

CARYN J.,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-24

### OPINION

#### INTRODUCTION

In this appeal, Appellant challenges the decision of the Baltimore County Board of Education (local board) denying her request to change her son's final grade in Gifted & Talented (GT) Physics for the 2008-2009 school year from a D to a C. The local board has filed a Motion to Dismiss for failure to note a timely appeal to the local board. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion. The local board has submitted a surreply.

#### FACTUAL BACKGROUND

Appellant's son, SJ, was a junior at Franklin High School during the 2008-2009 school year. SJ was enrolled in the GT Physics course. SJ was also enrolled in various other honors and upper level courses, including Honors U.S. History, GT Algebra, GT Music, and Spanish IV Honors.

SJ received the following grades for GT Physics during the school year: C in 1<sup>st</sup> quarter; D in 2<sup>nd</sup> quarter; E in 3<sup>rd</sup> quarter, D in 4<sup>th</sup> quarter. Each quarter grade was comprised of 25% homework, 25% lab work, 25% quizzes, and 25% tests. SJ earned a D on the final exam and a D for his final GT Physics grade. The final grade was calculated taking into consideration the 4 quarters and the final exam grades. (T.90-92).

The grade dispute centers on the teacher's practice of allowing students to complete quizzes, tests, and labs at times other than classroom time if they were unable to finish during the class period. This included coming to the teacher's classroom before or after school, or during lunch period or other available time slots.<sup>1</sup> (T.5-13). The teacher did not require students to put in the additional time in the classroom, rather it was an option available to students who wished

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<sup>1</sup>GT Physics was a 4<sup>th</sup> period class ending at approximately 11:15. (T.33).

to take the extra time to complete their work. (T.25-26, 78-79). Nevertheless, most of the students in the class availed themselves of this option. (T.17-19). Tests were scheduled in advance and students could plan ahead in order to put in extra time on test days. The quizzes were more difficult to plan for, however, as they were unannounced and given several times per week towards the end of the class period. (T.17-18).

During the first quarter, SJ stayed after school 10 – 15 times in order to complete quizzes or tests. (T.22). Appellant was eventually unable to stay after school for this purpose due to other after-school obligations. These obligations included French horn lessons, piano lessons and peer tutoring for the National Honor Society, as well as appointments with health care professionals related to an increasing problem with depression and also an ankle injury for which he underwent surgery in December 2008. In addition, transportation was an issue for SJ because he relied on the school bus to go to and from school.

On October 14, 2008, the Appellant first contacted the teacher about his practice of having students finish work outside of class time. The Appellant thanked the teacher for the times he helped SJ after school and asked if SJ could come in for help or to finish tests in the morning due to transportation issues in the afternoons. (Appeal, E-22, E-mail to Doetzer, 10/14/08; T.52). The teacher responded that SJ could come in any time after 7a.m. for extra help or to complete quizzes or tests. (Appeal, E-22, E-mail to App., 10/15/08).

In November 2008, SJ began treatment for depression. The Appellant first contacted the school about this in November through an e-mail to the guidance counselor. (T.41). SJ's depression worsened throughout November and December. SJ suffered a setback with his treatment in December when he experienced an adverse reaction to his prescribed medication, making it difficult for him to do his schoolwork. The situation was compounded by his inability take alternative medication until he was finished with his ankle surgery in late December 2008. (T.43-44; Local Bd. Rec., Exh. 8, SST Summary Form, 12/19/08).

In December 2008, Appellant complained to the guidance counselor and to the pupil personnel worker regarding the teacher's practice of having students put in extra time at lunch or after school to finish labs, quizzes and tests. (Appeal, E-5, 12/2/08 E-mail to Goldman; E-13, 12/15/08 E-mail to Evans). She believed this was a huge inconvenience and that the stress of this additional time was having a negative impact on SJ.

