

(The following remarks respond to questions raised on the Facebook page of Protect The Hersheys' Children, Inc. (PHC). The questions concern a *Philadelphia Inquirer* op-ed written by John Schmehl and Ric Fouad, the latter of whom prepared these remarks. The op-ed proposes that the Milton Hershey School (MHS) Trust create a Hershey-Girard campus in Philadelphia, without a residential component, or with a suitably scaled-down one. (See: <http://tinyurl.com/ond77br>) The questions addressed here were primarily in the form of a letter from Craig Stark, President of the National Hershey Association. That letter, together with other questions and comments, can be found at: <http://tinyurl.com/oph29s7>. The views expressed below are part of a conversation that the op-ed was intended to initiate and, as such, are subject to revision.)

Time For Fresh Thinking: Hershey-Girard Proposal Can End "Child-Churning" And Expand MHS

I have gone through Craig Stark's letter (posted on PHC's Facebook page) and identified 15 general assertions that take issue with the proposal that John Schmehl and I made about a Hershey-Girard campus. I will respond to these below.

But before doing so, I'll respond generally to the points that Joe Berning raised in the same forum, because his comments permit addressing the key broad items first.

Hershey-Girard Proposal Is Not A Deed Of Trust Violation

The assertion that our proposal "violates the Deed of Trust" begs the question. What we propose would need court approval and would not be a "violation," as explained below. But we believe that the MHS Trust has been in violation of the Deed on multiple levels, for decades; and this forms the backdrop to our Hershey-Girard proposal, and why we say something must be done.

At the most basic level, the Deed's beneficiary children have been systematically pushed aside far too often. In their place, the community, Penn State, the local economy, and even local businesses (primarily construction companies, but others too) have been substituted.

The Med Center, Founders Hall, the entire (unprofitable) entertainment and resort industry, luxury golf subsidization, Founders Park, Pumpkin World, compensation for the MHS Board, and many other items constitute ongoing Deed breaches. None of these "substitute beneficiaries" is named in the Deed.¹

The only reason these expenditures have been allowed is a tacit local agreement (and related confusion). Under this arrangement, those closest to the matter turn a blind eye, payoffs go to MHS alumni, oversight officials abet misconduct, and the local Orphans' Court endorses the behavior (while marginalizing anyone who questions the *status quo* or takes action to restore MHS children to their rightful place atop the MHS Trust hierarchy).

The refusal to serve "orphan" children is certainly also an ongoing Deed violation (as the term "orphan" was understood when Mr. & Mrs. Hershey executed their Deed; i.e., "dependent" children, or children requiring residential care).

¹ The Milton S. Hershey Medical Center is Penn State's teaching hospital and was created in 1963 from MHS assets. Founders Hall is a colossal administrative building constructed of white marble at a cost of \$50 million using MHS assets. Founders Park is a local athletic field created using MHS land. Pumpkin World is a roadside vegetable stand purchased at an inflated price with MHS assets. The local entertainment and resort industry is built around HERCO, a wholly-owned and unprofitable MHS asset. MHS assets have subsidized three local golf courses and the recent \$25 million spent on Hershey Links, the latter of which was the subject of an Office Attorney General investigation that found no wrongdoing.

As explained below, the latter violation, in particular, is why the Hershey-Girard proposal simply had to be made; i.e., it is time for MHS to come clean about this and remedy the damage it causes.

Whether or not one views our Hershey-Girard proposal as consistent with the Deed, we at least propose something that helps needy kids –unlike the other Deed violations, which take resources from kids, help others, and visit harms on children.

Failure To Expand Beyond Derry Township Contravenes The MHS Trust’s Purpose

But the key Deed failing in the operation of the MHS Trust, for our purposes here, is the failure to expand beyond Derry Township (as explained below). That may sound counter-intuitive, but those who charge that going beyond Derry Township would violate the Deed actually have it upside down: the failure to do so is causing the actual breaches, and this shortchanges needy children.

The core of our Hershey-Girard proposal would remedy this, by taking advantage of the opportunity created by Girard’s circumstances. This includes utilizing economies presented by the existing Girard infrastructure and operations (saving large startup costs for an otherwise soup-to-nuts MHS expansion). Girard’s residuary fund is also reportedly valued at \$230 million, a sum that would pay for a substantial number of students in the proposed Hershey-Girard setting.

Under charitable trust law, the MHS Board should not be allowed to continue refusing to expand beyond Derry Township. The reason is simple: \$11 billion and only one location.

This is far too much money to deploy entirely in one geographic setting by a *properly-managed* MHS Board. The Hershey charity simply must expand beyond Derry Township; and failure to do so violates the core mandate of the Deed, which is to serve as many children as possible (in a residential setting).

This was apparent even to Judge Warren Morgan, whose elevation of Derry Township’s interests above those of needy children has drawn critical scholarly comment. Judge Morgan explicitly noted, in a written opinion, how straightforward it would be to obtain approval for a second MHS location, when he denied the MHS Board’s 1999 *cy pres*.

Judge Morgan practically invited the MHS Board to come back to court and lift the geographic restriction, if there were excess assets. He did this because he recognized the restriction as a mere “administrative detail,” and because assets were growing too large to spend in just one location.

Legal scholars have also noted this, notwithstanding local thinking that suggests otherwise. This thinking is fostered by those controlling MHS, and note the result: one location, wasteful spending, and lots of sharing of MHS wealth among putative beneficiaries who are not needy kids.

Judge Morgan’s comment was also made when MHS assets were just over \$4 billion; i.e., the facts are even more compelling now, with assets at *\$11 billion*.

