

FILED
December 19,
2007

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, Justice, concurring:

I write separately to make clear that I find Appellant's conduct in beating his young son to be deplorable, cruel and worthy of punishment. Based upon this behavior, I am also concerned with his ability to control his anger when dealing with his students. It is necessary, however, to observe that the State Superintendent of Schools did not meet his required statutory burden of proof to revoke Appellant's teaching certificate on the basis of this reprehensible conduct.

It is undisputed that the county board of education disciplined Appellant relating to his conduct toward his son by suspending him without pay. The county board of education specifically rejected a recommendation by the county superintendent of schools to terminate Appellant's employment. Pursuant to W. Va. Code § 18A-3-6 (2004), the State Superintendent of Schools may not revoke a teacher's license or certificate to teach based upon conduct for which the county board of education imposed any discipline less than dismissal "*unless* it can be proven by *clear and convincing evidence*" that the teacher committed an offense set forth within the statute *and* the actions render him "*unfit to teach.*"

W. Va. Code § 18A-3-6 (emphasis added). Further, where, as here, the statutory offense is cruelty, the State Superintendent of Schools must also demonstrate that there is “a *rational nexus* between the conduct of the teacher and the performance of his or her job.” *Id.* (Emphasis added).

As noted by the majority, Appellant did not challenge the Superintendent’s finding that Appellant’s conduct constituted cruelty. The challenge herein was to the finding that he was unfit to teach, including whether a rational nexus was demonstrated between the cruelty finding and his fitness to teach. It is the duty of the State Superintendent of Schools to affirmatively meet his burden of proof to impose an enhanced penalty. Where there has been no attempt to explain how Appellant’s conduct toward his child impacts his fitness to teach or violates the generalized standards of teacher conduct relied upon by the State Superintendent of Schools to support his suspension order, the statutory requirement of clear and convincing evidence is not met. Similarly, the State Superintendent of Schools failed to articulate the rational nexus between the cruelty finding and Appellant’s fitness to teach. While there may indeed be a rational nexus between Appellant’s conduct toward his young son and his fitness to teach, the State Superintendent of Schools’ failure to clearly articulate the same is fatal to his attempt to suspend Appellant’s teaching certificate for a period of four years. Absent strict compliance with the statutory requirements, the State Superintendent of Schools’ order to suspend Appellant’s teaching certificate does not survive the current

legal challenge. Accordingly, while Appellant's conduct was horrendous, I must concur with the majority decision in this matter due to the State Superintendent of Schools' failure to meet his requisite burden of proof as required by law. The punishment set by the county board of education therefore should be reinstated.