An emergency Student Service Team ("SST") meeting was held on December 19, 2008 to discuss SJ's progress in school since his diagnosis and treatment for depression, as well as his anticipated absence from school for several days for his ankle surgery and possible placement on home and hospital teaching during recovery. (T.48; Local Bd. Rec., Exh. 8, SST Summary Form, 12/19/08; Appeal, E-9, E-mail to App., 12/17/08). At the Appellant's request, the Team determined that SJ should be allotted extra time to make up assignments that he had missed due to the depression, and for work that he would have to make up due to his anticipated absence for surgery. (T.48; Local Bd. Rec., Exh. 8, SST Summary Form, 12/19/08; ). No recommendations

regarding the physics class were made at that time other than having the assistant principal and guidance counselor communicate with the teacher about allowing SJ extra time to complete his work. The Team determined that another meeting would be held if SJ was unable to maintain his academic responsibilities without further intervention upon his return to school after winter break. (Local Bd. Rec., Exh. 8, SST Summary Form, 12/19/08).

The SST Team convened again on February 9, 2009. Although the Team acknowledged SJ's ability to make up all of his work over winter break, they also acknowledged some teacher concerns regarding declining grades and a lack of interaction with his peers. (Local Bd. Rec., Exh. 8, SST Summary Form, 2/9/09). The Team continued to recommend that SJ be allowed extra time to complete his work. At this time, the Appellant inquired about a parking permit so that SJ could drive to school and put in extra time for GT Physics.<sup>2</sup> A parking permit was issued during the 3<sup>rd</sup> quarter. In addition, because the Appellant was concerned about SJ's removal from the National Honor Society due to his grades, the Team recommended that Appellant contact the National Honor Society representative to see what options might be available for SJ. (*Id.*).

On February 28, 2009, the Appellant made allegations to school staff and administrators regarding cheating in the GT Physics class. The Appellant maintained that students would write down questions from the quizzes and tests, discuss them after leaving class, and figure out the answer's together prior to returning to the classroom to complete them. The Appellant stated that SJ chose not to cheat and therefore he received lower grades than the other students. (Local Bd. Rec., Exh. 8, E-mail to Evans, 2/28/09; E-mail to Schmidt, 3/2/09; Letter to Batoff, Hairston, Murphy, 9/28/09). SJ later took a polygraph test to verify these claims. (Appeal, Exh. P-1).

In March, the Appellant met with Kathleen Schmidt, Principal of Franklin, the pupil personnel worker, the assistant principal, and the guidance counselor. At this time, they discussed the possibility of SJ switching to a standard physics class, which would have required a change in other courses. (T.85-86). SJ declined the transfer because he did not want to have his schedule changed. (T.95-96). Ms. Schmidt also advised that she had ended the teacher's practice of having students complete quizzes and tests outside of class time.<sup>3</sup> (T.83-84; Appeal, L-2, Letter to Lawrence, 3/21/09).

The Appellant later contacted William Lawrence, Northwest Area Superintendent, to let him know that the teacher had not ended the practice. The matter was addressed and the teacher

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<sup>2</sup>Appellant first requested a parking permit in October 2008 but the request did not reference SJ's depression which seemed to develop in November 2008. (Appeal, E-2, E-mail to Goldman, 10/14/08).

<sup>3</sup>Appellant claims that Ms. Schmidt advised her that the teacher had no problem with students sharing quiz and test information prior to returning to finish them because it helped them learn physics. (Appeal, L-2, Letter to Lawrence, 3/21/09).

stopped the practice in April at the beginning of the 4<sup>th</sup> quarter. Mr. Lawrence advised the Appellant that the teacher had announced discontinuation of the practice at each of his classes orally and in writing. (Appeal, L-3, Lawrence Letter, 4/23/09). He also advised the Appellant that appropriate steps had been taken with the teacher but that he could not discuss personnel issues with her. (Appeal, L-2, 3/26/09, Lawrence Letter).

In May, Mr. Lawrence told the Appellant what grades SJ would need to receive for the 4<sup>th</sup> quarter and final exam in order receive a final grade of C. The GT Physics teacher also began providing SJ weekly grade updates so that he could gauge his performance. (Appeal, L-6, Lawrence Letter, 5/21/09). In addition, the Appellant received a grade report for each component of SJ's GT Physics grade for each quarter of the 2008-2009 school year . This is the breakdown:

	Quizzes	Tests	Labs	Homework	Final
1 <sup>st</sup> Quarter	75%	67%	80%	93%	79%
2 <sup>nd</sup> Quarter	53%	55%	57%	95%	65%
3 <sup>rd</sup> Quarter	52%	39%	39%	70%	50%
4 <sup>th</sup> Quarter	28%	54%	88%	83%	63%

(Appeal, L-6, Lawrence Letter, 5/21/09).

