

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTHER SMITH, on behalf of herself and
as Parent and Natural Guardian, on behalf of
ABRAHAM SMITH, a Minor,

Plaintiffs,

v.

MILTON HERSHEY SCHOOL,

Defendant.

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION TO TRANSFER VENUE
TO THE MIDDLE DISTRICT OF PENNSYLVANIA**

I. INTRODUCTION

The Milton Hershey School ("MHS," "Defendant," or "the School") openly admits that it denied thirteen year old Abraham Smith admission solely because he has HIV. Relying on little more than conjecture and speculation, MHS declared Abraham a direct threat to its students, in an attempt to justify its violation of federal and state antidiscrimination laws.

Now the Milton Hershey School seeks to deny Abraham his choice of venue in the federal district courthouse that is closest to his residence. MHS's motion to transfer is similarly based on speculation and remote possibilities. MHS concedes, in both its Answer and in its Motion to Transfer, that venue is proper in this District – Abraham's chosen forum. Its chief rationale for requesting transfer to the Middle District of Pennsylvania is to reduce the commute time of a still-to-be determined group of its employees to the courthouse, at the expense of Abraham, his mother, and his health-care providers at Children's Hospital of Philadelphia ("CHOP").

In arguing for a transfer, however, the School fails to meet its heavy burden necessary to overcome the substantial weight afforded to a plaintiffs' choice of forum, especially, as here, where Plaintiffs reside in the forum and the proposed transfer forum is less than one hundred miles away. MHS's request would simply shift the inconvenience of a two hour commute from the School to Abraham and his mother, a low-income family represented by a nonprofit public-interest law firm. In contrast, MHS has close to \$8 billion in assets and approximately two thousand employees and volunteers. There is no question that MHS is in a better position to bear any inconvenience associated with the commute.

In an attempt to avoid this inevitable conclusion, MHS suggests that if any single medical or admissions personnel is away from the School for an extended period of time, it "would have to avoid all campus admissions interviews for the entire period of trial," and there could be "dire consequences on the health and well being of [its] nearly 1,850 students." Mot. to Transfer at 8. It strains credibility to suggest that a school with such tremendous resources, which is located less than three miles from the renowned Milton S. Hershey Medical Center and Penn State Hershey Children's Hospital, does not have the capacity to ensure that school operations continue uninterrupted in the absence of a few key personnel during the time it would take them to commute to this Courthouse.

MHS also argues that a transfer is warranted because this Court or the jury would have to see the School at trial to fully understand its "unique" environment. The concept of a boarding school is not so unusual, however, that MHS would not be able to explain its residential setting to the jury through testimony or other evidence. In addition, a site visit is likely to be highly prejudicial to Plaintiffs' case without any corresponding probative value, and presents serious manageability concerns. Assuming *arguendo* that MHS's request for a site visit will even be

considered for trial, the visit may be scheduled with equal ease (or difficulty) from either the Eastern or Middle District of Pennsylvania.

Further, while MHS is mindful to note -- with suggestions of doomsday scenarios -- how the absence of a few key personnel might impact the school, it has turned a blind eye to the effect of a transfer on the only non-party witnesses currently identified by either party: Abraham's health care providers at CHOP. Abraham's doctor and case manager provide crucial services to their patients, and would be greatly inconvenienced if forced to travel to the Middle District to give testimony.

MHS hides behind the laudatory banner of protecting its students as a blanket excuse for its continued insensitive and unlawful treatment of Abraham — whether denying him admission to its School or seeking to move the case several hours from his home. In both instances, MHS is legally and factually wrong. MHS' Motion to Transfer should be denied, and the case should proceed before this Court in this judicial district.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case concerns the Milton Hershey School's unlawful discriminatory decision to refuse to consider thirteen-year old Abraham Smith for admission because of his HIV status, in violation of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181, *et seq.* ("ADA"). On November 30, 2011, Plaintiff Mother Smith filed the instant action on behalf of herself and her minor child, Abraham Smith, for violation of the ADA and intentional infliction of emotional distress. (Dkt. No. 1.) Plaintiffs filed a First Amended Complaint on January 20, 2012. ("FAC") (Dkt. No. 8.)

Abraham and his Mother reside in Delaware County, Pennsylvania, and Abraham attends school in Delaware County, in this judicial district. (FAC ¶¶ 14-15, 23.) Abraham receives his

medical care, and his medical records are located at the Children's Hospital of Philadelphia ("CHOP") in Philadelphia, in this judicial district. *Id.* at ¶¶ 25, 30. CHOP is located approximately 93 miles away from the district court in Harrisburg, and less than three miles from this Court. *See* Declaration of Ronda B. Goldfein ("Goldfein Decl.") at ¶¶ 6, 7, Exs. A & B. Abraham's case manager at CHOP, Layla De Luria, had several telephone conversations with employees at MHS about Abraham, and submitted his medical records to MHS as part of the application process. (FAC ¶¶ 27-30) (noting that a representative of MHS told Ms. De Luria that MHS "did not take kids like that.").

MHS is a cost-free private, coeducational home and school for pre-Kindergarten through 12th Grade students from families of low income, limited resources, and social need, located in Hershey, Pennsylvania. FAC ¶ 16; Defendant's Answer and Counterclaim ("Ans.") (Dkt. No. 10) ¶ 16 (admitting allegation). MHS is registered in the Commonwealth of Pennsylvania as a non-profit corporation. FAC at ¶ 7; Goldfein Decl. ¶ 8, Ex. C. MHS is located 82 miles by straight-line measurements from this Court. *See* Goldfein Decl. ¶ 9, Ex. D. According to its 990 IRS Form for fiscal year 2009, MHS employed 1,492 individuals and 588 volunteers. *See* Goldfein Decl. ¶¶ 10, 11, Ex. E. According to MHS, the School serves more than 1,800 students. (Ans. ¶ 103.) MHS reported total assets of close to \$8 billion in its 990 IRS Form for fiscal year 2009. *See* Goldfein Decl. ¶¶ 10, 12, Ex. E (reporting total assets of \$7,738,773,688).

MHS solicits and enrolls students in this judicial district, and gives preferential admission to students born in this judicial district. (FAC ¶ 9.) MHS' Deed of Trust requires first level preferential admission to students born in certain counties in Pennsylvania, including Lancaster County, which is located in this judicial district, and second level preferential admission to students born in Pennsylvania, including those born in this judicial district. *Id.* at ¶¶ 10-11; Ans.

¶¶ 10-11 (admitting allegations in part). MHS regularly conducts informational events for prospective students and families in this judicial district. (FAC ¶ 12; Ans. ¶ 12.) MHS's alumni association chartered chapters of its association in this judicial district. (FAC ¶ 13; Ans. ¶ 13.)

In or around April 2011, Mother completed an application for Abraham's enrollment at MHS from this judicial district and sent it to MHS. (FAC ¶ 31.) Mother also directed Abraham's academic records to be sent from his school in this judicial district to MHS, and Abraham's medical records were sent to MHS from CHOP. *Id.* at ¶¶ 30, 32. On June 30, 2011, MHS sent Mother a letter to her home address in this judicial district, which stated that Abraham's "application will not be considered for possible enrollment," because "it has been determined that [Abraham's] documented needs are beyond the scope of the Milton Hershey School programs. Specifically, we are unable to meet his needs in our residential setting." *Id.* at ¶ 35.

MHS openly admits that it did not enroll Abraham because of his HIV status. *See* Ans. ¶¶ 36, 110 ("[T]he reason the School discontinued processing Abraham Smith's application was related to his HIV-positive status."). MHS' rejection of Abraham and the receipt of MHS' rejection letter caused Abraham and Mother severe mental anguish, grief, worry, and other emotional disturbances in this judicial district. (FAC ¶¶ 60-61, 72-76.)

MHS argues that it denied Abraham enrollment because it believes he poses a direct threat to other students through the possibility of consensual sexual conduct. (Ans. ¶¶ A, 36, 83, 115 & 121) ("[T]he School's primary concern is based upon the direct threat to the safety of other students through the transmission of HIV by sexual conduct."). MHS further argues that it performed an individualized assessment of Abraham, despite admitting that it did not obtain any additional information about him outside of the records that were sent. *See* FAC ¶¶ 43-45; Ans.

¶¶ 43-45 (admitting that “the School did not evaluate information about Plaintiffs beyond the records received,” including that the School failed to speak with Abraham’s doctor, interview Abraham or his mother, perform any cognitive or behavioral tests on him, obtain additional information about his behavior, or perform a medical examination of him).

MHS also argues that implementation of Universal Precautions¹ “might require a fundamental alteration of its programs.” *See* Ans. ¶ 114 (providing “training to students within the student home to not provide first aid for each other in emergencies without following Universal Precautions might require a fundamental alteration of its programs”). Finally, MHS admits that it made its decision out of fear of litigation through “a subsequent tort claim by an infected student” if Abraham was admitted to its school.² (Ans. ¶ 121.)

Plaintiffs will demonstrate that MHS made its decision based on unfounded assumptions, unwarranted fears, generalizations, prejudice and stereotypes rather than the current medical knowledge and the best available objective evidence about HIV transmission, and without conducting an individualized assessment of Abraham’s specific disability, in violation of the ADA. (FAC ¶¶ 37-45, 54-57).

¹ MHS’ admission that it does not currently practice universal precautions is highly disconcerting, as such guidelines are standard practice and recommended to avoid exposures to all sorts of bloodborne pathogens and infections, including HIV. *See* Goldfein Decl. at ¶ 13; Ex. F (Fact Sheet of the Pennsylvania Chapter of the American Academy of Pediatrics, recommending and describing steps for implementation of Standard and Universal Precautions in all early education and child care settings to prevent exposure to bloodborne pathogens such as Hepatitis B, CMV and HIV “even when those spreading the micro-organisms do not appear to be ill”). Regardless of the outcome of this litigation, MHS’ failure to implement these precautions truly does put the health and safety of its more than 1,800 students at risk.

² The Supreme Court has recognized that a “fear of litigation” defense is not a valid excuse for making a discriminatory decision in violation of an individual’s civil rights. *See Ricci v. DeStefano*, 557 U.S. 557, 129 S. Ct. 2658, 2681 (2009).

