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Three Strikes & You're Out:
AG Kane's Hershey Agreement Constitutes Latest OAG Reform Failure
A Paragraph-By-Paragraph Analysis

On May 8, 2013, Pennsylvania Attorney General Kathleen Kane closed a nearly three-year investigation of the Milton Hershey School (MHS) Trust, a child welfare charity beset with problems. With great fanfare, Kane announced that she had executed a reform agreement between the Office of Attorney General (OAG) and the MHS Board. Kane claims her agreement contains "tough reforms [that set] a new a new standard for charitable organizations" and "changed the composition of the board."

As shown below, Kane's agreement changed virtually nothing. Where she did make changes, she mostly worsened matters. Her agreement is actually the third in a series; and rather than imposing reforms, it ratified reform rescission.

The first OAG agreement was executed on July 31, 2002 and contained genuine, if elementary, reforms; e.g., ending conflicts of interest, mandating child safety improvements, and prohibiting self-appointment to lucrative controlled-company boards. While it was not as far-reaching as it could have been, it was light years better than what had existed at the time.[1]

The second OAG agreement was executed on June 27, 2003 and rescinded the initial reforms. This contributed to the self-enrichment, poor spending decisions, and child welfare failures that followed.

Kane's agreement, the third in the series, simply endorses the second one; i.e., *it ratifies the reform rescission and itself rescinds the June 27, 2003 Agreement.*

The following paragraph-by-paragraph analysis demonstrates that Kane's claim of "setting a new standard for charitable organizations" is farfetched, unless she means in the areas of unbridled self-enrichment, cronyism, and the other misconduct that she perpetuates.

<u>AG Kathleen Kane's May 8, 2013 Agreement</u>

The numbered paragraphs below correspond to the paragraph numbers of Kane's 2013 Agreement. Other definitions are: HTC = Hershey Trust Company; HERCO = Hershey Entertainment & Resorts; HC = Hershey Company; Board = MHS/HTC Board; Managers/Directors = MHS Board of Managers/HTC Board of Directors.

1. **<u>Conflict of Interest</u>.** Requires MHS and HTC to enforce the *existing* Conflict of Interest Policy, with one proviso: it merely requires *disclosure;* i.e., the Kane agreement *waters down* the existing rules by

[1] OAG subordinates conceded that politics prevented them from achieving more in the 2002 agreement. Among other flaws, it failed to mandate serving foster care children and wards of the court; it compromised on child-crowding and allowed segregation of MHS children from the community; and it failed to mandate child welfare best practices. But its strengths lay in governance improvements and certain safety measures.

deleting the 2003 prohibitions on purchase of goods or services from a person or business that employs a Director, or in which the Director has more than a nominal ownership interest.

CONCLUSION (1): **NO CHANGE OTHER THAN A STEP BACK.** By allowing MHS to contract with companies owned by or employing a Board member, the Kane agreement lowers the bar, and will allow Managers/Directors another avenue for financial gain from the Hershey charity.

2. **School Employees.** Restates 2003 paragraph prohibiting employees from serving on boards.

CONCLUSION (2): **NO CHANGE.**

3. **Milton S. Hershey Medical Center.** Restates 2003 paragraph prohibiting interlocking directors.

CONCLUSION (3): **NO CHANGE.**

4. **Qualification of Managers/Directors.** Requires *"best efforts* to identify for election to their Boards individuals whose education, training and experience reflect the full range of the Boards' responsibilities, including but not limited to at-risk/dependent children, residential childhood education; financial and business investment; and real estate management." (Emphasis added.)

***Observations*:** The provision's flaws include: (i) failure to *mandate* Board members with requisite expertise in child-centered areas; (ii) failure to require a minimum number of Board members with such expertise; (iii) no insistence by the OAG on names of candidates before finalizing the 2013 Agreement in order to assure such expertise; (iv) no requirement that persons with such expertise be identified by the OAG itself to assure compliance and qualifications (even though offers to identify such candidates were provided to Kane); (v) "best efforts" and "identify for election" render the clause meaningless and are in essence akin to the NFL's "Rooney Rule," which requires NFL teams to *interview* minority candidates for coaching/general manager openings, but all recent hires have been non-minorities; and (vi) the definition is broad enough to include any MHS alumnus, including the present Board members, whose "education…and experience" can be said to "reflect...residential childhood education."