The 2008-2009 school year ended on June 12, 2009. SJ received a final grade of D. Here are all of SJ's grades for the 2008-2009 school year:

Course	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	Final exam	Final Grade
English 11 AP/GT	A	C	B	C	B	B
U.S. History Honors	A	B	B	A	B	A
Algebra GT/College	C	C	C	C	B	C
Physics GT	C	D	E	D	D	D
Spanish IV Honors	B	B	C	C	C	C
GT Music Level I	A	A	A	A	A	A
Health 11/12			B	A	C	B
PSAT/SAT Review Prep	A	B			A	A

(Appeal, R-5, High School Report Card).

Appellant appealed SJ's GT Physics grade. On June 30, 2009, William Lawrence, Area Assistant Superintendent for the Northwest Area, advised the Appellant that SJ's grade had been accurately computed. (Appeal, L-10, Lawrence Letter, 6/30/09).

Appellant sought review of Mr. Lawrence's decision. She maintained that the teacher's policy of having students finish quizzes, tests and labs outside of classroom time was unfair. She also alleged that there was a "massive cheating scandal that was initially ignored, never investigated, and then denied altogether." (Appeal, L-11, 7/11/09, Appellant's Letter). Ms. Batoff, the Superintendent's Designee, met with the Appellant and SJ on August 28, 2009. On September 21, 2009, Carol Batoff, the Superintendent's Designee, decided that SJ's grade would not be changed. (Appeal, L-17, Batoff Letter, 9/21/09; T.75). She stated, in part:

Principal Schmidt reports that at no time did she believe that the grade in question was unfair or should be changed. Ms. Schmidt notes that interventions were presented to [SJ] to help him improve his performance in physics class, including additional assistance before and after school and a change in his physics class and teacher. She adds that one of the schedule change scenarios that was offered to [SJ] involved only one class change in addition to the change in [SJ's] physics class and teacher; however, the new physics class would have been a standard-level class and you stated that it was your belief that college admissions officers would look more favorable upon a gifted and talented physics course when reviewing [SJ's] high school transcript.

(Appeal, L-7, Batoff Decision).

Appellant timely appealed Ms. Batoff's decision to the local board. (Appeal, L-8, 9/28/09). John A. Austin, Hearing Examiner, conducted a full evidentiary hearing on October 30, 2009.<sup>4</sup> At the hearing, Appellant argued that SJ had received a D because the school day was improperly extended by the teacher, that the school system did not provide bus transportation for students staying the extended period, and that accommodations were not made to address SJ's depression. (T. 8-9). Appellant maintained that, but for these three factors, SJ would have received a higher grade in GT Physics. (T. 8).

The Hearing Examiner issued his decision on November 24, 2009, upholding the decision of the Superintendent's Designee. The decision advised the Appellant of her right to request oral argument before the local board in writing within 15 days from the date of the hearing examiner's recommendation. Appellant did not request oral argument before the local board.

Having not heard anything regarding her appeal from the local board, the Appellant filed an appeal to the State Board on December 7, 2009. We advised the Appellant that the matter was premature, until such time as the local board issued a final decision in the case.

On February 24, 2010, the local Superintendent, through counsel, sought a Summary

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<sup>4</sup>Appellant was represented by counsel at the hearing. (T.7).

Affirmance of the Hearing Examiner's decision. (Local Bd. Rec., Exh.7). On March 10, 2010, the local board adopted the hearing examiner's recommendations upholding Ms. Batoff's decision. (Local Bd. Rec., Exh. 8). This appeal followed.