MHS filed the instant motion to transfer venue to the Middle District of Pennsylvania, based solely on 28 U.S.C. § 1404.

III. LEGAL ANALYSIS

A. Standard of Review

28 U.S.C. § 1404(a) provides that “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” *See Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). While section 1404(a) “gives the district courts discretion to decide a motion to transfer based on an individualized, case-by-case consideration of convenience and fairness, such motions are not to be liberally granted.” *Dinterman v. Nationwide Mut. Ins. Co.*, 26 F. Supp. 2d 747, 749 (E.D. Pa. 1998). In a motion to transfer venue under this section, the burden is on the moving party to establish that another forum would be more convenient. *Jumara*, 55 F.3d at 879; *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (“[U]nless the balance of convenience of the parties is *strongly* in favor of defendant, the plaintiff’s choice of forum should prevail.”) (emphasis in original).

In accordance with 28 U.S.C. § 1404(a), after establishing that venue would be proper in both districts at issue, the court must conduct a balancing test and weigh a number of factors in deciding whether the “interests of justice [would] be better served by a transfer to a different forum.” *Jumara*, 55 F.3d at 879 (quoting 15 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3847 (“Fed. Prac. & Proc.”)). With no “definitive formula or list of the factors to consider,” the Third Circuit in *Jumara* outlined a framework to apply when considering a motion to transfer venue under § 1404(a). *Id.* (internal citation omitted).

The *Jumara* factors include: “(1) the plaintiff’s choice of forum; (2) the defendant’s preferred forum; (3) the place where the claim arose; (4) the relative ease of access to sources of proof, but only to the extent that the proof could not be produced in one of the fora; (5) the convenience of the parties, as demonstrated by financial condition and physical location; (6) the convenience of the witnesses, but only to the extent that they are actually unavailable for trial in one of the fora; and (7) the public interest in deciding local controversies at home.” *Gent v. Pa. State Univ.*, Civ. No. 05–5125, 2006 WL 1686652, at *1 (E.D. Pa. Jun. 14, 2006) (citing *Jumara*, 55 F.3d at 879). The public interest factors, in turn, include the “relative congestion of court dockets, choice of law considerations, and the relationship of the community in which the courts and jurors are required to serve to the occurrences that give rise to the litigation.” *Lindley v. Caterpillar, Inc.*, 93 F. Supp. 2d 615, 617 (E.D. Pa. 2000) (citations omitted); *see also Jumara*, 55 F.3d at 879.

Rather than set out the applicable legal standard and engage in a comprehensive analysis of the *Jumara* factors, MHS merely asserted two main arguments that it believed made the Middle District more “convenient.”³ As described below, MHS is not able to meet its burden of proof for transfer because neither of its arguments is legally or factually sound, and a proper analysis of the *Jumara* factors supports maintaining venue in this Court.

B. Defendant Concedes that Venue is Proper In the Eastern District of Pennsylvania

Before engaging in an analysis of the *Jumara* factors, a court will determine whether venue may be properly laid under 28 U.S.C. § 1391 in both forums. In their First Amended

³ In the event MHS attempts to engage in such an analysis and asserts new arguments in a reply brief, this Court should decline to grant MHS leave to file its reply. *See U.S. v. Martin*, 454 F. Supp. 2d 278, 281 n.3 (E.D. Pa. 2006) (declining to address any issue raised for the first time in reply).

Complaint, Plaintiffs alleged that venue is proper in this judicial district both because a substantial part of the events or omissions giving rise to the claims alleged occurred in this judicial district, and because MHS is a non-profit corporation that resides in this judicial district. *See* FAC ¶¶ 6-13; 28 U.S.C. § 1391(b)(1)&(2).⁴

MHS expressly concedes that venue would be proper in both the Middle District of Pennsylvania *and* this judicial district. *See* Mot. to Transfer at 2 n.1 (“There is no dispute that venue may be proper in this district.”); Ans. ¶ 6 (“It is admitted that venue is proper in this district.”).

In this case, substantial events giving rise to Plaintiffs’ ADA and emotional distress claims took place in this judicial district, including the submission of Abraham’s application, medical and school records. Mother and Abraham’s case manager corresponded with MHS from this judicial district, and MHS sent its rejection letter to this judicial district. Mother and Abraham both felt the harm and distress from MHS’s discriminatory actions in this judicial district. These facts are sufficient to confer venue in this district pursuant to 28 U.S.C. § 1391(b)(2). *See Wilson v. Pa. State Police Dept.*, No. 94-6547, 1995 WL 129202, at *2 (E.D. Pa. Mar. 24, 1995) (Rendell, J.) (finding substantial events occurred in this judicial district in an ADA claim, where the plaintiff submitted his application, corresponded with the defendant, and received his rejection letter, even though the defendant’s policies and decisions were made in the Middle District).

⁴ The Federal Courts Jurisdiction and Venue Clarification Act of 2011 altered the numbering and changed some provisions of 28 U.S.C. §1391. *See* Pub. L. No. 112-63, 125 Stat. 763. However, the changes do not affect actions that were filed prior to January 6, 2012, such as this case. *See* Federal Courts Jurisdiction and Venue Clarification Act of 2011 §205, 28 U.S.C. 1390 note.

In addition, MHS resides in this district because it has continuous and substantial contacts in this judicial district such that it would be subject to personal jurisdiction here. *See* 28 U.S.C. § 1391(c) (For purposes of section 1391(b)(1), a defendant that is a corporation resides “in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.”). MHS’ founding charter requires it to give first level priority in admissions to students born in Lancaster county (in this judicial district), and second level priority to students born in Pennsylvania, including in this judicial district. MHS also admits that it conducts regular recruitment activities in this judicial district, and its alumni association chartered chapters in this judicial district. These contacts are extensive and continuous, reaching back to the 1909 charter, and demonstrate that MHS purposely availed itself of the Eastern District. Moreover, MHS’ action in this case caused harm or tortious injury in this judicial district through its acts and omissions, both in and out of this judicial district. *See* Pa. Long-Arm Statute, 42 Pa. C.S.A. § 5322(a)(3)&(4). Thus, MHS would be subject to personal jurisdiction here, and therefore can be deemed to reside in this district, making venue proper under §1391(b)(1).

As MHS does not dispute that venue would be proper in this district, the Court should proceed to the Section 1404 analysis.

C. Transfer Should Not Be Considered Here Because Of The Relatively Short Distance Between The Eastern And Middle Districts

Consideration of MHS’ request to transfer venue to the Middle District essentially boils down to a determination of which party is in a better position to bear the burden of an extra hour and a half to two hour commute in the event that this case cannot be resolved prior to trial. *See* Mot. to Transfer at 7 (MHS arguing inconvenience in travelling “anywhere from 2 to any number of hours from the federal courthouse in Philadelphia, depending on traffic.”). It is well-settled that it is not appropriate to transfer a case if doing so merely shifts the inconvenience

from one party to another. *See, e.g., TruePosition, Inc. v. Sunon, Inc.*, No. 05-3023, 2006 WL 1686635, at *11 (E.D. Pa. Jun. 14, 2006) (“A transfer is not warranted where, as in this case, a defendant simply seeks to shift the inconvenience to the plaintiff.”); *Johnston v. Exelon Corp.*, No. 04-4040, 2005 WL 696896, at *3 (E.D. Pa. Mar. 23, 2005) (same).

Additionally, where the transfer requested involves a forum located a relatively short distance from the original forum, such as is the case here, “some courts have refused to apply [the section 1404] multi-factored balancing test.” *Jumara*, 55 F.3d at 880; *see also Jenkins v. Wilson Freight Forwarding Co.*, 104 F. Supp. 422, 424-5 (S.D.N.Y. 1952) (holding that section 1404 “was designed and reserved for those instances where the transfer was sought to a District Court substantially distant from the district where the action had been instituted; otherwise it is difficult to imagine that there could be real inconvenience to the parties or witnesses.”); *Buchanan v. Umhoefer*, No. 10–CV–3175, 2011 WL 3421502, at *2 (E.D.N.Y. Aug. 3, 2011) (quoting *Jenkins*); 15 Fed. Prac. & Proc. § 3854 (commenting that the reasoning in *Jenkins* “seems eminently sound given the relative ease of traveling between two cities in the United States”).

Other courts have weighed the short travel distance as a factor against transfer. *See Gent*, 2006 WL 1686652, at *2 (“[T]he difference in distance between State College and Philadelphia and State College and the various places where the federal court sits in the Middle District of Pennsylvania is simply not sufficient to cause cognizable inconvenience to defendant.”); *Death Row Prisoners of Pa. v. Ridge*, No. Civ. A. 96-3179, 1996 WL 421852, at *5 n.3 (E.D. Pa. 1996) (denying motion to transfer and, noting that “[d]efendants residing in the Middle District need not travel an inconvenient distance to reach the Eastern District. The Pennsylvania Turnpike provides a direct route from Harrisburg to Philadelphia.”); *Smith v. Colonial Penn Ins. Co.*, 943

F. Supp. 782, 784 (S.D. Tex. 1996) (denying request to transfer venue a short distance, noting “[d]efendant should be assured that it is not embarking on a three-week-long trip via covered wagons when it travels to Galveston. Rather, [d]efendant will be pleased to discover that the highway is paved and lighted all the way to Galveston, and thanks to the efforts of this Court’s predecessor, Judge Roy Bean, the trip should be free of rustlers, hooligans, or vicious varmints of unsavory kind.”).

In *Jumara*, the Third Circuit explicitly recognized the validity of these concerns, and held that transfer should only be made in such cases if the other factors weigh heavily in favor of transfer. *See Jumara*, 55 F.3d at 880. In light of these cases, the Court should evaluate MHS’ convenience arguments with a healthy dose of skepticism, and should not order transfer absent a finding that the other factors weigh heavily in favor of transfer. As described below, the *Jumara* factors weigh heavily in favor of Plaintiffs, not MHS, such that transfer must be denied.

D. The Private Interest Factors Support Maintaining Venue In This Court

1. **Plaintiffs’ Choice of Forum Is Entitled To Substantial Deference, Especially Where Plaintiffs Reside In This Forum**

When considering the first two *Jumara* factors, the parties’ respective choice of forums, Plaintiffs’ choice should be given great deference and weight, and may not lightly be overturned. *See Gulf Oil v. Gilbert*, 330 U.S. 501, 508 (1947) (“[U]nless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.”), *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (“It is black letter law that a plaintiff’s choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice should not be lightly disturbed.”) (internal citations omitted).