Administrative Deviation Is Required, Not *Cy Pres*

As for the legal mechanism utilized in expanding beyond Derry Township, we don’t believe it’s *cy pres* at all.

A *cy pres* petition is filed when there is a failure of *charitable purpose*; e.g., the Restatement (Third) of Trusts §67 defines *cy pres* to apply when it becomes “impossible or impracticable” to carry out a particular charitable purpose—here, serving needy children in a residential setting.

This failure is not a premise of our Hershey-Girard proposal (unlike, for instance, the 1999 *cy pres* and MHS efforts to build a research institute at that time). In fact, such failure is not happening anytime soon, if ever—and it never happened in the past. This is despite claims to the contrary by several Attorneys General and MHS Boards, including in 1963, 1999, 2002, and otherwise.

That the charity’s stewards and local officials have repeatedly asserted (with the help of key alumni) that they “ran out of needy kids to serve” shows how pronounced their desire has been to shift resources away from MHS children. This “*pro tanto* failure,” which Joe Berning also flagged in his comments as a concern, has been used to facilitate much MHS mischief. But it has no connection to our proposal.

Rather, the proper legal mechanism for the Hershey-Girard campus that we propose is “*deviation*.” This occurs when *administrative changes* are required to carry out an ongoing and fully viable charitable purpose, but without any failure of the purpose itself. Thus, no Deed amendment is required—and no Deed violation is involved.

On the contrary, deviation is an *intent-facilitating* rule that empowers a court to allow departure from certain language administering a charitable trust, as a settlor would have wished, had he or she known of changed circumstances. Deviation furthers the purpose of the charity, by allowing reasonable departure from one or more terms, but not from core purpose.

If MHS has too much money to serve enough children in Derry Township, or if it is impracticable to serve more children in one setting, then, for administrative convenience, MHS can apply for a geographic deviation. MHS would then serve *the same class of children*, but outside Derry Township.

Here is how Judge Morgan himself described it, at footnote 12 of his 1999 ruling: “Courts have been *liberal in allowing change of location* and the doctrine of deviation is the available remedy; *location is merely a detail of trust administration*.” [Emphasis added; citations omitted.]

This is a huge distinction, of course: it makes clear that the *original purpose* remains sacrosanct, while only amending an “administrative detail:” *location*.

And to be clear, our proposal would not in any way end the Derry Township MHS location—this would remain, while additional locations would finally start being added too.

Again, this is well-settled charitable trust law—even Judge Morgan recognized it.

Failure To Expand Beyond Derry Township Invites MHS Misspending

To illustrate what happens when the MHS Board fails to follow a Deed requirement by refusing to make the administrative change necessary to use *all* MHS funds on the children whom the Deed mandates serving – i.e., when the board elevates the artificial Derry Township “restriction” above the core mandate to serve as many children as possible – you need look no further than the Med Center, HERCO, Founders Hall, and the numerous other improper uses of MHS assets over the years, totaling billions of misdirected funds.

Had those in control not made a decision to boost the local economy by diverting money away from serving needy kids, MHS would have expanded beyond Derry Township decades ago.

In other words, we are not proposing “violating” the Deed: we are proposing, at long last, complying with it.

Moreover, MHS has already granted itself an administrative deviation, apparently without court approval (or even notice?), by housing children outside Derry Township. Under a strict Deed construction, this would be impermissible. As explained below, it appears that Mr. Hershey himself would have needed to utilize the doctrine of deviation, when he first began serving children beyond Derry Township with MHS Trust assets.

However one looks at it, we should have already seen at least one additional campus by now, instead of the billions that flowed to HERCO, local contractors, a self-enriching board, and others.

The money used to subsidize luxury golf alone could have funded thousands of MHS students beyond Derry Township –and this is not just the most recent \$25 million squandered on Hershey Links. Rather, it is decades of golf money –in addition to Hersheypark growth, Founders Park, and all the rest.

MHS has witnessed, in essence the child welfare charity equivalent of “*Brewster’s Millions*,” as the group in charge rubbed their hands together and struggled to find creative ways to use “excess” child welfare money locally, rather than using these funds on needy kids outside Derry Township.

In short, those in charge decided to hoard child welfare assets locally. This is what led to the *real* Deed violation, not our Hershey-Girard proposal, one that would *remedy the actual one*.

In fact, if you look closely at the 1963 *cy pres*, the analysis set forth here explains how the legal fallacy was artfully constructed in that proceeding.

To explain: rather than relying on *administrative deviation* to utilize accumulating “surplus” funds for more kids beyond Derry Township, and thereby fulfill the charity’s core purpose, those in control constructed the fiction that the Derry Township *administrative restriction* caused a “trust purpose failure” that *trumped* the core purpose.

Consider the argument that those in charge, aided by public officials, have made: “*We have too much wealth to use on MHS kids in Derry Township; so let us use the assets for something else here!*”

Even Judge Morgan lost patience for but another open *cy pres* request. This is why he concluded that MHS must first serve needy kids outside Derry Township, rather than divert more funds to another new undertaking locally: the research institute that the MHS Board sought to build.

To put it simply, those in control in 1963 elevated a mere administrative detail (geographic restriction when assets were relatively small in size) all the way to the level of “core purpose” (serving kids).

Although transparent when examined with any appreciable scrutiny, the 1963 legal sleight of hand was not hard to accomplish. This is because the Attorney General, judge, governor, and all lawyers involved were on the wrong side.

