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FOUNDATION

Kansas

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**Via First Class Mail and Email:** kennysouthwick@USD 512.org

Interim Superintendent Kenneth Southwick  
Shawnee Mission School District  
McEachen Administrative Center  
8200 W. 71st Street  
Shawnee Mission, KS 66204

**Re: Student Walkouts**

Dear Interim Superintendent Southwick,

As you know, students at various schools throughout the Shawnee Mission School District (SMSD) were censored, silenced, and in some cases subjected to aggressive physical contact by administrators while participating in a nationwide walkout protesting gun violence on April 20, 2018. I am writing on behalf of a number of parents and students who have contacted the ACLU of Kansas Foundation for help to ensure that SMSD takes corrective action to remedy past harms and implements measures to prevent similar violations in the future. While we anticipate a response that the walkouts are a "private personnel matter," our clients demand transparency. Specifically, if SMSD does not rescind all discipline, retrain all employees on students' First Amendment rights, and communicate a proposed corrective action to each impacted student by 5:00 P.M. on Thursday, May 3rd, we will proceed with further legal action.

#### National Walkout Day

Students across the country organized a national walkout to advocate for reforms to protect students from gun violence in the wake of the tragic Parkland High School shootings. The date was selected to coincide with the 19th anniversary of the Columbine High School Massacre and the purpose of the protest was to

demand reforms that would reduce the prevalence of gun deaths and school shootings. Many SMSD students began organizing to participate in the national walkouts in late March and early April, informing administrators about their action plans around the same time. Per SMSD communication director Shawna Samuel, the official district policy was to permit student participation in the walkouts but prevent them from mentioning gun violence. SMSD adopted these guidelines in order to avoid the appearance that the school was taking a position on "the Second Amendment."

#### Hocker Grove Middle School

██████████ and ██████████ are among the parents who have contacted the ACLU of Kansas to represent their daughters, ██████████ and ██████████. ██████████ and ██████████ are both eighth-grade student at the Hocker Grove Middle School. ██████████ was involved in planning the April 20th student walkouts and was the second designated speaker for the walkout's 17-minute program. ██████████ participated in the walkout and wanted to speak during the program but was ultimately chilled by the administration's response.

HGMS Principal Pretz clearly communicated to parents and student organizers that the walkout was student led and was not sponsored by the school. Thus, ██████████ was never told that there were certain topics that she should avoid in her speech or issues that were prohibited. After she began her speech on April 20, Assistant Principal Alisha Gripp began poking ██████████ when she cited a statistic that there had been 19 school shootings in the last year. Gripp pushed ██████████ more forcefully after she noted that "we would have more shooters who were women, queer, transgender, and people of color if bullying caused school shootings." Realizing that Gripp was the person pushing her, ██████████ halted her speech. Gripp then chastised ██████████, stating "no shootings, no deaths. If you can't comply with the rules, you'll be removed." ██████████ edited the remainder of her speech and removed planned references to shootings, gun control, and the anniversary of the Columbine massacre.

After ██████████'s speech, Gripp confiscated the written remarks of another scheduled speaker who mentioned gun control and abruptly ended the event after the fourth speaker, referenced gun violence in school. Nine minutes remained in the planned 17-minute event so approximately 50 students remained outside and continued the planned program. Gripp then directed the remaining students to disperse, pushing several students towards the door. ██████████ and ██████████ reported that a number of students were either told that they had been suspended or had detention for participating in the walkout.

It is worth noting that while Gripp was accosting students who were trying to continue their protest, students who were returning to class were permitted to exercise speech rights unrelated to the walkout including loudly yelling "its Hitler's birthday today!" and "Free Meek Mill!" According to witnesses, no

administrator or teacher tried to censor their speech or aggressively told them to return to their classes.

#### Shawnee Mission North and East High School

Hooker Grove is not the only SMSD school where student speech was censored. At Shawnee Mission North, the school permitted students to hold a walkout program from 10:00-10:17 A.M. However, administrators told students that they could not mention shootings or gun violence. Over 100 students stayed after the end of the school permitted program in order to discuss mass shootings and policy reforms to improve school safety issues. Student journalist who remained with the protesters to cover the event had their cameras confiscated by administrators. Students who continued their protest were disciplined for creating a space where they could protest without the school's content-based censorship.

At Shawnee Mission East, students were similarly prohibited from discussing gun reform or gun violence. Organizers reported that Principal John McKinney told them that they could only talk about "school safety."

#### Legal Concerns

Public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). School officials may prohibit student speech only when they reasonably believe that the student expression "will substantially interfere with the work of the school or impinge upon the rights of other students." *Id.* at 508. It is not enough that school officials have an "undifferentiated fear or apprehension" of a disturbance. *Id.* Rather, the administration must reasonably forecast that student speech will "create a strong potential for substantial disruption." *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 38 (10th Cir. 2013).

Schools are also prohibited from exercising editorial control over signs, chants, or messages that students use during a protest. It is well established that student speech "not fairly considered part of the school curriculum or school sponsored activities, may only be regulated if it would materially and substantially interfere with the requirements of appropriate discipline." *Roberts v. Madigan*, 921 F.2d 1047, 1057 (10th Cir. 1990). Student speech cannot be excised "solely out of concern that some listeners may be offended by a controversial message." *Tinker*, 393 U.S. at 510. In particular, the school may not prohibit students from expressing political messages simply because they may be divisive. *See Taylor*, 713 F.3d at 51 (holding the school district is "not at liberty to suppress or punish speech simply because they disagree with it, or because it takes a political or social viewpoint different from . . . that subscribed to by the majority."). On the contrary, student political speech enjoys esteemed protection under the First Amendment. *Morse v. Frederick*, 551 U.S. 393, 403

(2007)(holding student political speech was “of course, is at the core of what the First Amendment is designed to protect”).

Here, SMSD did not sponsor the event and given the national scope of the walkouts, no reasonable student, parent, or member of the public would think that protest speeches bore the imprimatur of the district. Therefore, SMSD had no legal authority to limit student speech that it deemed overly political. Instead, SMSD would only be justified in restricting speech subject matter if it had a reasonable apprehension of disruption. Neither SMSD nor individual administrators expressed any concerns about disruption. Moreover, an argument that political discussion is inherently disruptive is antithetical to the free speech clause and factually false.

### Conclusion

The district’s aggressive censorship tactics have resulted in a variety of injuries to students. ██████ was pushed, interrupted, and prevented from exercising her First Amendment right to speak. ██████’s speech was chilled and she has been discouraged from speaking out in the future. Undoubtedly many other students received the same message as ██████ that attempts to exercise their constitutional rights in the future would be met with discipline and possibly physical force. Moreover, a number of students at Hocker Grove and Shawnee Mission North have been disciplined for respectfully resisting SMSD’s unconstitutional attempts to silence them.

These injuries cannot be remedied by the District’s internal investigations and blanket apologies. Concrete and transparent actions are necessary to remove the chill SMSD’s conduct imposed on future protected activity. If SMSD does not contact ██████ ██████ and the parents of other impacted students by May 3, 2018, we will move forward with legal action. Please contact me if you have any questions.

Sincerely,



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