

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES
BUREAU OF HEARINGS AND APPEALS**

**IN THE MATTER OF: Roots Learning Academy at Church of the Heights
 BHA Docket No.: B-26-05-01082
 Day Care Licensure**

**BRIEF IN SUPPORT OF APPELLANT’S MOTION FOR SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, MOTION TO DISMISS**

INTRODUCTION

Appellant Roots Learning Academy (“Roots”) is a hybrid and co-op homeschooling program. It meets just a few days per week, allowing homeschooled children to learn in a different venue, receive instruction in accordance with their home education programs, and interact with other homeschooled children. It incorporates parents in a way that traditional schools, public and private, do not. It is a program that makes sense when parents are conducting and supervising the education of their children, as Pennsylvania’s home education law requires. And it is the very type of resource that the Pennsylvania Department of Education suggests homeschooling parents use to satisfy their legal obligations under Pennsylvania’s compulsory attendance and home education laws. *See* PA. DEP’T OF EDUC., HOME EDUCATION AND PRIVATE TUTORING GUIDE 22, 35 (May 2026).¹

According to the Department of Human Services (“DHS”), however, the resources that the Department of Education encourages homeschooling parents to use in educating their

¹ *Available at* <https://www.pa.gov/content/dam/copapwp-pagov/en/education/documents/instruction/home-education-and-private-tutoring/home%20education%20and%20private%20tutoring%20guide.pdf>.

children are really “child care centers.” As DHS would tell it, there is traditional schooling and there is child care, and because Roots is not the former, it must be the latter.

While DHS is correct that Roots is not a private school—it meets only 90 days per year, for example, rather than the 180 days required of public and private schools—DHS is *incorrect* that Roots must therefore be a “child care center.” A child care center, according to the General Assembly, is a facility that provides care “*in lieu of* parental care.” 62 PA. STAT. § 1001 (emphasis added). Education provided as part of a parentally conducted and supervised home education program, under the oversight of the local public school superintendent, is not “care in lieu of parental care” and, thus, not “child care.” DHS’s determination to cram Roots into that regulatory box does not make it so.

In fact, DHS’s position is foreclosed by the U.S. and Pennsylvania Constitutions. Parents have a fundamental, constitutional right to choose the education that is best for their children, *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925), and DHS may not discriminate based on *how* parents exercise that right. Yet that is precisely what DHS’s construction of the statutory term “child care” does. Thankfully, this constitutional problem, as well as the others discussed below, are easily avoided by adopting the simple, commonsense construction that home education provided in compliance with Pennsylvania’s compulsory attendance law is not “care *in lieu of* parental care” and, thus, not “child care.” 62 PA. STAT. § 1001 (emphasis added).

For these reasons, as well as those discussed below and in the accompanying motion, DHS lacked authority to issue the cease-and-desist letter. It should therefore be dismissed.

ROOTS LEARNING ACADEMY

Roots Learning Academy (“Roots”) is an educational program for homeschooled children founded and operated by Katy Duckstein, a former public school teacher with a bachelor’s degree in math education and a master’s degree in educational leadership. *See* Declaration of Katherine Duckstein, Executive Director of Roots Learning Academy (hereinafter “Duckstein Decl.”) ¶¶ 2–4. It is designed to assist these children in partnership with their parents, and the children’s education is governed by Pennsylvania’s home education laws. *Id.* ¶ 5. Their parents merely utilize Roots, three days per week, to assist in providing: (1) core instruction (math, reading, writing, spelling, language arts, science, social studies, history, and geography) for four hours per day; and/or (2) extracurricular classes for two hours per day. *Id.* ¶ 6.² During the course of an academic year, these sessions meet for 90 days. *Id.* ¶ 7.³

At all times, a student’s home education program remains under the supervision of her parents. *Id.* ¶ 9. Roots’ *Policies and Procedures* manual provides that parents of participating children must “file as a homeschooling family under Pennsylvania Homeschool Law.” *Id.* ¶¶ 10, 11 & attach. A at 8; *see also id.* (providing that parents must “file with their home school district stating that they are homeschooling by August 1st”). Parents must also provide Roots a copy of the homeschooling registration paperwork that they are required to file with their local school districts. *Id.* ¶ 12. Roots, moreover, requires that parents: (1) “keep track of school days and account for 180 total days per year” (*i.e.*, days at Roots, combined with other instructional days);

² Some children participate only in the core instruction, some participate only in the extracurricular instruction, and some participate in both. Duckstein Decl. ¶ 6.

³ Roots operates a separate, standalone Christmas program for three weeks, three days per week, for a total of nine days. Duckstein Decl. ¶ 8. Some children participate only in this program, while others also participate in the core instruction and/or extracurricular classes. A child who participates in all three would attend, at most, 99 days per year. *Id.*

(2) “send their teacher their log/calendar at the end of the year before receiving their evaluation form”; and (3) “send evaluation paperwork into their home school district by June 30th each year.” *Id.* ¶ 13 & attach. A at 8, 9. Finally, parents must sign the manual, acknowledging that they “have read and understand the policies and procedures,” “agree to be responsible for making sure [their] children and family adhere to these school policies and procedures,” and “understand that any violations could be cause for dismissal from Roots Learning Academy without refund.” *Id.* ¶ 14 & attach. A at 11.