Conversely, needy kids were unprotected, and, like today, represented only by the Attorney General, whose consistent failure to enforce the rights of needy MHS kids has been notorious.

But those who say that our proposal on ending the residential program for certain groups of kids might be construed as outside the Deed have a point. This is because MHS, after all, was founded as an orphanage.

The latter is a much more complicated analysis than can be pursued here and I intend to address it this fall. But to summarize: an overwhelming case can be made that this too is a mere deviation mandated by today's best practices for the care and education of needy children, in light of changes that have occurred since Mr. Hershey's times.

Current Practices Constitute Harmful And Wasteful “Child-Churning”

For now, it is sufficient to point out that we are *not* proposing any changes whatsoever to current enrollment practices; i.e., to the type of children being served at MHS *today*.

This warrants repeating: we are *not* proposing *any* changes to current MHS enrollment policy –at least not in our op-ed; we otherwise certainly *do* propose that the school *stop* rejecting Deed-mandated children, including foster care children, wards of the court, and other children who truly require residential care.

What our op-ed *does* propose is that the MHS Board come clean on current enrollment practices. That is, we are calling out the board on no longer (for the most part) serving children who *require* residential care.

Our piece suggests that the MHS Board start by recognizing and being candid about the full range of children whom the school is enrolling, and then serve these children in the manner *best suited to each of them*; i.e., for many of these children, this is in their home communities, instead of trying to convince students that they are not really homesick. (MHS claims that a whopping 75% of the approximately 250 children withdrawn each year are just “homesick.”)

Our suggestion is a matter of course in the child welfare world, with good reason.

If you look at what the MHS Board has been doing over the years, it is to pay mere lip service to enrolling the Deed-mandated “neediest and most alone.” But in large part, MHS is no longer enrolling children who require residential care *to a degree sufficient to justify separating them from their families*.

This change began decades ago, under MHS President J.O. Hershey (no relation to Milton S. Hershey). It was accelerated under Presidents Bill Fisher, Rod Pera, and then, especially, Bill Lepley, who was aided by his enrollment director, Peter Gurt. The latter's role included hiding facts about enrollment from MHS Board members, executing a “marketing plan” that eschewed

the neediest children and targeted a different demographic,² and “testifying” during the 1999 *cy pres* as the MHS Board’s star witness for the claim that the school could not serve more children.³

The result today is a confused and schizophrenic enrollment policy that does more damage to kids than good. This is why MHS has to seduce kids into enrolling, with promises of college scholarships and, at various times, horseback riding, flying lessons, and other enticements –and all while ordering children to endure a year-round program, merely for appearances.

In other words, in many cases, MHS is enrolling kids who just want an education. MHS then forces them to accept a group home setting, as a condition of receiving this education –along with new clothes, college scholarships, braces, and the other judgment-clouding enticements that a very rich charity can dangle in front of desperately poor and mesmerized parents, to persuade them to do what they may not need to do: place their children outside their own homes and into a residential care setting.

The policy is irrational and harmful to kids and families: If MHS wants to serve children who do not require residential care, so be it. But the board should in that case stop playing games with kids’ lives, stop breaking up families, and stop wasting Mr. Hershey’s money. Instead, the board should simply provide these children the *schooling* that they want, let them stay with their parents, and save vast amounts of resources.

Anything else is irrational and damaging to children. Just because these parents are poor does not mean their kids won’t do better in homes that are safer and healthier than group home settings – everyone knows this, other than the MHS Board.

Not only does all the literature show this, but MHS’ own attrition statistics support the same findings: MHS basically has to enroll *ten* kindergartners just to produce *one* “successful” graduate; and even these “successes” are dubious; i.e., MHS college dropout rates are worse than those of the same demographic of children in public schools in the kids’ home communities.

MHS is thus spending a fortune just to achieve the same (or somewhat worse) outcomes. Why does this continue?

This pattern represents among the most disturbing metrics in child welfare today. The board is essentially saying: “*We will spend more money than anywhere else on the planet, \$100,000 per child annually, just to entice children to enroll, break up perfectly good families, and generate mediocre outcomes.*”

The same demographic, when served by quality schools in home communities, show outcomes that dwarf those of MHS –and this is without subjecting kids to a “wonderful” group home experience. MHS could simply serve children within a certain radius, along with ones who truly require residential care. Wouldn’t that make more sense?

² See, “*Marketing Plan for Milton Hershey School,*” prepared by Independent School Management, November 11, 1988 (“*Representation to the Public: To attract able students and shed the ‘orphanage image,’ [MHS] is to be represented as a year-round boarding school which offers full scholarships... Acceptance to [MHS] is an honor.*”).

³ See, June 9, 1999 Transcript of Oral Proceeding, *In Re: In the Matter of the Milton Hershey School*, Testimony of Peter Gurt at pp. 154-164.

This would certainly be the lesson derived from the example of such non-residential schools as Roxbury Prep, in Boston, or a number of other schools serving, in essence, the same children, including KIPP schools, and all with highly laudable results.

Or consider the children featured in the documentary “*Brooklyn Castle*,” 70% of whom are from households below the poverty level, many single-parent ones. Their public school (I.S. 318) has won *26 national chess titles over 10 years!* Despite not having even a fraction of the resources available to MHS, the educators at I.S. 318 have achieved extraordinary outcomes. Why? Can’t something be learned from their results and approach?

But if you placed the I.S. 318 kids at MHS – they qualify under recent MHS enrollment policies – you are virtually assured that their outcomes will be worse overall. Again, why?