Put differently, the Board can claim it is *already* in full compliance with this provision, one that openly sanctions continued use of MHS Board seats to reward cronies and compliant alumni unqualified to run the world's largest child welfare charity. It is just stunning that a $10.6 billion charity – one beset with child welfare policy problems, is losing more than one child every school day on average, and has been visited by a host of scandals involving child sex abuse and reckless housing experiments – is not simply *ordered* to add the requisite expertise to its board.

But instead, the MHS Board is required merely to make "best efforts" to "interview" such "experts," and with "expert" defined so broadly it is meaningless: the several alumni interviewed in 2011 arguably satisfied this definition, though they are among the least qualified individuals, in child welfare terms, ever to be considered for the MHS Board. Rather than assuring proper expertise on the MHS Board, the 2013 Agreement grants the self-selecting MHS Board the very mechanism it requires for perpetuating flawed Board composition.

CONCLUSION (4): **NO CHANGE.** Provides mere window-dressing and squanders an unprecedented opportunity to achieve real reform of Board composition by mandating *actual* child welfare expertise.

5. **Overlapping Managers/Directors.** Permits all Board members currently serving on the HC board and the HERCO board to continue so serving. Locks in the present number for the future; i.e., three such individuals on the HC board and one on the HERCO board. In other words, the *status quo* is preserved and no change is required. The 2013 Agreement does prohibit triple-dipping (which is not presently occurring) but perpetuates the practice of double-dipping.

CONCLUSION (5): **NO CHANGE.** The *status quo* is not a "reform." Ending triple-dipping is hardly "setting a new standard for charitable organizations." *Why does MHS even retain a grossly-conflicted and archaic "interlocking board" structure that has been the source of so past many abuses, that provides* *no benefits to children, and that is preserved simply to allow Managers to continue profiteering?* Ending the interlocking board structure is the one basic reform – contained in the 2002 Agreement – that governance experts universally endorse, and that would limit many of the most pernicious abuses. Kane's failure to include this in her "standard-setting" reform package is the most eloquent tell as to what motivated her action: she intentionally preserved the MHS Trust flaw that is most susceptible to abuse by connected insiders who seek to exploit this charity for non-child goals. Preserving this core flaw has zero benefit for needy children –their interests were ignored by Kane in allowing this to continue.

6. <u>Compensation of HTC Board</u>.

Preliminary comment: Close examination of this provision exposes the utter travesty of the Kane agreement, starting with the question-begging presumption that HTC Directors are entitled to even a dime of pay in the first place; i.e., since HTC sold its *only* profit-making unit two years ago (the Private Wealth Group), why are the Directors permitted to pay themselves *anything?* Kane's provision merely enables what is actually going on: the Managers are disguising their MHS Board (nonprofit) pay as HTC Board (for-profit) pay. This is despite the Deed of Trust forbidding such. Kane thereafter enables hiking up this improper pay, through artful add-ons and other transparent mechanisms, as explained below.

(a) Replaces 2003 silence on base pay with a floor of $30,000 –Kane has been publicly misrepresenting this *floor* as a "cap." Although this base amount will be increased up to and beyond the present $100,000 or more per person in minimum annual pay, doing so requires piecing together several compensation components; e.g., the Board chair may be paid $10,000 as an additional "fee;" each committee chair may be paid $5,000 as an additional "fee;" each Board member may be paid a $4,500 "fee" for "each daily session of an in-person Board meeting that exceeds four hours in length;" ***i.e., over $1,000 per hour!*** There are ***NO*** restrictions of any kind limiting the number of "full-day" (which in reality are half-day) meetings nor limiting committee chairs. The "restrictions" are virtually meaningless –and this, for HTC, a company that has sold its only profitable unit – the Private Wealth Management Group – thus calling into question why its Board members are paid *anything at all,* let alone over $100,000 annually once all the add-ons are factored in. The mere scheduling of meetings will ratchet up compensation –the only limitations are the number of hours in a day and days in a year.

