

## Score One for Superintendent: Fact Findings on Student's Gesture Upheld

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A recent opinion of the Michigan Court of Appeals (*Kloberdanz v Swan Valley School District*, No. 256208, Jan. 31, 2006) affirmed a school superintendent's decision to suspend a high school student who stuck two fingers into his mouth during a presentation in Language Arts class, in a gesture the presenter took as sexual.

The student insisted he meant to express boredom—he was pretending to shoot himself in the mouth, the student said—and he said he directed the gesture at a buddy.

The superintendent interviewed everyone who saw the gesture, but that included only the student, his friend and the presenter. The student and his friend gave consistent versions of the incident. The presenter, a high school counselor, described the student as looking first at her, then at his friend, and then inserting two fingers slowly into and out of his mouth. The counselor said she believed the gesture was sexual and she was embarrassed by it.

Faced with conflicting accounts of the incident, the superintendent credited the counselor's version and the Court of Appeals affirmed the superintendent's determination. Further, it agreed with the superintendent that the student's conduct constituted "gross misdemeanor" under the School Code, MCLA 380.1311(1). The Appeals Court acknowledged, as well, that the student's conduct was a clear violation of the Swan Valley High School Student Handbook. Finally, the Court concluded that, while less than perfect, the due process afforded to the student was adequate for a short-term suspension of fewer than ten days.

School districts should learn from *Kloberdanz* that (1) a court is likely to defer to the reasonable, careful investigations and findings of school officials; (2) school conduct codes should be regularly reviewed and updated for many good reasons—including that they may be helpful in defending disciplinary actions; and (3) affording due process appropriate to the circumstances is vital in student discipline cases.

For more information on this alert or other matters of Education Law, please contact our Labor Group; or Beverly Hall Burns at (313) 496-7508, email: [burns@millercanfield.com](mailto:burns@millercanfield.com); or Michelle P. Crockett at (313) 496-7655, email: [crockett@millercanfield.com](mailto:crockett@millercanfield.com), in Miller Canfield's Detroit office.