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***Milton Hershey School's Historic Disenfranchisement of Foster & Other At-Risk Youth:  
Will You Help Us Stop a \$350 Million "Cy Pres" Taking?***

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We are appealing to former and current foster youth, foster parents, child welfare professionals, Milton Hershey School, Girard College, and other children's home alumni, and youth advocates to help us in a David-versus-Goliath effort.

The problem: Hundreds of millions of dollars intended to shelter, educate, and provide services to at-risk K-12 students is being diverted to an initiative outside the lawful wishes of Milton S. Hershey. A coalition is forming to stop this and redirect these funds back to the at-risk, impoverished, homeless, and other vulnerable kids who can flourish in the residential school setting at MHS and who are the lawful beneficiaries of this remarkable charity.

***Milton S. Hershey: "The Chocolate King" & His Charitable Vision***

In 1909, candy magnate Milton S. Hershey bequeathed his entire fortune to an orphanage now known as the Milton Hershey School (MHS). As Mr. Hershey put it, *"I have no heirs, no children of my own. So I decided to make the orphan [children] of America my heirs."* The original bequest was \$60,000,000.

MHS was able to shatter the traditional orphanage model. Housing children in bucolic homes dotting the Pennsylvania countryside supervised by houseparent couples, MHS meets all material and educational needs of the children it serves.

No child should be in an archaic congregated care setting. But MHS is a residential school like no other, defying stereotypes and providing children with an extraordinary alternative. For over 100 years, children who might have remained in foster care or ended up at inferior children's homes found a refuge at MHS.

However, shortly after Mr. Hershey died, the stewards of his charity began diverting his funds to fuel local development. They also began disfavoring kids who needed MHS the most. While the Pennsylvania Office of Attorney General (OAG) should have prevented this, it abetted the conduct for political reasons: youth in care cannot vote and alternative uses of MHS assets generate influence and electoral rewards.



*Candy magnate Milton S. Hershey bequeathed his entire fortune to care for orphan children. The stewards of his charity and Pennsylvania oversight officials had other ideas and began diverting resources shortly after his death.*

***"Cy Pres:" A Legal Concept Misapplied by MHS***

In 1963, MHS invoked a trust law mechanism called *"cy pres"* to divert land and funds. A *cy pres* requires proof that the charity's purpose has *"failed."* That *"failure"* then allows a court to approve use of funds for a purpose *"nearest"* to the original one. Applied properly, for example, a charity for treatment of a disease that has been cured can be diverted to treat another similar illness.

In this way, during the 1963 *cy pres* proceeding, MHS claimed its “purpose had failed” and that it could not serve more children with a \$50,000,000 “surplus” it had accumulated. That “surplus” was artificially created by refusing to expand enrollment; i.e., by turning away foster care and other children who needed MHS. MHS then claimed that the “nearest purpose” to serving the kids it turned away was to build a medical school for the Pennsylvania State University.

With OAG assistance, MHS persuaded the Dauphin County Orphans’ Court of these unfounded claims. As a result, \$50,000,000 and 543 acres were diverted to build the Milton S. Hershey Medical Center, adding more than 20,000 local jobs.

It’s not that building the Medical Center was an unworthy cause. Rather, it’s that Mr. Hershey’s legally-binding wishes were trampled and America’s neediest and most neglected children were left in the cold.