The answer is obvious: when children do not need residential care, they often thrive with their own families, but flounder if forced into group homes.

Current MHS practices are also in stark contrast to those of MHS in the past, when enrolled children truly required residential care and were two years behind, on average. Yet, MHS managed to close the gap over time –and this, despite policies in that era hardly having been ideal.

What MHS is doing today is completely irrational: they under-perform and cannot retain children, because they match the wrong services to the wrong enrollment pool. But they do such a good job of “marketing” (as though enrolling a foster care child or ward of the court required “marketing”) that they produce a steady stream of students lining and up waiting to replace those who leave. This is, on average, more than one child per school day –a mind-numbing figure.

Call it what it is: “*child-churning*,” the process by which the MHS Board keeps enrollment numbers inflated, by cycling children in and out of MHS –and never mind the damage being done to these children.⁴

When far more children are removed from MHS each year than successfully graduate, something is gravely wrong.

A qualified MHS Board, of course, would have recognized this and made adjustments long ago. But the MHS Board as presently constituted lacks the necessary expertise; so irrational practices are perpetuated, through a kind of uncritical inertia.

The proper course today is obvious for anyone looking at this honestly: if MHS will not serve *only* kids who *require* residential care, then it must stop dissembling about it and adapt its programs accordingly.

Neediest Kids Are Failed By MHS And Subjected To “Star Chamber” Treatment

It is not that there are *no* children at MHS today who truly require residential care. Rather, it is that they are small in number and generally the ones most likely to be expelled, and returned to inadequate home settings, after MHS programs fail them.

⁴ Its near-cousin is “asset-churning,” used to keep the local construction industry booming by building and rebuilding incessantly.

It has reached a point where one has misgivings when recommending MHS placement for an at-risk child who truly needs residential care. This is because uneven MHS programs and questionable administration make the outcomes hit-or-miss; and the children on the losing side are simply devastated when MHS expels them.

Time and again, we are contacted by the guardians of these children, and concerned MHS staff, only to hear disturbing stories of inadequate services, followed by star-chamber “enrollment reviews,” a euphemism for termination proceedings.

The latter are used to create the pretense of a child-centered examination of facts and circumstances before an expulsion decision is made. In actuality, these are railroad jobs designed to let MHS shed the hard cases and expel children the moment MHS desires such. At times, even petty animosity by an adult participant in an “enrollment review” towards a particular child is cause enough to expel him or her. This is because the proceedings lack checks and balances; and MHS faces no accountability for any of these decisions, even when a child’s life is damaged.

The most notable time something resembling fairness transpired in an “enrollment review” is when MHS-hired documentary cameras were rolling and captured part of the process for the viewing public. In that case, the decision not to expel a little girl was needed, to create a happy ending for the school’s propaganda film. So the girl in question was not expelled; i.e., it was pure theatrics.⁵

But the reality for these children is that they are tried *in absentia*, without due process, with no one advocating for them, and without even the presence of their guardians. Then the children are arbitrarily punished and expelled, without any right of appeal. They are kicked out simply because the MHS leadership cannot figure out how to serve them, despite \$100,000 in per-child annual spending and all of the best services that money can buy.

MHS simply has no excuse for failing these children. For many of them, the result is lifelong trauma and they are in far worse condition when they leave than when they initially enrolled.

In other words, the MHS dysfunction today is ill-serving far too many children, for one reason or another. In many cases, MHS is forcing children who do not require residential care into unhealthy group home settings. In other cases, MHS is enrolling children who require residential care, but failing to serve them properly, and then expelling them. The result is that too large a proportion is being failed under the current dysfunctional policies.

Nor is this failure merely about economies. On the contrary, it is primarily about the emotional wellbeing of children and keeping perfectly adequate families intact. The asset waste, however large, is secondary.

⁵ See, “*Living the Legacy: The Untold Story of the Milton Hershey School*,” available on YouTube at: <http://www.youtube.com/watch?v=cGlwqNaq-eo>. At the 50-minute mark, the enrollment review panel decides to “*move away from terminating*” the child in question, in a “dramatic” and emotion-inducing moment. This uncritical infomercial exploited the MHS children and guardians featured, while failing to report on even a single expelled child, or any other MHS failure. Nonetheless, if one knows what to look for, close observation does reveal some of the more chilling aspects of the MHS enrollment reviews, despite the filmmaker’s effort to paint a rosy picture; e.g., the child in question is placed in *complete isolation* and alone in a room at the school’s health center during the course of the proceeding; the child can only guess at what is transpiring, since she has no role whatsoever in the process; and the child is not permitted to offer her side of the story. Hundreds of children, without the benefit of cameras recording their proceedings, have been summarily terminated, after these “enrollment reviews.”

“Ivy League Environment” For Kindergarten Children And Other “Sloganeering”

An indication of how dysfunctional MHS policies have become is the use of marketing slogans to try to convince single mothers to enroll children as young as four years of age. As PHC’s Open Letter to Attorney General Kane pointed out,⁶ MHS administrators say things like, “*We’ll give your kindergarten child an Ivy League environment!*”

Former MHS President Johnny O’Brien actually said this, about a four-year-old girl who was being wrenched from a perfectly capable and loving mother.⁷

Nowhere else in the child welfare world does one hear such things. But at MHS, it is content for puff pieces running in local newspapers.

