

JESSICA BRONSON,  
  
Appellant  
  
v.  
  
CARROL COUNTY BOARD  
OF EDUCATION,  
Appellee.

BEFORE THE  
  
MARYLAND  
  
STATE BOARD  
  
OF EDUCATION  
  
Order No. OR24-20

### ORDER

Appellant requests that this Board reconsider its March 26, 2024 order in *Jessica Bronson v. Carroll Cnty. Bd. of Educ.*, MSBE Order No. OR24-13, denying her facial challenge of Carroll County Board of Education (“local board”) Policy IIAA – Selection, Evaluation, and Adoption of Instructional Materials which contains a provision prohibiting all instructional materials that contain sexually explicit material, other than those related to Family Life and Human Development or as otherwise approved by the Superintendent. We found that the Appellant failed to meet her burden to demonstrate that Policy IIAA is unconstitutional on its face. We stated that it was too early in the review process to determine if the policy will be applied in a nondiscriminatory manner related to legitimate pedagogical concerns of educational suitability in accordance with the Constitution, and federal and State law given that a challenge to the application of the policy was not before us. *See* MSBE Order No. OR24-13.

The Appellant filed a request for reconsideration and a supplement to the request. The Appellant raises new legal arguments of constitutional overbreadth not previously raised in her appeal. She also maintains that the State Board should reconsider its decision based on changes made on August 19, 2024, to the Carroll County Public Schools (“CCPS”) Administrative Regulation (“AR”) IIAA which implements Policy IIAA.<sup>1</sup> The local board filed a response addressing both filings.

#### *Motion for Reconsideration Standard*

A decision on a request for reconsideration shall be made in the discretion of the State Board except that a decision may not be disturbed unless there is sufficient indication in the request that:

- (1) The decision resulted from mistake or error of law; or
- (2) New facts material to the issues have been discovered or have occurred subsequent to the decision.

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<sup>1</sup> The local board does not enact the administrative regulations, rather they are put into place by the local Superintendent. (Shockney Affidavit).

COMAR 13A.01.05.10.D. The State Board may refuse to consider facts that the party could have produced while the appeal was pending. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10.G.

*No Mistake or Error of Law*

The Appellant raises new arguments that Policy IIAA is unconstitutionally overbroad because it is devoid of the considerations set forth in *Miller v. California*, 413 U.S. 15 (1973) and Md. Code Ann., Crim. Law §11-203(a)(5)(i)-(iii). The *Miller* case established the obscenity standard under the First Amendment. Section 11-203(a)(5)(i)-(iii) defines “obscene” as used in Maryland’s criminal law prohibiting the advertisement, sale, display, or distribution of obscene materials to minors. These new arguments do not warrant reconsideration of our decision as they fail to demonstrate any mistake or error of law.

*No New Material Facts Discovered or Occurred Subsequent to Decision*

The Appellant maintains that the State Board should reconsider its decision based on changes made on August 19, 2024, to language in AR IIAA regarding the general selection criteria used in selecting and evaluating instructional materials and the tiered review system for selection of media center materials. She claims that the language confirms the local board’s intent to have Policy IIAA applied in a manner that will unconstitutionally ban materials with “sexually explicit content” without regard to what is age appropriate. As pointed out by the local board, this is regulatory language that preexisted the State Board’s decision and was not a change made to AR IIAA on August 19, 2024. Thus, these arguments fail to meet the reconsideration standard because they are not new material facts discovered or occurring subsequent to the State Board’s decision.

The Appellant also argues that amendments made to AR IIAA on August 19, 2024, that reduce the time frames for appealing decisions concerning reconsideration of instructional materials under Policy IIAA, should trigger the State Board’s reconsideration of Policy IIAA because our previous order, MSBE Order No. OR24-13, contemplated there may be future challenges based upon application of Policy IIAA. We do not find the alteration of the appeal time frames in AR IIAA to be material and the regulatory changes do not impact our prior decision as to the facial challenge of Policy IIAA. The Appellant’s facial challenge to the constitutionality of Policy IIAA failed, and individuals can still bring as-applied challenges of the Policy to the State Board in the future.

Because the Appellant has failed to provide an adequate basis for reconsideration of MSBE Order No. OR24-13, it is this 3rd day of December, 2024, ORDERED, by the Maryland State Board of Education, that the request for reconsideration is denied.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

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Joshua L. Michael  
President