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July 25, 2008

## VIA E-MAIL & UPS OVERNIGHT

Hon. Carol I. Cohen, A.L.J.  
Office of Administrative Law  
33 Washington Street  
Newark, New Jersey 07102

**Re: Z.R. v. Fort Lee BOE  
OAL DKT. NO. EDS 11423-2006N  
AGENCY DKT. NO. 2007-11806**

Dear Judge Cohen:

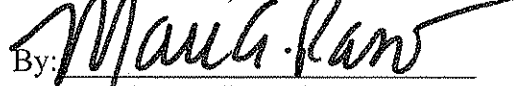
As the Court is already aware, our firm represents Respondent The Fort Lee Board of Education ("Fort Lee") in connection with the above-referenced matter.

Enclosed please find an original and two (2) copies of Fort Lee's Reply Brief. Kindly file same, returning one (1) of the copies stamped "filed" in the enclosed, postage paid envelope.

Naturally, should the Court have any questions or concerns, I am readily available to address same.

Respectfully submitted,

SINISI & RASO, LLP

By: 

Marc A. Raso, Esq.

MAR:rk

Enclosures

cc: Ms. Marilyn Arons (via facsimile, e-mail & regular mail)  
Dr. Jean North, Director of Special Services (via e-mail & regular mail)

Z.R.,

Petitioner,

-vs-

THE FORT LEE BOARD OF EDUCATION,

Respondent.

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW

OAL DOCKET NO.: EDS 11423-2006N

AGENCY REF. NO.: 2007-11806

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**REPLY BRIEF SUBMITTED ON BEHALF OF  
RESPONDENT THE FORT LEE BOARD OF EDUCATION**

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THE FORT LEE BOARD OF EDUCATION

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ON THE BRIEF

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## PRELIMINARY STATEMENT

Petitioner<sup>1</sup> has placed before this Court a forty-three (43) page, single spaced, “Post-Hearing Brief” (“Petitioner’s Brief”), overwhelmingly replete with inaccurate and/or unfounded factual assertions. Indeed, Petitioner goes so far as to accuse one of Fort Lee’s witnesses of committing perjury—an absurd and false accusation that may very well be actionable in another forum, at a later date. The obvious question is why has Petitioner engaged in such egregious conduct? **The plain and simple truth is that Petitioner’s conduct in this regard is the clear result of Petitioner’s realization that it cannot meet its burden of proof in the within matter.** That is, Petitioner’s Brief is nothing more than a manifestation of the following, weak-minded strategy:

- If the facts are against you, argue the law;
- If the law is against you, argue the facts; and
- If the facts and law are against you, argue ad hominem.

Notwithstanding, Fort Lee trusts that the Court, through its review of contemporaneous notes, hearing exhibits and applicable transcripts, will correctly discern fact from fiction, and consequently rule in Fort Lee’s favor.

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<sup>1</sup> This document incorporates by reference and thus relies upon any and all parenthetical references set forth in Fort Lee’s Trial Brief.

## LEGAL ARGUMENT IN REPLY

### **PETITIONER HAS FAILED TO MEET HER/HIS BURDEN OF PROOF AND THUS HER/HIS CLAIMS MUST BE DENIED IN THEIR ENTIRETY**

Petitioner's Brief places special emphasis upon, and in fact attaches a copy of, the court's decision in K.R. and J.R. o/b/o N.R. v. Vineland City Board of Education, 2008 WL 726210, OAL Dkt. No. EDS 2321-07 (Hon. Joseph F. Martone, ALJ) (January 22, 2008). (See Petitioner's Brief, p. 41.) Nonetheless, Judge Martone's decision in K.R. actually supports the denial of Petitioner's claims in the within matter. See ibid. Indeed, as Judge Martone so correctly recognized, in order to claim that a procedural inadequacy constitutes a denial of FAPE, a parent must demonstrate that these inadequacies either resulted in the loss of educational opportunity or seriously infringed upon the parent's opportunity to participate in the IEP formulation process. Ibid. However, nothing could be further from the truth in the within matter. The record is overwhelmingly replete with undisputed evidence of Petitioner's participation in the IEP formulation process. Moreover, Petitioner has not, and cannot, offer any credible evidence to dispute the following:

- Ms. Z.R. took the New Jersey High School Proficiency Assessment ("HSPA") exam in her eleventh-grade year and tested "proficient"—i.e., **Ms. Z.R. passed the HSPA exam.**

[(See High School Proficiency Assessment, R-17.)]