In the same article, MHS administrator Myron McCurdy contributes an add-on, to try to “help” this four-year-old girl survive the willful rupture of her bond with her mother. This is during the one-month “no physical contact” period that MHS has instituted for newly-enrolled children, also described in the article. Says administrator McCurdy to the little girl in question, who is devastated at being separated from her mother, “*Focus on your dreams and goals. Don’t give in to the temporary pain and sadness.*”

Again, where else does one encounter such things as a one-month “no contact” period for a four-year-old girl who desperately misses her mother, or for any young child who misses a parent or other primary care-provider?

These primitive and heart-breaking policies have no place at a charity for at-risk children. The practices are indefensible and the individuals responsible for them and for making these kinds of comments should not be running the world’s largest child welfare charity.

But if those on the MHS Board or in the Office of Attorney General disagree, I am sure they have four-year-old children or grandchildren. So they can lead the way, by placing *their own* four-year-old children into these MHS “*Ivy-League-Environment*” group homes. And when these children cry out for their mothers or fathers, or simply want the parental hugs that any four-year-old child needs throughout each and every day, the MHS “child welfare experts” can tell them, “*Focus on your dreams and goals! Don’t give in to the temporary pain and sadness!*” Then let’s see how long the practices continue –it would likely be less than a day.⁸

Consider the numbers that John and I noted in our op-ed: the \$25 million that MHS wastes annually on removed children could fund 1,250 kids at a Hershey-Girard campus; i.e., net-net, they would lose *no* money and would help vastly larger numbers of children, if MHS simply reconsidered their irrational enrollment policies.

⁶ See, PHC May 29, 2019 “*Open Letter to Attorney General Kathleen Kane*,” available at: http://www.protecthersheychildren.org/imgs/AG_Kane_Open_Letter_May_29_2013.pdf

⁷ The quotes noted here are from a March 8, 2008 *Harrisburg Patriot-News* article entitled, “*Grace’s New Life at the Milton Hershey School*.” The article describes placement of a four-year-old child in an MHS group home, and was intended to convey a positive image of MHS.

⁸ This is just as we would have seen an end to multi-age housing too, if that dangerous practice ever affected children of the well-connected, instead of poor, often minority MHS children.

But if the question is whether I would prefer that MHS serve *only* children who are “orphans” as that term was understood in Mr. Hershey’s Deed-of-Trust time, i.e., primarily today’s foster care children, the answer is categorically *yes*; and I have battled for 14 years to see these children served again, and will continue battling for them.

For me, the MHS reform effort begins with wanting to see the school’s assets utilized once again for this group, too; and I remain committed to this, and to seeing that MHS adapt programs to better serve these children, another area of progress that has not occurred.

But one thing is certain: MHS simply cannot keep treating kids’ lives lightly, which is what it is doing now, under the present policies. By building a residential care model (that today is flawed and needs overhaul), and populating it with kids who in large part do not need it, and who merely want an education, an unworkable environment has been created.

The current model is broken and must be fixed. The result is a recipe for disaster, as is demonstrated by MHS outcomes that show the school to be failing children on a massive scale.

The numbers bear reiterating: during the period 2003-2011, a staggering **1,726 children** were removed from MHS, while only 1,126 children graduated.

This is a shocking failure rate for a facility spending \$100,000 per child annually; and it is permitted simply because the MHS Board needs a steady stream of newly-enrolled children to replace the ones that MHS fails each year. Rather than fix the underlying problems that harm this many children, the MHS Board simply churns children in and out, as though expendable.

This is nothing more than “**Child-churning,**” a repugnant practice that must stop. Our Hershey-Girard proposal offers one path for doing so –there are others as well.

It is sad that no one on the MHS Board has the skills, imagination, or motivation necessary to recognize this on their own –a circumstance fostered by the failure of PA oversight officials to name even one child welfare professional to the MHS Board.

The matter set forth here is but one concrete example illustrating why we have been requesting for 14 years that the MHS Board include a meaningful number of child welfare professionals.

In any case, this is all part of the conversation that we wanted to provoke; because the facts simply must be addressed honestly and decision-making improved on that basis.

Now let’s look at Craig Stark’s comments, summarized below and followed by responses (some of which have been discussed above).

1. Craig says that our proposal will likely not serve more children.

Of course it will: For the *\$25 million* squandered on removed children, *1,250 children* could be served at a Hershey-Girard campus. And if you understand that many of the MHS kids now being served are better off at home, our proposal is even more compelling on a numbers basis: far more children would be served *successfully*, and with far less dollars spent. MHS is throwing away money only to fail far too many children. Why stubbornly insist on doing this and making children pay the price?

2. Craig says that our proposal will create a “lawyer’s panacea” by touching off another *cy pres* proceeding.

I don’t know what a “lawyer’s panacea” is. But as noted above, although our proposal would require court approval and Attorney General involvement, it would not require *cy pres*: the proper legal mechanism would be a deviation, for administrative purposes.

If Craig is suggesting that legal fees would be involved, this is true, but the fees need not be high; i.e., the MHS Board need not invoke its Pennsylvania-Connected-Lawyers-As-MHS-Trust-Beneficiaries policy: *pro bono* attorneys would be glad to assist in this worthy undertaking.

Moreover, the Attorney General should be in favor of our proposal too, for the reasons already explained. And based on (otherwise dubious) PA Supreme Court precedent, once the Attorney General approves, no one else would have standing to object, thus streamlining the proceeding. (I mention this strictly to address the legal fee issue in this specific case, not to endorse a questionable standing ruling.)

Indeed, with the assistance of a capable local trust and estates lawyer, I would be happy to handle this *pro bono* –it is more important to have committed attorneys who grasp the issues and can explain the trust/child welfare nuances to the court, than to precipitate another of the school’s large law firm billing frenzies.

