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Simmie Baer WSBA# 14179  
Attorney for Respondent

**MEMORANDUM**

FACTS

On January 30, 2019, N.Y. was in class. According to the statements in the police report, an anonymous student made a report that N.Y. had a vape pen. Without any further investigation, N.Y. was removed from class, brought to the principal's office and her bags were searched. She was asked if she had anything in her bags she shouldn't have and she said "vape juice." She was then told her bags would be searched. As a result of the search, a small amount of marijuana was found, cigarettes and a vape were also removed from her purse.

ARGUMENT

The school search exception to the warrant requirement allows a school official to search a student's person, locker, and belongings if, under all the circumstances, the official has reasonable suspicion. *State v. Slattery*, 56 Wash. App. 820 (1990), *State v. Brooks*, 43 Wash. App. 560 (1986), *State v. Meneese*, 174 Wash. 2d. 937 92012), *York v. Wahkiakum School District No. 200*, 163 Wash. 2d. 297 (2008). The question is, what are the circumstances that must be satisfied to find a school search to be reasonable and constitutionally sound? All of these school search cases cited, rely on the criteria set out in the case of *State v. Mckinnon*, 88 Wash. 2d. 75 (1977) to determine if the school official had reasonable suspicion. In the *Brooks* case, the Court stated that the factors to be judged in determining whether the school official had reasonable grounds are the child's age, history, school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search

1 without delay, and the probative value and reliability of the information used as justification for  
2 the search. The facts and circumstances in the *Brooks* case provided sufficient reason for the  
3 search. Unlike the dearth of facts sufficient to support the search in this case, in *Brooks* there was  
4 information from a student that Brooks was selling drugs out of a blue metal box in his locker.  
5 The student who provided the information had the locker next to Brooks. The vice principal also  
6 had an independent belief that Brooks was a drug user based upon reports from three of his  
7 teachers that he appeared to be under the influence of drugs or alcohol. She had confronted him  
8 previously on three occasions about his suspected drug usage. She had spoken to his mother  
9 about his drug use. The Court addressed the *Mckinnon* factors and determined the search of the  
10 locker and metal box were lawful. In the *Slattery* case, the Court applied the *Mckinnon* factors  
11 and found that the search by school officials was based on reasonable suspicion and upheld the  
12 search. The factors that justified the search were, that a reliable informant who had provided  
13 information in the past, told the vice-principal that Slattery was selling drugs in the parking lot.  
14 Several other individuals also had provided information about Slattery selling marijuana. The  
15 vice-principal also had reason to believe Slattery was a drug user.  
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17 Unlike the facts and circumstances set out in these cases, there are absolutely no such  
18 facts or circumstances set out in N.Y.'s case to support removing her from class and searching  
19 her bags. In fact, there was not sufficient information to remove her from class. The only facts  
20 available to the court in the case at hand are conflicting. One person says he received  
21 information that N.Y. had a vape pen and one school official said the informant said N.Y. had a  
22 vape pen and used it. There are no facts whatsoever that describe why the informant is reliable,  
23 as there is in the previously discussed cases. There is no information about prior contacts with  
24 N.Y. and school officials about any past or current her drug use as there is in the previously  
25

1 discussed cases. There are no facts about other teachers or school officials citing concerns about  
2 N.Y. using drugs or being under the influence as there are in the previously cited cases. There  
3 was one unsubstantiated fact. Clearly, N.Y.'s case completely lacks the requisite foundation of  
4 facts and circumstances to find the search was reasonable and constitutionally sound.

5 IN CONCLUSION, N.Y. respectfully requests this Court to suppress all statements, the  
6 marijuana, cigarettes and any other contraband seized as a result of the unlawful search and  
7 seizure and "fruit of the poisonous tree".

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9 Dated this \_\_\_\_\_ day of May, 2019.

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13 Simmie Baer, WSBA #14179  
14 Attorney for Respondent  
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