

# Judge rules in favor of Wake student suspended for fighting

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**RALEIGH** -- A Superior Court judge ruled Monday that the Wake County schools should not have suspended a student for fighting at a school bus stop, a decision that could discourage the district from suspending students for off-campus altercations.

Wake school officials had argued that they could suspend a Millbrook High School student for the rest of the school year for a fight at a bus stop even though the incident had taken place off campus. But Superior Court Judge Carl Fox backed the student, saying Wake had no jurisdiction because the fight didn't happen in school, on school property, at a school-sponsored event or related school activity.

Fox's ruling isn't binding on other cases unless it's upheld by an appellate court. The school system has not decided whether to appeal.

"We'll need to review the issue with our attorneys," said Michael Evans, a Wake schools spokesman.

Jason Langberg, an attorney for Advocates for Children's Services, said he hopes the decision causes Wake schools officials to issue fewer suspensions for off-campus fights. Neither Langberg nor Advocates for Children's Services, a project of Legal Aid of N.C., were involved in Monday's case.

"At a time of tight budgets, Wake shouldn't be spending money on an appeal," Lang berg said.

According to the court order, the student, then a freshman, exchanged heated words with an East Millbrook Middle School student at or adjacent to a bus stop on Sept. 10, 2009. The Millbrook High student struck the middle school student twice in the face. The middle school student did not fight back.

The East Millbrook student arrived at school with a bleeding, swollen lip and a bruise on his cheek, according to the court order. Fox wrote that the student wrote a statement about what happened. The court order doesn't mention whether police were notified.

The Millbrook High student "freely admitted striking (the other student) because he was 'mad' about being called names," Fox wrote.

The Millbrook High student was suspended for the rest of the school year, a decision upheld by then-Superintendent Del Burns. The school board modified the suspension in April to recommend that the student be placed at an alternative school for the remainder of the school year.

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The school district cited a board policy saying the student code of conduct applies at any time or place, on or off campus.

The student appealed in court, leading to Fox's order that the suspension should be removed from his record. Fox cited the section in state law saying that long-term suspensions for physical assaults that take place off campus must be at a school-sponsored or school-related activity.

Mark Trustin, the attorney representing the suspended student, said he couldn't comment specifically on the case. But he said that hypothetically the kind of ruling Fox gave would be limited to suspensions involving physical assaults and not apply to other kinds of suspensions for off-campus behavior.

Deborah Stagner, the attorney representing Wake in the case, said she couldn't comment until she saw the court order.

The ruling came out the same day that Langberg, the Legal Aid attorney, issued a report critical of Wake's suspension policies. Langberg acknowledged that Wake has been reducing the number of suspensions, but he said the data still shows that minority students are disproportionately suspended.

The U.S. Department of Education's Office for Civil Rights is looking at the suspension data as part of its investigation into the NAACP complaint filed over the school board's elimination of the use of socioeconomic diversity in student assignment.

Wake has historically kicked students out of class when they received long-term suspensions. But the budget proposed last week by new Superintendent Tony Tata proposes adding 760 seats in alternative schools that could be used in lieu of suspensions

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