(b) Beginning in 2013, and every second year thereafter, Directors submit to the OAG five names of industry-recognized independent consulting firms to conduct a study of board compensation paid by comparable organizations and make a compensation recommendation based on that study. The OAG then identifies three firms from the list. The Board chooses one of those three firms and obtains a report advising the OAG of the recommendation before "acting upon it" (i.e., raising their own pay). In other words, OAG approval is ***not*** a requisite, as this is an *"inform-but-do-what-we-want"* provision. Also, whatever the base pay, the same four compensation loopholes noted above are included. In sum, the Board will choose its own pay consultants and set its own raises; and the OAG is "empowered" merely to rubberstamp these choices. Some reform.

(c) After 24 months, any Director serving on the HC or HERCO boards will cease receiving the $30,000 minimum HTC pay (as adjusted by the "pay consulting firms"). In other words, if the HTC total pay remains $100,000, a double-dipper will receive $70,000 for HTC in addition to whatever they make from HC; i.e., currently $315,000 for Director James Nevels, $220,000 for Director Robert Cavanaugh, and $210,000 for Director James Mead. To cite one example of Kane's provision in action, current Board chair Robert Cavanaugh received $328,614 ($220,000 of which comes from HC) in FY 2011, according to the most recent Form 990. Assuming the above-noted add-on "fees," his pay would be $341,000 under Kane's "standard-setting" measures; i.e., he would make *more* money.

***Observations*:** (i) No limit on number of Directors; (ii) no limit on number of committees; (iii) no limit on number of daily sessions in one day, e.g., Board can schedule two sessions in one day, each just over four hours, and receive $9,000 per day; (iv) no limit on number of daily sessions in one year and therefor no cap on compensation; i.e., if there were 18 sessions, each Board member's minimum annual compensation becomes $111,000 –which is roughly equivalent to the minimum compensation reported by Board members right now (according to the most recent Form 990); (v) no agreement to freeze compensation at existing levels; (vi) formalizes a procedure to increase Board compensation that does *not* require OAG approval; and (vi) creates a detailed and complex process for compensation while otherwise eschewing any similar process for naming child welfare experts to the Board.

The OAG should also disclose the Mercer Report mentioned in the 2013 Agreement, so the public can see what is purportedly a "comparative board compensation study." It is difficult to believe that a genuine apples-to-apples comparison was done, even if Mercer improperly looked at for-profit companies (since HTC's assets under management and lack of appreciable net revenues cannot justify the amounts being paid). The Directors are no doubt receiving more in fees than HTC's total net income. It is also worth noting that the 2013 HC proxy indicates that Mercer is paid $1,482,973 annually to address HC board and executive compensation. Most important of all, nearly all non-profits have *fully volunteer* boards. *See* **Exhibit A,** showing the ten largest university endowments and four largest private school endowments. *None* of these institutions pays any compensation to its board members, while virtually all require board members themselves to contribute to the institution in question.

Did Mercer compare compensation to for-profit boards? If so, how can this compensation be on the low end, as represented by AG Kane? Moreover, since there is no longer a private trust business, this "HTC compensation" is in fact merely disguised MHS Board pay. The MHS Deed of Trust does not even authorize any Director compensation, limiting the *total* HTC fee to $1,000 per annum. For example, the Deed of Trust only authorizes the Managers to compensate employees, not themselves. *See* Deed paragraph 19 (Trustee can only pay reasonable expenses of Managers); and paragraph 9 (Trustee shall not charge the corpus or the principal for compensation). Kane simply ignored these Deed restrictions without any justification or explanation. *Why?* Here, the substance of charging the fees within a wholly-owned MHS Trust asset is charging the corpus of the MHS Trust, which is prohibited.