- In twelve (12) of the fourteen (14) classes that she took in her eleventh-grade and twelfth-grade years, Ms. Z.R. earned nine (9) "A's" and three (3) "B's," including "A's" in World History, Sociology and Spanish 1. While Ms. Z.R. did receive "D's" in the remaining two (2) classes (Basic Geometry and Basic Algebra 2), Ms. Z.R. did pass these classes. Furthermore, the grades that Ms. Z.R. received in Basic Geometry and Basic Algebra 2 further serve to support the

unassailable fact that Ms. Z.R. earned the grades on her school transcript. That is, if Ms. Z.R.'s grades had been inflated, would her transcript show any "D's" at all? The answer is clearly "no." Consequently, Petitioner must concede that Ms. Z.R. earned the grades on her school transcript.

[(See School Transcript, **R-37.**)]

- Following Ms. Z.R.'s completion of her twelfth-grade year at Fort Lee in June 2007, Ms. Z.R. enrolled in the summer program at Riverview, where she received excellent grades/comments in the subjects of: English Language Arts; and Social Science & Math—demonstrating her ability to complete all assigned tasks, as well as the undeniable fact that Fort Lee provided Ms. Z.R. with a program that conferred upon Ms. Z.R. and exceedingly meaningful educational benefit. For that matter, Ms. Z.R. also excelled in the Social Competency module of the Riverview summer program, further demonstrating that Ms. Z.R. completed her twelfth-grade year at Fort Lee possessing admirable social skills.

[(See Riverview August 18, 2007 Correspondence & Progress Report, **R-42.**)]

It is likewise beyond dispute that in her eleventh-grade and twelfth-grade years at Fort Lee, Ms. Z.R. consistently demonstrated: an eagerness to learn; a desire to pursue "good grades"; and a commendable enthusiasm for class participation. (See, e.g., ¶¶ 23-34 of Fort Lee's Statement of Relevant Facts & Procedural History, Trial Brief, pp. 11-18.) Ironically, Petitioner disregards all of the foregoing and, citing the testimony of Ms. Arons and Dr. Usher, incorrectly asserts that Fort Lee did not address Ms. Z.R.'s needs from a transition standpoint. (See Petitioner's Brief, pp. 29-35.)

Initially, Petitioner asserts that Ms. Arons is a "special education expert without peer in the United States." (See Petitioner's Brief, p. 31.) Nonetheless, and with all due respect to Ms. Arons, the transcript of Ms. Arons' voir dire reveals that Ms. Arons is actually an expert in the art of self-promotion. (See ¶¶ 61-75 of Fort Lee's Statement of Relevant Facts & Procedural

History, Trial Brief, pp. 33-37.) Furthermore, despite the fact that Ms. Arons admittedly never observed Ms. Z.R. in class at Fort Lee, Ms. Arons inexplicably authored a proposed IEP and Transition Report for Ms. Z.R. Also worthy of note is the fact that neither the IEP nor the Transition Report prepared by Ms. Arons recommends the compensatory education or residential placement being sought in the Petition. (See ¶¶ 74-75 of Fort Lee’s Statement of Relevant Facts & Procedural History, Trial Brief, pp. 36-37.) Even more astonishing, Dr. Usher admitted on cross-examination that the basis for her recommending a residential placement in the within matter arises from Ms. Z.R.’s family life, as opposed to any action or inaction on the part of Fort Lee. (See ¶ 48 of Fort Lee’s Statement of Relevant Facts & Procedural History, Trial Brief, pp. 20-21.)

