

In the
Supreme Court of Ohio

SILVER LINING GROUP, EIC	:	Case No. 2017-1602
MORROW COUNTY, ET AL.,	:	
	:	
Plaintiffs-Appellants,	:	On Appeal from the
	:	Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
OHIO DEPARTMENT OF EDUCATION	:	Court of Appeals
AUTISM SCHOLARSHIP PROGRAM,	:	Case No. 16 AP-398
	:	
Defendant-Appellee.	:	

MEMORANDUM OF DEFENDANT-APPELLEE
OHIO DEPARTMENT OF EDUCATION

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INTRODUCTION

This case does not warrant the Court's review, and it does not implicate the broad interests that Plaintiffs-Appellants allege. Rather, it involves the application of well-settled principles of law to straightforward claims. While a different result may be desirable to Plaintiffs-Appellants Silver Lining Group EIC Morrow County et al. ("Silver Lining Group"), the appellate court's application of well-established principles of law is not of general importance to the people of Ohio.

Silver Lining Group sensationalizes their claims by alleging that this case implicates a constitutional mandate for the Ohio Department of Education (the "Department") to provide a free and appropriate public education to Ohio schoolchildren. *See* Jur. Mem. 3, 10, 13. This case does not present any constitutional questions. Not only does Silver Lining Group fail to cite the Ohio Constitution anywhere in its Memorandum in Support of Jurisdiction, they also completely overlook the fact that Appellants are *private* entities that attempted to provide services to children under the Autism Scholarship Program (the "Scholarship Program") during the 2013-2014 school year. Simply stated, no constitutional rights are implicated by the fact that these private entities failed to meet the statutory and administrative requirements for participating in the Scholarship Program.

Contrary to Silver Lining Group's assertion, the court of appeals' decision does not give the Department a "free pass" to deny payment to private providers that are delivering services to students under the Scholarship Program. Rather, the court of appeals' decision is consistent with the Department's statutory duty to administer the Scholarship Program and ensure that Scholarship Program funds are paid only to those private providers that are properly registered with the Department. *See* R.C. 3310.41(D). In fact, the court of appeals' decision will have little, if any, impact on the nearly three-hundred entities that are currently properly registered

with the Department to participate in the Scholarship Program. See <https://scholarship.ode.state.oh.us/Provider>.

While the statutory interpretation question raised by Silver Lining Group might appear to be of general concern at first blush, a careful review of the claim shows that no further review is needed. The appellate court applied longstanding principles of agency deference in upholding the Department's reasonable interpretation of R.C. 3310.41, the statute creating the Scholarship Program. The Department has interpreted the statute as requiring every prospective private provider to register each of its locations individually with the Department in order to serve students under the Scholarship Program. The appellate court found that the statute is ambiguous in that it does not specify whether the private entity must exist at one location, or whether the entity may have multiple locations. In examining the statutory and administrative scheme surrounding the Scholarship Program, the appellate court found that the Department "reasonably filled that gap and defined the term as an entity existing at one location." *Silver Lining Group EIC Morrow Cnty. et al. v. Ohio Dep't of Educ. Autism Scholarship Program*, 2017-Ohio-7834, ¶ 51 (10th Dist.) ("App. Op."). Consistent with well-established law, the court of appeals therefore deferred to the Department's reasonable interpretation of the statute.

Similarly, the lower courts' grant of summary judgment on Silver Lining Group's unjust enrichment claim is not of public concern or great general interest. The appellate court found that Silver Lining Group failed to place evidence in the record suggesting that they conferred a benefit on the Department. Without evidence in support of an essential element of their claim, Silver Lining Group's unjust enrichment claim fails. Rather than being a case of great general interest, this is a routine case in which the non-moving party failed to present evidence sufficient to overcome summary judgment. Additional review is unnecessary.

STATEMENT OF CASE AND FACTS

A. The Department administers the Autism Scholarship Program in accordance with R.C. 3310.41 and Chapter 3301-103 of the Ohio Administrative Code.