By setting pay at over $1,000 per hour (which equates to $40,000 per week, or $2 million annually), did the OAG consider how much Managers get paid per hour in their full-time jobs? If they do earn this type of compensation, why do they need to charge MHS anything for charitable work? If they do not earn this rate of pay in their private lives, why is the charity paying them a premium for purportedly charitable work? The OAG did not even require Mercer (or other future compensation consultants) to limit the analysis to nonprofit board pay, thus rendering the exercise pointless: this agreement permits the MHS Board members to conjure a "comparison" with for-profit companies as a transparent ruse for paying themselves for nonprofit MHS work. That they do so using a wholly-owned for-profit non-operating company (HTC) is immaterial.

In sum, the 2013 Agreement preserves the lavish compensation and double-dipping for present and future Board members *–including prominent Democrats reportedly eager to gain access to this charity's wealth.* Contrast these individuals with bona fide child welfare professionals, who would gladly serve for free, and who would implement better policies than the group that the current mechanism attracts.

CONCLUSION (6): **VIRTUALLY NO CHANGE.** Other than ending triple-dipping and creating window-dressing that requires piecing together dollar amounts to obtain the total pay sought, the 2013 Agreement ratifies excessive charitable board compensation and squanders the opportunity to create a volunteer board. Make no mistake: this core provision was preserved to ensure profiteering by the latest group of insiders to circle the MHS Trust, prominent Keystone State Democrats. It is well known that the "pitch" to cronies when describing these lucrative MHS Board positions includes the standard phrase *"The pay's good!"*[2]

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[2] Not only is this "pitch" made when inviting new members to join the MHS Board, but the same phrase was reported by current Manager Joe Senser as what he was told when offered a HERCO board seat in 2002. Senser rejected the seat at the time, earning praise. He has since had a dramatic change of heart: he accepted a HERCO board position last year and has amassed over $1 million in total MHS pay since being named to the Board, in addition to enjoying many lavish perks.

7. **Board Travel Reimbursement Policy/Expense Policy**.

Preliminary comment: The treatment of perks – *not* child welfare, *not* child safety measures, *not* Board expertise – is the most detailed part of the 2013 Agreement and helps show what really matters to the MHS Board and AG Kane: food, wine, spa treatments, and luxury golf. The Kane 2013 Agreement's perk-protecting terms are even contained in a special stand-alone "Exhibit B." There is no corresponding exhibit on *any* matters affecting MHS children, child safety, or Board expertise. But there was a child safety exhibit to the 2002 Agreement, containing the recommendations of a Blue Ribbon Task Force safety panel. Kane eschews that kind of child-protecting attachment in her agreement, in favor of one that protects Manager spas, golf, meals, and other similar items.

Exhibit B Summary: Ordinarily, HTC staff will make travel arrangements (not the Managers themselves). Reimbursed travel expenses will consist of: (i) coach airfare; (ii) airport parking; (iii) auto rental fees; (iv) car services if arranged by HTC; (v) airport bus, shuttle, and other local transportation costs; (vi) personal vehicle mileage reimbursed at current IRS "standard rate," which is $0.565 per mile for business miles driven, but only $0.14 per mile for driving in service of charitable organizations. (Query: Which IRS reimbursement rate did Kane approve, business or charitable, if she even knows?)

***Observation*:** How bad were the travel abuses that this policy had to be forced on the Board at all? Was first class airfare being charged? Or did this simply preserve existing rules? If there were abuses, then why no restitution? If not, then why include the provision at all?

Hotels. Gift shop purchases, in-room videos, personal phone usage, spa services, local sightseeing, entertainment or recreational activities such as golf "that are unrelated to the business purpose of the trip," will not be reimbursed. If charged to a room, HTC must be reimbursed within 60 days, rather than immediately. Manager tips to porters will be reimbursed by the charity.

***Observation*:** Again, how bad were abuses that this detailed policy had to be imposed by the OAG? Why did the OAG not require Managers to reimburse the charity for past abuses on gift shop purchases, movies, spa services, sightseeing, entertainment and golf charged to MHS? Why does the policy narrowly apply only to expenses "unrelated to the business purpose of the trip?" What does this qualification mean? If two Managers discuss business while receiving spa treatments together or playing golf or sightseeing, or if they buy gifts for those with whom they seek to curry favor, are the expenses charged to the charity? Why not a blanket policy that a Manager must pay *all* of these personal expenses, without exception, from their $4,500 daily half-day session fees or the $30,000 minimum annual base pay? What constitutes a round of golf that will be "related" to a business purpose?