Plaintiffs reside in Delaware County, and Plaintiffs’ preference is given particular weight where, as here, they reside in the venue where the case was filed. *See Piper Aircraft Co. v.*

Reyno, 454 U.S. 235, 256 (1981) (“[A] plaintiff’s choice of forum is entitled to greater deference when the plaintiff has chosen the home forum.”); *Leone v. Cataldo*, 574 F. Supp. 2d 471 (E.D. Pa. 2008) (“If a plaintiff brings suit in his home forum, then his choice of forum is entitled to even greater deference.”).

MHS acknowledges the weight given to Plaintiffs’ choice of forum but argues that this choice should not be given particular weight here because “none of the operative facts occurred in the selected forum.” Mot. to Transfer at 4-5. Contrary to MHS’ assertion, however, a substantial part of the operative facts did occur in this judicial district, a point that MHS implicitly concedes by admitting venue is proper here. *See supra* Section B.

In addition, other courts in this district continue to give deference to plaintiff’s choice of forum where the plaintiff resides in the venue, even where no operative facts occurred in the district. *See, e.g., Collins v. U.S.*, No. 11-4450, 2012 WL 72484, at *2 (E.D. Pa. Jan. 10, 2012) (holding that plaintiff’s choice of forum in her state of residence was entitled to “substantial deference” even where a “substantial part of the events and circumstances giving rise to [the] claim” occurred elsewhere); *Labrot v. John Elway Chrysler Jeep on Broadway*, 436 F. Supp. 2d 729, 731 (E.D. Pa. 2006) (“Although deference to [p]laintiff’s choice of forum is somewhat diminished because the operative facts that gave rise to the action occurred in another forum, ... this factor still weighs against the transfer.”).

Accordingly, Plaintiffs’ choice of forum should be given substantial weight, both because a substantial part of the events occurred here, and because Plaintiffs reside in this judicial district.

2. Proof of Plaintiffs' Claim May Be Accessed With Equal Ease From The Eastern District of Pennsylvania

The next *Jumara* factor looks to the relative ease of access to sources of proof, but only to the extent that the proof could not be produced in one of the fora. *Jumara*, 55 F.3d at 879. MHS makes no arguments that records will be difficult to access or unavailable in either forum. Instead, MHS' primary argument for transfer is that the Middle District would be a more convenient forum for a site visit to its campus at trial. Mot. to Transfer at 6-7.

In so arguing, however, MHS asserts as a foregone conclusion that either this Court *or* the Middle District would agree that a site visit would be permissible or necessary to MHS' ability to defend this case. *See Borgwarner, Inc. v. Honeywell Intern., Inc.*, No. 1:07-cv-184, 2008 WL 394991, at *4 (W.D.N.C. Feb. 11, 2008) (noting that "reality must be factored in, and this court is certain that both this court and its sister court in California would prefer (if not require) a video of the process at each plant in lieu of the expense, risk, and delay that would be inherent with an actual view."). In the event that this case proceeds to trial, MHS' proposed site visit would have no probative value, would pose all sorts of manageability problems, and would be highly prejudicial to Plaintiffs.

The Third Circuit has held that, while a federal court may allow a jury visit, its decision to disallow a jury view is "highly discretionary." *Kelley v. Wegman's Food Markets, Inc.*, 98 Fed. App'x 102, 105 (3d Cir. 2004) (holding that district court did not abuse its discretion in denying store's request for a jury view, where court determined that jury view would be time consuming, difficult to control, and unnecessary for jurors to fully appreciate the case, in light of numerous photographs, reports, and testimony); *see also Trueman v. City of Upper Chichester*, 289 Fed. App'x 529, 535 (3d Cir. 2008) (holding that district court acted "well within its

discretion” in its decision to deny request for jury visit, and noting that “such an on-site visit would be *highly out of the ordinary*.”) (emphasis added).

In its Motion, MHS has failed to articulate what the Court or jury would view at the School that would be so critical to its defense. “Courts should refuse to take into account the possibility of a jury view [in the transfer analysis] unless the moving party has shown how a view of the locality of the events in litigation could be helpful.” 15 Fed. Prac. & Proc. § 3854 (noting that “[t]his judicial approach seems especially sound given the very small percentage of federal cases that actually reach trial.”). Given its defense that Abraham’s HIV status poses a direct threat to the health and safety of its students because of the alleged risk of potential “unprotected consensual sex with other students,” Ans. at A, MHS has not and cannot articulate exactly what a jury would actually view on such a site visit that would have any probative value in understanding “[w]hy the direct threat is magnified in the School’s setting.” Mot. to Transfer at 7.

Moreover, MHS has not demonstrated why its setting is so “unique” that jurors would not be able fully understand the how its students are “cared for just as a parent would care for his or her own child” without visiting the School. *See* Mot. to Transfer at 5. The structure of a boarding school where students live on campus is not outside the general knowledge of a jury, and surely a jury can fully understand how parents care for their own children without having to view the School in action taking care of those children. There is no reason why MHS cannot present its defenses through fact or expert witnesses, or other forms of admissible evidence at trial.

In addition, a site visit under the circumstances described by MHS would be incredibly difficult to control. Jury views involve time-consuming disruptions to the ordinary course of a

trial, and include inherent, additional risks to the manageability of trial, such as unauthorized comments, hearsay, or other improper conduct. *See* 2 McCormick On Evid. § 219 (6th ed.). MHS’ proposal for a jury view would be especially unmanageable because it would not involve a view of any static accident scene, but rather an observation of “daily moment-to-moment realities” of its students.⁵ *See* Mot. to Transfer at 6 (“In this action what needs to be seen is how and where children live. What are the daily, moment-to-moment realities of this location that bear directly on how children interact with each other?”) (emphasis in original). Such a view could be subject to influence by MHS, even if unintentional, which could create serious difficulties at trial. *See, e.g., Grand Trunk Western R. Co. v. Pursley*, 530 N.E.2d 139 (Ind. App. 1988) (holding that railroad’s attempted simulation of accident transgressed bounds of proper jury view, and ordering new trial). For these reasons, Plaintiffs will strongly object to any proposed site visit by the Court or a jury as highly prejudicial.

Finally, any possibility that the Court would grant MHS’ request for a site visit at trial over Plaintiffs’ vigorous objections should not be given any weight in the transfer analysis, because a site visit could also be accomplished from this judicial district. *See LeDoux v. Isle of Capri Casinos, Inc.*, 218 F. Supp. 2d 835, 838 (E.D. Tex. 2002) (denying motion to transfer venue, and noting that even though the court would “likely not” visit the scene during a trial, the logistics of “moving the jury, court personnel, and parties to the scene ... would not be

⁵ By contrast, both of the cases cited by MHS to support its assertion that the possibility of a jury view warrant transfer anticipate view of a static accident scene, not a tableau of the “daily realities” of a school. *See Christensen v. Hyatt Corp.*, No. 1:09-cv-70, 2009 WL 51957772 (D. Virgin Islands Dec. 21, 2009) (granting unopposed motion to transfer by defendant and considering site visit of scene of accident where plaintiff alleged in complaint that site was especially dangerous “if one is unfamiliar with the area.”); *Grohoski v. Wyndham Int’l, Inc.*, No. Civ. A. 04-3949, 2005 WL 475175 (E D. Pa. Mar. 1, 2005) (considering scene of the accident in motion to transfer).

significantly more difficult” from the plaintiffs’ forum choice, where “[i]t would simply be about an hour more driving each way.”). Accordingly, Defendant’s request for a site visit should not be considered as a factor in support of transfer.

3. This Judicial District Is Far More Convenient for Plaintiffs, and
Defendant’s Convenience Arguments Lack Merit

The next *Jumara* factor, the convenience of the parties, as demonstrated by financial condition and physical location, also supports maintaining venue in this judicial district. While MHS is a well-resourced institution with close to eight billion dollars in assets, Plaintiffs are low-income individuals represented *pro bono* by their non-profit law firm. *See* Goldfein Decl. ¶¶ 2, 3; *see also Clark v. Burger King Corp.*, 255 F. Supp. 2d 334, 338 (D. N.J. 2003) (balancing the financial condition of a disabled individual with limited resources against a corporation with annual revenues of \$8 billion as a factor against transfer in a Title III claim under the ADA). The extra burden and expense of the additional hour and a half commute each way to the courthouse is far better borne by MHS than Plaintiffs.

Mother and Abraham are much less prepared to bear the burden of the additional travel than MHS. Plaintiffs are sufficiently low-income to meet MHS’ “initial minimal qualifications for admission to the School,” Ans. ¶ 109, which include being from “a family of low income, limited resources, and social need.” (FAC ¶ 33.) In addition, Abraham is a 13 year-old child who would either be pulled out of school, miss out on time to do his homework, or both, for an additional three to four hours each time he had to appear in the Middle District. In the event of trial, Plaintiffs’ law firm, the AIDS Law Project of Pennsylvania, would have to bear the additional expense of paying for Plaintiffs (as well as its legal team) to stay in a hotel for the duration of trial. *See* Goldfein Decl. ¶¶ 5. Staying in a hotel for trial would also burden Plaintiffs, who would have to make arrangements to be away from their home for the entire trial,

or make the three to four hour commute each day (and incur the costs associated with such travel) to avoid such inconvenience.

Here, there is no question that MHS is far better resourced than Plaintiffs. In addition to its significant financial resources, MHS has hired the law firm of Saul Ewing, which boasts more than 240 attorneys in ten offices located throughout the Mid-Atlantic region, including one in Philadelphia with nearly 100 attorneys. Moreover, one of MHS' three attorneys of record works out of Saul Ewing's District of Columbia office, making Philadelphia a more convenient forum for him to travel than Harrisburg. Courts consistently hold that a movant's comparatively greater resources weigh against transfer. *See, e.g., Collins v. U.S.*, No. 11-4450, 2012 WL 72484, at *2 (E.D. Pa. Jan. 10, 2012) (holding that, where individual plaintiff was a resident in this judicial district, the relative financial conditions of the parties "weigh[ed] heavily in favor" of maintaining the action here).

