

An Analysis of 2003-2008 Hershey Trust Board/MHS Administration Compensation Levels & Performance Results – A Call for Voluntary Board Service and Hershey Trust/MHS Leadership Change

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Protect The Hersheys' Children, Inc.
P.O. Box 2433
Jenkintown, PA 19046
717-312-8900
info@protecthersheychildren.org
www.protecthersheychildren.org

Protect The Hersheys' Children, Inc. is an advocacy group of Milton Hershey School (MHS) alumni dedicated to monitoring the Hershey Trust, which funds MHS, the world's largest residential childcare charity, located in Hershey, PA. MHS assets totaled \$8 billion at the start of 2008, including 10,000 acres of land. MHS was founded in 1909 by Milton & Catherine Hershey and today serves approximately 1,700 children.

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Milton Hershey School (MHS) Board of Managers Compensation Levels¹

<u>Current Managers</u>	<u>FY 2006 (From 990)</u>	<u>FY 2007 (From 990)</u>	<u>FY 2008² (Projected)</u>
Robert Cavanaugh ³ (Joined 2001)	\$247,500	\$265,000	\$285,000
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:⁴	\$190/hour	\$510/hour	\$548/hour
Raymond Gover ⁵ (Joined 2003)	\$100,000	\$107,746	\$107,796
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:	\$77/hour	\$207/hour	\$207/hour
James M. Mead (Joined 2007)	n.a.	n.a.	Unknown
Total Hours Per Week:	n.a.	n.a.	Unknown
Hourly Rate:	n.a.	n.a.	Unknown
James E. Nevels ⁶ (Joined 2007)	n.a.	\$51,667	\$285,000
Total Hours Per Week:	n.a.	10 hrs/wk	10 hrs/wk
Hourly Rate:	n.a.	\$199/hour	\$548/hour
Hillary C. Pennington (Joined 1998)	\$90,000	\$97,988	\$100,000
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:	\$69/hour	\$188/hour	\$192/hour
Velma A. Redmond ⁷ (Joined 2003)	101,667	\$117,357	\$117,357
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:	\$69/hour	\$226/hour	\$226/hour
Robert Reese (Joined 2008)	n.a.	n.a.	Unknown
Total Hours Per Week:	n.a.	n.a.	Unknown
Hourly Rate:	n.a.	n.a.	Unknown
Joseph M. Senser (Joined 2001)	\$90,000	\$102,454	\$102,454
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:	\$69/hour	\$197/hour	\$197/hour
LeRoy S. Zimmerman ⁸ (Joined 2003)	\$153,505	\$217,041	\$402,041
Total Hours Per Week:	25 hrs/wk	10 hrs/wk	10 hrs/wk
Hourly Rate:	\$118/hour	\$417/hour	\$773/hour
Total Current Compensation:			\$1,599,648

¹ Compensation figures include all sums paid from all related, i.e., “Hershey Entity,” boards. All Managers serve on the purportedly uncompensated MHS Board and the openly-compensated Hershey Trust Company Board. Openly-compensated services for certain Managers include the Hershey Entertainment & Resorts (“HERCO”) board or The Hershey Company board. Uncompensated services include the Hershey Foundation Board. “MHS Board members” or “Managers” here also means “Hershey Trust Company Directors,” as these roles are generally treated interchangeably, for historic, practical, and idiosyncratic reasons that burden this charity.

² FY 2008 projections are based on reported figures where available and assume that reported FY 2008 hours will be unchanged from FY 2007. For recently-named Managers James Mead and Robert Reese, all sums are unknown. However, for purposes of Total Current Compensation and in the discussion that follows this chart, it is assumed that these Managers, too, will receive at least the minimum amounts received by all other Managers, pending confirmation of actual sums as reported in the FY 2008 Form 990.

³ Also serves on The Hershey Company Board.

⁴ “Hourly Rate” is defined as total compensation from all Hershey Entity boards divided by hours spent on MHS Board work as reported in IRS Form 990. The Hourly Rates noted here are probably lower in most cases than the actual rates, because the calculation here uses the 10-to-25-hours reported for MHS Board work and it is unlikely that Managers with full-time jobs spend significant time beyond these hours performing services for other Hershey Entities; i.e., this analysis likely understates Hourly Rates and errs in the Managers’ favor –unless Managers claim to spend even more hours on other Hershey Entity matters than on MHS Board matters, and in which case an explanation is required as to how they elsewhere do anything other than Hershey Trust work.

⁵ Also serves on the Hershey Foundation Board.

⁶ Also serves on The Hershey Company Board. Mr. Nevels split FY 2007 with former Manager Juliet Rowland and presumably would have had twice the FY 2007 compensation noted here had he served a full year, which is reflected in his Hourly Rate.

⁷ Also serves on the Hershey Foundation Board.

⁸ Also serves on the boards of HERCO, The Hershey Company, and the Hershey Foundation.

OBSERVATIONS:

1. Donate All Fees to MHS or Relinquish Board Positions to Those Who Will. Manager fees have reached such excessive levels and skewed decision-making to such a degree that it is time for the Attorney General to require that MHS Board service become fully volunteer, without camouflaged compensation paid for no-work membership on the boards of the Hershey Trust Company or HERCO. Similarly, lucrative board fees from The Hershey Company should be donated back to the Hershey Trust by the three Managers representing this charity on the Hershey Company's board. In these harsh economic times, when even CEOs and boards of our nation's largest for-profit companies are voluntarily surrendering salaries and bonuses, it is not too much to ask that charitable board members donate all fees to the charity that they serve. For those unwilling to do so, the Attorney General can simply solicit new Manager applications and replace compensation-driven Managers with our nation's most highly-qualified residential childcare professionals, individuals whose track records and motives are consistent with the charitable wishes of Hershey Trust settlors Milton & Catherine Hershey. The rationalization that the current "investment advisor" type of Managers are somehow preferable to childcare professionals is belied by the results observed and by the fact that \$14,000,000 annually is already being paid by this charity to outside experts for investment advice. The Managers have embraced the self-serving and cockeyed outlook that it is better to have *only* businesspeople on a childcare charitable board making childcare policy or delegating childcare decisions to employees, in lieu of simply naming childcare experts to the board and relying on outside advisors to manage the investment portfolio. Obviously, this need not be an all-or-nothing proposition, but creating a balanced board reflecting both business expertise *and* childcare skills is a bare minimum. A first step to achieving this balance is to replace fee-driven business-world Managers with charitable-minded residential childcare professionals.