3. Craig says that our op-ed does not state the truth.

Every word we wrote is true. If Craig wants to quibble about whether Hershey chocolate paid for Mr. Hershey’s Cuban orphanage, or whether it was Cuban sugar interests (that were anyway held by the MHS Trust), who cares? The point is that Mr. Hershey was supremely generous even beyond his Derry Township orphanage.

No one who truly thinks this through would suggest otherwise, because it would require claiming that Mr. Hershey would say, *“I don’t care if the trust now has \$11 billion –I insist that you keep spending my money in Derry Township, build another Founders Hall, raze the school buildings again and rebuild new ones, spend another \$500 million telescoping the group homes into one centralized compound, divert more child welfare money to an unprofitable entertainment and resort industry, spend millions more on luxury golf, but don’t you dare serve vastly larger numbers of kids beyond Derry Township.”*

Mr. Hershey never said, “I want to make the orphan boys of Hershey my heirs.” He said, “I want to make the orphan boys of *America* my heirs.”

It is only among those who control MHS that the Deed’s *core child welfare purpose* morphed into something that includes an irrational “geographic restriction,” to a degree that Derry Township somehow was granted a kind of “*beneficiary*” status.

Whatever argument might exist for opposing our proposal on serving MHS kids in a non-residential program, there is no argument for opposing our position that the trustee should be serving kids beyond Derry Township in light of astronomical asset growth.

4. Craig says that our proposal overlooks that MHS is established exclusively for children who are residents of Derry Township.

See above. Again, this is another way for those in control to rationalize Founders Park and all the other *diversions* to non-MHS child interests.

5. Craig says our proposal is premised on a “fundamentally flawed pretense.”

I’m not sure what is meant by this, but I think I’ve covered everything. If not, I’ll be glad to deal with *specific* “flawed pretenses,” not conclusory assertions.

6. Craig says our proposal contains an “error in law” to suggest that MHS money could be diverted to Girard.

As explained above, our proposal is legally rock-solid: charitable trust law mechanisms readily exist for using MHS assets just as we propose. But there are no legal grounds for failing to expand beyond Derry Township.

7. Craig says our statement that “Mr. Hershey’s desire to educate poor children was not restricted to Hershey, Pa., nor by retrograde thinking” is untrue (and that we “knew the statement to be untrue” when we made it).

As for the first part of the comment, see above (and remember Cuba): once again, *the Derry Township restriction as a legal impediment is without basis.*

As for the second part of the comment: Is Craig saying that Mr. Hershey *was* restricted by retrograde thinking, and *would have* advocated programs that he knew harmed children –such as forcing them into residential care when they did not need it, at huge economic waste, and in an emotionally-damaging manner?

We disagree: this would cast Mr. Hershey as a spend-thrift child-abuser.

On the contrary, Mr. Hershey *always* sought child welfare best practices, including improvements to the Girard model. Were Mr. Hershey to see his charity managed today by people who were damaging many kids’ lives, merely because they were too insular and stubborn to get proper advice and learn what they were doing wrong, I am confident he would change things quickly.

This is especially if he found out how much those in charge were paying themselves, and the non-child goals they were pursuing. While Attorney General Kane may have ratified the MHS Board’s \$25 million in luxury golf spending, the founder of the Hershey charity was known to take a dimmer view when the wealthy and powerful misused funds intended for needy children.

The idea that Mr. Hershey, of all people, would reject empirical data counseling changes to child welfare programs, merely because he was mired in an uninformed and obsessive fixation on two parts of his model (the large group homes and the Derry Township location) has no basis in historic fact.

Can anyone legitimately make this claim, knowing that Mr. Hershey was always adjusting to and often ahead of his times? Of course not. Put another way, if the MHS Trust were worth \$100 billion today, would Craig still object to a second campus beyond Derry Township? If not, we are simply disputing the degree of excess assets.

8. Craig says that our proposal overlooks that the Deed restricts MHS to Derry Township.

See above. Once again, the Derry Township “restriction” is not supportable given MHS asset growth; and the Dauphin County Orphans’ Court has already signaled its inclination to approve deviation from this restriction.

9. Craig says our proposal ignores that Mr. Hershey would object to diverting funds elsewhere.

See above. Also, it is not “diversion,” it is *lawfully-supportable “expansion.”*

10. Craig says that our proposal ignores Mr. Hershey preferring a rural setting to urban life for kids.

No it doesn’t: MHS kids *do not have* a rural setting today. They have an urban campus, in a suburban setting. MHS kids living in the Centralized Compound actually have less nature there than many urban-dwellers living near quality parks –this is even the case for New York City and Central Park, which speaks volumes about what the MHS Board’s decisions have wrought. Further, Mr. Hershey would listen to child welfare expertise that today shows it is better to educate poor children where you find them, if they do not need residential care.

And if Craig is saying that MHS kids would be better served in a bucolic setting, a community-integrated home, surrounded by such natural diversions as creeks, woods, fields, caves, and all the other marvelous things Mr. Hershey bequeathed them, and that we alumni enjoyed, *we agree!*

But Craig should take this complaint up not with us, but with those who ruined Mr. Hershey’s children’s home Shangri La and replaced it with the Centralized Compound. Why is this even an issue in regard to *our* Hershey-Girard proposal?⁹

Or is Craig suggesting that the Centralized Compound is somehow *better* than a Girard campus adapted to the non-residential model that we propose?