Meals. Reasonable meal charges while traveling to and from Board meetings or on other Board business will be reimbursed. "Reasonable" is defined as being limited to 3 meals per day.

***Observation*:** What have we been reduced to when the newly-elected Attorney General of the Commonwealth of Pennsylvania trumpets a get-tough policy that limits child welfare charitable trust board members to 3 meals per day at the charity's expense? Query: Does an appetizer or two constitute a meal? When the Managers continue their practice of charging the charity for their lavish Hotel Hershey dinners, replete with cocktails, expensive dinner wines, choice entrees, and desserts, will AG Kane review the bill to determine whether they could have finished everything on their plates? Should Kane consider an anti-doggie bag provision, in case the Managers seek to circumvent this draconian reform? Given the fat per-day fees that these Managers are paying themselves, in addition to their $30,000 base pay, double-dipping, and other add-ons, is it too much to ask them to pay for their own food, instead of wining and dining themselves using even more money intended for needy children and families?

Spouses and children.

Preliminary Comment: Why should the charity absorb *any* spousal or child expenses for *any* reason at *any* time?

"Spouses and children may be invited to retreats and graduation." Query: (i) How is a retreat distinguishable from a normal multi-day board meeting at a world class resort in Hershey? (ii) Why is there no limit on the age of children (most Managers have adult children)? While initially stating that spousal and child expenses are the responsibility of the Managers, the provision goes on to "clarify" that this only means that their expenses will be treated as compensation to the Board member; i.e., classic double-talk. Note the following "clarifying" provisions:

(i) "Spouses and children may attend graduation weekend events and celebrations, and transportation, lodging, and meals for spouses and children will be paid by the Trust Co. and reported as taxable income to the Manager/Director." *Translation:* Spa, golf, and other entertainment will continue for the whole family.

Observation**:** Many Managers live at substantial distances from Hershey, making transportation expenses for spouses and children a very costly matter. Query: (i) Have Managers been avoiding income tax for years on this? (ii) Does this allow multiple hotel rooms or cottages at Hotel Hershey, which rent out for thousands of dollars per night? (iii) Why is a charity incurring these expenses at all?

(ii) "Local sightseeing, entertainment or recreational facilities such as golf and spa services may be arranged during retreats and graduation for spouses and children." Query: Does arrange mean "pay for"? If not, then why is the provision included, since anyone who likes can "arrange" these indulgences with or without AG Kane's supervision?

Observation**:** Why would a child welfare charity pay for spa services and golf for the spouses and children of Managers who are already being paid upwards of $100,000 annually plus expenses? Again, is this what AG Kane means by "setting a new standard for charitable boards?"

(iii) "Spa services for Managers/Directors and spouses will be reported as taxable income, as will any other entertainment and charges for spouses and children."

Observation**:** The 2013 Agreement purportedly reins in expenses. But this provision actually grants *carte blanche* permission for multiple unlimited spa treatments and golf play, for Managers and their families, and all paid for with child welfare charitable assets. *Why?* For $4,500 per daily 4-hour session ($9,000 for full-days in the rest of the English-speaking world), can't the Managers pay for these indulgences on their own? After all, they and their spouses are enjoying a world class resort that the children and families served by the charity can only dream of. Why is there no limitation on spa usage or frequency of golf play? These MHS-paid lavish perks could easily constitute mini-vacations valued at $10,000 or more for each Manager, his or her spouse, and their children (and stepchildren); i.e., an amount greater than the total annual household income for many of the poor families served by MHS. Does "getting tough" mean drawing the line at paying for the golf/spa treatments of cousins, grandchildren, and same-sex partners? Again, is this what AG Kane means by "setting a new standard for charitable boards?" There are many charities serving poor children and families whose entire annual budgets consist of just the amounts that MHS will spend on these Manager perks, now sanctioned by Kane's "standard-setting" reform agreement.