2. MHS Board Performance Measurements. Performance levels for a residential childcare charity are difficult to measure and include subtleties beyond the scope of this analysis. However, and ignoring for the moment such matters as \$1.9 billion in Hershey Trust portfolio losses (addressed below), the six variables that the MHS Board itself has identified as bearing on its MHS-related performance over the last five years are as follows:

- a. **Children Added to Stabilized Enrollment:** **393** children have been added to stabilized enrollment as of last year's graduation; i.e., after mid-year removals were factored in.
- b. **Children Removed:** **994** children have been removed as of November 2008.
- c. **Children Graduated:** **610** children have graduated.
- d. **Total Infrastructure Spending:** **\$600,000,000** has been spent on infrastructure.
- e. **Annual Per-Child Costs:** Annual per-child spending is approximately **\$100,000**.⁹

f. **Need Level of Children Served:** Need level of children served is difficult to measure and encompasses a totality of economic, social, behavioral, disability, and other factors. According to the MHS Annual Report, 70% of newly-enrolled children are from households below the federal poverty level, excluding the income of household members who are not relatives; i.e., actual total household income is unknown. No statistics are available on the number of children who are wards of the court, foster care children, or who are otherwise not in the care of family members, though it is assumed that this is unchanged from the previous MHS Board; i.e., that there are virtually none of these children enrolled today. This is in contrast to the past Deed-mandated enrollment profile,

⁹ The 2007-2008 MHS Annual Report claims that per-child costs during 2003-2008 ranged from \$74,174 to \$76,655. This can only mean that MHS changed the calculation to exclude a large component from the equation, since the figure under the previous Administration was nearly \$100,000 and it is impossible that costs suddenly dropped by 25% in FY 2003, a year when severance packages alone from departing previous Administration personnel would have spiked spending. For consistent comparison, the IRS 990 annual spending figure (\$165,000,000) is simply divided here by the average number of children served, which yields \$100,000 per child; i.e., costs remain steady at the steep levels observed under the previous MHS Board, even though the claimed figure is 25% less. Whether \$75,000 or \$100,000, the figure is in any case astonishing for a facility serving children in the need parameters of current MHS children.

wherein 100% of the children enrolled were from below the federal poverty level, including substantial numbers of children who were wards of the court or in the equivalent of foster care, pursuant to the Deed's "dependency" criteria. In essence, the current MHS Board is serving children who appear to be marginally needier in economic terms than those served under the previous MHS Board, though dramatically less needy than the children served by MHS in the past and certainly not within the Deed's past "dependency" criteria. Naturally, need level of children served is a key factor in measuring MHS Board performance and virtually all other residential childcare facilities are serving children with vastly higher need levels. In short, by the MHS Board's own admission, its performance must be viewed against the backdrop of a selection process that excludes the hardest cases.¹⁰

g. Five-Year Performance Conclusions: With annual per-child costs of approximately \$100,000, infrastructure spending of \$600,000,000, 994 children removed while only 610 children graduated, and stabilized enrollment growth of merely 393 children, MHS Board performance levels on childcare matters over the last five years are sub-par, at best. At the reported spending levels, and given the need parameters of the children served (e.g., few, if any, wards of the court or foster care children and no emotionally disturbed or physically handicapped children such as are often served at other childcare facilities), competent childcare professionals deploying the same resources would be serving children on a different order of magnitude, enrolling needier children, showing lower attrition, and achieving dramatically larger growth levels. Simply contrasting infrastructure spending (\$600,000,000) with stabilized enrollment growth (393 children) over five years reveals glaring deficiencies in resource utilization. This is an astonishing \$1,500,000 of infrastructure spending for every child added. The implications of this infrastructure spending are discussed in more detail below at ¶¶14-16.

3. Fees Of \$1,600,000 Should Be Used For Poor Children And Not Manager Enrichment. A search of public databases on charities could find no similar board compensated at these profligate levels. At most, other boards – for example, Indiana University – provide nominal *per diems* for meeting attendance. In fact, many childcare charities require that board members make monetary contributions to the charities for the privilege of serving, rather than permitting board members to enrich themselves from what is purportedly charitable service. Where charitable board members receive fees for serving on related-company boards, as is the case with the MHS Board, one would expect them to donate these fees to the charity whose interests they represent, in order to avoid conflicts of interest and to assure that board members serve only the charity and for only the right reasons. This was an assumption implicit in the Hershey Trust governance reforms imposed by the previous Attorney General, but which were rescinded under the current MHS Board.¹¹ Annual fees totaling \$1,599,648 should be used for children, not Managers. This sum constitutes 1.4% of the MHS program services budget, or enough to save 20 additional children annually using MHS-generated cost figures –40 children annually if using the cost figures at virtually every other childcare charity.

¹⁰ MHS had allowed its foster care licenses to lapse under the previous MHS Board, a source of criticism from alumni and others. It was assumed that the MHS Board installed by local authorities in 2003 would revive these licenses. Apparently, this has not happened, with the current Board quietly continuing the previous Board's practice of rejecting foster care children and wards of the court, notwithstanding the clear mandate of Mr. & Mrs. Hershey to serve children who are the "neediest and most alone."

¹¹ The practice of requiring that related-board fees be donated to the charity being represented is even more compelling here, given the unorthodox investment strategy announced by MHS Board Chairperson Roy Zimmerman; i.e., that the Hershey Trust will not relinquish control of the Hershey Company *under any circumstances whatsoever*. This policy – the investment equivalent of a captain insisting that all passengers must go down with the ship no matter what storms arise – contravenes the Deed of Trust and all rational investment principles. But if the policy is to be pursued, then the huge personal financial incentive for pursuing it on the part of several MHS Board members should be eliminated entirely, since it creates a glaring conflict of interest by rewarding the act of exposing needy children to imprudent investment practices. Messrs. Nevels, Cavanaugh, and Zimmerman collectively amass \$555,000 each year from Hershey Company director fees, but only so long as they maintain their "never-relinquish-control" investment "strategy." There is thus no better example than the Hershey Trust of an instance where a proscription on retaining related-board fees makes sense, and for an additional reason nowhere else observed. It is one thing for MHS Board members to jeopardize the resources of needy children by pursuing an imprudent investment strategy, but it is another thing entirely for these Managers to actually reward themselves for doing so. Query as to how the investment banking clients of Messrs. Nevels and Cavanaugh – or the trust and estates clients of Mr. Zimmerman's law firm – would react if their investment portfolios were also managed this way, under this conflict-laden fee arrangement, and as though 2008 had not demonstrated the grave risks of these practices.