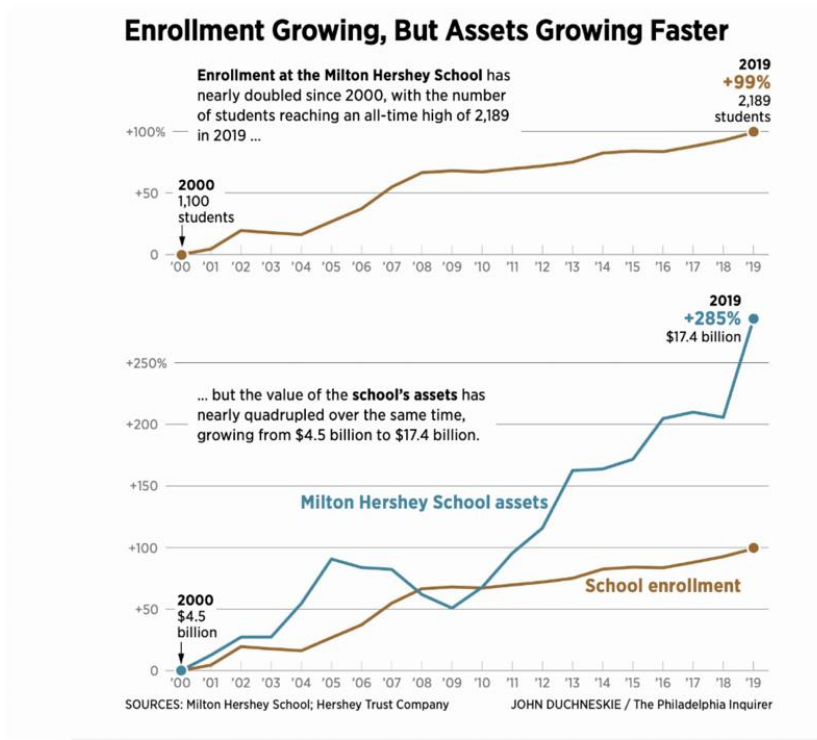
MHS would continue diverting funds. It would also increasingly turn its back on foster care children, wards of the court, and other at-risk youth, seeking to “shed ‘the orphanage image’” and cast itself as a “boarding school” “offering scholarships” to “more able students.”

In 1999, MHS again tried to have another *cy pres* granted — this time for \$50,000,000 — to build and fund a research institute. But on that occasion, the Orphans’ Court put its foot down, telling MHS to expand enrollment instead and to look beyond the town of Hershey if it had too much money to use in one place.

MHS began to do as told but still refused to expand beyond the town of Hershey.

### Asset Deployment Failure Numbers Tell All

To illustrate the problem, in 1970, the Hershey fortune totaled \$187,000,000 and MHS served 1,550 children. Today, MHS has over \$17,000,000,000 but serves only 2,100 children. In other words, despite adding **\$17 BILLION** to its asset base, MHS added a mere 550 children during a 51-year span. This is the worst asset deployment failure in child welfare charitable trust history.



MHS assets mushroomed but enrollment growth lagged as this Philadelphia Inquirer graphic illustrates.

Where has all the money gone? Uses include [a failed housing experiment](#), [lavish board pay](#), wasteful construction, [internal bickering](#), and massive PR spending (to paper over problems). This has reached a point where MHS today is spending \$113,000 per child per year.

Despite that spending, MHS [problems proliferated](#), [questionable practices](#) continued, and [leadership misconduct](#) has been scandalous. This year, MHS infighting led to [another lawsuit](#) where one board member alleges financial information is being kept from him.

Nonetheless, efforts to secure governance reforms have failed. Promises made by the OAG to require MHS to name qualified child welfare professionals — with proven records of service — to its board were also broken.

***2020 Cy Pres: Another Laudable Idea That Ignores Mr. Hershey's Wishes***

During the last five years, the MHS trust has generated about \$48,000,000 per year that is not used to fund operations. Due to this purported “surplus,” MHS has accumulated a \$1.2 billion cash “reserve.” Yet, it plans to limit enrollment to 2,300 in its only location, despite receiving many thousands of applications each year.

More troubling, after artificially creating this “surplus” by turning away thousands of applicants, MHS appealed to the Orphan’s Court on September 30, 2020 seeking to divert \$350,000,000 in another questionable *cy pres*. Once again, state oversight officials are part of the problem.

Specifically, current Pennsylvania Attorney General Josh Shapiro fully supported the plan. He also worked with MHS to assure that foster care and other at-risk youth voices were not heard during a hastily-convened hearing in October 2020. At the hearing, MHS again claimed a “failure” of charitable purpose and that it “could not serve more kids” needing residential care. One witness from the 1999 failed *cy pres* testified again in 2020 making nearly identical claims. The OAG failed to ask a single meaningful question.