Roots relies heavily on parent volunteers to function, from teaching extracurricular classes to cleaning up classrooms. *Id.* ¶ 15. Its *Policies and Procedures* require that parents undergo and turn in a host of clearances before their child begins attending and that they renew these clearances every five years. *Id.* ¶ 16 & attach. A at 10.⁴ Roots also reserves the right to request a clearance renewal “at any point for any reason.” *Id.* ¶ 17 & attach. A at 10.

Finally, Roots enforces multiple policies typical of schools and other educational programs. For example, it maintains a class start time of 9:00 a.m., requests notification for tardy students, sends students home with homework, requires make-up work for absent students, effectuates a four-level discipline policy, and administers math assessments and test prep. *Id.* ¶ 18 & attach. A at 1, 3, 5, 10.

To be clear, however, Roots is not and cannot qualify as a private, or nonpublic, elementary or high school under Pennsylvania law. *Id.* ¶ 19. Such schools are required to be in session 180 days per year. *See* 22 PA. CODE § 51.61(b); 24 PA. STAT. § 13-1327(b). As noted

⁴ These clearances include the Pennsylvania Child Abuse History Certification, Pennsylvania State Police criminal-history check, a National Sex Offender Registry verification, and, for those who have not been a Pennsylvania resident for the entirety of the last 10 years, an FBI criminal-history check. Duckstein Decl. ¶ 16. Roots requires all four of these clearances for staff, regardless of their past residency. *Id.*

above, Roots' homeschool-based model means it is in session only half that time. Duckstein Decl. ¶ 19.

On March 12, 2026, Roots received a visit from representatives of the Office of Child Development and Early Learning. *Id.* ¶ 20. A few weeks later, its executive director, Katy Duckstein, received a cease-and-desist letter, dated April 1, 2026. *Id.* ¶ 21 & attach B. "On March 12, 2026," it stated, "our representative visited the premises located at 500 Salem Lane, Gibsonia, PA 15044-6164 and observed 40 children receiving child care services at this location. The Department hereby orders you to *cease and desist* operation of an uncertified child care facility." *Id.* ¶ 22 & attach. B.⁵

Certification, or licensure, would be no small matter for Roots. *Id.* ¶ 26. Of particular concern for Roots is the effect on parent involvement, which plays a crucial role in its day-to-day function. *Id.* Forced licensure would subject parent volunteers to onerous requirements, such as attending classes to obtain credentials, training at an approved agency, undergoing fire safety training, taking professional development classes, and more. *Id.*; *see also* 55 PA. CODE § 3270.31. It would likely dissuade some parents from participating, and it would require Roots to raise prices to hire administrative staff to maintain the influx of paperwork, assuming Roots could even keep its doors open. Duckstein Decl. ¶ 26.

In that light, Roots timely appealed the cease-and-desist letter. *Id.* ¶ 23. A prehearing conference was held on July 14, 2026, and a hearing date was set during that conference for

⁵ On July 27, 2026, Church of the Heights—which owns the Gibsonia property in which Roots leased space—informed Katy that, because of the cease-and-desist letter, it would no longer allow Roots to use that space (notwithstanding representations from DHS that it would not enforce against Roots during the pendency of this appeal). Duckstein Decl. ¶ 24. The children who attended Roots at that location are now attending one of Roots' two remaining locations: Harmony Baptist Church, 4103 Ellwood Rd, New Castle, PA, and St. John's Burry's Church, 1835 PA-68, Rochester, PA. *Id.* ¶ 25.

December 8, 2026. *Id.* Roots now moves for summary judgment or, in the alternative, to dismiss the letter.⁶

ARGUMENT

The cease-and-desist order should be dismissed because Roots Learning Academy is a homeschooling resource and not a “child care center” subject to the jurisdiction of the Department of Human Services (hereinafter “DHS”). In the words of the Pennsylvania Department of Education, Roots is a “source[] for obtaining curriculum and support for a home education program” under Pennsylvania’s compulsory and home education laws. PA. DEP’T OF EDUC., HOME EDUCATION AND PRIVATE TUTORING GUIDE 35 (May 2026). It assists homeschooling parents with the home education programs that *they* conduct and supervise, for *their* children, in compliance with *their* legal obligations, under the oversight of the superintendents of their local public school districts.