(iv) "If a Manager/Director stays beyond the arranged retreat and graduation dates, he or she is responsible for any additional charges."

Observation**:** How bad were practices that this "restriction" is trumped up as "reform"? Why did the OAG not seek recovery of expenses for extended post-meeting vacations previously taken by the Managers and billed to needy children?

CONCLUSION (7): The minutiae in the Managers' expense policy is the heart of the 2013 Agreement's new material, despite protestations from the OAG that it does not micro-manage. As a reform, it is lacking in nearly every respect, and itself requires reform. If this policy were in place at any other charity, the OAG would have been seeking *actual* reform with a simple mandate: "No personal expenses will be reimbursed or allowed as compensation, *period."*

8. **Auditors.** Repeats 2003 Agreement paragraph 4.

CONCLUSION (8): **NO CHANGE.**

9. **Legal Counsel.** Essentially the same provision as 2003 Agreement paragraph 5.

CONCLUSION (9): **NO CHANGE.**

10. **Real Estate.** Merely requires *notice* to (not approval of) OAG 30 days prior to a real estate transaction involving a lease of 3 or more years or more than $250,000 of consideration.

The following provision of the 2003 Agreement paragraph 6 was deleted:

• MHS Trust shall not sell land, construct a building or place restrictions on land which would interfere with use of the land by MHS for program purposes, without first notifying the OAG in writing at least 90 days prior to such sale, construction or restriction.

Thus, as to the mere notice provision: (1) the notice period was *shortened,* allowing the OAG even less time to take measures; (ii) purchases of land were added; (iii) construction of buildings was deleted; (iv) expanded notice events in certain cases by removing program purpose limitation; and (iv) now allows restrictions on usage provided the leases are short-term.

CONCLUSION: **(10) NO MEANINGFUL CHANGE.** It is not a reform to require notice without including some remedy or OAG approval requirement. Consider that Kane has just publicly represented that even a $25 million spending orgy on a luxury golf course (including building a swank "Scottish-style" clubhouse and subsidizing annual losses of $1 million using charitable money), is fully permissible, warrants no penalty, and cannot be hindered by the OAG. With that as a standard, how meaningless is this mere "notice" provision?[3]

11. **School Admissions.** Identical to 2003 Agreement paragraph 7, with the additional recitation of a condition that children are "not receiving adequate care from one of their natural parents," which is a direct quote from the mandates of Paragraph 13 of the Deed of Trust, but without any qualification as to what this means in practical terms.

CONCLUSION (11): **NO MEANINGFUL CHANGE.** It is not a "reform" to require compliance with the Deed of Trust, particularly in the absence of practical guidance.

12. **Academic Standards.** Repeats 2003 Agreement paragraph 8.

CONCLUSION (12): **NO CHANGE.**

13. **School Year-Round Program.** Repeats 2003 Agreement paragraph 9.

CONCLUSION (13): **NO CHANGE.**

14. **Student Safety.** Merely a one sentence paragraph that repeats the 2003 Agreement paragraph 10 ("Ages of Students in Homes"), *except* that it calls for "*maintaining* reduced age differences among children within each student home," which is much less favorable to children than the 2003 Agreement. The latter required "*reducing* the age differences between children within each student home."

Observations**:** The MHS website indicates students are housed by divisions (Pre-K through Grade 4; Grades 5-8; and Grades 9-12). These age groupings *openly violate the Blue Ribbon Task Force recommendations,* mentioned above, that were provided to MHS in 2002 and included in the rescinded 2002 Agreement. These recommendations were designed to enhance student safety by assuring that age gaps were reduced to no more than 2-to-3 years for children in the same MHS group homes. Thus, in the only sentence

[3] An apparently gullible Attorney General disregarded unequivocal public representations by the Directors asserting that Hershey Links would remain forever a golf course, and now accepts that the original purchase and clubhouse construction were actually intended for MHS expansion.

of the entire 2013 agreement that even touches on child welfare, Kane fails to improve anything. Instead, she preserves the dangerous *status quo* of multi-age housing, while deleting the single enforceable restriction from the 2003 Agreement (requiring *reduction* of age differences to make living arrangements safer).

