to freely set its own standards of admission, independent from the Lenape BOE, a school District has its own broad authority to set academic standards as well as standards for extracurricular activities,

which include grading or rewarding good conduct or behavior,, i.e. “character.” Thus, in subjects ranging from selection for “making” the Senior football team, to competing in the Chess Club, the Districts have the broad discretion to set their own standards. Thus the only issue here is whether E.T. met the NHS standards. Regarding those standards, the only specific dispute regards the character pillar of the student applicant, at least as compared to other applicants for membership. But petitioner, instead of providing proofs in this motion that E.T. indeed met or exceeded the character standard, petitioner instead argues, apparently, that she doesn’t have to prove that; rather, it is claimed E.T. was treated unfairly because the character standards should not be imposed on her owing to her having a recognized disability.

E.T. argues that she has the disabling conditions of Anxiety and ADHD, according to Section 504/ADA Accommodations. (Exhibit B Petitioners’ Opposition). As precious little has been offered to show what that has to do with the issue of membership in the NHS or the local chapter’s actions, I shall try to address what I think the petitioner is trying to get at

Even if the standards of character, as determined by the Appeals Committee or the local Chapter disproportionately weigh on a student’s “immutable characteristics” (Petitioners also argued, without any proof, that the NHS decision was motivated by Anti-Catholicism-although Catholicism or any other religious membership is not an “immutable characteristic,”) if we were to follow the petitioners’ line of reasoning all school programs designed to recognize achievement would be subject to innumerable hypothetical attacks by parents that the standards are unfair as applied to their child, e.g. their height was considered in determining whether he or she wouldn’t be a good candidate for the basketball team, or an asthmatic condition inhibited the child from long distance running or making the swimming team. That does not make those standards, i.e. ability to play basketball better because of being tall, or greater lung capacity being a factor making one a better swimmer or long-distance runner arbitrary, capricious or unreasonable nor is it evidential of invidious discrimination. Nor would it implicate an arbitrary unreasonable or capricious course of conduct by the BOE, if the BOE, as the local chapter and appeals committee clearly did so here, provided they follow their own policy or policies. Besides that, there was no proof submitted that the committee’s

determination or the appeals determination evidenced bias or a disproportionate burden to E.T. because of E.T.'s Anxiety of ADHD.

Although petitioners' proofs were not presented as they should be by certification or affidavit, and although nothing further was submitted as to her disability other than the 504, that plan shows the recommended accommodations by the school for E.T. such as "If grades are not posting in Genesis within 24 hours, teachers are to email parent and student," the 504 does not even suggest that the school, much less the NHS local chapter has to accommodate "lower than average or average" character achievement. Indeed, there is no claim in the petition that there is any violation of the 504 plan or of any IEP, if there even is one (no proof was offered). Thus, the District's accommodations for E.T. is not properly before me. No evidence suggests that a student suffering from Anxiety of ADHD cannot possibly meet the character pillar of membership. Further, the Court will not indulge in speculating further as to whether the appeals Committee's decision was correct where the complaining party argues petitioner need prove nothing. Rather the complete opposite is true; the burden is entirely on the petitioners.

If judges were permitted to engraft their own beliefs by making determinations to second guess the decision making of committees to establish standards for membership into honorary societies, there would be no end to judicial meddling into what is entirely beyond their scope and permitted areas of their function. There would be no end to litigation by parents whose children by those who have strong credentials for membership in the NHS, if their "standards" were permitted to supplant the Committee or the Committee of appeals, with their own less informed, and more likely to be biased opinions of their child's abilities and qualities.

I agree also with that the petition fails to state a claim upon which relief may be granted. For all the above reasons, therefore, I **CONCLUDE** that the motion to dismiss of respondent should be and is **GRANTED** and the matter **DISMISSED**.

ORDER

For the reasons set forth above, the motion to Dismiss filed by the respondent, is hereby **GRANTED** and that the petitioners' demand for relief be **DISMISSED**.

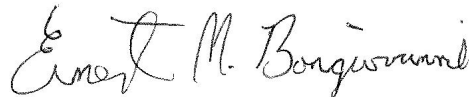
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

August 23, 2024

DATE



ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

8/23/24

Mailed to Parties:

8/23/24

id