A child care center, by contrast, is a facility that provides “care *in lieu of* parental care.” 62 PA. STAT. § 1001 (emphasis added). Education provided in the course of a child’s parentally conducted and supervised home education program is *not* care “*lieu of*” parental care and, thus, not “child care.” To treat it as such, moreover, would lead to absurd and unreasonable results. DHS, for example, does not consider care provided during the hours of instruction in private or nonpublic schools—whether licensed by the Department of Education (hereinafter “DOE”) or not—to be “child care.” 55 PA. CODE § 3270.3(b)(4). Yet it insists that instruction provided as part of a child’s home education program *is* “child care,” even though it is an equally valid

⁶ Roots styles its motion primarily as one for summary judgment because it is supported by a declaration. Given that Pennsylvania’s civil procedure rules do not squarely apply to proceedings in this agency, however, Roots styles it, in the alternative, as a motion to dismiss. In either event, judgment should be entered in Roots’ favor and the cease-and-desist letter dismissed.

means of satisfying a parent's legal obligations under Pennsylvania's compulsory attendance law. DHS, moreover, exempts a whole host of educational *and non-educational* programs, including summer day camps, art schools, and basketball camps, from licensure, *see* 55 PA. CODE § 3270.3a(1), (3), yet it insists that the education a child receives in accordance with the compulsory attendance law is "child care." These absurd and unreasonable results that flow from DHS's construction of the term "child care" are reason enough to reject it.

Finally, applying the child care licensing requirement to Roots would violate the U.S. and Pennsylvania Constitutions. Parents have a fundamental, federal constitutional right to choose the education that is best for their children, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925), and DHS may not discriminate based on *how* parents exercise that right. Yet that is precisely what DHS's construction of the statutory term "child care" does. The serious constitutional problems arising from that construction are easily avoided by adopting the commonsense construction that education provided in compliance with a parent's legal obligations under Pennsylvania's compulsory attendance law, "under the direct supervision of [the] parent," 24 PA. STAT. § 13-1327.1(c), is not "care *in lieu of* parental care" and, therefore, not "child care," 62 PA. STAT. § 1001 (emphasis added).

1. Roots is a Resource that Assists Homeschooling Parents with the Home Education Programs that They Conduct and Supervise for Their Children

Roots does not provide "care in lieu of parental care." Rather, it assists homeschooling parents in complying with their obligations under Pennsylvania's compulsory attendance law. While every parent must provide an education for her children under that law, *see* 24 PA. STAT. § 13-1327, "[i]t is the policy of the Commonwealth to preserve the primary right and the obligation of the parent . . . to choose the education and training" that is best for her child. *Id.* § 13-1327(b). For that reason, the Commonwealth allows parents a great degree of discretion in

the particular type of education they provide for their children. While most parents send their child to a public school, a licensed private school, or a nonpublic nonlicensed school, *id.*

§ 13-1327(a), (b), (c), some choose to provide their children a “home education program.” *Id.* § 13-1327(d). Each choice is an equally valid means of satisfying the compulsory attendance law. *Id.*

A “home education program” is one that is “conducted . . . by the parent . . . of the child or children.” 24 PA. STAT. § 13-1327.1(a). The parent must serve as the “supervisor” of the program, *id.*, and the child’s education “is therefore under the *direct supervision* of his parent.” *Id.* § 13-1327.1(c) (emphasis added).

Parents who opt to provide a home education program for their children are subject to extensive legal requirements, as well as oversight by the superintendents of their local school districts. They must file an annual affidavit or declaration with the superintendent of the public school district in which they reside, certifying, among other things, that they will comply with the requirements of Pennsylvania’s homeschooling law. 24 PA. STAT. § 13-1327.1(b)(1). Parents must ensure that their child receives instruction for the requisite number of days or hours in state-prescribed subjects. *Id.* § 13-1327.1(c). They must maintain a portfolio of records and materials, including “a log, made contemporaneously with the instruction, which designates by title the reading materials used, samples of any writings, worksheets, workbooks or creative materials used or developed by the student and in grades three, five and eight results of nationally normed standardized achievement tests in reading/language arts and mathematics or the results of Statewide tests administered in these grade levels.” *Id.* § 13-1327.1(e)(1). They must submit their child’s portfolio for an annual written evaluation “by a licensed clinical or school psychologist or a teacher certified by the Commonwealth or by a nonpublic school teacher or

administrator.” *Id.* § 13-1327.1(e)(2). This evaluation must be based on an interview of the child and a review of the portfolio, and it must “certify whether or not an appropriate education is occurring.” *Id.* To constitute an “appropriate education,” the student must, among other things, “demonstrate[] sustained progress in the overall program.” *Id.* § 13-1327.1(a). Parents must submit this written evaluation to the superintendent of the public school district by June 30 of each year. *Id.* § 13-1327.1(h.1).

If, at any time, the superintendent has a reasonable belief that appropriate education may not be occurring, she or he may require an evaluation to be conducted within 30 days. *Id.* § 13-1327.1(i.1). Similarly, if the superintendent “has a reasonable belief that the home education program is out of compliance with any other provisions” of the home education law, she or he may request the parent to submit certification of compliance within 30 days. *Id.*

§ 13-1327.1(j.1). Failure to comply with these evaluation and certification requirements may subject the parent to a hearing. *Id.* § 13-1327.1(h.1), (i.1), (j.1). And “[i]f the hearing examiner finds that the evidence does not indicate that appropriate education is taking place in the home education program,” the student must be “promptly enrolled in the public school district of residence or a nonpublic school or a licensed private academic school.” *Id.* § 13-1327.1(l).