4. During The Last Two Years, Managers Paid Themselves Hershey Trust Company Director Fees That Are Six Times The Dividends Paid To Shareholder MHS While Otherwise Allowing Trust Asset Diversion. The convoluted MHS Board structure has fostered a climate where director fees are divorced from shareholder profits and trustee imprudence is commonplace. MHS Board members are simultaneously directors of the Hershey Trust Company, whose sole shareholder is MHS. According to the FY 2006-2007 MHS Form 990, the Hershey Trust Company paid dividends totaling \$350,000 to shareholder MHS during these two years. Over the same period, the Managers – as directors of the Hershey Trust Company – voted themselves director fees totaling \$2,000,000, or nearly *six times* the dividends paid to MHS. This decision-making chain has allowed Managers to favor their own pockets by a ratio of six dollars to every dollar remitted to the charity that the Managers purportedly serve, and to whom they owe the highest fiduciary duty.

a. Managers’ Trustee Decisions Are Highly Questionable. Equally troubling are Manager decisions made in their other role as board members of the Hershey Trust Company, the trustee of the MHS trust. In this role, they manage all trust assets, including selecting the board of HERCO, a for-profit company that is also wholly-owned by the MHS trust. The trustee board’s poor oversight and lack of accountability is illustrated by its permitting HERCO to divert profits that should be paid to MHS in the form of dividends, which would be used to help needy children. HERCO has a spotty dividend record and in 2006 and 2007 paid zero dividends to MHS, even though the company *gave away* \$1,000,000 to a local hospital in 2006. As bad, and similar to Hershey Trust Company directors, HERCO directors also pay themselves hefty board fees while remitting scant or zero dividends to MHS.

b. A Childcare Charity Trustee That Chooses Local Golf Subsidization Over Helping Needy Children. The Managers, as trustee, also permit HERCO to drain money *away from* MHS, beyond allowing profit diversion. According to the FY 2007 Form 990, MHS remitted \$887,832 that year to HERCO for “management fees, capital improvements, and operating expenses” of the Spring Creek Golf Course, a local golf course owned by the MHS trust. This golf course is operated by HERCO under a management contract that generates HERCO revenues. In other words, it is only a funding subsidy from MHS that allows HERCO to keep collecting management fees from what is an apparently insolvent golf course. A rational owner (or prudent trustee) would dispose of this money-losing asset. Even simply closing the golf course would be fiscally prudent, because it would stop the MHS trust from hemorrhaging \$1,000,000 annually just to keep the course open. Yet, the Managers cling to this course, throwing good childcare money after bad. In essence, the Managers have elevated subsidizing local golf leisure activities above saving needy children.

5. Manager Reported Hours Are Questionable. The hours reported by Managers as spent on Hershey Trust work are highly questionable, even if the Managers mean by their reported hours the time that they spend on *all* Hershey Entity matters, rather than just on MHS Board work, as the IRS Form 990 technically states. The FY 2006 25-hours-per-week is particularly dubious. For example, some Managers who elsewhere have full-time employment, and in three cases live at great distances, are reporting *up to 50% or more* of a normal work week spent on Hershey Trust matters, in addition to workloads elsewhere. Even the FY 2007 10-hours-per-week – i.e., *520-hours-per-year* – is questionable for these *part-time* positions. Given the anomalously high compensation packages that they are paying themselves for this charitable work, Managers should be asked to produce time entries in support of the hours that they claim to spend on Hershey Trust matters. This is no mere quibble, because the IRS uses reported hours to test the reasonableness of charitable board compensation.

6. Why Has Manager Compensation Tripled? Accepting at face value, *arguendo*, the reported hours, the Managers reduced their services from 25-hours-per-week in FY 2006 to 10 hours in FY 2007, while *tripling* their compensation over the last three years. Apparently, the Managers believe that they are entitled to more pay for less work, and on a charitable board, no less! Prior to FY 2006, MHS Board compensation was below the \$50,000 Form 990 minimum reporting threshold.

7. Charitable Board Work Should Constitute Giving And Not Self-Enrichment. Nominal board fees are sometimes paid by large grant-making private foundations without a narrow purpose. However, the Hershey Trust is a childcare charity devoted to residential care for poor children and it need not and should not use its

resources to enrich its directors. Indeed, a 2005 survey of the 10,000 largest U.S. foundations (“*Foundation Expenses and Compensation*”) undertaken by The Urban Institute, The Foundation Center, and GuideStar.org provides revealing comparisons with MHS practices. That survey found:

- a. Of more than 46,000 individual trustees, over 80% receive *no compensation whatsoever*. For those who are compensated, the median was \$7,750 in 2005; i.e., **\$90,238 less** than the FY 2007 *minimum* for MHS Board members serving the full year. MHS Board members are thus receiving a startling **1,300%** over the median, or **13 times** the median amount.
- b. Only 3.2% of corporate foundation trustees are paid.
- c. The average compensation of compensated trustees was \$15,637 and of all trustees was \$2,417.
- d. 80% of compensated trustees received less than \$10,000 while 1/3 received less than \$1,000.

8. Self-Enrichment By Charitable Board Members Is Broadly Condemned. Protect The Hersheys’ Children, Inc. is not the only organization offended by grossly-compensated part-time charitable trust directors. On the contrary, virtually every authoritative body takes the same position, as did the founders of this very charity.

a. The Pennsylvania Association Of Nonprofit Organizations Disapproves Of Trustee Self-Enrichment. The highly-respected Pennsylvania Association of Nonprofit Organizations (“PANO”) has published its own ethics code for the nonprofit sector (the “Ethics Code”¹²). The Ethics Code provides that “[c]haritable nonprofits are governed by an elected, *volunteer* board of directors, which should consist of individuals who are committed to the mission of the organization.” More explicitly, the Ethics Code prescribes that “Board members should serve *without* compensation. Board members may be reimbursed for expenses directly related to their board service.” (All emphases added.) The Ethics Code also cautions that a “nonprofit board must not act in furtherance of personal interests or the interests of third parties.” What is clear from MHS Board compensation arrangements is that: (i) compensation that is purportedly paid for serving the Hershey Trust Company and HERCO is really for MHS Board charitable work; (ii) compensation received by Managers is solely to further the personal interests of these charitable board members; and (iii) Manager compensation flows from the funds of subsidiaries of the Hershey Trust, but those funds should be distributed to the charity since paying it to Managers does not constitute a necessary expenditure. After all, if the Hershey Trust is already paying Managers \$100,000 annually for this *part-time* work, then surely this sum should be sufficient pay for any additional *part-time* work required of the Managers for serving on another Hershey Entity board, such as HERCO or the Hershey Company –unless the Managers are claiming a right to double-dip or in some cases triple-dip. While service on The Hershey Company Board requires somewhat more of a commitment, the three seats occupied by Messrs. Zimmerman, Nevels, and Cavanaugh are solely as representatives of the Hershey Trust and thus are clearly part of their charitable service such that any fees received should be donated to the MHS charity. However analyzed, MHS Board compensation arrangements appear to violate the PANO Standards of Ethics for Nonprofits.

b. The Pennsylvania Office of Attorney General Disapproves Of Trustee Self-Enrichment. MHS Board practices also contravene PA Attorney General Tom Corbett’s “*Handbook for Charitable Nonprofit Organizations*.” His letter to Nonprofit Board Members, introducing the Handbook, begins: “Your willingness to *volunteer* your time and expertise is deeply appreciated.” (Emphasis added.) Yet, with the MHS Board, there is no volunteer service whatsoever. The Handbook cautions, “*This means that [Board members] must not seek to derive private gain from business transactions that involve the nonprofit [entity] or advance their own interests at the expense of the [entity]... Individuals who take advantage of corporate opportunities to make profits for themselves at the expense of the corporation may be liable for the profits they received at the corporation’s expense.*” This passage well illustrates what is happening at the Hershey Trust. Managers reap substantial private gains, at the