In an attempt to escape the unavoidable conclusion that it is better resourced than Plaintiffs and can better bear the burden of travel, MHS argues that maintaining venue in this Court would "jeopardize the School's operations," and "have dire consequences on the health and well-being of MHS's nearly 1,850 students." *See* Mot. to Transfer at 8, 10 ("Pulling the School's medical staff away from campus does more than inconvenience the well-being of students – it puts those 1,850 students at a real risk."). MHS characterizes its School as a fragile house of cards, the removal of any one of which would bring down the entire institution.

Nothing could be further from the truth. At no point during this case will MHS be required to remove its medical staff whole cloth and leave its students exposed to danger. MHS' medical staff will not need to attend the entire trial (fact witnesses of a party are typically prohibited from hearing the live testimony of other fact witnesses at trial, with the exception of a

party representative), and the parties can work together with the Court to stagger witness testimony of MHS' employees to minimize disruption. Regardless of the venue of this case, depositions will not be taken at the courthouse.⁶

Additionally, in light of its vast resources, MHS' doomsday prophesies ring hollow. MHS employs close to 1,500 employees as well as 588 volunteers who work at or for the School. *See* Goldfein Decl. ¶ 10; Ex. E. Presumably MHS permits its employees to leave campus, go on vacations, or attend to personal matters without the school collapsing. The School has state of the art medical facilities located on campus, which includes "a medical staff of pediatricians, registered nurses, certified nursing assistants, a pre-enrollment coordinator, staff assistants, a medical claims analyst and a health systems manager." (FAC ¶ 21; Ans. ¶ 21 (admitting allegations)). In addition, the renowned Milton S. Hershey Medical Center and Penn State Hershey Children's Hospital are located less than three miles from Defendant's campus. *See* Goldfein Decl. ¶ 14; Ex. G. Given these resources, it is implausible that the School's 1,850 students would be put at risk by requiring relevant, as yet unidentified, witnesses on MHS' medical staff to commute to Philadelphia for a single day of trial testimony.

⁶ In its motion, MHS "suggests" that "it may be best if depositions occur at the School, so that key personnel can be where they need to be in the event of an emergency." Mot. to Transfer at 9 n.2. MHS also makes the unfounded assumption that Plaintiffs will not want to attend depositions. *Id.* at 9. The AIDS Law Project of Pennsylvania typically relies on the generosity of court reporters to provide their services *pro bono* for depositions, and has been successful in obtaining such services in the past for depositions held at its offices in Philadelphia. Goldfein Decl. ¶ 4. Plaintiffs will be willing to discuss the location of depositions to accommodate certain of MHS' "key personnel," provided that Plaintiffs choose not to attend those depositions, and MHS agrees to bear the additional costs associated with conducting depositions closer to the School.

The convenience of the parties factor strongly favors maintaining venue in Plaintiffs' resident forum, especially given the financial condition and imbalance of resources available to each party.

4. The Convenience Of Witnesses Favor Maintaining the Action in This Judicial District

Finally, the convenience of witnesses factor also strongly supports Plaintiffs' position. "Convenience of the witnesses matters only to the extent that the witnesses may actually be unavailable for trial in one of the fora." *Jumara*, 55 F.3d at 879 (citation omitted). In considering this factor, the court "focuses on the convenience of non-party witnesses." *Pub. Util. Serv. Corp. v. Leggett & Platt, Inc.*, 2008 WL 4610241, at *4 (E.D. Pa. Oct. 16, 2008); *see also Gent*, 2006 WL 1686652, at *2 (holding that, for the convenience of witness factor, "we are not required to consider the burden on defendant's employees independent of defendant's own burden").

All of the individuals MHS lists as potential witnesses are its employees, and therefore are not considered in the convenience of witnesses factor. *Compare* Mot. to Transfer at 8 ("The witnesses of interest to the Plaintiffs will include school administrators, teachers, coaches, houseparents, relief houseparents, counselors, and medical personnel.") *with Advanced Fiber Technologies (AFT) Trust v. J & L Fiber Services, Inc.*, No. 07-CV-1191, 2008 WL 4890377, at *4 (N.D. N.Y. Nov. 12, 2008) ("any employees of a party, despite their geographic location, can reasonably be expected to testify as witnesses at trial and their availability is not a consideration").

In fact, the *only* non-party witnesses who have been identified thus far by either party are Plaintiffs' doctor and case manager, who work at CHOP in this judicial district. *See* FAC at ¶¶ 25, 27-30. Both of these individuals perform jobs that are essential to the health and well-being

of their patients, and both would be more inconvenienced by travel to Harrisburg than Philadelphia.

Even if the Court were to consider the convenience of MHS' employee witnesses, MHS has not plausibly demonstrated that any of its witnesses would actually be unavailable for trial in this forum. Instead, MHS makes vague assertions that "[t]here are also some School employees who are beyond the Court's 100-mile subpoena power."⁷ Gurt Decl., Dkt. No. 9-2, ¶ 21; *see also* Mot. to Transfer at 5. According to MHS, "[t]he majority of School employees live in and around Hershey, Pennsylvania, and near the School," which is located less than 100 miles from this Courthouse. *See* Gurt Decl. ¶¶ 19-20 (noting that the School is approximately 93 miles from this Court). In fact, MHS is only 82.7 miles from this Court through the straight-line measurement that is generally used under Rule 45's subpoena powers. *See* Goldfein Decl. ¶ 9; *Core Leasing, Inc. v. American Airlines, Inc.*, No. 90-1514, 1990 WL 92562, at *2 (E.D. Pa. Jul. 2, 1990) (noting that location "situated within 100 miles of this courthouse by the proverbial aeronautical crow, is within our subpoena power").

Even if MHS' employees lived more than 100 miles from this Courthouse, employees of a defendant are "party witnesses who are required to comply with a subpoena regardless of where they reside." *See White v. SmithKline Beecham Corp.*, 2007 WL 1237952, at *4 (E.D. Pa. Apr. 26, 2007); *see also* Fed. R. Civ. P. 45(c)(3)(A)(ii) (providing that a non-party witness may

⁷ MHS argues that transfer "may in fact make the prosecution of [Plaintiffs'] case more efficient." Mot. To Transfer at 8. MHS' alleged "concern" for Plaintiffs' case, aside, such an argument is not a valid consideration in this motion. *See* 15 Fed. Prac. & Proc. § 3849 ("That the plaintiff may be burdened by some inconvenience in its own chosen forum is not an argument that a defendant can make successfully in support of its transfer motion."); *Ruckman v. Life Ins. Co. of North America*, No. 2:07-CV-0474, 2007 WL 4218968, at *2 (D. Nev. 2007) ("Defendant's arguments that it may be difficult or impossible for [p]laintiff to ... obtain the necessary witnesses at trial is a little self-serving. It is [p]laintiff's choice to make, not [d]efendant's to make for her. And [p]laintiff has the right to choose.").

be compelled to attend trial in the same state even when it may require them to travel “more than 100 miles from where that person resides, is employed, or regularly transacts business in person”). Accordingly, MHS has failed to identify a single witness who would be unavailable in this forum at trial.

MHS’ arguments that “*nearly every* witness resides in the Middle District” are similarly unavailing. Mot. to Transfer at 8 (emphasis in original). Setting aside that MHS’ identified witnesses are all employees, “courts generally conclude that the actual number of witnesses each party would present is not determinative” in weighing the convenience of witnesses. *Pub. Util. Serv. Corp.*, 2008 WL 4610241, at *4 (citing cases).

Instead, the party seeking a transfer must “clearly specify the key witnesses to be called and must make a general statement of what their testimony will cover. The emphasis must be on this rather than on numbers.” *Jenkins*, 104 F. Supp. at 424; *see also Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 757 n.2 (3d Cir. 1973) (holding that moving party must submit “a list of names and addresses it plans to call and affidavits showing the materiality of the matter” in order to justify transfer).

MHS has not identified any witness by name, and has failed to clearly specify what the substance of any witnesses’ testimony will cover. *See Clay v. Overseas Carriers Corp.*, 61 F.R.D. 325, 330 (E.D. Pa. 1973) (holding that “conclusory affidavits are not helpful and are insufficient” in considering a motion to transfer, and the moving party must provide “the names and location of witnesses,” with “statements...as to the materiality of testimony”). MHS has failed to meet its burden of demonstrating how the testimony from teachers, coaches, house-parents, relief house-parents or counselors would be material to Plaintiffs’ case or its defenses, such that convenience of these witnesses would support transfer.

Accordingly, as the only identified non-party witnesses are employed in this judicial district at CHOP, and MHS has failed to specifically identify a single one of its employee witnesses who would be unavailable at trial, the convenience of witnesses' factor strongly favors maintaining venue in this judicial district.

E. The Public Interest Factors Support Maintaining Venue In This Court

In addition to the private factors, the public interest factors also strongly support maintaining venue in this Court. MHS does not make any arguments that the public interest factors support transfer. MHS makes no argument that this district shoulders a more congested docket than the Middle District. Further, as this case is premised on federal question jurisdiction and both venues are in Pennsylvania, there are no choice of law matters that would be affected by the venue of the case.

The Middle District may have an interest in ensuring that corporations located within its bounds do not unlawfully discriminate, but this district also has an interest in ensuring that its residents are not subject to such discrimination. This case, however, concerns an issue that is not specific or local to either district.

At the heart of MHS's defense is its assertion that its residential setting is so unique as to exempt it from the requirements of federal and state law that prohibit discrimination on the basis of disability. As of 2009, the CDC estimated that more than 1.2 million people are living with HIV in the United States. Goldfein Decl. at ¶¶ 15, Ex H. As MHS' argument affects the people with HIV who are currently in congregate-living settings without creating a direct threat to others, the interest in this argument reaches far beyond the Middle District. MHS has not and cannot successfully argue that public interest factors support a transfer to the Middle District.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny MHS' motion to transfer this case to the Middle District of Pennsylvania.

Dated: February 13, 2012

Respectfully submitted,

AIDS LAW PROJECT OF PENNSYLVANIA

/s/ Ronda B. Goldfein

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(215) 587-9902 (fax)
goldfein@aidslawpa.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER VENUE TO THE MIDDLE DISTRICT OF PENNSYLVANIA is available for viewing through the Court's ECF system this 13th day of February, 2012, addressed as follows:

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/s Ronda B. Goldfein
Ronda B. Goldfein

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTHER SMITH, on behalf of herself and
as Parent and Natural Guardian, on behalf of
ABRAHAM SMITH, a Minor,

Plaintiffs,

v.