The Department's Scholarship Program offers educational options for students with autism. R.C. 3310.41. The purpose of the Scholarship Program is to provide the parent of a qualified child up to \$20,000.00 so that the parent may send the child to an alternative public provider or a registered private provider in order to receive the services in the child's individualized education program ("IEP").¹ R.C. 3310.41(B). Any student who has been identified by their school district as a child with autism and for whom the district has created an IEP qualifies for the Scholarship Program. R.C. 3310.41(A)(7).

Scholarship funds are deducted dollar-for-dollar from the school district's state funding. *See* R.C. 3310.41(C)(2). The funds may be used for (1) a program in a school district other than the district the child is entitled to attend, (2) another public entity, or (3) a registered private provider. Ohio Adm.Code. 3301-103-07. The funds can only be used to provide services outlined in the child's IEP, and the provided services must include an educational component. R.C. 3310.41(B); Ohio Adm.Code 3301-103-02.

In order to become registered to provide services under the Scholarship Program (*i.e.*, a registered private provider), prospective private providers must annually apply to the Department before providing services. While not exhaustive, an application to participate in the Scholarship Program as a registered private provider must include information relating to: employee and

¹ During the 2013-2014 academic year, the academic year relevant to Silver Lining Group's claims, the maximum scholarship amount was \$20,000.00 per school year. *See* Am. Sub. H.B. 153, 129th Gen. A. (2011) (eff. June 30, 2011). The maximum scholarship amount has since been increased to \$27,000.00 per school year. *See* R.C. 3310.41(B); Am. Sub. H.B. 64, 131st Gen. A. (2015) (eff. June 29, 2015).

contractor credentials and BCI/FBI background checks; current tuition and fee schedules; proof of insurance; health and safety documents; business policies. *See* Ohio Adm.Code 3301-103-06. Providers that wish to serve children at multiple locations must register each location separately prior to serving children pursuant to the Scholarship Program. *See* OHIO DEPARTMENT OF EDUCATION, AUTISM SCHOLARSHIP PROGRAM GUIDELINES, <http://education.ohio.gov/getattach ment/Topics/Other-Resources/Scholarships/Autism-Scholarship-Program/Autism-Scholarship-G uidelines.pdf.aspx> (“[b]usinesses that serve children through multiple locations must register each location separately”).

Once registered, providers must have written contracts signed annually with students’ parents that list the agreed-upon services and the cost for such services. Ohio Adm.Code 3301-103-06(A)(7)(d). Based on those agreements, parents allocate their scholarship dollars to their provider(s) by signing an allocation form. Registered private providers then invoice the Scholarship Program monthly for the services provided. *Id.* Checks are mailed to the provider but are written to the parent and provider. Ohio Adm.Code 3301-103-07(A). Parents must endorse the scholarship checks. *Id.*

Once payments have been approved, the Department deducts the aggregate amount of scholarship payments to resident students from the state funding paid to each school district under Chapter 3317. R.C. 3310.41(C)(2). Thus, the actual result of the Scholarship Program is that money is deducted from the school district of residence and paid to the parent and their selected provider – the Department is merely the administrator of the scholarship money.

B. In the Amended Complaint, Silver Lining Group sought payment of Scholarship Program funds for services allegedly provided at two unregistered locations.

During the 2013-2014 academic school year, Silver Lining Group operated locations in Westlake and Mansfield that were approved by the Department as registered private providers

under the Scholarship Program. That is to say, Silver Lining Group submitted applications for both their Westlake and Mansfield locations, and the Department approved both. In their Amended Complaint, however, Silver Lining Group sought payment of Scholarship Program funds for services allegedly provided at two additional, unregistered locations — one in St. Clairsville and one in Columbus. *See App. Op. at ¶ 21.*

1. Silver Lining Group’s St. Clairsville location was not a registered private provider during the majority of the 2013-2014 school year.