MHS made its unfounded claims despite there being 400,000 foster care kids across America and 13,000 in Pennsylvania alone, where 33,000 children are also homeless. Indeed, the Pennsylvania Statewide Adoption & Permanency Network currently lists profiles of 396 representative children and youth awaiting adoptive homes.

MHS has the resources to provide a stellar education, nurturing community, and post-graduation supports to these children who are otherwise likely to age-out of foster care without a permanent or loving family. MHS also could expand by replicating its residential program in other locations in Pennsylvania, in other states, or in any number of other creative ways consistent with Mr. Hershey’s Deed of Trust.

Yet, no one said any of this during the October 2020 hearing. Why? Because the youth affected by it were unrepresented: it was 1963 all over again. Worse still, current Attorney General Josh Shapiro openly opposed the appointment of any trustee *ad litem* to speak for those kids.

This time, MHS and AG Shapiro want to use the \$350,000,000 to build six early childhood education centers across Pennsylvania for children living with their families; i.e., the use of funds is in no way for foster care children or other children with residential needs. Further, \$200,000,000 of this money is earmarked for construction — a nice economic boost to communities where the learning centers will be built, but that again does nothing to improve the lives of Pennsylvania’s 13,000 foster care children.



*Ethan Okula was an 11-year old boy in Pennsylvania foster care who tragically died after grievous neglect. There are 13,000 children in the state’s foster care system, many enduring abuse. MHS and AG Shapiro told the Orphans’ Court that MHS could not serve these children and that \$350,000,000 intended for them should be used on early learning centers. We respectfully disagree.*

When factoring in the \$55,000,000 per year in operating expenses, the actual total diversion will quickly rise to a half-billion dollars just to get started. This will drain funds that MHS might otherwise use to expand residential services for thousands of America’s foster and similar at-risk youth. We do not believe that this is proper.

Of course, launching early childhood learning centers is a laudable goal. That is why a similar proposal is in President Biden's infrastructure plans, making the MHS *cy pres* diversion even more questionable. But in any case, non-residential daycare for babies, toddlers, and preschoolers is not how Milton S. Hershey directed that his assets be used and we believe that the law here is clear: neither of the *cy pres* conditions were met; and the first condition — that MHS cannot identify more kids to serve in residence — sadly will never be met. Covid alone has taken [over 120,000 primary caregivers from children](#) and hit minority communities hardest. Another tragedy is the quarter of a million children in [America's "shadow" foster care system](#). As the Orphans' Court told MHS in 1999, these children are legion and their needs matter too.

As a result, we believe that every penny of the \$350,000,000 requested (or \$500,000,000 if you look closely) should be used on America's 400,000 foster youth in some form: their legal rights must be protected.

But just as occurred in 1963, the October 2020 hearing was conducted on an accelerated schedule that thwarted advocates from speaking up for the actual MHS beneficiaries. This also occurred in the middle of a pandemic and right before a contentious election when people were distracted. Neither the timing nor the tactics were a coincidence: this was all deliberate.

With no one present to challenge MHS's claims, the Orphans' Court granted the *cy pres* after only two days of MHS's one-sided testimony.

Never before has so much been taken from so needy a group with so little said on their behalf: this \$350,000,000 diversion is the largest *cy pres* grant in American charitable trust history. It was also accomplished without due process for the foster care kids who lost out. This should not happen in an American court of law.

Fortunately, that's not where the story ends!

#### ***One Hershey Group (PHC) Fights Back & Asks the Orphans' Court to Reconsider***

A small group of Hershey alumni have stayed vigilant and continued to press for fulfillment of Mr. Hershey's wishes, acting through a nonprofit called Protect the Hersheys' Children, Inc. (PHC). [As the nonprofit authority Pablo Eisenberg noted](#): "Protect the Hersheys' Children — a dissident group of alumni headed by a tough lawyer, Ric Fouad — is the only organization that has continually fought to overhaul [MHS] policies and practices. Thanks to its persistence and courage — and in spite of harsh criticism and attacks on its integrity by school officials — the Hershey pot has been kept boiling."