Observation: The 2013 Agreement spends more time obsessively protecting the Managers' appetites for luxury and their spouses' spa and golfing perks than protecting the safety of MHS children. The same can be said about Managers' children, who get more attention and benefits in the 2013 Agreement *than MHS children themselves.* Standing alone, this provision is an abdication of AG Kane's oversight duty in light of the scandalous history of MHS multi-age housing. Query: Did Kane speak with even one of the children who were sexually abused in the multi-age housing that the OAG has permitted? Did she speak with any of their guardians? Did she examine the cases of such children who were subsequently expelled by MHS, for "acting out?" Did she seek out any expertise? Or did she simply rely on her staff to persuade her that their handling of this matter is acceptable –staff whose record of Hershey failure is commonly known?

CONCLUSION (14): NO POSITIVE CHANGE. DANGEROUS STEP BACKWARD & REFUSAL TO PROTECT CHILDREN DESPITE NUMEROUS REPORTED MULTI-AGE ABUSES.

15. Reports to the Attorney General. Repeats 2003 Agreement paragraph 11, except for changing the student home age differences language, as noted above. Also acknowledges that the OAG may investigate complaints, as though the OAG did not already have this authority, by law.

CONCLUSION (15): NO CHANGE OTHER THAN BACKWARD STEP ON MULTI-AGE HOUSING.

16. No changes [i.e., no amendment]. Repeats 2003 Agreement paragraph 12 requiring OAG approval for any changes).

CONCLUSION (16): NO CHANGE.

17. Effective Date. Restates 2003 paragraph with updated signing date.

CONCLUSION (17): NO CHANGE.

18. Execution. Restates 2003 paragraph.

CONCLUSION (18): NO CHANGE.

SUMMARY OF CONCLUSIONS:

Of 18 paragraphs in the Kane agreement, *not one* makes a genuine and meaningful change constraining the current MHS/HTC Board. Even where a kind of "constraint" is introduced, e.g., the proscription on triple-dipping, it affects no one today –and it would have affected only one Manager/Director in recent memory, Roy Zimmerman, who has left the Board already. In the case of actual changes, the most significant ones address such lofty concerns as when HTC Directors and their spouses and children may charge the charity for spa treatments, golf, hotel stays, and meals. This includes the embarrassing "three-meals-per-day" limitation, a provision designed to rein in Directors who pay themselves upwards of $100,000 annually, and $1,000 per hour, but still want the charity to buy them food –and who apparently must be policed to prevent them from expensing four or five meals each day. Kane even troubles to make sure Managers do not have to go out of pocket for personal tips to porters, so concerned is she for Manager financial well-being.

AG Kane has indeed "set a new a new standard for charitable organizations." Never before has such glaring misconduct, reckless policy, self-enrichment, and indefensible spending by a child welfare charity been so richly rewarded by a state attorney general. Kane absolves all past wrongdoing (by explicitly making such a finding and approving every expenditure in MHS' last accounting); she excuses such outrages as $25 million squandered on a luxury golf course lark; and she compounds all this by confirming rescission of the only reforms that might have limited similar misconduct in the future; i.e., the 2002 Agreement.

Kane simply ratified the 2003 Agreement's reform rescission, openly blessing such extravagances as paying for spa treatments and golf, for Managers and their families, using child welfare assets.

Kane also props wide open the MHS Board door for more unqualified Managers to join –the very lackeys and cronies appointed in the last ten years qualify today, under Kane's new "get tough" policies.

Kane openly sanctions $9,000 per day "fees," $1,000 per hour payments, and $100,000 annual compensation –not even the 2003 Agreement did this, including a "how to" manual for adding up "fees" to obtain the desired total pay.

In the only area where Kane *does* pay attention to the safety of needy children – concerning multi-age housing – she takes a horrific step *backwards:* Kane's agreement perpetuates the reckless housing practices that led her own chief lieutenant to lament, *"We know the hours between 10 PM and 6 AM pass very slowly for some of these kids."* This statement – referring to a spate of sexual assaults committed against MHS children in multi-age housing – is as true today as it was in December 2001, when OAG attorney Mark Pacella made it.

