

IN THE MATTER OF

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BEFORE THE BOARD

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OF EDUCATION OF

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CARROLL COUNTY

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DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This is an appeal before the Board of Education of Carroll County (“the Board”) pursuant to Md. Code Ann., Educ. § 4-205(c) brought by _____ concerning decisions rendered by Mr. Nicholas R. Shockney who, as the Superintendent’s Designee, upheld the decisions by the Reconsideration Committee rejecting _____ requests that two novels, *The Kite Runner*, by Khaled Hosseini, and *Homegoing*, by Yaa Gyasi, be removed as instructional materials and from school libraries. For the reasons discussed more fully below, we shall affirm Mr. Shockney’s decision retaining both books as instructional materials. However, we shall remand for further consideration Mr. Shockney’s decision regarding the availability of both books from general circulation without restriction in school libraries.

STANDARD OF REVIEW

In reviewing the decision of the Superintendent or the Superintendent’s Designee, the Board applies the standard set forth in COMAR 13A.01.05.06A. Pursuant to this standard, the Board will not substitute its judgment for that of the Superintendent or the Superintendent’s Designee unless the decision was arbitrary, unreasonable, or illegal. *Id.* A decision may be arbitrary or unreasonable only if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion. COMAR 13A.01.05.06B. Finally, appellants challenging a decision of the Superintendent or the Superintendent’s Designee bear the

burden of proving a decision arbitrary, unreasonable, or illegal by a preponderance of the evidence.
COMAR 13A.01.05.06D.

FINDINGS OF FACT

initiated two reconsideration requests concerning *The Kite Runner* and *Homegoing* contending that both books amounted to “pornography” and that their use in the schools violates Section 11-203 of the Criminal Law Article of the *Annotated Code of Maryland*.¹ In her two requests for reconsideration, [redacted] admitted that she hadn’t read either of the books. She nonetheless answered “no” to the question of whether there were any “good sections” included in either book. The Reconsideration Committee members read both books and, after reviewing the books voted to retain them.

[redacted] then appealed those decisions, and the Superintendent designated Mr. Shockney to review the appeals and to render a decision. Mr. Shockney also read both books and, after considering the merits, issued two letters dated December 18, 2023, wherein he advised [redacted] of his decision to uphold the Reconsideration Committee decisions on both books.

In his decisions, Mr. Shockney noted that both books had previously gone through the instructional material approval process and were approved both by the Curriculum Council and by the Board and that both books were approved as instructional materials for upper level and Advanced Placement literature courses. Although Mr. Shockney found that both books contain “strong content, including sexual content,” and that both books were “borderline when it comes to meeting the criteria of ‘does not contain sexually explicit content,’” he reasoned that the sexual content was “more implicit than explicit” and that “CCPS has developed procedures and trained

¹ Md. Code Ann., Crim. Law §11-203, prohibits the sale or display of certain “obscene” items to minors, subject to certain exceptions, including, but not limited to, materials of “serious artistic, educational, literary, political, or scientific value.”

staff on the use of instructional materials that contain strong content.” Ultimately, given the continued use of both books, the overwhelming approval of both books by the Curriculum Council and the Board, and the use of both books in upper level literature and AP classes, subject to CCPS procedures on the use of material with strong content, Mr. Shockney determined that the Reconsideration Committee’s decisions on both books would be upheld because they were not arbitrary, unreasonable, or illegal.

_____ then appealed both decisions to this Board. In her Appeal Information Form, _____ maintains that Mr. Shockney’s decisions violate Board Policy restricting sexually explicit materials and that the availability of both books violates Section 11-203 of the Criminal Law Article of the *Annotated Code of Maryland*. _____ has not sought a hearing before the Board.

CONCLUSIONS OF LAW

In preparation for the appeals,² the Board members were provided copies of both books which were reviewed and considered along with the record. This Board rejects _____’s contention that *The Kite Runner* and *Homegoing* meet the criminal law definition of “obscene” materials as prohibited under Section 11-203 of the Criminal Law Article of the *Annotated Code of Maryland*. Although the books contain some strong scenes and sexual references, there is absolutely no doubt that they fall within the statutory exception for works of “serious artistic, educational, literary, political, or scientific value.”

We also affirm Mr. Shockney’s decision that both books should remain available for upper level instruction and advanced placement classes where trained educators are able to follow the

² Because the two appeals concern common issues and a common procedural time-line, they are consolidated into a single appeal even though there are two books involved.

CCPS *Instructional Guidelines for Use of Text Containing Strong Content*.³ To that end, the Board recognizes that both books have gone through Curriculum Council scrutiny and Board approval and that the students who take these classes have typically demonstrated a higher level of academic ability than the general student population. Even so, these guidelines provide not only instructional safeguards but also an important safety valve whereby “alternative text and learning activities will be provided to students if they or their parents/guardians object to the use of an assigned text.” Accordingly, in such a curricular setting with careful instructional and parental safeguards in place, we are persuaded that the use of both books is appropriate.

We have a greater concern, however, with respect to the more general availability of these books in high school media centers where there are generally no instructional or parental safeguards in place and where materials are generally available to all students in grades 9 through 12. The fact that neither book falls within the criminal law definition of “obscene” does not end the inquiry as to whether the books nonetheless fall within the parameters of Board Policy IIAA. We believe that this inquiry with respect to the availability of *The Kite Runner* and *Homegoing* for general circulation on high school library shelves merits additional consideration separate and distinct from the inquiry regarding the instructional use of these books. To that end and with that limitation, this Board remands this appeal back to Mr. Shockney for further consideration.

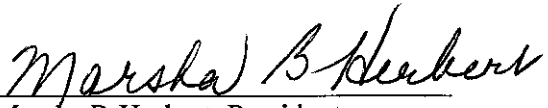
DECISION

For the reasons discussed above, this Board affirms the decision of Mr. Shockney as the Superintendent’s Designee with respect to the continued availability of *The Kite Runner* and *Homegoing* as instructional material. We reject _____ contention that these books fall within the definition of “obscene” as set forth in Section 11-203 of the Criminal Law Article of

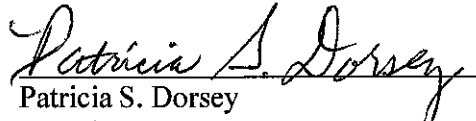
³ Under these guidelines,

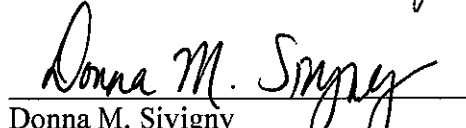
the *Annotated Code of Maryland*. We further remand this appeal back to the Superintendent's Designee for further consideration as to whether the books in question should be made available for general circulation within high school libraries consistent with Board Policy IIAA. Should she choose to do so, _____ may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty days of the date of this decision.

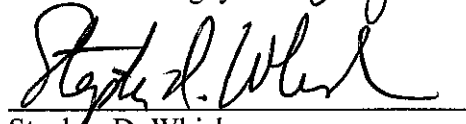
May 8, 2024


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