Although the child’s parent conducts and supervises the home education program, “[i]t is not necessary for” the parent “to deliver all instruction personally.” PA. DEP’T OF EDUC., HOME EDUCATION AND PRIVATE TUTORING GUIDE 35 (May 2026). As DOE recognizes, “[p]arents of homeschooled students often band together for sharing resources, ideas, and planned activities,” and “[a] number of organizations also offer services to homeschooled students, often for a fee.” *Id.* at 22. In fact, DOE provides an extensive list of “resource suggestions” for parents to utilize in their child’s home education program. *Id.* at 35. They include “homeschool cooperatives,”

“umbrella schools,” “individuals who specialize in particular subjects,” and “selective classes at a private school.” *Id.* As DOE explains, “all of these options are categorized as resources for home education programs and the source of educational materials is the supervisor’s”—*i.e.*, the parent’s—“prerogative.” *Id.* Again, the child’s education is “under the direct supervision of [the] parent.” 24 PA. STAT. § 13-1327.1(c).

Regarding homeschool cooperatives specifically, the DOE notes that they may be conducted “in formal and informal settings” and that “[p]arents use these associations for many reasons,” including “to share the responsibilities of teaching their children in areas of expertise,” “to trade or purchase books and other curricular materials,” and “to group together for various kinds of field trips, events, or extracurricular activities.” PA. DEP’T OF EDUC., HOME EDUCATION AND PRIVATE TUTORING GUIDE 48 (May 2026). DOE calls them “a great source” for “providing various kinds of support for those who homeschool.” *Id.* at 35.

Roots is one of the very types of resources that DOE suggests—even encourages—parents to utilize in conducting their home education programs in accordance with Pennsylvania’s compulsory attendance and home education laws. As explained below, it is not a child care center.

2. Roots is Not a “Child Care Center” Subject to DHS Jurisdiction

The cease-and-desist order should be dismissed because DHS’s licensing authority extends to “child care” centers, and education provided in the course of a child’s parentally supervised home education program is not “child care.” DHS thus had no authority to issue the cease-and-desist letter to Roots.

DHS is statutorily empowered to require licensure of “child care center[s].” 62 PA. STAT. §§ 1001, 1002. A “child care center” is defined as a “premises operated for profit in which *child*

care is provided simultaneously for seven or more children who are not relatives of the operator, except such centers operated under social service auspices.” 62 PA. STAT. § 1001 (emphasis added). “Child care,” in turn, is defined, in relevant part, as “care *in lieu of parental care* given for part of the twenty-four hour day to children under sixteen years of age, away from their own homes.” 62 PA. STAT. § 1001 (emphasis added); *see also* 55 PA. CODE. § 3270.4 (defining “child care experience” as “[c]are for a child *in lieu of care by the parent or guardian* for part of a 24-hour day” (emphasis added)).

Roots does not provide care “*in lieu of parental care*.” 62 PA. STAT. § 1001 (emphasis added).⁷ Rather, it is an integral part of participating children’s home education programs, which are “conducted” by and “under the direct supervision of . . . parent[s],” who are exercising their “primary right and the obligation” to educate their children. 24 PA. STAT. § 13-1327.1(a), (c); *id.* § 13-1327(b). As noted above, it is one of the very types of resources that the Department of Education suggests that homeschooling parents use to educate their children. According to DHS, however, it is “child care.” It is no such thing.

In fact, DHS itself recognizes that, at least for most children, services procured by their parents in satisfying their compulsory attendance requirements is not “child care” subject to licensure. For example, DHS fully exempts “[c]are provided during the hours of instruction in nonpublic schools” from child care licensure, even if the school is not licensed by DOE. 55 PA.

⁷ Nor, for that matter, does Roots operate “for profit,” Duckstein Decl. ¶ 27, which is another element of the definition of “child care center.” 62 PA. STAT. § 1001. That is yet another reason why DHS lacks licensing authority over Roots. However, Roots recognizes that this argument is currently foreclosed by *St. Elizabeth’s Child Care Center v. Department of Public Welfare*, 600 Pa. 131, 963 A.2d 1274 (2009). There, the Pennsylvania Supreme Court held that, notwithstanding the “for profit” element in the definition of “child care center,” the Department may require licensure of non-profits that otherwise meet the definition. Roots maintains that *St. Elizabeth’s* was wrongly decided and hereby preserves that argument for eventual consideration by the Pennsylvania Supreme Court.

CODE § 3270.3(b)(4).⁸ It defines “school-age care” as child care provided “during the hours when a child is not required to attend school.” 55 PA. CODE § 3270.4. And it even provides that “a child care facility may not admit [a] child for care during the hours when the child is required by law to attend public or private school.” *Id.* § 3270.241(a).