MILTON HERSHEY SCHOOL,

Defendant.

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: Case No: 11-7391-CDJ
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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2012, upon consideration of
Defendant Milton Hershey School's Motion To Transfer Venue To The Middle District Of
Pennsylvania and Plaintiffs' response thereto, IT IS HEREBY ORDERED that Defendant's
motion is DENIED.

BY THE COURT:

Honorable C. Darnell Jones, II
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTHER SMITH, on behalf of herself and
as Parent and Natural Guardian, on behalf of
ABRAHAM SMITH, a Minor,

Plaintiffs,

v.

MILTON HERSHEY SCHOOL,

Defendant.

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: Case No: 11-7391-CDJ
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DECLARATION OF RONDA B. GOLDFEIN IN SUPPORT
OF PLAINTIFFS' MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER

This Declaration is being submitted in support of Plaintiffs' Brief In Opposition To
Defendant's Motions To Transfer Venue.

1. My name is Ronda B. Goldfein. I am over the age of eighteen and am competent
to make this Declaration.

2. I am an attorney and the executive director of the AIDS Law Project of
Pennsylvania. The AIDS Law Project of Pennsylvania is a non-profit, public interest law firm
that provides free legal assistance to people with HIV/AIDS and those affected by the epidemic
throughout the state of Pennsylvania.

3. This firm represents Plaintiffs in the above-captioned litigation, and I am the
attorney of record in the case. As with all of our clients, the AIDS Law Project of Pennsylvania
represents Plaintiffs *pro bono*, and has agreed to pay for all costs associated with the litigation.

4. The AIDS Law Project of Pennsylvania typically relies on the generosity of court reporters to provide their services *pro bono* for depositions, and has been successful in obtaining such services in the past for depositions held at our offices in Philadelphia.

5. If this case were transferred to the Middle District of Pennsylvania, the AIDS Law Project of Pennsylvania would have to bear the additional expense of paying for Plaintiffs (as well as our legal team) to stay in a hotel for the duration of trial.

6. The straight line distance between the Children's Hospital of Philadelphia and the James A. Byrne Federal Courthouse is 2.3 miles. A true and correct copy of a map showing the straight line distance between the Children's Hospital of Philadelphia, located at 3550 Market Street, Philadelphia Pennsylvania, GPS coordinates 39.9561457, -75.1939455, and the James A. Byrne Federal Courthouse, located at 601 Market Street, Philadelphia, Pennsylvania, GPS coordinates 39.9510898 latitude, -75.1511804 longitude, calculated by the GPS Visualizer Calculator, available at <http://www.gpsvisualizer.com/calculators>, is attached hereto as Exhibit A.

7. The straight line distance between the Children's Hospital of Philadelphia and the Harrisburg Federal Building and U.S. Courthouse is 93.5 miles. A true and correct copy of a map showing the straight line distance between the Children's Hospital of Philadelphia, located at 3550 Market Street, Philadelphia Pennsylvania, GPS coordinates 39.9561457, -75.1939455, and the Harrisburg Federal Building and U.S. Courthouse, located at 228 Walnut Street, Harrisburg, Pennsylvania, GPS coordinates 40.261518 latitude, -76.882755 longitude, calculated by the GPS Visualizer Calculator, available at <http://www.gpsvisualizer.com/calculators>, is attached hereto as Exhibit B.

8. A true and correct copy of the Milton Hershey School's Business Entity filing with the Pennsylvania Department of State, which was downloaded from the Pennsylvania Department of State Corporations website on February 13, 2012, and is available at <https://www.corporations.state.pa.us/corp/soskb/Corp.asp?15108>, is attached hereto as Exhibit C.

9. The straight line distance between the Milton Hershey School and the James A. Byrne Federal Courthouse is 82.7 miles. A true and correct copy of a map showing the straight line distance between the Milton Hershey School, located at 801 Spartan Lane, Hershey, Pennsylvania, GPS coordinates 40.2859239 latitude, -76.6502468 longitude, and the James A. Byrne Federal Courthouse, located at 601 Market Street, Philadelphia, Pennsylvania, GPS coordinates 39.9510898 latitude, -75.1511804 longitude, calculated by the GPS Visualizer Calculator, available at <http://www.gpsvisualizer.com/calculators>, is attached hereto as Exhibit D.

10. A true and correct copy of relevant portions of the Milton Hershey School & School Trust 2009 Form 990, filed with the Internal Revenue Service May 13, 2011, fiscal year ending July 31, 2010, which was downloaded from GuideStar on February 13, 2012, and is available at <http://www2.guidestar.org/organizations/23-1353340/milton-hershey-school-school-trust.aspx>, is attached hereto as Exhibit E (excluding supplements). This is the most recent 990 Form filed by the Milton Hershey School & School Trust that is publicly available for download on Guidestar's website.

11. According to its IRS Form 990 for fiscal year 2009, the Milton Hershey School reported 1,492 employees and 588 volunteers.

12. According its IRS Form 990 for fiscal year 2009, the Milton Hershey School reported \$7,738,773,688 in total assets.

13. A true and correct copy of The Early Childhood Education Linkage System & Healthy Child Care Pennsylvania, PA Chapter of the American Academy of Pediatrics, *Fact Sheet, Universal, Standard and Transmission-Based Precautions As They Apply to Child Care Settings* (2004), available at <http://www.ecelshealthychildcarepa.org/content/FSUniversal%20and%20Standard%20Precautions.pdf> (last accessed Feb. 11, 2012), is attached hereto at Exhibit F.

14. The straight line distance between the Milton Hershey School and the Milton Hershey Medical Center and Penn State Hershey Children's Hospital is 1.9 miles. A true and correct copy of a map showing the straight line distance between the Milton Hershey School, located at 801 Spartan Lane, Hershey, Pennsylvania, GPS coordinates 40.2859239 latitude, -76.6502468 longitude, and the Milton Hershey Medical Center, located at 500 University Drive, Hershey, Pennsylvania, GPS coordinates 40.26466 latitude, -76.675773 longitude, calculated by the GPS Visualizer Calculator, available at <http://www.gpsvisualizer.com/calculators>, is attached hereto as Exhibit G.

15. A true and correct copy of National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, U.S. Centers for Disease Control, *HIV in the United States* (2011), available at <http://www.cdc.gov/hiv/resources/factsheets/PDF/us.pdf> (last accessed Feb. 13, 2012), is attached hereto as Exhibit H.

16. The United States Centers for Disease Control and Prevention (“CDC”) estimates that 1.2 million people in the United States are living with HIV.

According to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2012 in Philadelphia, Pennsylvania.


/s/ Ronda B. Goldfein
Ronda B. Goldfein


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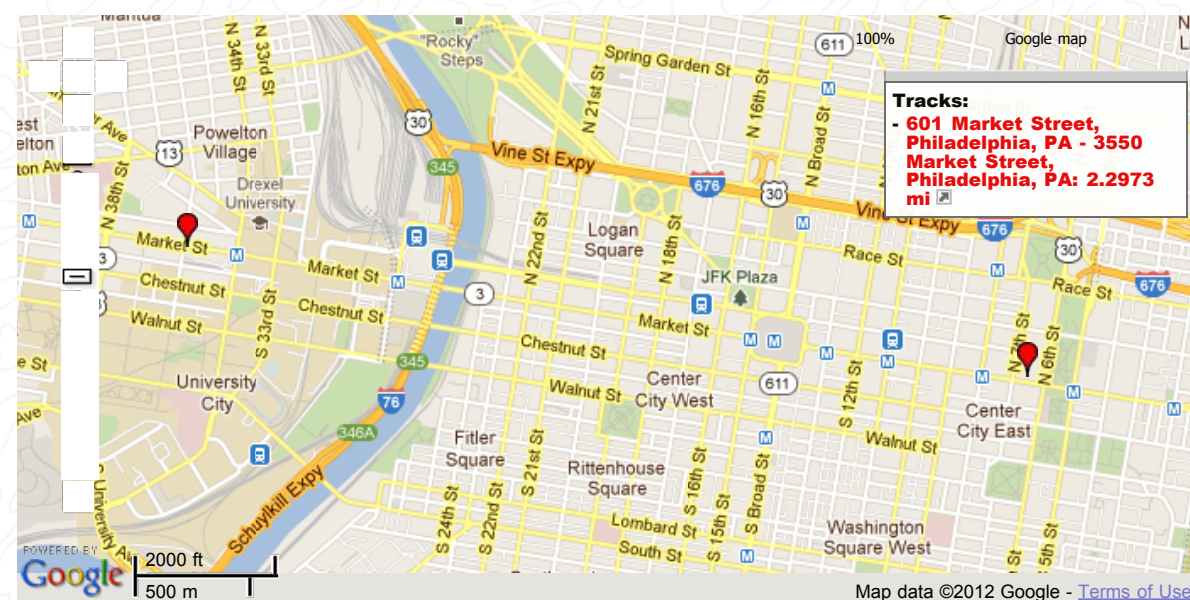
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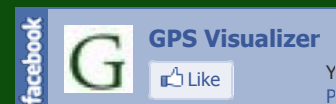
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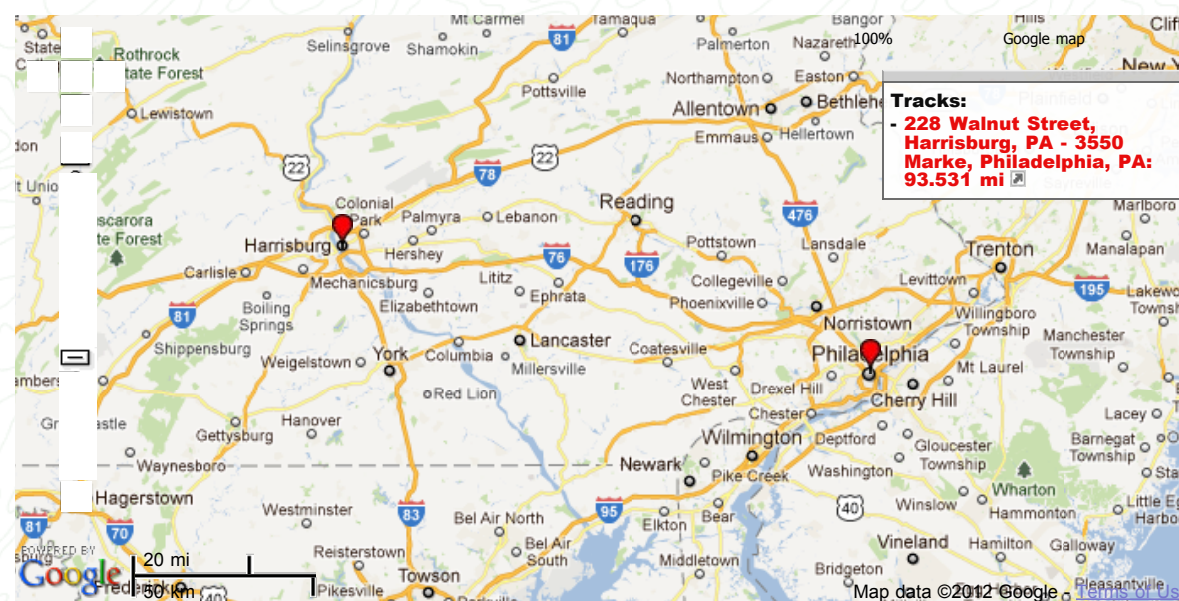
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History