¹² See, “*Standards for Excellence Code, An Ethics and Accountability Code for the Nonprofit Sector*,” The Pennsylvania Association of Nonprofit Organizations, available at www.pano.org.

expense of the Hershey Trust, by drawing fees for every board to which they appoint themselves or their cronies – and these fees are paid whether or not MHS is receiving dividends from the related companies.

c. Milton & Catherine Hershey Disapproved Of Trustee Self-Enrichment. The Deed of Trust for this very charity limits total annual trustee compensation to the nominal amount of \$1,000, expressing a clear intent that Hershey Trust Company directors (required to be the same as MHS Board members) serve *without* compensation. So how can it be claimed that Mr. & Mrs. Hershey intended that MHS Board members would each receive \$100,000 per year for serving as Hershey Trust Company directors, when the Hersheys contemplated that only \$1,000 would be paid to the Hershey Trust Company *in toto* as this charity’s trustee? This raises an additional question of whether the statements on the Form 990 claiming that Managers serve the charitable trust without compensation are accurate. It appears that Hershey Entity affiliates are merely used to camouflage what Managers recognize is embarrassingly high compensation, for service on the board of a charity helping needy children.

In sum, whether by the standards of foundation boards elsewhere, PANO, Attorney General Corbett, or the settlors of this very charity, MHS Board compensation departs from all norms. The negative consequences are manifest in the distorted decision-making observed over the last five years.¹³

9. Part-Time Charitable Board Work For Full-Time Executive Pay: Not Bad If You Can Find It.

MHS Board total compensation resembles high-level full-time administrator salary scales more than it resembles reasonable part-time fees for a charitable board that meets only several times annually. Contravening ordinary charitable compensation practices, the MHS Board has constructed a system of lucrative patronage appointments that rewards MHS Board leadership cronies and compliant MHS alumni, rather than attracting the finest residential childcare professionals to the world’s largest such charity. Similar conduct has been permitted at the MHS Administration level, with numerous hires or contracts flowing to those connected to the Administration, as charitable dollars are converted into a patronage stream. The current system has thus devolved into one similar to that witnessed in American politics; that is, “spoils” are lavished on allies while cronies are promoted to key positions by individuals amassing power, all with negative consequences for the quality of care provided to MHS children. The only “qualification” that seems a constant in MHS hiring and board appointments is fealty to the current Manager-enriching system and opposition to any kind of childcare or governance reform.¹⁴

¹³ The manner in which these fees undermine Manager decision-making is illustrated by an infamous exchange that can be confirmed by the individual who reported it, current Manager and MHS alumnus Mr. Joseph Senser. When Mr. Senser – demonstrating strong conviction prior to 2003 – was proving difficult for the then MHS Board leadership, a lucrative HERCO board seat was offered to him in an apparent effort to gain his compliance, and with the editorial comment that, “*The pay’s good!*” Mr. Senser, to his credit, declined the seat, bewildering the MHS Board leadership. Mr. Senser has apparently since altered his outlook to accommodate profligate compensation arrangements. His gradual change of heart is disappointing and appears to be a cautionary tale on the seductive effect of large sums of readily available cash coupled with the corrosive influence of the MHS Board’s insular structure, policing its ranks, stifling dissent, and excluding anyone who might question cozy and lucrative arrangements, especially charitable-minded residential childcare professionals. For his part, MHS alumnus Manager Robert Cavanaugh, prior to 2003, had told other alumni that he would donate all director fees from The Hershey Company to charity. If he has done so, he should be lauded for it and he should have no hesitation about agreeing to donate these fees to the Hershey Trust. But if he has not done so and has instead also had a change of heart, then he, too, is an example of how corrosive the effect of the MHS Board’s compensation practices have been since rescission of governance reforms in 2003. In sum, those with high ideals occasionally have found their way onto the MHS Board, seeking to improve matters. But the Hershey Trust’s governance and compensation structure continually undermines even the best intentions and thwarts all efforts at internal self-reform, underscoring the need for outside intervention.

¹⁴ In the case of the MHS Administration, the practice of using MHS resources as a patronage stream has been permitted to reach chilling levels, as local “enforcers” allied with the MHS Administration have disrupted meetings, smeared alumni reform activists, and issued physical and financial threats, including several instances where the police had to be called. Virtually every ringleader of this campaign has had a financial or personal incentive dangled in front of him or her; e.g., MHS contracts or plum positions for these individuals or their immediate relatives. The Hershey Trust has thus also become a disturbing case study of what happens when a charitable trust board permits resources to be used coercively. Strong-arm tactics over the last five years have included instigation of “spontaneous” mob actions by the MHS Administration, coercive “petition campaigns,” “pay-to-play” “donations” to charitable events organized by MHS leadership cronies and extracted from MHS vendors, and other similar conduct. MHS Administrators appear now to be behind another “petition campaign,” seeking to pressure the MHS Board into naming a current Administrator to replace outgoing President O’Brien. MHS employees are thus being

10. Hourly Rates That Shock The Conscience. The Hourly Rates for Hershey Trust board members also paint a disturbing picture, including the following:

a. Hourly Rates Rise In Spite Of Massive Portfolio Losses. Although the Hershey Trust has reported portfolio *losses* in the last year that total ***\$1.9 billion***, Manager compensation and Hourly Rates have *risen*. For instance, Robert Cavanaugh went from \$190/hour in FY 2006 to \$510/hour in FY 2007. He is projected to be compensated at \$548/hour for FY 2008. Joseph Senser's compensation increased from \$69/hour to \$197/hour during the same period. Velma Redmond's compensation increased from \$78/hour to \$226/hour. It is as though the more the Hershey Trust loses, the more the Managers pay themselves. One can only wonder what the Managers would pay themselves if the Hershey Trust portfolio actually increased on their watch, rather than showing \$1.9 billion in losses. Mr. Cavanaugh's increased compensation and rising Hourly Rates are particularly odd given that he alone among Hershey Company directors did not tender his resignation when the rest of that company's board resigned a year ago, after the company's performance led to billions of dollars in decreased shareholder value. It is typical that the MHS Board absolves itself of all responsibility for problems and takes credit for what it claims are childcare successes, even while dismissing the chief executives of HERCO, The Hershey Company, and, now, MHS itself, along with requiring resignations from every independent Hershey Company Director. It can also be surmised that the chief executive of the Hershey Trust Company himself was asked to step down, given the totality of circumstances at the time and the abrupt nature of his departure. It seems that, in the view of the MHS Board, only MHS Board members, who answer to no one and cannot be replaced from without, are above blame and, indeed, are entitled to tripled compensation while those who answer to them must tender resignations.