This approach reflects common sense: education provided in satisfaction of compulsory attendance requirements is not “care in lieu of parental care” and, thus, not “child care.” And as the Pennsylvania Supreme Court and General Assembly have directed, “in construing statutory language, ‘[w]ords and phrases shall be construed according to . . . their common and approved usage.’” *Bowser v. Blom*, 569 Pa. 609, 617, 807 A.2d 830, 835 (2002) (alteration in original) (quoting 1 PA. STAT. § 1903(a)). “Child care,” by its common and approved usage, does not mean “elementary and secondary education.”

Yet, despite *not* treating the overwhelming majority of education as “child care” subject to licensure, DHS insists that the education of children whose parents satisfy the compulsory attendance law through homeschooling *is* “child care” if they use an outside provider as part of their home education program (which, again, DOE permits and even encourages them to do). As the Pennsylvania Supreme Court has stressed, “we must read [statutes] in the light of reason and common sense.” *Vellon v. Dep’t of Transp.*, 292 A.3d 882, 890 (Pa. 2023) (alteration in original) (internal quotation marks omitted). Treating Roots as a “child care” center *defies* common sense, and the cease-and-desist order should be dismissed for that reason.

⁸ See also PA. DEP’T OF EDUC., *Nonpublic/Private Schools*, <https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/nonpublic-and-private-schools> (“There are two types of private academic schools in Pennsylvania: 1. LICENSED PRIVATE ACADEMIC SCHOOLS [and] 2. NONPUBLIC NONLICENSED SCHOOLS”); *S. Hills Cath. Acad. v. Dep’t of Hum. Servs.*, 308 A.3d 915, 925 (Pa. Commw. Ct. 2024) (“[DHS] regulations categorize a school as either public or private, without differentiating categories of private schools.”).

DHS’s contrary position would lead to absurd and unreasonable results. The General Assembly has codified a canon against “absurd” or “unreasonable” constructions to guide the executive and judicial branches in “[i]n ascertaining the intention of the General Assembly in the enactment of a statute.” 1 PA. STAT. § 1922(1); *see also Bowser*, 569 Pa. at 617, 807 A.2d at 835 (“It is presumed ‘that the General Assembly does not intend a result that is absurd’” (omission in original) (quoting 1 PA. STAT. § 1922(1))). That canon precludes DHS’s construction of the term “child care.”

For one thing, under DHS’s construction, the agency’s licensing jurisdiction would turn entirely on the means by which a parent chooses to satisfy her compulsory attendance obligations—that is, on how she exercises her “primary right and . . . obligation . . . to choose the education and training for [her] child.” 24 PA. STAT. § 13-1327(b). If a parent were to educate her child by sending him to a public school, a licensed private school, or an unlicensed private school, the child’s education would be deemed just that: education. But if a parent were to exercise her right to homeschool using Roots or a similar co-op-type provider, that education would be deemed “child care” and the provider a “child care center.”

And it would not only be programs like Roots that would be deemed “child care centers” under DHS’s construction. Other resources that DOE suggests homeschooling parents utilize in home education programs for their children would, as well. One of those suggested resources, for example, is “[e]nrollment in universities or other higher educational choices.” PA. DEP’T OF EDUC., HOME EDUCATION AND PRIVATE TUTORING GUIDE 35 (May 2026). Under DHS’s construction, if seven or more homeschooled children enrolled in a college or university, per DOE’s suggestion, that college or university would become a “child care center” and require a license from DHS. After all, there is no “college or university” exemption in DHS’s regulations.

And yet the absurdities would not end there. For example, DHS does not treat non-academic children’s programs such as summer day camps, art schools, and basketball camps as “child care” subject to licensure. *See* 55 PA. CODE § 3270.3a(1), (3). But under the construction of that term that DHS advances to capture Roots, core academic instruction undertaken pursuant to a parent’s legal obligations under Pennsylvania’s compulsory attendance law *would be* child care.

Pennsylvania law does not countenance such an absurd and unreasonable reading of the child care licensing statute. In fact, only four weeks ago, the Commonwealth Court rejected a construction of the Implied Consent Law that would exclude motorized wheelchairs but not manual wheelchairs, because that construction “would lead to an absurd and unreasonable result.” *See, e.g., Bowman v. Commonwealth*, ___ A.3d. ___, 2026 WL 2329502, at *4 (Pa. Commw. Ct. Aug. 12, 2026). The same is true here: construing the child care licensing law to exclude some means of satisfying compulsory attendance obligations but not others would be an absurd and unreasonable result. The canon against such results should therefore be followed to make clear that education that a parent secures for her child, in compliance with Pennsylvania’s compulsory attendance and home education laws, is not “care in lieu of parental care” and, thus, not “child care” subject to DHS licensure. *See Dep’t of Lab. & Indus. v. Workers’ Comp. Appeal Bd. (Lin & Eastern Taste)*, 647 Pa. 28, 47–49, 187 A.3d 914, 925–26 (2018) (applying canon against absurd or unreasonable results to reject an expansive interpretation of “construction industry” that would have swept ordinary homeowners and non-construction businesses into an onerous regulatory scheme).⁹

⁹ Although Roots also operates a very small preschool/pre-K program for children who are not school-age, *see* Duckstein Decl. ¶ 28, that program is not at issue. The cease-and-desist letter does not allege that Roots was providing care for seven or more such children unrelated to the

3. Application of the Child Care Licensing Requirement to Roots Violates the U.S. and Pennsylvania Constitutions

Applying the child care licensing requirement to Roots would not merely lead to absurd and unreasonable results. It would also be unconstitutional.