### STANDARD OF REVIEW

It is well settled that the State Board will not review the merits of student grade decisions. As stated in *Crawford v. Washington County Board of Education*, 4 Op. MSBE 890 (1997), "the merits of students' grades 'should be kept within the school building,' and are to be made by the persons most able to evaluate the situation from personal knowledge." See also *Fisher v. Montgomery County Board of Education*, MSBE Opinion No. 99-43 (1999); *Chase v. Carroll County Board of Education*, 7 Op. MSBE 915 (1997); *Mai v. Montgomery County Board of Education*, 7 Op. MSBE 752 (1997); *Tompkins v. Montgomery County Board of Education*, 7 Op. MSBE 475 (1996). The State Board will only hear appeals about academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student's due process rights. In such cases, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is found to be arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05.

### ANALYSIS

#### *Motion to Dismiss*

The local board has filed a Motion to Dismiss the appeal, maintaining that the Appellant failed to timely appeal this matter with the local board. The Appellant clearly filed a timely appeal of Ms. Batoff's decision to the local board. In accordance with that filing, the local board referred the matter to one of its hearing examiners for review and a recommendation. Although the local board's procedures allow an Appellant to request oral argument on a hearing examiner's recommendation within 15 days of the decision, the fact that the Appellant did not request oral argument does not render the appeal to the local board untimely. (Local Bd. Rec., Exh. 11, BCPS Policy 8339.VI). Rather, it merely means that the Appellant waived oral argument. In this case, the Appellant's appeal to the local board was timely and her failure to request oral argument did not change that.

#### *Substance of Case*

In her appeal, the Appellant makes several arguments in support of her claim that SJ's grade should be changed from a D to a C. She argues that SJ did not have equal opportunity to participate in education for the following reasons:

- (1) That the GT Physics teacher maintained an unfair policy of requiring students to finish quizzes, tests, and labs before and after school in violation of Baltimore County Public

School (BCPS) Rules. Specifically, the Appellant argues that this practice extended the school day in violation of BCPS Rule 5210 and violated BCPS Rule 3410 because bus transportation was not provided for students who stayed late and came in early.

- (2) That the school system failed to investigate or intervene in response to the Appellant's claims that students were cheating on the quizzes and exams by reviewing questions and answers together before returning to the classroom to finish them.
- (3) That the school system failed to create a 504 plan and provide SJ accommodations for his depression in order to deal with the rigor of the physics class or in some way discriminated against SJ.
- (4) That the school system did not process the appeal in a timely manner.
- (5) That administrators and staff members at Franklin deliberately violated the written bylaws and procedures of the National Honor Society and terminated SJ's membership without a hearing or faculty vote.

#### *Unfair Policy in Violation of BCPS Rules*

The Appellant argues that the teacher maintained a policy of requiring students to finish quizzes, tests, and labs before and after school in violation BCPS Rule 6302 which establishes the times for the school day. Linked to this argument is the Appellant's assertion that because the school day was extended, the school system violated BCPS Rule 3410 that provides for school bus transportation for students.

Appellant's presumption here is that the teacher's practice of allowing students extra time to complete work was a *de facto* requirement of the class. In our view, however, it was an option available to all students in the class if they wished to take advantage of it. With regard to the assessments, we do believe it was an unusual protocol.<sup>5</sup> Although the Appellant claims that the quizzes and tests were not designed to be finished during class time as evidenced by the majority of students who returned later to complete them, there is no evidence that such is the case.

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<sup>5</sup>Perhaps the number of students putting in extra time to work on assessments should have served as a signal that the course structure needed to be reviewed. This does not make the practice illegal, however.

Indeed, some students who SJ described as “the most gifted in physics” were able to finish. (T.16). Other students may not have been able to finish and some may have returned simply to take advantage of the extra time offered to get higher grades. This GT Physics class was a challenging course with extremely rigorous subject matter. The high level of class difficulty required many students to put in extra time to do well. Because it was not a requirement that they put in the extra time, we do not find a violation of the BCPS Rules cited above.

Moreover, although the Appellant argues it was the teacher’s unfair practice of requiring students to put in additional time that resulted in SJ’s low grades, the practice was discontinued in the 4<sup>th</sup> quarter. During that quarter the quiz and test portions of SJ’s grades were the lowest part of his physics grade, with a 28% and 54% respectively, while he was able to raise his percentages in the areas of labs (88%) and homework (93%). This flies in the face of the Appellant’s claim that there was a correlation between the practice and SJ’s final grade, especially given the fact that his quiz and test grades were higher in the 1<sup>st</sup> and 2<sup>nd</sup> quarters when the practice was in place.