b. The MHS Board Chairperson's Hourly Rate Is Higher Than His Law Firm's Highest Corporate Rate. The Hourly Rate that MHS Board Chairperson Roy Zimmerman is receiving is higher than the highest hourly rate charged by his law firm – Eckert Seamans Cherin & Mellot LLC – to blue-chip corporate clients. That firm's highest hourly rate is \$500/hour while Mr. Zimmerman's Hershey Trust FY 2008 Hourly Rate is projected to be ***\$773/hour, or 155% of his law firm's highest billable rate.*** This is even though Mr. Zimmerman's Hershey Trust Hourly Rate does not include overhead costs that are naturally included in law firm billing rates. In other words, Mr. Zimmerman's corporate clients receive a steep discount from Mr. Zimmerman's Hershey Trust charitable work Hourly Rate. We are aware of no other attorney anywhere in the world who is paid more per hour for purportedly charitable service on the board of a childcare charity than he is paid by his firm's highest-paying corporate clients. The Hershey Trust could save childcare resources by dispensing entirely with the fiction that Mr. Zimmerman is performing charitable service and instead simply hiring him at his law firm's highest corporate rate.

c. MHS Administration Compensation Is Also Out Of Line With Childcare Facility Norms. The Hourly Rates that MHS Board members pay themselves are paralleled by the astonishing sums being paid to MHS Administrators, including ***\$664,000*** in total annual compensation being paid to MHS President John O'Brien – a figure so flatly out of line with comparable figures at any other residential childcare facility that, standing alone, it warrants IRS examination. Indeed, this mind-boggling sum includes an utterly perplexing “special retirement payment in lieu of a retirement plan” in the amount of \$200,000. This \$200,000 “special retirement payment” shows up in the IRS Form 990 for several years, not just once, and thus raises a host of questions that the Managers should answer – starting with what on earth it is. Several other MHS Administrators are also in the quarter-million-dollar range annually, again in a manner out of line with comparable figures at other residential childcare facilities. These lucrative positions at times are distributed to MHS leadership cronies in defiance of conventional hiring norms and without adequate background checks. The overall result is an explosion in the compensation levels for

openly confronted with coercive “requests” to sign these petitions, on pain of facing negative repercussions for not doing so in the event that a current Administrator is in fact chosen as the next MHS President. This is just as the previous MHS Presidential search was similarly undermined, with those who did not “voluntarily” endorse President O'Brien later facing intense retaliation, while those who did support him were openly rewarded.

both MHS Board members and senior Administrators, coupled with stark decline in the quality of the senior leadership.¹⁵

d. Questions Concerning IRS Guideline Compliance. The grossly-inflated compensation levels witnessed at MHS raise questions about Hershey Trust compliance with IRS guidelines on not-for-profit board and administrator compensation. Where such compensation is found by the IRS to be unreasonable, remedies can include disgorgement. Protect The Hersheys' Children, Inc. will be requesting IRS review of the matter.

11. Expense Account Aristocrats: Managers Spare Themselves No Extravagance. In addition to astonishing compensation, this childcare charity's board members also give themselves lavish traveling perks. For instance, rather than staying in a comfortable and economic local hotel when traveling to MHS Board meetings, the Managers stay in luxury at Hotel Hershey, the most expensive hotel in Central Pennsylvania. By comparison, one night at the local Hilton Garden Inn – where MHS houses alumni who are assisting with student enrollment – costs an average of \$92. Hotel Hershey rates are up to *six times* that amount. Because the rooms occupied by Managers could otherwise be rented to paying guests in the frequently sold-out Hotel Hershey, it is no excuse that Hotel Hershey is owned by the Hershey Trust –as the Managers apparently recognize since they ask those who donate time to MHS *enrollment efforts* to stay at more reasonable establishments. The Managers also decline the option of staying – *for about half the Hotel Hershey rate* – at the Hershey Lodge, a more modest but nonetheless excellent local hotel also owned by the Hershey Trust. Indeed, according to Hotel Hershey employees, even Managers who live *locally* stay at Hotel Hershey during MHS Board meetings, apparently believing it is acceptable to spend tens of thousands of childcare dollars in order to spare themselves the inconvenience of ten-minute drives to-and-from their homes. Further, according to a current MHS Vice-President who had previously worked at HERCO, certain Hotel Hershey employees, such as bartenders, are provided with a book containing photographs of the Managers, so that they can greet the Managers by name. Query as to whether the Managers' bar tab too is being paid from childcare funds –a question that the Attorney General should ask. The Managers also convene one meeting per year at an expensive off-site location. This is another inexcusable extravagance given that the alternative is to conduct this meeting at the Managers' already-luxurious Hotel Hershey setting, if not at a less expensive local hotel or at the perfectly adequate Hershey Lodge. An occasional charitable board indulgence such as staying at Hotel Hershey might be tolerable for ordinary charitable board *volunteers*, but not for ones who, like the Managers, draw compensation at levels unheard of at other childcare charities. The MHS Administration is similarly spendthrift. For example, President O'Brien's first acts included using childcare resources to purchase a luxury SUV for his use, followed by purchase and lavish renovation of an extravagant home valued at approximately \$1,000,000 –and this after having campaigned for the MHS Presidency with heart-tugging assertions that he would be "*willing to work for free and live in any shack on campus.*" This is on top of a lavish media-and-event budget devoted to

¹⁵ MHS leadership misconduct has been thoroughly described elsewhere and need not be revisited here, with prime offenders being promoted and given raises though elsewhere they would be terminated. Suffice it to say that the Managers have created a situation where they now have overwhelming financial reasons to look away from Administration misconduct, for the sake of appearances. Similarly, even though the MHS Board determined months ago that MHS President O'Brien had to be replaced, he has been left in his position and the fiction that he is "voluntarily retiring" is being maintained. This is in spite of the consequences for MHS of another year under President O'Brien's failed leadership, which appears to be worsening. More troubling, there is every reason to believe that President O'Brien, similar to other departing MHS executives, will also receive an outlandish golden parachute to encourage his going quietly into the night. Indeed, five years after former MHS President William L. Lepley's departure, the MHS Form 990 shows him still receiving \$134,184 –and thus making MHS a childcare charity that pays departed executives as much compensation as other such charities pay current ones, a novel practice for a childcare charity. In President O'Brien's case, a huge severance payment would be especially inappropriate because of what appear to be prepaid retirement sums of \$200,000 for each of the last several years, according to the Form 990s. For its part, the MHS Administration – led by a President lacking requisite qualifications – has been instrumental in championing MHS Board reform rescission, including selling it to skeptical alumni and relentlessly attacking alumni reform activists. In other words, in financial terms, for the MHS Board and Administration, one hand has washed the other: the MHS Board has paid astonishing sums to a woefully unqualified President and his senior leadership team, who in turn have aided the Board in rescinding reforms in a manner that allowed the Managers to enrich themselves as at no similar childcare charity. Lacking any outside check on their behavior, the MHS Board and Administration have locked themselves into an insidious downward spiral propelled by mutual self-interest, and in a manner that underscores the need for Attorney General action.

constant public self-congratulation by the MHS leadership, without a scintilla of benefit to needy children.¹⁶ In sum, whether it is the MHS Board or Administration, the MHS leadership spares itself no expense.