As noted above, under DHS’s construction of the term “child care,” the agency’s licensing jurisdiction turns on the means by which a parent satisfies her compulsory attendance obligations—that is, on how she exercises her “primary right and the obligation . . . to choose the education and training for [her] child.” 24 PA. STAT. § 13-1327(b). That right is not merely codified in Pennsylvania statute; it is enshrined in federal constitutional law.

For more than a century, the U.S. Supreme Court has recognized that “the liberty of parents and guardians to direct the upbringing and education of [their] children” is firmly protected by the Fourteenth Amendment to the U.S. Constitution. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *see also Meyer v. Nebraska*, 262 U.S. 390, 399–401 (1923) (recognizing the right of parents “to control the education of their own” and the “natural duty of the parent to give his children education suitable to their station in life”). The Court reaffirmed this right only four months ago, *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam), and the Court has repeatedly referred to the right as “fundamental” and entitled to “heightened protection.” *E.g., Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).¹⁰

operator, *see* 62 PA. STAT. § 1001, and for good reason: it wasn’t. Duckstein Decl. ¶ 28. Even if it had been, that would be no basis for ordering it to cease operation of its homeschool program.

¹⁰ At least one Supreme Court justice has suggested that the Privileges or Immunities Clause is the appropriate source of substantive protection for this right. *Troxel*, 530 U.S. at 80 n.* (Thomas, J., concurring in the judgment). Roots agrees that the Privileges or Immunities Clause provides substantive protection for the right but recognizes that this argument is foreclosed by

Moreover, in these seminal cases—*Meyer* and *Pierce*, as well as *Farrington v. Tokushige*, 273 U.S. 284 (1927)—the Court protected not only the right of parents to direct their children’s education, but also the right of private education providers to offer their services to parents who desire them. See *Meyer*, 262 U.S. at 400, 401 (recognizing that a private school teacher’s “right . . . to teach and the right of parents to engage him so to instruct their children . . . are within the liberty” protected by the Fourteenth Amendment); *Pierce*, 268 U.S. at 536 (providing, under the Fourteenth Amendment, “protection against arbitrary, unreasonable, and unlawful interference with the[] patrons” of private schools and “the consequent destruction of [the schools’] business and property”); *Farrington*, 273 U.S. at 298 (enjoining licensing regulations governing foreign language schools because “[e]nforcement . . . probably would destroy most, if not all, of them” and “would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful”).

DHS’s insistence that education provided in a home education program is “child care,” whereas education provided in a school is not, raises grave constitutional concerns. It discriminates based on how these rights—the fundamental right of parents to direct the education of their children and the right of private education providers to offer their services to, and contract with, parents who desire them—are exercised. This discrimination—which now threatens closure of Roots and, thus, loss of a significant portion of the home education programs that parents are lawfully providing for their children, in satisfaction of their legal obligations under Pennsylvania’s compulsory attendance law—is prohibited by the Fourteenth Amendment to the U.S. Constitution. See *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978) (“When a statutory

the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). Roots nevertheless raises it now to preserve it for possible U.S. Supreme Court review.

classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”); *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (“[A]ny classification which serves to penalize the exercise of [a fundamental] right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.”), *overruled on other grounds* by *Edelman v. Jordan*, 415 U.S. 651 (1974).

It is also prohibited by Article I, Section 26 of the Pennsylvania Constitution. *See* PA. CONST. art. I, § 26 (“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”). As the Pennsylvania Supreme Court held only two years ago, “Section 26 guarantees . . . that the government will not discriminate against a person based on the manner in which a right is exercised.” *Allegheny Reproductive Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 934 (Pa. 2024). In other words, it “requires that the government act neutrally to the manner in which a right is exercised.” *Id.* If the state *does* discriminate based on the manner in which a right is exercised and “[i]f the right is one that is fundamental, then only evidence of a compelling government interest and a finding that there are no less intrusive means to advance the interest will save the government action.” *Id.* at 938.

DHS’s interpretation of “child care” is anything *but* neutral toward the educational choices that parents make for their children. It discriminates against parents and private education providers based on the manner in which parents exercise their fundamental right to direct the education of their children. DHS has no compelling or any other interest in discriminating against Roots or the parents of participating students in this manner. Nor is

application of the licensing requirement to Roots necessary to achieve (or even rationally related to) any such interest.

In fact, even if *no* fundamental right were involved, DHS's application of the child care licensing requirement to Roots would still be unconstitutional. Under the substantive due process protections of Article I, Section 1 of the Pennsylvania Constitution, "a law restricting social and economic rights, like the right to pursue a lawful occupation, '[1] must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and [2] the means which it employs must have a real and substantial relation to the objects sought to be attained.'" *Ladd v. Real Est. Comm'n*, 659 Pa. 165, 176, 230 A.3d 1096, 1102 (2020) (quoting *Gambone v. Commonwealth*, 375 Pa. 547, 551, 101 A.2d 634, 637 (1954)).