Turning to Ms. Arons’ assertion that Ms. Z.R. had in September 2006 advised Ms. Arons that “she wanted to hurt herself,” it likewise beyond dispute that Ms. Z.R. never testified that she had experienced such feelings. (See April 2, 2008 and April 4, 2008 Transcripts of Testimony of Ms. Z.R.) For that matter, Ms. Arons’ testimony in this regard is completely inconsistent with Dr. Usher’s observations of Ms. Z.R., wherein, for example, Dr. Usher described Ms. Z.R. as “lively and pleasant”—**wherein Dr. Usher stated that Ms. Z.R. had “assured” Dr. Usher that Ms. Z.R. “loved school and had many friends.”** (See, e.g., ¶ 51 of Fort Lee’s Statement of Relevant Facts & Procedural History, Trial Brief, p. 23.) Furthermore, the record clearly establishes that by the end of her twelfth-grade year, Ms. Z.R. possessed those “functional” living skills which, according to Dr. Usher, should be required of high school graduates. (See ¶¶ 9-50 of Fort Lee’s Statement of Relevant Facts & Procedural History, Trial Brief, pp. 3-23.) As such, Judge Martone’s decision in K.R. does not, and indeed cannot, lend any support to the flawed theses advanced by Petitioner in the within matter. Point in fact, it is Judge Martone’s

decision in the case of N.P. by R.C.P. v. Kinnelon Bd. of Educ., 1992 WL 394850, OAL Dkt. No. EDS 3465-92 (Hon. Joseph F. Martone, ALJ) (August 13, 1992) that actually has great applicability to the issues in the within matter.

In N.P., Judge Martone held that a parent will be unsuccessful in asserting a procedural violation based upon an alleged absence of measurable goals where the child at issue is in mainstream classes. Id. at \*20. Thus, Petitioner's assertions that Ms. Z.R.'s IEP's lacked "goals," albeit untrue, are without consequence. (See Petitioner's Brief, p. 15.) Similarly, the court's decision in J.A. and J.A. o/b/o B.A. v. Mountain Lakes Bd. of Educ., 2006 WL 2583445 (D.N.J. 2006) provides much needed guidance for the issues in the within matter.

In J.A., the parents of a high school student sought reimbursement for their unilateral placement of the student in a residential preparatory school. J.A., supra, 2006 WL 2583445, \*2. In affirming the ALJ's decision denying the parents' claims, Judge Hochberg found that the parents' criticisms of the school district were largely undercut by the student's academic performance. Id. at \*7. Significantly, Judge Hochberg wrote "[a]lthough ... [the parents] argue that ... [the student's] strong grades were a result of grade inflation ... or falsification, there is simply no evidence to support such a contention." Ibid. Furthermore, Judge Hochberg determined that the "testimony of ... [the student's] teachers about his strong performance and good demeanor in their classes ... supports the ALJ's conclusion that ... [the student] received significant educational benefit." Ibid. Even more telling is Judge Hochberg's response to the parents' assertion that the student was "depressed":

There is no credible evidence in the record to support Plaintiffs' claims that ... [the student] was depressed and did not get along well with his peers; ... [the student] was a member of the football and lacrosse teams as well as a leader in some of his classes, and his teachers indicated that he was engaged in their classes. The

ALJ found the contrary testimony offered by the Plaintiffs to be “totally unpersuasive.”

[Id. at \*7, n.6.]

Thus, in striking similarity to the J.A. decision, Petitioner’s criticisms of Fort Lee are largely undercut by Ms. Z.R.’s academic performance, especially in light of the fact that Petitioner has failed to present any remote evidence of grade inflation. (See, e.g., High School Proficiency Assessment, **R-17**; and School Transcript, **R-37**.) Moreover, the record is possessed of countless examples of Ms. Z.R.’s strong performance, good demeanor and leadership in class. (See, e.g., ¶¶ 20, 23-28, 34, & 55-58 of Fort Lee’s Statement of Relevant Facts & Procedural History, Trial Brief, pp. 10, 11-13, 16-19, & 27-32.) Lastly, there is simply no evidence in the record to support Ms. Arons’ claim that Ms. Z.R. contemplated harming herself—**and thus Ms. Arons’ claims in this regard should be deemed “totally unpersuasive.”**

**CONCLUSION**

For the foregoing reasons, as well as the reasons set forth in its Trial Brief, Fort Lee respectfully submits that Petitioner's claims should be denied in their entirety.

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By: Marc A. Raso  
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