12. Economizing For Everyone Other Than The MHS Leadership. But there is a stark contrast between Manager/Administrator profligate spending on themselves and economizing on MHS children. While MHS Board and Administrator compensation has mushroomed, and while childcare resources have been diverted to MHS leadership cronies and to non-child uses, frontline staff report that economizing has been ordered at the childcare program level. For example, the number of children per student home has increased in spite of MHS Board commitments to decrease these numbers and in spite of a Blue Ribbon Task Force finding that similarly recommended such a decrease.¹⁷ Employees report other economizing on childcare as well, including in counseling. Similarly, the MHS Board has now placed *10% of all children in dormitories*, further economizing on childcare.¹⁸ Indeed, the MHS Annual Report glowingly cites claimed economies, priding itself on purportedly spending less per child –while MHS Board and Administration compensation skyrocketed. It is particularly troubling that, while the MHS leadership publicly claims that childcare economizing is not occurring, MHS employees insist that this is a falsehood. For instance, a local newspaper reported on December 14, 2008 that the Hershey Trust’s \$1.9 billion in portfolio losses would not affect the MHS budget, according to MHS officials. MHS General Counsel Jim Sheehan added, “[W]e won’t have trouble making the milk bill tomorrow.” Yet, at virtually the same moment, the MHS Administration was informing distraught junior division houseparents that the planned opening of several new student homes would have to be delayed, as a result of the portfolio losses, and that the number of children per student home would accordingly be increased. Clearly, the MHS leadership is telling the public one thing and MHS employees another.¹⁹

¹⁶ This spending has ranged from absurd to outrageous. President O’Brien – who prefers to be called “Johnny” – commenced his term with a lavish “inauguration” ceremony, including the processional “*When Johnny Comes Marching Home!*” Subsequent highlights included expensive full-page ads in a local newspaper unctuously wishing MHS housemothers a Happy Mother’s Day and housefathers a Happy Father’s Day (after poisoning relations with houseparents due to a string of abusive acts); countless “press conferences” that exploit MHS children (such as requiring the children to march in formation behind President O’Brien while he announced MHS “growth” targets, as cameras whirled); and, recently, a carefully-prepared “tribute” to President O’Brien that ran in local newspapers on Thanksgiving Day, *thanking President O’Brien* while the rest of the nation was thanking our Divine Creator. The list is endless, and all to deluge the public with a constant stream of self-serving imagery flatly at odds with the reality of today’s MHS.

¹⁷ The Blue Ribbon Task Force was a 2002 panel convened to examine a child safety crisis at MHS. It included outside residential childcare experts and a prominent local attorney. This panel made an authoritative set of safety recommendations that the MHS Board promised to implement as part of an overall reform package. But these anti-crowding promises were also rescinded when the MHS Board revoked other childcare and governance reforms imposed by the previous Attorney General.

¹⁸ The MHS Administration’s attempt to rationalize this as a childcare “advance,” i.e., as a form of “independence training” for seniors by placing them all in dormitories, is not credible. Sources on the MHS Board and in the Administration admitted that the goal was economizing. Further, a pilot study had already demonstrated the benefits of seniors remaining in houseparent-supervised and family-like student homes, with leeway given to houseparents to grant measured, additional freedoms to the seniors, much as is the case with older children in normal families everywhere. But the Administration misrepresented the results of the study to justify placing all the seniors in dormitories. This illustrates the nature of many MHS Board actions: retrograde childcare policies intended to economize are fobbed off as childcare “advances” while the best counsel from within and without MHS is ignored. Meanwhile, genuine and obvious childcare advances – such as smaller student homes integrated into a community setting – are eschewed, since these do not comport with the non-child agendas of the MHS Board. In other words, the MHS Board leadership was apparently committed from its first day in power to keeping MHS children in centralized and segregated compounds, just as the previous MHS Board had done, rather than reintegrating these children into the local community as virtually all childcare professionals recommend –and as Hershey Trust settlers Milton & Catherine Hershey mandated.

¹⁹ The contrast between MHS leadership self-indulgence and economizing for all others is not lost on employees, many of whom reach out desperately for help. One such employee recently sent a letter that included the following: “*The treatment of the employees over the past 3+ years has been absolutely horrifying. [MHS leaders] are just like these big corporations squeezing every penny from the people who have worked hard over the years, all in the name of reducing costs under the guise of furthering the mission of the school. Meanwhile, they themselves continue to waste money on pet projects and things that do not further the mission of the school.*” Protect The Hersheys’ Children, Inc. could not have put it better.

13. Perverse Economies Exacerbate High Attrition. Virtually *every* example of the MHS Board’s childcare economizing contributes directly to the astonishing attrition levels prevalent under the current MHS Board, with **994 children** having been removed during the last five years while **only 630 children** graduated. It is obvious that children are being churned in and out of MHS in spite of failing programs, simply to boost enrollment figures and in an effort to create the illusion of MHS leadership accomplishment. This is notwithstanding the wrenching consequences for children whipsawed in this manner. These are children who, in many cases, have already experienced multiple dislocations such that the additional trauma of being bounced in and out of MHS has lifelong damaging effects. The net result is arguably that, today, more children are being harmed than helped by MHS under the current MHS Board. By way of analogy, the MHS Board’s “success” claims in the face of soaring attrition are the equivalent of a hospital losing 994 patients to unsuccessful surgeries, but nonetheless boasting about the number of new patients showing up and trying their luck. Most disturbing of all is the manner in which the MHS Board seeks to reduce attrition. Rather than implementing the Blue Ribbon Task Force anti-crowding recommendations as promised – which recommendations are echoed by virtually *every* credible childcare voice in the nation and which were urged on the MHS Board by numerous parties – the MHS Board stubbornly ignored this advice, increased the number of children per student home, made excuses about departing MHS children not being “the right children” for the school, and then sank \$40,000,000 into a “transitioning” facility that housed 20 children per bedroom and 40 children under one roof, in reckless disregard of all warnings and as though crowding newly-enrolled children into this facility would somehow “improve” retention rates.²⁰ The latter act is so breathtakingly ill-considered that it rivals the “multi-age housing” scheme implemented under the previous MHS Board, itself considered among the worst MHS childcare decisions of all time. Put in simplest terms, all other variables being held constant, the MHS Board could have dramatically lessened child attrition merely by carrying out *its own promises* to decrease the number of children per student home, as every credible residential childcare professional advised, including ones paid large sums by the Hershey Trust to render independent expert advice. Why the MHS Board refused to do this and opted instead for a crowded intake facility is mystifying and unconscionable – and every Manager and senior Administrator involved in this act should be summarily removed on this basis alone.