Date: 2/12/2012
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Business Name History

Name	Name Type
MILTON HERSHEY SCHOOL	Current Name
The Hershey Industrial School	Prior Name

Non-Profit (Non Stock) - Domestic - Information

Entity Number:	159534
Status:	Active
Entity Creation Date:	12/30/1919
State of Business.:	PA
Registered Office Address:	801 SPARTAN LANE HERSHEY PA 17033-0 Dauphin
Mailing Address:	No Address




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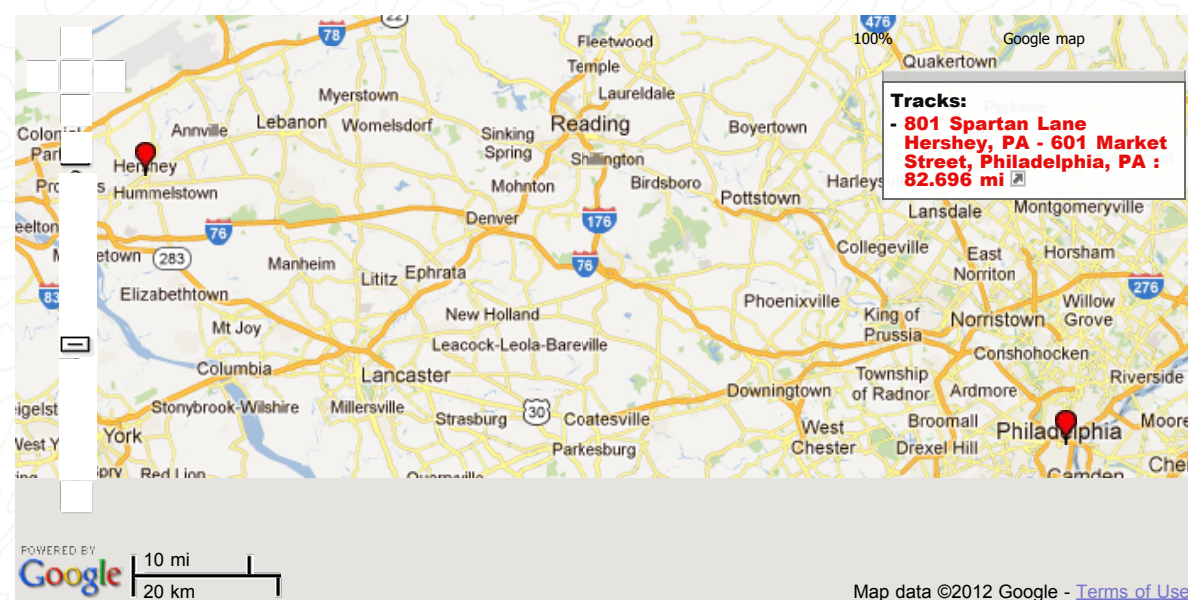
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EXHIBIT E

Form 990  Department of the Treasury Internal Revenue Service	<p>Case 2:11-cv-07391-CDS Document 11-7 Filed 02/13/12 Page 20 of 35</p> <p>Return of Organization Exempt From Income Tax</p> <p>Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)</p> <p>▶ The organization may have to use a copy of this return to satisfy state reporting requirements</p>	<p>OMB No 1545-0047</p> <p>2009</p> <p>Open to Public Inspection</p>
--	--	--

A For the 2009 calendar year, or tax year beginning 08-01-2009 and ending 07-31-2010				
B Check if applicable <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	Please use IRS label or print or type. See Specific Instructions.	C Name of organization MILTON HERSHEY SCHOOL AND SCHOOL TRUST		D Employer identification number 23-1353340
		Doing Business As		E Telephone number (717) 520-1100
		Number and street (or P O box if mail is not delivered to street address) PO BOX 445	Room/suite	G Gross receipts \$ 512,184,217
		City or town, state or country, and ZIP + 4 HERSHEY, PA 17033		
		F Name and address of principal officer ANTHONY J COLISTRA PO BOX 830 HERSHEY, PA 17033		
I Tax-exempt status <input checked="" type="checkbox"/> 501(c) (3) <input type="checkbox"/> (insert no) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527		H(b) Are all affiliates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list (see instructions)		
J Website: WWW.MHS-PA.ORG		H(c) Group exemption number		
K Form of organization <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input checked="" type="checkbox"/> Other <input type="checkbox"/> See Sch O			L Year of formation 1909	M State of legal domicile PA

Part I		Summary		
Activities & Governance	1	Briefly describe the organization's mission or most significant activities IN KEEPING WITH MILTON AND CATHERINE HERSHEY'S DEED OF TRUST, MILTON HERSHEY SCHOOL NURTURES AND EDUCATES CHILDREN IN SOCIAL AND FINANCIAL NEED TO LEAD FULFILLING AND PRODUCTIVE LIVES SEE SCHEDULE O		
	2	Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	
	5	Total number of employees (Part V, line 2a)	5	
	6	Total number of volunteers (estimate if necessary)	6	
	7a	Total gross unrelated business revenue from Part VIII, column (C), line 12	7a	
	7b	Net unrelated business taxable income from Form 990-T, line 34	7b	
Revenue	8	Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9	Program service revenue (Part VIII, line 2g)		
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)		
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		
	Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	
14		Benefits paid to or for members (Part IX, column (A), line 4)		
15		Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		
16a		Professional fundraising fees (Part IX, column (A), line 11e)		
b		Total fundraising expenses (Part IX, column (D), line 25)		
17		Other expenses (Part IX, column (A), lines 11a–11d, 11f–24f)		
18		Total expenses Add lines 13–17 (must equal Part IX, column (A), line 25)		
19		Revenue less expenses Subtract line 18 from line 12		
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21	Total liabilities (Part X, line 26)		
	22	Net assets or fund balances Subtract line 21 from line 20		

Part II		Signature Block		
Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge			
	<div>*****</div> <div>Signature of officer</div>		<div>2011-06-13</div> <div>Date</div>	
	<div>WILLIAM DAVIES CHIEF FINANCIAL OFFICER</div> <div>Type or print name and title</div>			
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input checked="" type="checkbox"/>	Preparer's identifying number (see instructions)
	Firm's name (or yours if self-employed), address, and ZIP + 4	GRANT THORNTON LLP 2001 MARKET STREET SUITE 3100 PHILADELPHIA, PA 19103		EIN
				Phone no (215) 561-4200

Part III

Statement of Program Service Accomplishments

1

Briefly describe the organization's mission

MILTON HERSHEY SCHOOL AND SCHOOL TRUST MISSION - SEE SCHEDULE O FOR FURTHER DETAILS

2

Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ?

Yes

☒

No

If "Yes," describe these new services on Schedule O

3

Did the organization cease conducting, or make significant changes in how it conducts, any program services?

Yes

☒

No

If "Yes," describe these changes on Schedule O

4

Describe the exempt purpose achievements for each of the organization's three largest program services by expenses. Section 501(c)(3) and 501(c)(4) organizations and section 4947(a)(1) trusts are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported

4a

(Code) (Expenses \$ 60,755,582 including grants of \$ 2,762,757) (Revenue \$ 0)

Education & Guidance - See Schedule O for further details

4b

(Code) (Expenses \$ 56,103,121 including grants of \$ 0) (Revenue \$ 0)

Board, Lodging & Clothing - See Schedule O for further details

4c

(Code) (Expenses \$ 25,931,130 including grants of \$ 0) (Revenue \$ 636,525)

Health Services, Recreation & Social Life - See Schedule O for further details















4d

Other program services (Describe in Schedule O)

(Expenses \$ including grants of \$) (Revenue \$)

4e

Total program service expenses \$ 142,789,833

		Yes	No				
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A 	Yes					
2	Is the organization required to complete Schedule B, Schedule of Contributors? 	Yes					
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I		No				
4	Section 501(c)(3) organizations. Did the organization engage in lobbying activities? If "Yes," complete Schedule C, Part II		No				
5	Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations. Is the organization subject to the section 6033(e) notice and reporting requirement and proxy tax? If "Yes," complete Schedule C, Part III						
6	Did the organization maintain any donor advised funds or any similar funds or accounts where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I 		No				
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas or historic structures? If "Yes," complete Schedule D, Part II 		No				
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III 	Yes					
9	Did the organization report an amount in Part X, line 21, serve as a custodian for amounts not listed in Part X, or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV 		No				
10	Did the organization, directly or through a related organization, hold assets in term, permanent, or quasi-endowments? If "Yes," complete Schedule D, Part V 	Yes					
11	Is the organization's answer to any of the following questions "Yes"? If so, complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable. 	Yes					
	• Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI.						
	• Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII.						
	• Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII.						
	• Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX.						
	• Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X.						
	• Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48? If "Yes," complete Schedule D, Part X.						
12	Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI, XII, and XIII 	Yes					
12A	Was the organization included in consolidated, independent audited financial statements for the tax year? <table><tr><th>Yes</th><th>No</th></tr><tr><td></td><td>No</td></tr></table>	Yes	No		No		
Yes	No						
	No						
	If "Yes," completing Schedule D, Parts XI, XII, and XIII is optional 						
13	Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E 	Yes					
14a	Did the organization maintain an office, employees, or agents outside of the United States?		No				
14b	Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, and program service activities outside the United States? If "Yes," complete Schedule F, Part I 	Yes					
15	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or assistance to any organization or entity located outside the U S ? If "Yes," complete Schedule F, Part II 		No				
16	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or assistance to individuals located outside the U S ? If "Yes," complete Schedule F, Part III 		No				
17	Did the organization report a total of more than \$15,000, of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I		No				
18	Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II		No				
19	Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III		No				
20	Did the organization operate one or more hospitals? If "Yes," complete Schedule H		No				