In January 2013, Lisa Huckins (“Huckins”), an Education Program Specialist at the Department, notified Scholarship Program participants, including Silver Lining Group, of the need to register each location from which students would be served during the upcoming 2013-2014 school year. *Id. at ¶ 7.* Huckins followed up with all registered private providers in March 2013, again reminding them that each location must individually register to participate in the Scholarship Program. *Id. at ¶ 12.*

On September 4, 2013, Huckins emailed Michelle Murphy (“Murphy”) of Silver Lining Group to inquire about a possible St. Clairsville location that was being operated by Appellants. *Id. at ¶ 14.* Murphy confirmed that Appellants were “serving clients in the St. Clairsville area.” *Id.* Huckins reminded Murphy and Kristen Wilcock (“Wilcock”), also of the Silver Lining Group, of “the need to register the new location as a provider.” *Id.* The next day, in response to Wilcock’s request, Huckins informed Wilcock that Silver Lining Group’s additional locations must register due to the Department’s obligations to ensure compliance with the requirements in Ohio Adm.Code 3301-103-06. *Id. at ¶ 15.*

Silver Lining Group started an application for the St. Clairsville location on September 9, 2013, but did not submit the application to the Department until nearly a month later. *Id. at ¶¶ 15, 18.* While under review by the Department, the St. Clairsville application was placed into

“correction needed” status multiple times. *Id.* at ¶ 19. The reasons for the “correction needed” status varied and included: need for proof of insurance, missing or outdated criminal background checks for staff members, expired professional licenses of staff members, and questions involving general staffing levels. *Id.* Silver Lining Group eventually submitted a complete application to the Department, and the Department approved the St. Clairsville location as a registered private provider on April 15, 2014 – three months before the end of the 2013-2014 Scholarship Program year. *See id.* at ¶ 20.

2. Silver Lining Group’s Columbus location was never a registered private provider during the 2013-2014 school year.

In March 2013, Silver Lining Group began an application for their Columbus location to become a registered private provider under the Scholarship Program. *Id.* at ¶ 12. Silver Lining Group submitted the application to the Department for the first time in October 2013. *Id.* at ¶ 18. While under review by the Department, the Columbus application was placed into “correction needed” status on several occasions. *Id.* at ¶ 19. The reasons for the “correction needed” status included: need for proof of insurance, missing criminal background checks, licensure questions, and questions involving general staffing levels. *Id.* The Department never approved the Columbus location as a registered private provider during the 2013-2014 school year, as the application continued to be placed in correction needed status throughout the year. *Id.* at ¶ 20.

C. The trial court deferred to the Department’s interpretation of R.C. 3310.41 and granted summary judgment in favor of the Department.

Silver Lining Group filed suit against the Department, seeking payment for services allegedly provided at the St. Clairsville and Columbus locations during the 2013-2014 school year. In their original Complaint, they alleged a single claim of collection on past due account.

At the behest of the trial court, the parties agreed to submit briefs on the meaning of the term “registered private provider” in R.C. 3310.41. *Id.* at ¶ 21. In support of their contention

that the St. Clairsville and Columbus locations met the statutory definition, Silver Lining Group argued that once a prospective registered private provider registers *any* of its locations with the Department under R.C. 3310.41, all of its locations are approved. *Id.* at ¶ 23. In contrast, the Department argued that R.C. 3310.41 expressly authorizes the Department to establish standards to be met by prospective providers and that those standards, including Ohio Adm. Code Section 3301-103-06, require each location to register with the Department. *See id.* at ¶ 22.

The trial court issued a decision finding the Department's interpretation to be reasonable and not contrary to law. *Id.* at ¶ 24. The trial court noted that the Department could not assess whether a provider met all applicable health and safety codes under Ohio Adm.Code 3301-103-06(A)(8) unless the Department had each location registered and on file. *See id.*

Thereafter, Silver Lining Group filed an Amended Complaint, reasserting their claim for collection on past due account and adding a claim for unjust enrichment. *Id.* at ¶ 25. The Department filed a motion for summary judgment, which was granted by the trial court as to both claims. *Id.* at ¶¶ 27-28. The court held that because the St. Clairsville and Columbus locations were not registered under R.C. 3310.41 during the relevant school year, they could not have had accounts with the Department that would entitle them to payment under the Scholarship Program. *Id.* at ¶ 28. As to the unjust enrichment claim, the trial court found the record failed to show an issue of material fact on whether Silver Lining Group conferred a benefit that was unjustly retained by the Department. The court noted that the benefit would be to the parents of students who attended the St. Clairsville and Columbus locations, not the Department. *Id.*

D. The Court of Appeals found no error in the trial court’s interpretation of R.C. 3310.41 or grant of summary judgment in favor of the Department.