Here too, we disagree: once they bulldozed Mr. Hershey’s natural-setting children’s home, ended the farm program, and telescoped the MHS campus, they created an unhealthy model for kids who truly require residential care –and unworkable even for children who don’t require it.

However lavish MHS group homes may appear, with their hefty \$2 million price tags, the result is unhealthy. When you place over a thousand at-risk youth in one contiguous land mass, where they are surrounded only by similarly-situated children in nearly identical cookie-cutter group

⁹ To be clear, “centralization” did not benefit MHS children or reflect child welfare learning. Instead, the move boosted the local construction industry and removed “undesirable” MHS children from the Derry Township community at large, so that the kids’ land could be used for “better” things, like HERCO and related economic development. This is just one more instance where the MHS Board made decisions indefensible on child welfare and economic grounds. But no one called them out on it –just as today no one is calling the MHS board out on the failure to expand beyond Derry Township and the other issues raised in our op-ed. In other words, the same core problem persists: a grossly-conflicted MHS Board, lacking child welfare skills, makes decisions involving billions of dollars and thousands of children’s lives, without any accountability whatsoever.

homes – removed entirely from the community and barred even from venturing into town except under certain controlled circumstances – bad things will happen. This is especially so when a year-round program is ordered for children who for the most part do not require residential care.

It is also ironic that the MHS Board even used creating a “buffer” between MHS group homes and the community as a rationalization for acquiring an insolvent luxury golf course. This too underscores how little the MHS Board understands about all this: a rational approach would be to *reintegrate* MHS children back into the community, and make their environment more natural and homelike, *not* seek to isolate them even further, with a “buffer zone.”

In other words, even when MHS stewards use children to justify misspending, they are so clumsy in doing so that they reveal how little they understand of child welfare.

The only question is how many kids MHS will insist on damaging before coming clean and figuring out how to make the best of what they have created. We are simply offering one of about a dozen proposals on how to start doing this –there are many others too.

11. Craig repeatedly states that John and I were both “beneficiaries” of Mr. Hershey’s charity (or “estate,” as Craig wants to call it).

No we were not.

John Schmehl was *never* a beneficiary of the MHS Trust –nor is any member of the Hershey community, other than MHS kids (who, ironically, are often treated as though not members of the community, except when we hear these “community-as-beneficiary” arguments).

This is one of the grand lingering fallacies in Hershey, and it is high time we put an end to it.

The Deed names *MHS children* as the *sole* beneficiaries of the MHS Trust, full stop. The *only* Schmehl who fell into this category was the peerless Bill Schmehl –not John, Charlie, or the Schmehl sisters, all of whom are lovely people, but fortunately, had parents to care for them and did not need to grow up where their father did.

12. Craig says that Mr. Hershey created a 12,000-acre “agrarian estate.”

And this has what bearing on our Hershey-Girard proposal? What’s more, how come only 2,640 of these acres (according to MHS) are now the MHS campus?

13. Craig says that the Cuban orphanage did not use funds from the MHS Trust (and that funding came instead from Cuban sugar profits).

The point is not whether the money came from chocolate, sugar, or pineapples –the point is that Mr. Hershey’s philanthropy was broad, big-minded, non-discriminatory, and certainly looked beyond one small location, where assets existed for such.

Moreover, when the Cuban orphanage was built, the MHS Trust itself owned *all of the sugar interests*; i.e., Craig may have inadvertently proven that MHS Trust assets *did* in fact build the Cuban orphanage, the opposite of what he sought to show –so the assertion is irrelevant, and, even were it relevant, it strengthens our case.

Or is Craig suggesting that Mr. Hershey wanted to benefit Derry Township with his MHS Trust money, rather than needy children beyond Derry Township?

The latter claim has been addressed above. (As an aside, for Mr. Hershey to have utilized *MHS Trust-owned* sugar interests to fund the Cuban orphanage, he too would have relied on administrative deviation to depart from the Derry Township geographic restriction.)

14. Craig says MHS is open to every qualified Philadelphia child now in need of a home.

Not at all: Foster care children, wards of the court, and other children truly requiring residential care are *not* served by MHS today –we have assisted such children over the years, after their enrollment applications were rejected.

But MHS *does* serve many children who do not belong in residential care, and who, as such, would be best served in the Hershey-Girard campus that we propose, *thereby freeing space for foster care children and other children like them.*

15. Craig says orphaned and homeless children would not benefit if our Hershey-Girard idea gained traction.

Why not? Our proposal forces the issue about which children are being served, and how they are served. Once MHS establishes its Hershey-Girard campus, it can also study if and how to recreate an improved (best practices) residential program there as well.

In any case, Craig mixes up two categories: Orphan children and homeless children belong in different groups, and require different services, of course –a distinction that the MHS Board too may not grasp.

Our proposal is a step towards recognizing and admitting this fact, and providing the right services (or interventions, as the case may be) for the right children –instead of the current one-shoe-size-fits-all approach.

Conclusion: Speaking Out Was Necessary Now

The bottom line is that Craig, in my view, prematurely put himself on record with the Attorney General. This may be because he focuses so closely on the Derry Township location issue, one of the classic Hershey thought-traps –this Derry Township location fixation must be put to rest, and the sooner the better.

To be sure, Craig has often been on the right side in Hershey, opposing the MHS board and pointing out their errors.

But in this instance, he would have done better to have consulted with legal and child welfare experts. He is simply wrong on the Derry Township “restriction” and on *cy pres* (it’s a deviation, at least so far as going beyond Derry Township is concerned). He misses our point in terms of why we’re making the proposal: we are focused on ending “child-churning” and on achieving MHS expansion. And he introduces subjects not relevant to our proposal –such as Mr. Hershey’s rural model, the question of whether profits from a corporation with Cuban sugar interests (owned by the MHS Trust) funded the Cuban orphanage, and otherwise.