#### *Cheating Allegations*

The Appellant raised the issue of cheating in the GT Physics class with school personnel for the first time in February 2009. She maintains that SJ’s grade was unfair in light of the alleged cheating because his grade would have been higher had he cheated like the other students. We do not believe that there was cheating going on in the class because everyone had the option to use the extra time. There is no evidence that this practice negatively impacted SJ’s grade. Only if the class was graded on a curve could SJ’s grade have been affected by other students receiving unfairly inflated grades. We do not find any evidence, however, that the class was graded in such a manner.

#### *Failure to Provide Accommodations*

Appellant maintains that the school system failed to provide SJ with a §504 plan to implement accommodations to deal with the rigor of the AP Physics class given his diagnosis of clinical depression. Section 504 of the Rehabilitation Act requires schools to provide a “free appropriate public education” (FAPE) to each qualified student with a disability through the provision of regular or special education and related aids and services. 29 USC §794; 34 CFR Part 104. Under §504, public schools must provide accommodations to qualified individuals with a disability to allow their access to FAPE. *Id.*

To be eligible for a §504 plan, an individual’s physical or mental impairment must substantially limit a major life activity. 34 CFR 104.3. Learning is a major life activity. (*Id.*) The Appellant maintains that SJ’s depression was a mental impairment that substantially affected his learning, and she testified before the Hearing Examiner that she believed it affected SJ’s academics. (T.42-43). In addition, SJ’s doctor stated that the depression could impair SJ’s concentration in school. (Appeal, M-3, Professional Statement).



BCPS has a local review process for §504 claims. Under those procedures, if the parent disagrees with the school systems actions regarding the identification, evaluation, or educational placement of the student, the parent may request a local level §504 due process hearing held by an impartial hearing examiner. (Section 504 Procedures, Code No. PS114).

Although the §504 due process procedures were never engaged, the Appellant's appeal of the grade dispute went before a hearing officer during which counsel for the Appellant made fleeting mention during opening argument of the school system's failure to provide SJ accommodations. (T.9). Counsel mentioned it also in her written closing arguments. (Local Bd. Rec., Exh. 5). Despite this, arguments in support of or against this issue were never fully developed by either party.<sup>6</sup>

Even if we assume that SJ was eligible for a 504 plan based on his depression, although no formal plan was established, the SST Team provided SJ accommodations in response to the Appellant's concerns. At the first meeting in December 2008, the Team recommended that SJ be allotted extra time to complete his work. The Team made the same recommendation at the second meeting in March 2009. Of course, this was an accommodation that the teacher was already providing to all students in the GT Physics class. In addition, aware of the Appellant's concerns about transportation, the SST Team was ultimately able to get SJ a parking permit during the 3<sup>rd</sup> quarter so that he could drive to and from school to put in extra time for physics. The Appellant was also offered the option of having SJ change classes.

Although the school provided accommodations, SJ did not avail himself of them. Appellant maintains that SJ did not stay after school to finish physics work either because of other obligations or because it was inconvenient to pick him up from school given that they lived approximately 12 miles away. Nor did SJ avail himself of the opportunity to come in prior to school because the transportation issue presented difficulty. Principal Schmidt testified that, even if SJ was taking the bus, he would have had some limited time in the mornings to report to the teacher's room to do physics because the school bus generally arrived just before 7:30 and classes did not begin until 7:50. (T.95). In addition, once SJ received the parking permit in the 3<sup>rd</sup> quarter it would seem that transportation in the mornings would no longer be an issue. Yet Appellant presented no testimony why SJ could not avail himself of this option when the teacher had stated that he could come any time after 7a.m. to do work. Unfortunately this was a rigorous class and extra time was necessary for some students to do well and master the material.

#### *Other Discrimination Claims*

With regard to the claims of discrimination the Hearing Officer stated as follows:

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<sup>6</sup>We find it confusing that during the hearing Appellant's counsel stated that the case does not involve review of the SST Team process (T.50-51) when review of the §504 claim would necessarily include what transpired between the Appellant and the SST Team.