Silver Lining Group appealed to the Tenth District Court of Appeals, asserting that the trial court erred in its interpretation of R.C. 3310.41 and in granting summary judgment in favor of the Department on the unjust enrichment claim.² The Tenth District affirmed in both regards.

As to the statutory interpretation issue, the appellate court found that R.C. 3310.41’s definition of registered private provider is ambiguous. App. Op. at ¶ 40. The statute defines a “registered private provider” as “a nonpublic school or other nonpublic entity that has been approved by the [Department] to participate in the [Scholarship Program.]” R.C. 3310.41(A)(8). Because the statute does not specify whether the nonpublic entity must exist at one location, or whether the entity may have multiple locations, the court of appeals noted that it is susceptible to more than one reasonable interpretation. App. Op. at ¶ 40. The court of appeals found that the Department reasonably interpreted the term as an entity existing at one location. In accordance with longstanding principles of agency deference, the court of appeals deferred to the Department’s interpretation and affirmed the trial court on the statutory interpretation question. *See id.* at ¶¶ 48-51; *see also Shell v. Ohio Veterinary Med. Licensing Bd.*, 105 Ohio St.3d 420, 2005-Ohio-2423, ¶ 34, quoting *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 17-18 (2000).

The court of appeals also affirmed the grant of summary judgment on the unjust enrichment claim, finding that nothing in the record demonstrated whether the Scholarship Program funds at issue remained with the relevant school districts or with the Department. App. Op. at ¶ 61. The court of appeals noted that at oral argument, Silver Lining Group’s counsel admitted that there is no evidence in the record depicting the Department’s finances. *Id.* at ¶ 62. In affirming summary judgment on this claim, the court of appeals stated, “By failing to place

² Silver Lining Group did not appeal the trial court’s grant of summary judgment on the action on account claim.

evidence in the record demonstrating [the Department] removed and retained scholarship funds from the affected school districts, appellants failed to establish they conferred a benefit on [the Department].” *Id.*

Silver Lining Group now seeks this Court’s review.

**THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION
AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

The Court should decline jurisdiction for three reasons. *First*, the broad constitutional question and interests that Silver Lining Group describes are not implicated here. *Second*, Silver Lining Group is simply seeking fact-bound error correction. And *third*, this case is not of public or great general interest. Rather, the court of appeals applied well-settled law to a garden-variety set of facts. The issues were properly resolved below, and nothing about the appellate court’s reasoning merits review.

A. This case does not implicate any constitutional questions.

Silver Lining Group alleges that the Department “has ducked its constitutional responsibilities,” presumably the responsibility “to provide free public education to children in [sic] Ohio.” Jur. Mem. 4, 13. What Silver Lining Group overlooks is that Appellants are *private* entities that attempted to provide services to children under the Scholarship Program during the 2013-2014 school year. The Ohio Constitution does not provide a right to free *private* education, nor does it in any way suggest that Appellants will be reimbursed for allegedly providing services to students under the Scholarship Program. Appellants failed to meet the statutory and administrative requirements for participating in the Scholarship Program and therefore are not entitled to payment of Scholarship Program funds. Additionally, to the extent that the Ohio Constitution provides any enforceable rights to a free and appropriate public education, those rights belong to students, not private education providers.

B. Silver Lining Group seeks fact-bound error correction.

In their second proposition of law, Silver Lining Group asks this Court to review determinations made by the lower courts on the unjust enrichment claim. Silver Lining Group disagrees with the lower courts' findings that nothing in the record supports that they conferred a benefit on the Department. *See* Jur. Mem. at 13-15. In other words, Silver Lining Group now seeks error correction regarding the application of settled law to the specific facts of this case. However, this court does not normally involve itself in fact-bound issues as it is not a court of simple error correction. *See State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, ¶ 90 (Lanzinger, J., dissenting); *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 492, 2000-Ohio-397, 727 N.E.2d 1265 (Cook, J., concurring).