21	Did the organization report more than \$5,000 of grants and other assistance to governments and organizations in the United States on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i>	21		No
22	Did the organization report more than \$5,000 of grants and other assistance to individuals in the United States on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i>	22	Yes	
23	Did the organization answer "Yes" to Part VII, Section A, questions 3, 4, or 5, about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i>	23	Yes	
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer questions 24b-24d and complete Schedule K. If "No," go to line 25</i>	24a		No
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d		
25a	Section 501(c)(3) and 501(c)(4) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i>	25a		No
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i>	25b		No
26	Was a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person outstanding as of the end of the organization's tax year? <i>If "Yes," complete Schedule L, Part II</i>	26		No
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor, or a grant selection committee member, or to a person related to such an individual? <i>If "Yes," complete Schedule L, Part III</i>	27		No
28	Was the organization a party to a business transaction with one of the following parties? (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions)			
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28a		No
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28b		No
c	An entity of which a current or former officer, director, trustee, or key employee of the organization (or a family member) was an officer, director, trustee, or owner? <i>If "Yes," complete Schedule L, Part IV</i>	28c		No
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i>	29		No
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i>	30		No
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i>	31		No
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i>	32		No
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i>	33	Yes	
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Parts II, III, IV, and V, line 1</i>	34	Yes	
35	Is any related organization a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2</i>	35	Yes	
36	Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i>	36		No
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI</i>	37		No
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11 and 19? Note. All Form 990 filers are required to complete Schedule O	38	Yes	

			Yes	No
1a	Enter the number reported in Box 3 of Form 1096, <i>Annual Summary and Transmittal of U.S. Information Returns</i> . Enter -0- if not applicable	1a327		
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable	1b0		
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?	1c	Yes	
2a	Enter the number of employees reported on Form W-3, <i>Transmittal of Wage and Tax Statements</i> filed for the calendar year ending with or within the year covered by this return	2a1,492		
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns? Note: If the sum of lines 1a and 2a is greater than 250, you may be required to e-file this return (see instructions)	2b	Yes	
3a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	3a	Yes	
b	If "Yes," has it filed a Form 990-T for this year? If "No," provide an explanation in Schedule O	3b	Yes	
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?	4a	Yes	
b	If "Yes," enter the name of the foreign country: LU See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts			
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?	5a		No
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?	5b		No
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction?	5c		
6a	Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible?	6a		No
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	6b		
7	Organizations that may receive deductible contributions under section 170(c).			
a	Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?	7a		No
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?	7b		
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?	7c		No
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d		
e	Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	7e		No
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?	7f		No
g	For all contributions of qualified intellectual property, did the organization file Form 8899 as required?	7g		
h	For contributions of cars, boats, airplanes, and other vehicles, did the organization file a Form 1098-C as required?	7h		
8	Sponsoring organizations maintaining donor advised funds and section 509(a)(3) supporting organizations. Did the supporting organization, or a donor advised fund maintained by a sponsoring organization, have excess business holdings at any time during the year?	8		
9	Sponsoring organizations maintaining donor advised funds.			
a	Did the organization make any taxable distributions under section 4966?	9a		
b	Did the organization make a distribution to a donor, donor advisor, or related person?	9b		
10	Section 501(c)(7) organizations. Enter			
a	Initiation fees and capital contributions included on Part VIII, line 12	10a		
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities	10b		
11	Section 501(c)(12) organizations. Enter			
a	Gross income from members or shareholders	11a		
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them)	11b		
12a	Section 4947(a)(1) non-exempt charitable trusts. Is the organization filing Form 990 in lieu of Form 1041?	12a		
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year	12b		

Part VIIGovernance, Management, and Disclosure

For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Section A. Governing Body and Management

		Yes	No
1a	Enter the number of voting members of the governing body . . .		
1b	Enter the number of voting members that are independent . . .		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	Yes	
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? . . .		No
4	Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed?		No
5	Did the organization become aware during the year of a material diversion of the organization's assets? . . .		No
6	Does the organization have members or stockholders?		No
7a	Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body?	Yes	
7b	Are any decisions of the governing body subject to approval by members, stockholders, or other persons? . . .		No
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following		
8a	The governing body?	Yes	
8b	Each committee with authority to act on behalf of the governing body?	Yes	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		No

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
10a	Does the organization have local chapters, branches, or affiliates?		No
10b	If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?		
11	Has the organization provided a copy of this Form 990 to all members of its governing body before filing the form?	Yes	
11A	Describe in Schedule O the process, if any, used by the organization to review the Form 990		
12a	Does the organization have a written conflict of interest policy? If "No," go to line 13	Yes	
12b	Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	Yes	
12c	Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done	Yes	
13	Does the organization have a written whistleblower policy?	Yes	
14	Does the organization have a written document retention and destruction policy?	Yes	
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
15a	The organization's CEO, Executive Director, or top management official	Yes	
15b	Other officers or key employees of the organization	Yes	
	If "Yes" to line a or b, describe the process in Schedule O (See instructions)		
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		No
16b	If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements?		

Section C. Disclosure

17 List the States with which a copy of this Form 990 is required to be filed ▶

18 Section 6104 requires an organization to make its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c) (3)s only) available for public inspection. Indicate how you make these available. Check all that apply.
☐ Own website ☐ Another's website ☒ Upon request

19 Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public. See Additional Data Table.

20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization ▶
GAYLA BUSH HERSHEY TRUST CO
PO BOX 445
HERSHEY, PA 17033
(717) 520-1100

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year. Use Schedule J-2 if additional space is needed.

• List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation, and **current** key employees Enter -0- in columns (D), (E), and (F) if no compensation was paid

• List all of the organization's **current** key employees. See instructions for definition of "key employee."

• List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations

• List all of the organization's **former** officers, key employees, or highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations

• List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons

☐ Check this box if the organization did not compensate any current or former officer, director, trustee or key employee

[illegible]

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 in reportable compensation from the organization **43**

		Yes	No
3	Did the organization list any former officer, director or trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>	Yes	
4	For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>	Yes	
5	Did any person listed on line 1a receive or accrue compensation from any unrelated organization for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		No

Section B. Independent Contractors

1	Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization		
(A) Name and business address		(B) Description of services	(C) Compensation
SEE SCHEDULE O			
2	Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization 0		

Part VIII Statement of Revenue

				(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512, 513, or 514	
Contributions, gifts, grants and other similar amounts	1a	Federated campaigns . . .	1a					
	b	Membership dues	1b					
	c	Fundraising events	1c					
	d	Related organizations	1d					
	e	Government grants (contributions)	1e					
	f	All other contributions, gifts, grants, and similar amounts not included above	1f	41,874				
	g	Noncash contributions included in lines 1a-1f \$ _____						
	h	Total. Add lines 1a-1f			41,874			
Program Service Revenue			Business Code					
	2a	AG MILK AND CROP SALES	900,099	542,162	542,162			
	b	MEMORABILIA SALES TO PUBLIC	900,099	54,265	54,265			
	c	CONCESSION STAND SALES	900,099	40,098	40,098			
	d							
	e							
	f	All other program service revenue						
	g	Total. Add lines 2a-2f			636,525			
Other Revenue	3	Investment income (including dividends, interest and other similar amounts)		160,951,869		-191,473	161,143,342	
	4	Income from investment of tax-exempt bond proceeds . . .		0				
	5	Royalties		0				
	6a	Gross Rents	(i) Real	(ii) Personal				
			5,799,643					
		b	Less rental expenses	5,912,369				
		c	Rental income or (loss)	-112,726				
	d	Net rental income or (loss)		-112,726		-777,667	664,941	
	7a	Gross amount from sales of assets other than inventory	(i) Securities	(ii) Other				
			336,012,988	8,741,318				
		b	Less cost or other basis and sales expenses	293,604,173	1,062,731			
		c	Gain or (loss)	42,408,815	7,678,587			
	d	Net gain or (loss)		50,087,402			50,087,402	
	8a	Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c) See Part IV, line 18						
			a					
		b	Less direct expenses	b				
	c	Net income or (loss) from fundraising events . . .		0				
	9a	Gross income from gaming activities See Part IV, line 19						
			a					
		b	Less direct expenses	b				
c	Net income or (loss) from gaming activities . . .		0					
10a	Gross sales of inventory, less returns and allowances . .							
		a						
	b	Less cost of goods sold . . .	b					
c	Net income or (loss) from sales of inventory . . .		0					
Miscellaneous Revenue		Business Code						
11a								
b								
c								
d	All other revenue							
e	Total. Add lines 11a-11d			0				
12	Total revenue. See Instructions			211,604,944	636,525	-969,140	211,895,685	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns.					
All other organizations must complete column (A) but are not required to complete columns (B), (C), and (D).					
Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.		(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to governments and organizations in the U S See Part IV, line 21	0	0		
2	Grants and other assistance to individuals in the U S See Part IV, line 22	2,762,757	2,762,757		
3	Grants and other assistance to governments, organizations, and individuals outside the U S See Part IV, lines 15 and 16	0			
4	Benefits paid to or for members	0			
5	Compensation of current officers, directors, trustees, and key employees	2,324,643	1,043,157	1,281,486	
6	Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)	0			
7	Other salaries and wages	63,835,617	54,547,515	9,288,102	
8	Pension plan contributions (include section 401(k) and section 403(b) employer contributions)	10,617,992	7,644,954	2,973,038	
9	Other employee benefits	20,623,261	14,657,494	5,965,767	
10	Payroll taxes	5,785,004	4,165,203	1,619,801	
11	Fees for services (non-employees)				
a	Management	0			
b	Legal	442,548	26,441	416,107	
c	Accounting	97,717	70,356	27,361	
d	Lobbying	0			
e	Professional fundraising See Part IV, line 17	0			
f	Investment management fees	14,444,300		14,444,300	
g	Other	3,475,096	3,475,096		
12	Advertising and promotion	1,039,836	621,372	418,464	
13	Office expenses	237,540	170,110	67,430	
14	Information technology	488,525	472,025	16,500	
15	Royalties	0			
16	Occupancy	7,215,448	5,633,948	1,581,500	
17	Travel	686,805	670,573	16,232	
18	Payments of travel or entertainment expenses for any federal, state, or local public officials	0			
19	Conferences, conventions, and meetings	89,568	57,866	31,702	
20	Interest	0			
21	Payments to affiliates	0			
22	Depreciation, depletion, and amortization	38,556,959	30,074,428	8,482,531	
23	Insurance	3,621,397	3,348,579	272,818	
24	Other expenses Itemize expenses not covered above (Expenses grouped together and labeled miscellaneous may not exceed 5% of total expenses shown on line 25 below)				
a	TRUST EXPENSES	10,353,112		10,353,112	
b	CONTRACTED SERVICES	6,275,613	2,778,813	3,496,800	
c	FOOD,CLOTHING,HOUSE ITEMS	6,166,684	5,977,432	189,252	
d	EQUIPMENT RENTAL&MAINTENANCE	2,781,059	1,616,464	1,164,595	
e	SUPPLIES	1,959,844	1,819,240	140,604	
f	All other expenses	4,380,375	1,156,010	3,224,365	
25	Total functional expenses. Add lines 1 through 24f	208,261,700	142,789,833	65,471,867	0
26	Joint costs. Check here <input type="checkbox"/> if following SOP 98-2 Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation				

