

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

342

CA 08-01901

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, GREEN, AND PINE, JJ.

IN THE MATTER OF ANTHONY J. MACULA,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BOARD OF EDUCATION, GENESEO CENTRAL SCHOOL
DISTRICT, AND TIMOTHY HAYES, SUPERINTENDENT,
GENESEO CENTRAL SCHOOL DISTRICT,
RESPONDENTS-RESPONDENTS.

ANTHONY J. MACULA, PETITIONER-APPELLANT PRO SE.

WAYNE A. VANDER BYL, WILLIAMSON, FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Livingston County (Robert B. Wiggins, A.J.), entered June 11, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the petition is reinstated and the matter is remitted to Supreme Court, Livingston County, for further proceedings in accordance with the following Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination denying his request to "tabl[e] access to Geneseo Central School [hereafter, School] to conduct truth-in and counter-military recruitment speech," and to provide the opportunity to present information concerning alternative career opportunities. Petitioner appeals from a judgment dismissing the petition. We conclude, however, that the record on appeal lacks sufficient information to enable a court to determine whether the determination was arbitrary and capricious or whether petitioner's constitutional rights were violated. We note in particular that the record lacks evidence concerning what, if any, criteria respondents employ in determining who may present information at career days held at the School, as well as a specific description of the information that petitioner sought to present at the School with respect to career alternatives to military service. Consequently, "[t]he matter must be remitted for further development of the record (much, if not all, of which may be feasible by stipulated facts and documents . . .)" (*Matter of Bryant v Board of Educ., Chenango Forks Cent. School Dist.*, 21 AD3d 1134, 1138). We therefore reverse the judgment, reinstate the petition and remit the matter to Supreme Court for further proceedings

consistent with our decision.

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court