C. This case is not of public or great general interest.

Finally, this case is not of great general interest to the citizens of Ohio. Silver Lining Group overstates the impact of this case when it suggests that the appellate court's decision gives the Department a "free pass" to deny payment to private providers under the Scholarship Program. In fact, the appellate decision will have very little, if any, impact on other registered private providers throughout the state. The Department has made clear that companies that serve children through multiple locations must register each location separately, and the Department regularly assists companies in doing so. Currently, two-hundred and eighty-four entities are registered with the Department as private providers under the Scholarship Program. *See* <https://scholarship.ode.state.oh.us/Provider>. Many of these registered private providers are owned by the same company, but have independently registered each location from which they provide Scholarship Program services, as required by R.C. 3310.41 and the Ohio Administrative Code. Because these entities are registered private providers under the Scholarship Program, the appellate court's decision, which addresses Silver Lining's *failure to properly register*, will have

little bearing on them. In fact, the appellate court's decision is limited to *Appellants'* entitlement to Scholarship Program funds during the 2013-2014 school year.

ARGUMENT

Appellee Ohio Department of Education's Proposition of Law No. 1:

The lower courts properly determined that the Department's interpretation of R.C. 3310.41 is reasonable, not contrary to law, and deserving of deference.

Even if this Court were to grant review, Silver Lining Group's claims would fail on the merits. The lower courts found that the Department's interpretation of R.C. 3310.41 is reasonable. Therefore, the courts deferred to the interpretation of the Department, the agency which the legislature designated to implement R.C. 3310.41 and the Scholarship Program.

A. Only the Department's interpretation of R.C. 3310.41 is supported by the legislature's purpose and its related Administrative Code provisions.

By law, Scholarship Program funds shall be paid only to alternative public providers or registered private providers. R.C. 3310.41(B), (D). Section 3310.41(A)(8) of Revised Code defines the phrase "registered private provider" as "a nonpublic school or other nonpublic entity that has been approved by the department of education to participate in the [Autism Scholarship Program]." The Revised Code authorizes the Department to define the parameters of the Scholarship Program by adopting rules under R.C. Chapter 119. R.C. 3310.41(E). The Department has interpreted the statute as requiring each location operated by a private provider to individually register with the Department and has adopted rules consistent with this interpretation. The Department's interpretation is reasonable and supported by the legislative purpose of R.C. 3310.41.

The primary duty in construing a statute is to give effect to the intention of the legislature enacting it. *Humphrys v. Winous Co.*, 165 Ohio St. 45, 49, 133 N.E.2d 780 (1956). The purpose behind the enactment of the Scholarship Program was "to pay scholarships to the parents of

autistic children to be used toward paying tuition at public or nonpublic special education programs.” Ohio Legislative Service Comm’n, Final Analysis, Am. Sub. H.B. 95, 125th Gen. A. (2003). In furtherance of this purpose, the General Assembly delegated authority for implementation of the Scholarship Program to the Department and directed the Department to establish procedures for implementing the program, including those to be used in approving nonpublic providers. *Id.*; *see also* R.C. 3310.41(E).

Pursuant to this delegation, and the language of R.C. 3310.41, the Department promulgated the administrative rules found in Ohio Adm. Code Chapter 3301-103. Together the statute and administrative rules establish the overall parameters within which registered private providers must operate. The Department is authorized to interpret and apply the statute and its related administrative regulations, and actions that are in accord with a reasonable interpretation of those regulations are valid. *See Braddock Motor Freight, Inc. v. Pub. Utils. Comm’n of Ohio*, 174 Ohio St. 203, 188 N.E.2d 162 (1963), paragraph four of the syllabus. Reading the term “registered private provider” to encompass every location in operation effectively negates the administrative scheme established by the Department in accordance with R.C. 3310.41(E).

For example, registered private providers are required to meet “all applicable state and local health and safety codes.” Ohio Adm.Code. 3301-103-06(A)(8). It follows logically that the Department must be able to access and review the health and safety inspection reports for each location where a registered private provider will host and educate autistic children pursuant to the Scholarship Program. This obligation of the Department cannot be enforced if R.C. 3310.41 were interpreted, as Silver Lining Group suggests, to allow a private provider to open new locations without separately registering those locations with the Department.