The Appellant has made no showing, however, that he was subjected to disparate treatment that resulted from his problems with depression. Further, no individual educational profile dealing with his disability or learning handicap was ever requested or explored. Further, there is no evidence that a medical accommodation was sought for the Appellant's depression and was denied. There was, however, evidence that on at least two occasions, an SST team met and afforded accommodations to him with respect to completing his courseware, arranging for a parking pass and other accommodations, all designed to help him improve his GT Physics grade. There has been no showing that any request for assistance was denied. Accordingly, there has been no showing that any discriminatory action was taken on the part of the Board of Education that resulted in any treatment of the Appellant that was inappropriate based upon his depression.

The Hearing Officer also determined that the Appellant had established no causal connection between SJ's depression and his physics grade. Given the record in this case, we concur.

#### *Timely Review of Appeal*

The Appellant maintains that the local board failed to provide her with a timely review of her appeal. There is no law or regulation, however, that addresses the time frames within which a local board must render a decision in an appeal. The appeal process took some time at the school system level because the matter was reviewed at various levels. The Appellant appealed Mr. Lawrence's final grade decision in July 2009 and met with the Superintendent's Designee, Ms. Batoff, to discuss the case in August 2009. Ms. Batoff issued her decision on September 21, 2009 and the Appellant appealed to the local board. The Hearing Examiner conducted a hearing on the appeal on October 30, 2009 and rendered a decision on November 24. The Appellant did not request oral argument before the local board. Thereafter, on February 24, the local Superintendent sought summary affirmance of the Hearing Examiner's decision by the local board and the local board issued its decision on March 10, 2010. At least one month of the time between the Hearing Examiner's decision and that of the local board can be allotted to the 15 day time frame for requesting oral argument, followed shortly thereafter by BCPS's winter break. Once the appeal was ripe for a decision, it took the local board just over two months to render a final decision. We do not believe that this is unreasonable.

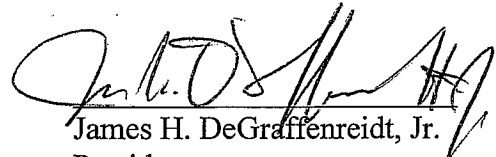
#### *National Honor Society Claims*

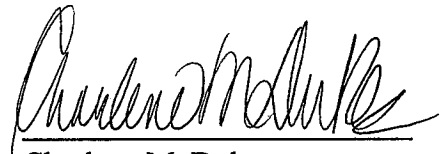
For the first time in her appeal to the State Board, Appellant alleges that administrators and staff members at Franklin deliberately violated the written bylaws and procedures of the National Honor Society (N.S.) and dismissed SJ from the N.S. without a hearing or faculty vote. This was not an issue before the local board, nor was it addressed in the Hearing Examiner's

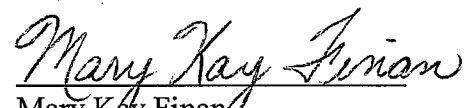
decision. It is the long held position of this Board that it will not review matters not initially reviewed by the local board. *Jan M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-40 (2008); *McDonnell v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Craven v. Board of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Ops. MSBE 740 (1997). If the Appellant wishes to appeal the decision of the National Honor Society dismissing SJ from its membership she must follow the N.S. procedures.

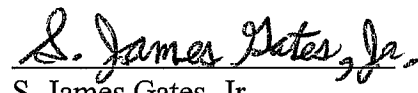
CONCLUSION

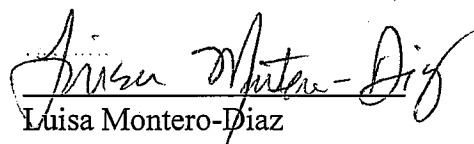
Based on the record in this case, we affirm the local board's decision not to change SJ's grade from a D to a C.

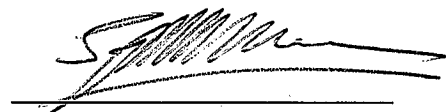
  
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May 25, 2010