What Craig does demonstrate is a sound grasp of Hershey facts (but not with 100% accuracy); and there is no doubt he is a font of interesting information on Hershey minutia. He would certainly beat me in the Hershey Quiz Bowl.

But how he analyzes these facts and applies legal and child welfare principles to them is the problem.

Put another way, Craig seems to think that reciting facts about how Mr. Hershey did things – e.g., “*Mr. Hershey created MHS in Derry Township and funded his Cuban orphanage with sugar profits*” – is somehow an argument for doing things *exactly the exact same way today*.

But it is not: to decide what to do *today*, one starts with the Deed’s core mandate. With that as the fundamental guide, you look at the reality of what MHS is doing, at charitable trust law principles, at asset growth (*\$11 billion and climbing*), and at child welfare learning generally. Based on a complex analysis that rationally interweaves all of these factors, with the Deed mandate as the mainspring, you decide how to deploy the MHS Trust’s vast resources, in the manner that *best* helps the *most* children, and that fulfills the core purpose and intent of the MHS Trust.

Craig would have us ignore the broken model, ignore the number of removed children, ignore mind-boggling asset growth, and ignore extraordinary waste. He would also have us remain quiet while MHS keeps forcing kids into Derry Township group homes. And he would suggest this simply because two components remain from the original Mr. Hershey model (group homes and Derry Township location). We disagree.

Rather, John and I propose something different: we say look at the reality today and do what is best for children in fulfilling the purpose and intent of the MHS Trust, based on that reality. This includes ending the artificial Derry Township geographic “restriction.”

MHS Board Has Lost Its Way And Attorney General Fails To Rescue It

Tragically, the MHS Board has lost its way and cannot understand why it is failing children so badly. This is why they come up with such things as the 20-child bedrooms of “*Springboard Academy*,” “*Ivy League environments*” for kindergarten children separated from perfectly good mothers, and other notions that illustrate how little they grasp of the only thing that the Deed requires them to know: best practices for educating and nurturing at-risk youth.

The timing of our op-ed wasn’t entirely our choice either: the Girard announcement moved us to speak out now, for the reasons stated in our piece.

In addition to the huge economies to be gained from MHS acting on our proposal, and taking over Girard as an ongoing operation, there is also the added good of preserving a worthy charitable undertaking. Protecting the legacy of Mr. Girard, whose life and deeds bear remarkable similarities to those of Mr. Hershey, is certainly a factor that MHS should consider.

Both these men had no children. Both had wives predecease them. Both gave their entire fortune to needy children. And among the stories about Mr. Girard that recall incidents from Mr. Hershey’s own life, on two occasions, Mr. Girard refused to leave Philadelphia during yellow fever epidemics, choosing instead to volunteer at hospitals to care for the sick, the most dangerous place to be.

I may be wrong, but I believe Mr. Hershey would be deeply honored to have his charity take the Girard College charity baton and carry it forward into perpetuity.

The whole thing really fits together well, including using this opportunity to come clean on the failures of the current model and the need to rethink certain aspects of MHS programs.

In fact, the Hershey Advisory Council that Attorney General Kane refused to meet (despite her post-election promises) would have laid out a type of Hershey-Girard proposal, among other ones, since Girard's financial difficulties were already apparent.

But the newly-elected Attorney General reneged on her word, thus denying herself the ability to become educated on these issues. Not surprisingly, this led her to perpetuate the *status quo*, as PHC's Open Letter made clear.

John and I felt compelled to speak out now and to make our proposal, notwithstanding our awareness that it might create misunderstandings or invite hostility –these things simply had to be said.

Further, since the MHS Board and Attorney General Kane declined meetings where these proposals could have been made privately, we are making them publicly, in the hope that the ideas will gain traction when the public learns of them.

One more point: We have heard from many caring people who know Girard and warn that Girard management problems might also taint Hershey. We have also heard from those who know MHS, and who warn of MHS failures being replicated at another location.

We recognize both risks. This only underscores the imperative to persevere with efforts to reform MHS, and to see its board populated with *full-volunteers who understand child welfare*. This struggle must continue.

But in the meantime, we simply could not allow the opportunity presented by Girard developments to go by without raising the issues we have raised.

The overwhelming majority of arguments – legal, child welfare, and historic – militate in favor of our Hershey-Girard proposal; and this very exercise in responding to related questions has sharpened our focus and reinforced our views on it.

A proper MHS Board would certainly do what we propose –but even an improperly-constructed MHS Board can adopt our plan and run with it, the main thing is that *something* be done.

This conversation is long overdue –and the questions raised on PHC's Facebook page help us explain why. We may disagree with the positions expressed there, but we are grateful that the concerns were raised, because they allow us to frame the issues and test our proposal.

Alumni, the public, the MHS Board, the Attorney General, and others can read this exchange and decide for themselves if what we propose makes sense.

Ours is a bold suggestion, to be sure; and the supporting analysis is certainly complex. But at the end of the day, we don't see how anyone can conclude other than to support our plan.

It is time now for a Hershey-Girard campus, MHS expansion beyond Derry Township, and an end to senseless “child-churning.”

It is time now for the MHS Board to come clean: here is the board’s opportunity to do so, and to demonstrate genuine commitment to child welfare and charitable trust best practices.

Ric Fouad