14. MHS Board Structure Perpetuates Lack Of Childcare Expertise Causing Myriad Poor Decisions.

Although the Hershey Trust is the world’s largest residential childcare charity and in 2003 embarked on a major infrastructure initiative entailing vast spending, not one member of the MHS Board has any meaningful residential childcare qualifications. This contravenes basic board governance norms and is the equivalent of constituting the world’s wealthiest hospital board without a single physician, and then handing that board an unlimited budget to design and construct new hospital facilities, even though not one board member had any idea what such facilities should entail.²¹ Worse, since Hershey Trust governance reforms were rescinded in 2003 in a manner that opened the door to current compensation levels, no *bona fide* residential childcare professionals have been named to any Hershey Trust board position. The MHS Board’s selection of MHS Administrators reflects this handicap, with certain hires undertaken in violation of personnel rules established at virtually all other residential childcare facilities; e.g., the hiring of an MHS President discovered to have falsely claimed to hold a graduate degree in psychology –an unthinkable lapse at any similar facility given the implications, which in fact manifested themselves at this very charity. Conversely, during the same period, political cronies of MHS Board Chairperson Roy Zimmerman have been named to lucrative part-time positions on the boards of MHS, the Hershey Trust, HERCO, and The Hershey Company. This combination of vast infrastructure spending, lack of residential childcare competence, and deficient MHS Administrator selection has produced such projects as the \$40,000,000 intake facility that housed 20 children per bedroom, dormitories for all seniors regardless of individual needs, and

²⁰ A disturbing characterization leveled at departing children, who often face unspeakable related trauma, is that they are not “the right children” and that their departure is thus somehow acceptable, as they are replaced by students who supposedly are “the right children.” Even the MHS Annual Report uses this pejorative and self-serving phrase, with its connotation that departing children, rather than MHS Board members, are somehow at fault. The alumni organization quisling board installed by President O’Brien similarly repeats this mantra in its mailings, on script. Meanwhile, MHS frontline care-providers relate harrowing reports of children who desperately need the school being returned to tragic settings, but who have fallen between the cracks as inadequate programs fail them. MHS does not provide any statistics on the need levels of departing children but it appears that many who leave are among those who are the poorest and who need MHS the most.

²¹ The Milton S. Hershey Medical Center, a hospital located in Hershey, PA, has a board of 15 members, four of whom are physicians.

other initiatives lacking support in residential childcare learning. On the contrary, the MHS Board's infrastructure decisions contravene 100 years of residential childcare progress and it is arguable that every infrastructure dollar spent during the last five years has been tainted by the MHS Board's lack of qualifications.

15. Unparalleled Infrastructure Waste: A \$600,000,000 Budget Produced Only 29 New Residences For MHS Children! The colossal dimensions of the MHS Board's infrastructure decision-making failure are difficult to convey without examining the five-year budget item-by-item to elaborate on each shocking choice. But a sense of this failure can be gleaned from observing that, over the course of five years, and while spending **\$600,000,000**, the MHS Board has constructed **only 29 new residences for MHS children**. This means that each of these new housing units represents nearly **\$21,000,000** of total budget, and for what should have been the single largest component of spending; i.e., money used to **house children**, the very *raison d'être* of a **residential childcare** facility. However, instead, the MHS Board has squandered budget on numerous other irrational purchases and projects, none of which directly increased housing capacity. Put another way, \$600,000,000 is enough money to have constructed **1,000 new homes for MHS children at a cost of \$600,000 per home**. But instead, the MHS Board has constructed **only 29 new residences** –which in eight cases cannot even be called “homes” since these include dormitories or “block-style” facilities, in disregard of all residential childcare progress. In fact, even newly-constructed student homes that are purportedly intended to house 10- or 12-children per home are said to actually be intended to house twice that number in the future. If true, this would comport with the child-crowding initiatives that the MHS leadership attempted to impose over the last several years, only to relent when confronted with intense public opposition. A rational use of the money squandered by the MHS Board would have been to build as many new student homes as possible, each housing fewer children, rather than constructing a bare minimum of new homes that housed larger numbers of children per-home and that required the child-crowding witnessed at MHS. There is simply no way to sugarcoat it: MHS Board budget allotments and spending choices have been nothing short of absurd.²²

²² There are numerous examples of dumbfounding infrastructure spending decisions made by the MHS Board, including:

- Purchase from MHS President O'Brien cronies of three buildings in what now constitutes an “alumni campus,” with related lavish renovation and construction costs, but without a scintilla of childcare benefit; i.e., *not one child resides in these facilities*. The centerpiece was renamed in honor of the O'Brien-crony sellers, for whom the sale reportedly provided debt bailout assistance.
- Purchase of a failing luxury golf course frequented by President O'Brien and Board Chairperson Roy Zimmerman, together with lavish renovation of the clubhouse. Again, *zero child-housing benefit*. MHS children are not even allowed to play on the course. This purchase was rationalized with an absurd “residential childcare reason” by the Managers; i.e., as necessary to “buffer” MHS children from the community –the precise *opposite* of what childcare professionals would recommend since every modern trend is toward “mainstreaming,” with natural and homelike settings integrated into communities, rather than segregated (or “buffered”) congregated housing. (This golf course should not be confused with the other money-losing course mentioned above at p. 4; i.e., the MHS Board's golf fixation has led to multiple instances of economically irrational decisions.)
- “Renovation” of one school building at a cost \$130,000,000 although it was publicly represented that the project would cost \$30,000,000 –a figure in line with what construction professionals stated would have been reasonable. This project – the irrational conversion of a high school into a middle school even though a brand new and expensively-constructed middle school had just been completed under the previous MHS Board – was so poorly planned that the MHS Board was quickly confronted with the problem of excess capacity and empty classrooms in the converted school. How did the Managers solve this problem? By creating new problems; i.e., the Board simply moved the entire fifth grade into this middle school from the junior division, thus placing fifth graders in the same building as 8th graders. But the decision was not premeditated or deliberate. Instead, the MHS Board simply reacted to its own expensive blunder with a new policy leap –one that moves in the opposite direction of what competent childcare professionals had advised or what is ideal for a middle school.

