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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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McGraw, Justice, dissenting:

Ms. Bender started a challenging nursing program under certain conditions, and I believe she should have been able to complete the program under the same conditions that applied when she started. Ms. Bender signed up, if you will, for a ten mile race, but during the running of it, the school decided to add an extra mile. While a Marine Corps drill instructor might make such a change for psychological reasons, I don't think the school should have been able to do that to Ms. Bender.

Several details of the program suggest that the school's choice of scheduling classes make it difficult to complete, even under the best of circumstances. One must finish in five years, but many required courses are only offered once a year. As the majority points out, Ms. Bender lost a semester when poor grades required her to repeat a class. We do not know why it is Ms. Bender performed poorly that semester, but certainly she is not the first student to do so. A student might face the birth of a child, the death of a parent, or a serious illness during his or her course of study, any of which might result in a poor outcome for grades. But under the program as described, that student faces a difficult challenge in completing the program, caught between a limited schedule and a five year limit.

But in spite of the scheduling obstacles created by the school, Ms. Bender still completed the program, and would have successfully graduated if the school had applied the same rules her last semester that it had established at the beginning. Instead, Ms. Bender finds herself with her degree not quite complete, and with no opportunity to complete it. After spending several years of her life working toward the goal of a degree, she has been told by the school to try something else.

Obviously it is important for all of Ms. Bender's potential future patients that she be well educated and well trained. But I don't believe that the difference between a 70 and a 75 necessarily makes her a bad nurse. I imagine that there were other nursing students who finished the program one year before Ms. Bender did who scored between 70% and 75% in a class and still passed that class and graduated from the program. No reasonable person would suggest that such individuals, now nurses, should be sent back to school.

My comments in no way imply that a school should not have the ability to change the requirements of one of its programs. Education is a constantly changing endeavor, and schools must be free to incorporate new advances into their existing curriculum. However, if a school does make such a change, I feel it should allow students who began their study before that change to finish under the old rules, or it should at least make some allowance when that change prevents a student from graduating.

In short, I think that the school made a deal with Ms. Bender when it enrolled her and took her tuition money, and she should have had the benefit of that deal throughout her studies. The majority indicates that Ms. Bender held up her end, and I believe the school should have been required to hold up its end as well.

Therefore, I respectfully dissent.