[J-83-2025] [MO: Brobson, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

STATE COLLEGE AREA SCHOOL DISTRICT,	:	No. 86 MAP 2024
Appellant	:	Appeal from the Order of the Commonwealth Court at No. 337 CD 2022 dated October 2, 2023, Affirming the Decision of the
v.	:	Department of Human Services, Bureau of Hearings and Appeals at Nos. 018-16-0030M, 018-16-
DEPARTMENT OF HUMAN SERVICES,	:	0031M, 018-16-0032M, 018-16-
Appellee	:	0033M, 018-16-0034M and 018-16-0035M dated March 10, 2022
	:	ARGUED: October 8, 2025

CONCURRING OPINION

JUSTICE MUNDY **DECIDED: November 17, 2026**

I concur with the Majority's resolution of the narrow question upon which we granted allowance of appeal: that a school district meets the statutory definition of a "children's institution" such that it is subject to the supervisory authority of the Department of Human Services (DHS). Maj. Op. at 31 (interpreting 62 P.S. § 901). However, I write separately to highlight the troubling consequence of the Majority's holding combined with our prior decision in *St. Elizabeth's Child Care Center v. Department of Public Welfare*, 963 A.2d 1274 (Pa. 2009). In *St. Elizabeth's*, this Court upheld DHS's exercise of its supervisory authority to order a nonprofit child day care center operating without a "certificate of compliance" to cease and desist its operations. *St. Elizabeth's*, 963 A.2d at 1278. As applied in this case, that combination allows DHS to wield its supervisory authority to shut down the before and after school extended learning program established

by State College Area School District (District) based on DHS's assertion that the District was operating an uncertified child care facility.

Here, in response to an anonymous parental complaint about the curriculum of the District's Community Education's Extended Learning (CEEL) Program, DHS visited six of the District's schools to inspect the CEEL Program and then issued the District a letter ordering the District to cease and desist the operation of the program because it constituted an "uncertified child care facility." Letter from Office of Child Development and Early Learning, 6/3/16 (R.R. at 51a). DHS did not note any health or safety concerns with any location's CEEL Program following its visits. Because DHS lacks the apparent statutory authority under Article IX to require a certificate or license for the operation of the not-for-profit CEEL Program and to order the District to cease and desist the program, absent the decision in *St. Elizabeth's*, I question that decision's reasoning and its continuing viability in light of the Majority holding. *See St. Elizabeth's*, 963 A.2d at 1280-82 (Saylor, J., dissenting). However, the District did not preserve or brief this issue, and it is beyond the scope of the issues upon which we granted allowance of appeal. Accordingly, I am constrained to concur in the Majority decision.

The Majority addresses the "valid" concern that this decision may "breed instances of administrative overreach and intrusion into school affairs." Maj. Op. at 33. Initially, it limits this decision to the facts of this case, noting that the CEEL Program is "fee-based" and replaced a similar program based on "outside payment." *Id.* However, the record belies any implication that the CEEL Program is a for-profit program subject to the licensure requirements of Article X, as DHS never contended the District's facilities were operated for profit, and the District's CEEL business plan demonstrated that it was a not-for-profit program. *See* DHS Bureau of Hearings & Appeals Adjudication, 4/27/18, at 5, finding of fact 19 (R.R. at 341a) ("The Department does not allege that Appellant's child

care facilities are operated for profit"); CEEL Business Plan, May 2015, at 3 (R.R. at 273a) ("CEEL is self-supporting, covering operational and allocated administrative expenses"). This is significant because one principal distinction between Article IX and Article X is whether the entity is operated on a for-profit or not-for-profit basis. *Compare* 62 P.S. § 901 (excluding from Article IX's definition of children's institutions "a family child care home or child care center operated for profit and subject to the provisions of Article X") *with* 62 P.S. § 1001 (defining a child care center subject to Article X as "any premises operated for profit in which child care is provided"). Article IX provides that if an inspection of a not-for-profit children's institution reveals any condition that DHS deems "unlawful, unhygienic, or detrimental to the proper maintenance and discipline of such State or supervised institution," then DHS has the power to direct the institution's management "to correct said objectionable condition in the manner and within the time specified by the department." 62 P.S. § 911(c). If the supervised institution does not comply with such an order, Article IX provides DHS with two forms of recourse: "the department may request the Department of Justice [now, the Office of Attorney General] to institute appropriate legal proceeding to enforce compliance therewith, or the department may withhold any State money available for such institution until such officer or officers comply with such direction." *Id.* Article IX, however, does not authorize DHS to require a not-for-profit children's institution to have a license or a certificate of compliance, and it does not explicitly authorize DHS to issue a cease-and-desist order to a children's institution operating without a certificate of compliance. *But see St. Elizabeth's*, 963 A.2d at 963 A.2d at 1277-78 (concluding DHS has the implied authority to issue a cease-and-desist order to a not-for-profit child day care center operating without a certificate of compliance). In this regard, I agree with then-Justice Saylor's dissent in *St. Elizabeth's*:

> [T]he Department has established a licensing scheme which extends beyond express statutory boundaries. . . . [T]he

> Department's implied powers are to be assessed against its enabling authority, which, again, establishes clear boundaries upon licensure. While the Department's health and safety concerns are vitally important, it does not sufficiently explain why its employees cannot inspect facilities and supervise the correction of health-and-safety related deficiencies outside a scheme of regulation centered on licensure.

Id. at 1281 (Saylor, J., dissenting).

The Majority further explains that its decision is the result of the statutory interpretation of the plain language of 62 P.S. §§ 901-02, pursuant to which we cannot consider the consequences of our interpretation. Maj. Op. at 34. As noted above, the Majority narrowly decides that DHS has supervisory authority over a school district's before and after school extended learning program. Nonetheless, DHS's actions in this case, in which it launched an investigation of the CEEL Program based on an anonymous complaint about the program's curriculum and then ordered it to cease and desist, may require us to reexamine the scope of that supervisory authority to ensure it conforms to the enabling legislation. As the Majority notes, the District did not ask us to revisit *St. Elizabeth's* in this case. *Id.* at 34 n.28. However, that may be warranted if DHS continues to expansively exercise its Article IX supervisory authority.

Justice Dougherty joins this concurring opinion.