This list of willy-nilly decisions is far from exhaustive but suffices to illustrate how \$600,000,000 was spent though only a fraction of it actually went to house children. By pursuing a deformed infrastructure budget grossly unbalanced in favor of projects that do not even house children, vast sums were thus squandered. Worse, in the few projects that were devoted to housing children, intense child-crowding has also been pursued, since MHS enrollment growth has strained capacity and children have thus been squeezed into both new and existing residences. In other words, the MHS Board over the last five years has stood all rational residential childcare principles upside down –because the vast majority of spending should have been used to build new child residences so that children could be housed ideally and comfortably, not to buy another failing luxury golf course, construct an “alumni campus,” “renovate” one building for \$130,000,000, or any of the similar vanity

16. A Tragic Equation: Squandered Resources + Enriched MHS Board Members = Abysmal Childcare Results. The Hershey Trust’s annual income stream is approximately \$165,000,000 according to IRS Form 990. No other state in the country is blessed with so huge a resource earmarked for residential care of dependent and at-risk children –children who elsewhere are beggared by strapped state treasuries scrimping on childcare costs. Yet, the overall results of the Hershey Trust over time do not even scratch the surface in fulfilling the potential of what could be accomplished with all these resources on behalf of needy children, though certain individuals have greatly enriched themselves and their cronies by it. The tragic question hovering over all of this is what a child-focused MHS Board, comprised of selfless and competent residential childcare professionals, would have achieved at the spending levels witnessed over the last five years; i.e., how many needy children today would be receiving Hershey Trust life-saving benefits if the resources expended during this time had been utilized optimally by those with residential childcare expertise? It is inconceivable that such a board, spending comparable sums, would have shown similarly poor results, hired Administrators with falsified credentials and checkered backgrounds, ignored expert advice to end child-crowding, squandered money on luxury accommodations and media stunts, or otherwise pursued the infrastructure plans observed over the last five years, the emblematic and core folly of which was constructing only 29 new residences for children while simultaneously expanding enrollment, such that ill-advised child-crowding was necessary. Further, the only way that the current MHS Board can claim that its “growth” levels constitute a “success” is to ignore the \$600,000,000 spent on infrastructure during the same period, the \$100,000 in annual per-child costs, and the 994 children removed while only 610 children graduated. But the MHS Board focuses myopically on absolute “growth” in order to claim “success.” The Board apparently then relies on this sole “success” barometer to rationalize raising its compensation levels to sums unheard of at other childcare charities, epitomized by Board Chairperson Roy Zimmerman’s projected \$773/hour. No Attorney General charged with charitable trust oversight should permit this level of compensation, let alone this degree of failure, including preposterous infrastructure schemes such as 20-child bedrooms in 40-child intake facilities that harken back to a primitive era in residential childcare. But here too, the Zimmerman Board claims that this is a childcare “advance,” proudly featuring it in the latest Annual Report and tinkering with its details to try to salvage this financial and childcare fiasco.

17. Déjà Vu All Over Again: Pennsylvania Authorities Have Another Chance To Reform The Hershey Trust But This Time Must Get It Right. Since rescission of Hershey Trust governance reforms in 2002-2003 and replacement of ten Managers with individuals handpicked by public officials behind closed doors, MHS dysfunction has been extended to skyrocketing board compensation, reaching levels unheard of at any similar charity and directly reducing the income available for needy children. This compensation hike for part-time work – a *tripling* in the levels paid three years ago – corresponds with billions of dollars of Hershey Trust portfolio losses, childcare economizing, student attrition that dwarfs the number of children graduating by a ratio of nearly 2-to-1, increased child-crowding, questionable hiring and board selection, and indefensible infrastructure decisions. Virtually every empirical measure reveals a deeply flawed Hershey Trust governance structure that squanders resources and fails children, while enriching MHS leaders and their cronies –including, now, political ones, perhaps the only reason that the MHS Board has been permitted to engage in the behavior and decisions described here.

Commenting on the conduct of the Pennsylvania Attorney General, courts, and legislature in 2002, when the current Hershey Trust die was cast, one of the nation’s leading charitable trust scholars asserted: “*The Hershey case shows each of the three branches of Pennsylvania government acting illegitimately.*”²³ Five years later, these words ring prophetic as every effort to improve the MHS childcare mission has foundered on Pennsylvania

projects pursued by the MHS Board (such as renovating historic student homes simply to mollify traditionalists, but also without adding child-housing capacity). This \$600,000,000 in spending is arguably the worst residential childcare waste of all time –and the ultimate “benefit” to needy children is tragically inadequate: a mere *29 new residences coupled with across-the-board child-crowding*, and all because the MHS Board failed to appreciate that its first and primary duty is *to house children*. This was precisely what childcare and governance reform advocates had warned the local authorities would happen in 2003, to no avail.

²³ Evelyn Brody, “*Whose Public? Parochialism and Paternalism in State Charity Law Enforcement,*” 79 Indiana Law Journal 937, 998-999 (2004).

Attorney General or court resistance. This is in spite of a string of glaringly poor MHS decisions and notwithstanding constant pleading with the Attorney General to act.

With the recently-announced imminent removal of MHS President John O'Brien, another opportunity exists to rectify the inadequacies undermining the Hershey Trust's childcare functions. This is just as such an opportunity existed in 2002, when the previous Attorney General rescinded, rather than strengthen, his own reforms –and when all pleas to public officials to name *even one* residential childcare professional to the MHS Board fell on deaf ears while cronies of these officials were forced onto the MHS Board in disregard of the Hershey Trust's core childcare functions. The bitter harvest for needy children of the seeds sown by this conduct is manifest in the performance results of the last five years.

What Attorney General Tom Corbett will make of this latest opportunity to address Hershey Trust problems remains to be seen, though it will form a key component of his public legacy, for better or for worse. For if the Hershey Trust's childcare problems again are not rectified – including at the MHS Board level and *before* another MHS President-selection debacle occurs – then the losses to Pennsylvania taxpayers and to needy children will be astronomical. To be clear, the path to a better future for the Hershey Trust in 2009 looks uncannily similar to the one in 2002: remove the current MHS Board leadership and senior Administrators; appoint *childcare professionals* to fill vacated Manager positions; and name an interim MHS President for the several months necessary for the new Board to hire a *qualified* permanent President.

This very option existed in 2002, when local authorities eschewed childcare professionals in favor of cronies for the MHS Board, the latter of whom in turn selected not a credible MHS President, but an individual who could help them fight off reform advocates and open the door to the Manager compensation described here –never mind false claims to a graduate degree in psychology or lack of credible leadership experience. This MHS Board then stood beaming while “*When Johnny Comes Marching Home!*” was sung at a lavish “inauguration,” elevating image over any semblance of substance. Thus was ushered in the Zimmerman/O'Brien era –and thus was set the stage for what Attorney General Tom Corbett faces today. Needless to add, General Corbett now is also the only person with any power to act in this matter, since the Pennsylvania State Supreme Court has shut down all other avenues of reform.

Something simply must be done, finally, to improve the childcare functions of the Hershey Trust given the vast resources at stake and the unconscionable and ongoing failure to deploy these resources rationally. The removal and scapegoating of a sadly unqualified MHS President by the latest failed MHS Board is not enough. It is necessary also to remove the MHS Board leaders who hired this individual in the first place and who endorsed his every decision, no matter how reckless, while lining their own pockets. By every measure, the current MHS Board rivals the previous one in resource waste and childcare regression. It is thus time to change the system, not just the latest exploiters of that system. For starters, upstanding citizens who have already made their way in the world need to stop taking \$1,600,000 of annual fees for part-time charitable board work from funds that should go to needy children. The Hershey Trust should be the pride of Pennsylvania and should have changed the face of residential childcare across the state, if not across the nation. Instead, it remains a charitable, childcare, and governance disgrace.