Recognizing the miscarriage of justice, PHC filed papers last year asking Pennsylvania state courts to reconsider the *cy pres* ruling. PHC also sought the appointment of a trustee *ad litem* to represent the interests of foster care and other youth whose interests were at stake — the bare minimum that one would expect.

However, these efforts were unsuccessful: MHS and AG Shapiro joined forces to prevent PHC from being heard at all and to block the appointment of any trustee *ad litem*.

**WHEREFORE**, the Commonwealth respectfully requests that this  
Honorable Court deny and dismiss, with prejudice, PHC's *Application for  
Appointment of Trustee Ad Litem for Beneficiary Class*.

*In multiple court filings, Pennsylvania Attorney General Josh Shapiro succeeded in persuading state courts not to appoint an ad litem to represent 400,000 foster care kids whose rights were trampled in the 2020 MHS cy pres.*

But neither we nor PHC are giving up: we believe that relief can be secured in federal court and that's where you can lend a hand!

#### ***Foster Youth & Others Need Your Help!***

Your assistance now can make a difference with startling sums at stake: if the federal legal challenge is successful, MHS will have to devote the over \$500,000,000 at issue to kids who require residential services, as Mr. Hershey intended.

Just imagine if MHS's \$17,000,000,000 were finally deployed properly! MHS could expand its reach in the manner that Boys Town has done with its vastly fewer resources. MHS could change the face of child welfare across the nation!

On the other hand, if this diversion goes unchallenged, there will be no vindication of the rights of kids who need residential services. Will you allow that?

## **WE CAN DO THIS!**

### **How You Can Help Us Protect Mr. Hershey's Heirs**

1. **Help us Identify "class representatives."** If you know of parents or guardians of any child who has sought admission to MHS or considered similar residential education (or of organizations serving such parents, guardians, or children) who can inform legal arguments, serve as witnesses in court, or consider serving as a class representative, please reach out to PHC via its [Facebook page](#) or email them at [info@protecthersheychildren.org](mailto:info@protecthersheychildren.org).

2. **Spread the word.** Tell everyone you know about this \$350,000,000 miscarriage, especially TV and print media, social media, fellow alumni, and youth advocates. Up until now, MHS has achieved a blackout on how this misuse of funds is harming youth who need residential services. Instead, the public is told only about the good that the early learning centers will do. We must keep pointing out that it is foster care kids who are paying the price — a group that needs every resource lawfully intended for them.

3. **Enlist political allies.** Inform your elected representatives that MHS is for foster care youth and other at-risk kids needing residential education. America's abused, neglected, orphaned, and disenfranchised children have rights concerning how the MHS trust "surplus" income is used. Their engagement is vital!

4. **Like and follow the Protect Hershey's Children, Inc.** [Facebook page](#) for updates and to help build momentum — and share this post with everyone you know!

5. **Sign our petition** [supporting federal court review of the \\$350,000,000 cy pres ruling](#) and calling on AG Shapiro and the OAG: (a) to never again block the appointment of an *ad litem* to represent foster and other at-risk youth in any MHS *cy pres* proceeding; and (b) to fulfill longstanding promises to have MHS Board members named who are genuinely committed to foster youth and are competent child welfare professionals.

Milton S. Hershey bequeathed his vast chocolate fortune to providing residential schooling and a home for America's orphan, foster, and at-risk youth. But instead, these funds have been diverted. Imagine the number of orphan and foster youth whose lives would be immeasurably improved if these funds were properly used. That's what Mr. Hershey wanted. He and these children — his "heirs" — deserve nothing less!



*With over \$17 billion, MHS could have ended Pennsylvania foster care as it is now known. But rather than devoting all resources to help these children, the charity and Pennsylvania oversight officials have diverted funds. Advocates questioning this diversion face blistering attack for "daring to ask for more porridge." A cy pres grant last fall will divert another \$350,000,000 from foster youth. We ask your help in persuading federal courts to review the matter and uphold the due process rights of these children.*