Twelve years and three "reform" agreements later, the reckless policy at issue *still* continues –Kane did not bother to remedy even something this elementary. Equally troubling, child welfare and charitable trust experts had been lined up to provide Kane with guidance on avoiding just such basic mistakes –but Kane reneged on promises to hear what they had to say, and instead cavalierly embarked on the course that produced the 2013 Agreement, child-endangering flaws and all. Put differently, while powerful insiders seeking to preserve a lucrative *status quo* had full access to Kane and her top OAG staff, child welfare advocates were barred from offering any suggestions at all, rigging the process to disfavor needy children and assuring a flawed outcome.[4]

Kane did get tough all right: she got tough with needy children who had it bad enough before she made matters worse, squandering the best opportunity in history for achieving MHS overhaul. Kane's attention to protecting Manager perks, refusal to create meaningful Manager selection requirements, and *carte blanche* invitation to persist with runaway compensation and double-dipping make clear who her agreement is designed to protect: connected insiders who will continue to populate the various Hershey entity boards, albeit this time their party affiliation will switch from Republican to Democrat.

In sum, the 2002 Agreement's compromise reform measures were strike one against the OAG; the 2003 Agreement's total reform rescission was certainly strike two; and Kane's embarrassing whiff on the 2013 Agreement is an ignominious strike three: *the Pennsylvania OAG has struck out.*

It is time for federal intervention to wrest the Hershey charity from utterly compromised Pennsylvania oversight officials, individuals who place the interests of political cronies and connected insiders above those of needy children. When an Attorney General ignores consistent and ongoing abuses of needy children, codifies self-enrichment and wild spending, lavishes attention on a special "reform" exhibit protecting charitable board perks but pays ***zero*** attention to child welfare – and compounds all this with outlandish claims to be "setting a new standard for charitable organizations" – needy children must look beyond the Commonwealth to have their rights vindicated.

[4] Protect The Hersheys' Children, Inc. is preparing a separate letter to AG Kane that addresses this item and sets forth the historic context for the 2013 Agreement. This letter will be made available to the public shortly and underscores the failures identified in the paragraph-by-paragraph analysis contained here.

Exhibit A

Largest Private Universities (As Measured By Endowment Only)

	U.S. News	Compensation of Trustees	Hours per Year
1. Harvard	$32 Billion	**zero**	260
2. Yale	$19 Billion	**zero**	260
3. Princeton	$17 Billion	**zero**	260
4. Stanford	$17 Billion	**zero**	104
5. MIT	$10 Billion	**zero**	260
6. Columbia	$8 Billion	**zero**	156
7. Michigan[5]	$8 Billion	**zero**	once per month
8. U. of Pennsylvania	$7 Billion	**zero**	156
9. U. of Notre Dame	$6 Billion	**zero**	104
10. Duke	$6 Billion	**zero**	52

Boarding Schools with Largest Endowments

1. Phillips Exeter Academy	$1 Billion	**zero**	104
2. Phillips Academy Andover	$1 Billion	**zero**	156-208
3. St. Paul's School	$.43 Billion	**zero**	156
4. Deerfield Academy	$.4 Billion	**zero**	104 +

MHS Board Projections Factoring In AG Kane 2013 "Standard-Setting" Reform Agreement

FY 2011 As Reported In Form 990: **$1,910,000**[6]

FY 2013 Per Kane Agreement: **$1,899,000**[7]

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[5] A public university but listed in U.S. News & World Report as having one of the top ten University endowments in the U.S.

[6] $1,015,000 for HTC; $745,000 for HC; $150,000 for HERCO.

[7] $1,054,000 for HTC; $745,000 for HC; $100,000 for HERCO; i.e., net decrease of $11,000, assuming not made up in "add-ons" such as spa treatments, luxury golf, spousal and child travel, lodging, and entertainment, which Kane allows as additional compensation.