Under this standard, application of the child care licensing requirements to Roots is unconstitutional. Chapter 3270 contains numerous exemptions that allow the *unlicensed* operation of programs that are substantially similar to Roots in terms of any health or safety concerns they present, yet the cease-and-desist order demands licensure, as well as the many appurtenant regulatory requirements, for Roots. These exemptions render the licensing regime both over- and under-inclusive. Worse, they turn on factors that have little, if any, bearing on the purported purpose of the licensing requirements: namely, protection of the health, safety, and rights of children. The exemptions thus: (1) belie any "real and substantial relation" between the requirements and "the objects sought to be attained" by them; and (2) render application of the requirements to Roots "unreasonable, unduly oppressive [and] patently beyond the necessities of the case." *Ladd*, 230 A.3d at 1102, 659 Pa. at 176.

Consider, for example, that the child care regulations exempt: nonpublic schools (including nonlicensed schools); part-day school-age programs that operate fewer than 90

consecutive days per calendar year; part-day school-age programs that operate two hours or less per day for three or fewer days per week; and part-day school-age programs with a “single purpose,” such as instruction in art, math, or music. 55 PA. CODE §§ 3270.3(b)(4) & 3270.3a(1)–

(3). Roots barely misses coverage from each exemption:

- It is not in session 180 days so as to qualify as a nonpublic school. *See* 24 PA. STAT. § 13-1327(b); 22 PA. CODE § 51.61(b).
- It operates only 90 days per year,¹¹ but those days are not consecutive.
- It operates only three days per week, but it does so for more than two hours per day.
- It focuses on multiple subjects (math, reading, writing, spelling, language arts, science, social studies, history, geography, and extracurricular instruction), rather than maintaining a single purpose, such as math instruction alone.

These differences are minor in substance, yet major in their consequence and wholly detached from any legitimate health or safety justification. An educational program that meets only 90 days per year, after all, presents no more a threat to the health and safety of children than a nonlicensed school that operates 180 days per year. An educational program that operates 90 non-consecutive days per year presents no more a threat to the health and safety of children than an educational program that operates 89 consecutive days per year. An educational program that meets three days per week for six hours per day presents no more a threat to the health and safety of children than an educational program that meets three days per week for two hours per day.

¹¹ Or 99 if the Christmas program is included.

And an educational program that focuses on English and math presents no more of a threat to the health and safety of children than an educational program that focuses on math alone. This differential treatment between Roots and the numerous exempted programs is utterly irrational and cannot be justified on any health or safety grounds.

And yet the irrationality does not end there. Consider that schools in session 180 days or more annually are exempt, as are school-aged programs that operate three days per week for no more than two hours per day. This means that Roots provides, at once, too little *and* too much instruction for exemption—an absurd state of affairs.

As the Pennsylvania Supreme Court recognized in *Ladd*, a licensing law may be so riddled with exceptions and inconsistencies, allowing conduct that is so “closely analogous” to that which it prohibits, as to be unconstitutional. *Ladd*, 230 A.3d at 1115, 659 Pa. at 197.¹² Such is the case with applying the child care licensing requirements to Roots.

The same is true under the Fourteenth Amendment to the U.S. Constitution, which protects the “due process right to choose one’s field of private employment.” *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999); *see also Truax v. Raich*, 239 U.S. 33, 41 (1915) (“[T]he right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.”). A licensing law that exempts conduct materially like that for which a license is required violates this right. *See Merrifield v. Lockyer*, 547 F.3d 978, 992 (9th Cir. 2008) (holding

¹² *See also Ladd v. Real Est. Comm’n*, No. 321 M.D. 2017, 2022 WL 19332047, at **16–17 (Pa. Commw. Ct. Oct. 31, 2022) (holding, on remand from the Pennsylvania Supreme Court, that application of the Real Estate Licensing and Registration Act to a short-term vacation property manager was unconstitutional); *Thiam v. Bureau of Pro. & Occupational Affs.*, 301 A.3d 942, 944 (Pa. Commw. Ct. 2023) (applying *Ladd* and holding that a natural hair-braiding licensing requirement was unconstitutional as applied to a salon owner).

application of pest control license requirement was unconstitutional in light of exemptions of like conduct: “[T]he government has undercut its own rational basis for the licensing scheme by excluding Merrifield from the exemption.”); *Jenkins v. Manry*, 216 Ga. 538, 545–46, 118 S.E.2d 91, 96 (1961) (“There is no reasonable basis for requiring the examination and licensing of plumbers and steam fitters who are not employees of public-utility corporations, and exempting employees of public-utility corporations operating in the territory covered by the act. This is an unjust discrimination between classes of persons, since the actions of one class in following the vocation of plumbing or steam fitting would affect the public health as materially as the actions of the other class.”).¹³

There is no question, meanwhile, as to the unduly oppressive and onerous impact that the certification regulations will have on Roots. These requirements would be crippling, imposing a severe financial strain on Roots, which would translate to a burden on the very children and parents Roots is trying to help (assuming Roots is able to stay open at all). Pennsylvania courts have held laws with similar outcomes unconstitutional because of the disproportionate balance between the effect on the licensee and the supposed public interest. *See, e.g., Thiam v. Bureau of Pro. & Occupational Affs.*, 301 A.3d 942, 957–58 (Pa. Commw. Ct. 2023). Roots thrives because the parent volunteers help keep costs down while attending to the educational needs of their own children, an outcome that simply cannot be maintained if licensure is forced upon them.

