

May 24, 2018

Dr. Dale Herl
Superintendent
Independence School District
201 North Forest Avenue
Independence, Missouri 64050
By fax to (816) 531-5680
By email to dale_herl@idschools.org



Re: Kylan Scheele Graduation

Dr. Herl:

As you are aware, Kylan Scheele, a Truman High senior, is facing disproportionately harsh discipline for a senior prank that harmed no one. This letter is effort to urge you to take corrective action on your own to permit Mr. Scheele to participate fully in the remaining graduation exercises.

Mr. Scheele engaged in entirely non-violent, off-campus expressive activity by posting to Craigslist. It is obvious to any reasonable person that the posting of a "for-sale" advertisement for the school from which he and about 400 others are poised to graduate is a prank.¹ It was not a threat: real or implied. Perhaps with the most cynical of minds one could conjure something nefarious in Mr. Scheele's post, but it took minimal investigation to determine that there was never any threat. And the posting was done with the email address of seniorsrule2k18@gmail.com, which is a good hint that it was a joke.

Continuing to punish Mr. Scheele for some folks' completely unreasonable interpretation of his words is violative of his First Amendment and due process rights. It is also unnecessary.

¹ Most people recognize this is quite clever. *See, e.g.*, "Senior Prank Lists Auburn High School for Sale on Craigslist," <http://www.mystateline.com/news/senior-prank-lists-auburn-high-school-for-sale-on-craigslist/1194657381> (showing how reasonable school officials respond to such a prank); "Scottdales' Chaparral High School 'Listed for Sale' on Craigslist as Part of Senior Prank," <http://www.fox10phoenix.com/news/arizona-news/scottsdale-chaparral-high-school-listed-for-sale-on-craigslist-as-part-of-senior-prank>; "Students Put Texas High School up for Sale on Craigslist as Senior Prank," <https://www.statesman.com/news/students-put-texas-high-school-for-sale-craigslist-senior-prank/xV0yEkw7Ig3ZwKuJuriVxK/>; "Cane Bay High School Listed Cheap in Craigslist Ad," <http://abcnews4.com/news/education-news/cane-bay-high-school-listed-cheap-in-craigslist-ad>.

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Jeffrey Mittman
Executive Director

If needed, we will explain the First Amendment and due process issues to you in court papers.² Today I appeal to you to make the just decision for Mr. Scheele, the District, and its students.

No reasonable person would have felt threatened by the for-sale listing for Truman High. Everyone knows there was never any intent to convey any kind of threat: not real, not implied. Pretending that there was something to fear here, as your punishment does, tells students that they should live in fear. *America was not built on fear.*

You know that it was Mr. Scheele who posted the advertisement for one reason only: he told school officials that he was the author. The *buck stopped* with him. Your continued punishment tells students that they should hide from responsibility, not take it.

Mr. Scheele apologized. That is impressive under the circumstances—where a couple of people (at most) unreasonably read a threat of violence into a writing that had no hint of it. But he has sincerely apologized. Continuing to punish Mr. Scheele tells students *don't ever apologize for anything.*

A District that teaches students to live in fear, avoid responsibility, and never apologize is weak. It does not prepare students to participate in the world. *Without a strong educational system, Democracy is crippled.*

There is still time for you to send a much better message: that the District has empathy, respects students who take responsibility, and forgives those who apologize. Mr. Scheele is a model student you should be promoting. His actions after learning that at least one person unreasonably interpreted his joke have been honorable. He is also a very good student, with a grade point average in excess of 3.9 and a barren record of discipline.

As Superintendent, you can make things right by permitting Mr. Scheele to participate in graduation exercises. Please respond to this letter no later than tomorrow at 10 a.m.³ If the District does not change course, we will consider prompt legal action.⁴ *There is some risk involved in action, there always is. But there is far more risk in failure to act.*

Sincerely,



Anthony E. Rothert
Legal Director

² Spoiler alert: your rules are extremely vague. The ACLU of Missouri would willing to collaborate with you on improving your school discipline policies. See, e.g., <https://tinyurl.com/ydepq7dy>.

³ Email is good: trothert@aclu-mo.org. I take faxes at (314) 652-3112.
Call if you would like: (314) 669-3420.

⁴ You will need to be prepared to explain the discrepancy between your discipline of Mr. Scheele and lack of similar action against student speech that could reasonably be interpreted as threatening.