

JANIS SARTUCCI, ET AL.,

Appellant
v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-43

OPINION

INTRODUCTION

Appellants challenge the Montgomery County Board of Education's (local board) decision to approve the purchase of Promethean interactive classroom technology products (Promethean boards) under the Maryland Education Enterprise Consortium (MEEC) contract. The local board filed a Motion to Dismiss arguing that Appellants lack standing to bring this appeal or, in the alternative, a Motion for Summary Affirmance maintaining that its decision should be upheld. Appellants opposed the Motion and the local board replied.

FACTUAL BACKGROUND

On September 11, 2012, the local board approved a resolution for the purchase of Promethean boards pursuant to the State of Maryland Contract 050B780023 subject to approval by the Montgomery County Council. Appeal, Attach. B at 3. The contract, however, expired before the Montgomery County Council approved the local board's request. Appeal, Attach. A. Thus, on December 11, 2012 the local board amended its earlier resolution to authorize the purchase through the MEEC rather than the expired contract. *Id.*

The MEEC contract allows its member institutions to contract with several vendors for the "purpose of providing computer hardware and service." Reply of Local Board, Ex. A at 1. Under MEEC, member institutions can place orders with any of the selected vendors for items in one or more of the six product categories. *Id.* The six product categories included in the contract are: (1) Desktop and Portable Computers, (2) Data Storage Devices, (3) Server Class Computers, (4) Network Hardware and Appliances, (5) Virtual Computing Systems, and (6) Peripherals¹. *Id.* The Promethean boards in question fall into category six: peripherals. Reply of Local Board, Ex. B at 8-9.

Member institutions may only place orders with vendors that have been awarded a master contract. Reply of Local Board, Ex. A at 1. Dell entered into such a contract with MEEC. Reply of Local Board, Ex. B. In terms of peripherals, Dell offers its own products as well as those of third-party brands. *Id.* at 8. Promethean is one of those brands. *Id.* at 9.

¹ A peripheral is a device that is attached to a host computer, like a monitor, a mouse, or a printer. Reply of Local Board, Ex B. at 8.

Appellants argue that the local board's decision violates Maryland state education procurement law because the MEEC contract does not cover the purchase of bulk quantities of Promethean products. Appeal at 1. Thus, Appellants claim that the December 11 resolution to purchase these products pursuant to MEEC is invalid and unenforceable. *Id.*

STANDARD OF REVIEW

When the State Board explains the true intent and meaning of State education law and State Board rules and regulations, we exercise our independent judgment on the law's meaning and effect. COMAR 13A.01.05.05(E).

LEGAL ANALYSIS

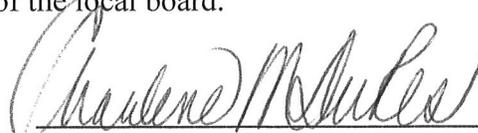
Appellants allege that the local board's decision to purchase Promethean boards through the MEEC contract violates Maryland state education procurement law because the MEEC contract does not cover the purchase of bulk quantities of Promethean products. Although Appellants do not specify the statute they contend is being violated, we assume they are referring to section §5-112 of the Education Article which outlines the requirements for certain local board of education procurements.

The local board maintains that it did not violate Maryland state education procurement law because the standards set forth in §5-112 do not pertain to the purchase at issue. Section 5-112(a)(3) states that the statute does not apply to "a county board's participation in contracts for goods or commodities that are awarded by other public agencies or by intergovernmental purchasing organizations if the lead agency for the contract follows public bidding procedures." Md. Educ. Code Ann. § 5-112. Through a public bidding procedure, MEEC contracted with Dell, which sells its own products and third-party products, including Promethean boards. The boards are specifically listed in the contract as 'peripherals.' Thus, the local board's purchase of Promethean boards under the MEEC contract falls under this exception.

Moreover, Appellants' argument that the Promethean boards are not covered under the contract because 'peripherals' are intended to be purchased only in addition to larger purchases of other items, like computers, lacks merit. The MEEC contract states that member institutions can place orders with any of the selected vendors for items in one or more of the six product categories. Peripherals are one of those categories. Reply of Local Board, Ex. A at 1. Although 'peripherals' are generally unable to function without a host computer, the MEEC contract does not preclude the purchase of 'peripherals' alone. Reply of Local Board, Ex. B at 8.

CONCLUSION

For these reasons, we affirm the decision of the local board.


Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.
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Linda Eberhart
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S. James Gates, Jr.
S. James Gates, Jr.

Absent
Luisa Montero-Diaz

Absent
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Donna Hill Staton
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Guffrie M. Smith, Jr.
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August 27, 2013