¹³ *See also Raffensperger v. Jackson*, 316 Ga. 383, 390, 888 S.E.2d 483, 491 (2023) (“[I]f a similarly situated person is able to pursue the occupation competently, then the burden imposed on the person who is prohibited from pursuing the occupation is likely not reasonably necessary to the State’s interest in health and safety.”).

Declining to apply the licensing requirements to Roots, meanwhile, would not leave protection of its students outside the regulatory reach of the state. On the contrary, students who participate in Roots are registered homeschoolers. Their parents are bound by Pennsylvania's homeschooling laws, which: charge parents with supervision of the home education program; impose reporting, testing, evaluation, medical, and immunization requirements; and maintain oversight by public school superintendents. *See, e.g.*, 24 PA. STAT. §§ 13-1327.1 & 13-1327(d). These laws, which already exist, are a “less drastic and intrusive alternative[]” to child care licensure and are sufficient to achieve the state’s purported interest in child health and safety. *Ladd*, 659 Pa. at 197–98, 230 A.3d at 1115 (quoting *Mahony v. Twp. of Hampton*, 539 Pa. 193, 198, 651 A.2d 525, 528 (1994)).

The many constitutional problems discussed above are only problems if Roots is determined to be a “child care center” subject to DHS’s authority. As the General Assembly has instructed executive and judicial officers charged with interpreting its statutes, however, “the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.” 1 PA. STAT. § 1922(3). “Under the canon of constitutional avoidance,” therefore, “if a statute is susceptible of two reasonable constructions, one of which would raise constitutional difficulties and the other of which would not, we adopt the latter construction.” *Commonwealth v. Herman*, 639 Pa. 466, 495, 161 A.3d 194, 212 (2017). In fact, the U.S. Supreme Court relied squarely on this canon to prevent an agency from asserting jurisdiction over an education provider when doing so would have raised thorny constitutional questions. *See N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 507 (1979) (“[I]n the absence of a clear expression of Congress’ intent to bring teachers in church-operated schools within the jurisdiction of the Board, we decline to construe the Act in a manner that could in turn call upon

the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses.”).

Because “child care” is reasonably susceptible to a construction that excludes education—including a home education program—that construction must govern. DHS’s contrary interpretation would discriminate against the constitutionally protected educational choices of parents, as well as the right of Roots to offer and provide its services to parents who desire them.

CONCLUSION

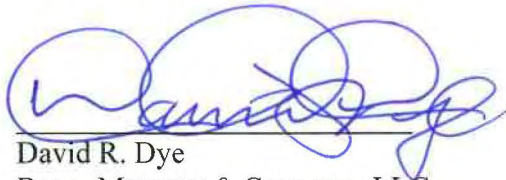
Roots Learning Academy is a labor born from a dedicated teacher who built a space for parents to homeschool their children together and alleviate the loss of social stimulation naturally fostered in private or public school. It is a group of children who are doing what they are already doing at home, but together instead. It is not a “child care center.”

“[A]n administrative agency can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language.” *Aetna Cas. & Sur. Co. v. Commonwealth*, 536 Pa. 105, 118, 638 A.2d 194, 200 (1994) (alteration in original) (citation omitted). DHS’s statutory power to require licensure of “child care centers” does not “clear[ly] and unmistakabl[y]” “confer upon it” authority to require licensure of resources that a parent utilizes as part of the home education program she conducts and supervises, under oversight of her local superintendent, for her child. DHS therefore “lacked the authority to order [Roots] to cease and desist.” *Id.* And because DHS did not have authority to issue the cease-and-desist letter, the presiding officer does not have jurisdiction to adjudicate it. 1 PA. CODE § 35.187 (“Presiding officers designated by the agency head to preside at hearings shall have the authority,

within the powers and subject to the regulations of the agency” (emphasis added)). The letter should therefore be dismissed.

Respectfully submitted this 10th day of September, 2026.

Michael E. Bindas
INSTITUTE FOR JUSTICE
600 University Street, Suite 2710
Seattle, WA 98101
Tel: (206) 957-1300
Email: mbindas@ij.org



David R. Dye
BALL, MURREN & CONNELL, LLC
2303 Market Street
Camp Hill, PA 17011
Tel: (717) 232-8731
Email: dye@bmc-law.net

Attorneys for Appellant