Similarly, and no less important, each employee of a registered private provider must carry the appropriate credentials and successfully complete a background check at regular intervals. Ohio Adm.Code 3301-103-06(A)(3), (5). When each location is registered, the provider is able to include licensure and background check information for only those employees or contractors who are operating from that location. This enables the Department to readily ensure that registered private providers meet the licensure and background check requirements set forth in Ohio Adm.Code 3301-103-06. Under Silver Lining Group's interpretation, the Department would not be able to effectively monitor where employees, contractors, and volunteers are operating or that they meet the Scholarship Program requirements.

Finally, a registered private provider must participate in on-site monitoring visits upon the request of the Department. Ohio Adm.Code 3301-103-06(C). The Department cannot conduct an on-site visit of a private provider unless the Department is aware of that private provider's existence.

The lower courts' determination that each location must register as a private provider in order to participate in the Scholarship Program is the only interpretation supported by the legislature's intent in enacting R.C. 3310.41, as well as by R.C. 3310.41's related administrative code provisions. Silver Lining Group's argument to the contrary essentially asks the Court to read confusion and disharmony into the statute and its accompanying administrative rules.

B. The lower courts properly deferred to the Department's reasonable interpretation of R.C. 3310.41.

Even if this Court were to find that Silver Lining Group's interpretation of R.C. 3310.41 is reasonable, the mere existence of an equally reasonable interpretation does not negate the Department's interpretation. In fact, the Department's interpretation would still be entitled to deference. *See generally State ex rel. Bertaux v. State Teachers Ret. Sys. Bd. of Ohio*, 10th Dist.

No. 11AP-504, 2012-Ohio-5900, ¶ 9 (“that relator can offer an alternative interpretation does not make [the agency’s] interpretation unreasonable”); *see also Frisch’s Rests., Inc. v. Conrad*, 170 Ohio App.3d 578, 868 N.E.2d 689, 2007-Ohio-545, ¶ 21 (10th Dist.). In order to prevail, Silver Lining Group must clear the high hurdle of demonstrating *not* that their interpretation is equally as reasonable as the Department’s, but that the Department’s interpretation of its own rules is *unreasonable*. They cannot meet this burden.

This Court has stated that “[i]t is a fundamental tenet of administrative law that an agency’s interpretation of a statute that it has the duty to enforce will not be overturned unless the interpretation is unreasonable.” *State ex rel. Clark v. Great Lakes Constr. Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802, 791 N.E.2d 974, ¶ 10. Moreover, this Court has found that “[d]ue deference should be given to statutory interpretations by an agency that has accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility.” *Weiss v. Pub. Utils. Comm’n of Ohio*, 90 Ohio St.3d 15, 17-18, 2000-Ohio-5, 734 N.E.2d 775. Silver Lining Group has not articulated why the Department’s interpretation is unreasonable. Nor is it able to do so. The lower courts both found the Department’s interpretation to be reasonable and therefore properly deferred to the Department’s interpretation.

Appellee Ohio Department of Education’s Proposition of Law No. 2:

Summary judgment on an unjust enrichment claim is proper when the non-moving party submits no evidence demonstrating the existence of a benefit, an essential element of an unjust enrichment claim.

A plaintiff’s burden of proof in an unjust enrichment case is well established. To prevail, a plaintiff must establish: (1) a benefit conferred by plaintiff upon the defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry*

Corp., 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984). Unjust enrichment occurs when a person or entity retains money or benefits that in justice and equity belong to another. *Daily Servs., LLC v. Ohio Bureau of Workers' Comp.*, 10th Dist. No. 13AP-509, 2013-Ohio-5716.

Here, both the trial court and court of appeals found that Silver Lining Group's unjust enrichment claim fails as a matter of law. The appellate court noted that there is "no evidence in the record depicting [the Department's] finances." App. Op. at 17. By failing to produce evidence demonstrating that the Department removed and retained the Scholarship Program funds from the relevant school districts, Silver Lining Group failed to establish that they conferred a benefit on the Department. *Id.* Without evidence in support of an essential element of Silver Lining's unjust enrichment claim, reasonable minds can come to but one conclusion: the Department has not been unjustly enriched. Accordingly, summary judgment in favor of the Department was appropriate.

CONCLUSION

For these reasons, the Ohio Department of Education urges the Court to deny jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Defendant-Appellee Ohio Department of Education was served via ordinary mail and electronic mail this 12th day of December, 2017, upon the following counsel:

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