Part X

Balance Sheet

					(A)		(B)
					Beginning of year		End of year
Assets	1	Cash—non-interest-bearing				1	
	2	Savings and temporary cash investments			76,499,030	2	74,445,817
	3	Pledges and grants receivable, net				3	
	4	Accounts receivable, net			16,115,548	4	19,380,064
	5	Receivables from current and former officers, directors, trustees, key employees, and highest compensated employees Complete Part II of Schedule L				5	
	6	Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) Complete Part II of Schedule L				6	
	7	Notes and loans receivable, net				7	
	8	Inventories for sale or use			1,851,196	8	1,304,048
	9	Prepaid expenses and deferred charges			2,112,175	9	2,133,346
	10a	Land, buildings, and equipment cost or other basis Complete Part VI of Schedule D	10a	1,093,390,516	742,326,425		727,059,462
	b	Less accumulated depreciation	10b	366,331,054		10c	
	11	Investments—publicly traded securities			1,766,549,009	11	1,863,164,333
	12	Investments—other securities See Part IV, line 11			4,361,670,137	12	5,051,286,618
	13	Investments—program-related See Part IV, line 11				13	
	14	Intangible assets				14	
	15	Other assets See Part IV, line 11				15	
	16	Total assets. Add lines 1 through 15 (must equal line 34)			6,967,123,520	16	7,738,773,688
Liabilities	17	Accounts payable and accrued expenses			157,042,496	17	168,602,026
	18	Grants payable				18	
	19	Deferred revenue				19	
	20	Tax-exempt bond liabilities				20	
	21	Escrow or custodial account liability Complete Part IV of Schedule D				21	
	22	Payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons Complete Part II of Schedule L				22	
	23	Secured mortgages and notes payable to unrelated third parties				23	
	24	Unsecured notes and loans payable to unrelated third parties				24	
	25	Other liabilities Complete Part X of Schedule D				25	
	26	Total liabilities. Add lines 17 through 25			157,042,496	26	168,602,026
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.						
	27	Unrestricted net assets			937,888,263	27	929,005,573
	28	Temporarily restricted net assets				28	
	29	Permanently restricted net assets			5,872,192,761	29	6,641,166,089
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 30 through 34.						
	30	Capital stock or trust principal, or current funds				30	
	31	Paid-in or capital surplus, or land, building or equipment fund				31	
	32	Retained earnings, endowment, accumulated income, or other funds				32	
	33	Total net assets or fund balances			6,810,081,024	33	7,570,171,662
	34	Total liabilities and net assets/fund balances			6,967,123,520	34	7,738,773,688

Part XI Financial Statements and Reporting

	Yes	No
1 Accounting method used to prepare the Form 990 <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O		
2a Were the organization's financial statements compiled or reviewed by an independent accountant? . . .		No
b Were the organization's financial statements audited by an independent accountant?	Yes	
c If "Yes," to 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O	Yes	
d If "Yes" to line 2a or 2b, check a box below to indicate whether the financial statements for the year were issued on a consolidated basis, separate basis, or both <input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separated basis		
3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		No
b If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits . . .		

SCHEDULE A
(Form 990 or 990EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.

2009

Open to Public
Inspection

Name of the organization MILTON HERSHEY SCHOOL AND SCHOOL TRUST	Employer identification number 23-1353340
--	--

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions

The organization is not a private foundation because it is (For lines 1 through 11, check only one box)

- 1

☐

A church, convention of churches, or association of churches **section 170(b)(1)(A)(i).**
- 2

☒

A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E)
- 3

☐

A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**
- 4

☐

A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state
- 5

☐

An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II)
- 6

☐

A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**
- 7

☐

An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)** (Complete Part II)
- 8

☐

A community trust described in **section 170(b)(1)(A)(vi)** (Complete Part II)
- 9

☐

An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See **section 509(a)(2).** (Complete Part III)
- 10

☐

An organization organized and operated exclusively to test for public safety See**section 509(a)(4).**
- 11

☐

An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2) See **section 509(a)(3).** Check the box that describes the type of supporting organization and complete lines 11e through 11h

a

☐

Type I

b

☐

Type II

c

☐

Type III - Functionally integrated

d

☐

Type III - Other
- e

☐

By checking this box, I certify that the organization is not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2)
- f

☐

If the organization received a written determination from the IRS that it is a Type I, Type II or Type III supporting organization, check this box
- g

☐

Since August 17, 2006, has the organization accepted any gift or contribution from any of the following persons?

(i)

a person who directly or indirectly controls, either alone or together with persons described in (ii) and (iii) below, the governing body of the the supported organization?

(ii)

a family member of a person described in (i) above?

(iii)

a 35% controlled entity of a person described in (i) or (ii) above?
- h

☐

Provide the following information about the supported organization(s)

	Yes	No
11g(i)		
11g(ii)		
11g(iii)		

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 9 above or IRC section (see instructions))	(iv) Is the organization in col (i) listed in your governing document?		(v) Did you notify the organization in col (i) of your support?		(vi) Is the organization in col (i) organized in the U S ?		(vii) Amount of support?
			Yes	No	Yes	No	Yes	No	
Total									

Part II

Support Schedule for Organizations Described in IRC 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I.)

Section A. Public Support						
Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
1 Gifts, grants, contributions, and membership fees received (Do not include any "unusual grants.")						
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 Total. Add lines 1 through 3						
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						
6 Public Support. Subtract line 5 from line 4						

Section B. Total Support						
Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
7 Amounts from line 4						
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources						
9 Net income from unrelated business activities, whether or not the business is regularly carried on						
10 Other income (Explain in Part IV) Do not include gain or loss from the sale of capital assets						
11 Total support (Add lines 7 through 10)						
12 Gross receipts from related activities, etc (See instructions)					12	
13 First Five Years If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a 501(c)(3) organization, check this box and stop here						

Section C. Computation of Public Support Percentage		
14 Public Support Percentage for 2009 (line 6 column (f) divided by line 11 column (f))	14	
15 Public Support Percentage for 2008 Schedule A, Part II, line 14	15	
16a 33 1/3% support test—2009. If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization		
b 33 1/3% support test—2008. If the organization did not check the box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization		
17a 10%-facts-and-circumstances test—2009. If the organization did not check a box on line 13, 16a, or 16b and line 14 is 10% or more, and if the organization meets the "facts and circumstances" test, check this box and stop here. Explain in Part IV how the organization meets the "facts and circumstances" test The organization qualifies as a publicly supported organization		
b 10%-facts-and-circumstances test—2008. If the organization did not check a box on line 13, 16a, 16b, or 17a and line 15 is 10% or more, and if the organization meets the "facts and circumstances" test, check this box and stop here. Explain in Part IV how the organization meets the "facts and circumstances" test The organization qualifies as a publicly supported organization		
18 Private Foundation If the organization did not check a box on line 13, 16a, 16b, 17a or 17b, check this box and see instructions		

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Part III Support Schedule for Organizations Described in IRC 509(a)(2)
(Complete only if you checked the box on line 9 of Part I.)

Section A. Public Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
1 Gifts, grants, contributions, and membership fees received (Do not include any "unusual grants ")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 Total. Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b						
8 Public Support (Subtract line 7c from line 6)						

Section B. Total Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
9 Amounts from line 6						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						
c Add lines 10a and 10b						
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on						
12 Other income Do not include gain or loss from the sale of capital assets (Explain in Part IV)						
13 Total support (Add lines 9, 10c, 11 and 12)						
14 First Five Years If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a 501(c)(3) organization, check this box and stop here						

Section C. Computation of Public Support Percentage

15 Public Support Percentage for 2009 (line 8 column (f) divided by line 13 column (f))	15	
16 Public support percentage from 2008 Schedule A, Part III, line 15	16	

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2009 (line 10c column (f) divided by line 13 column (f))	17	
18 Investment income percentage from 2008 Schedule A, Part III, line 17	18	
19a 33 1/3% support tests—2009. If the organization did not check the box on line 14, and line 15 is more than 33 1/3% and line 17 is not more than 33 1/3%, check this box and stop here. The organization qualifies as a publicly supported organization		
b 33 1/3% support tests—2008. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3% and line 18 is not more than 33 1/3%, check this box and stop here. The organization qualifies as a publicly supported organization		
20 Private Foundation If the organization did not check a box on line 14, 19a or 19b, check this box and see instructions		

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Part IV

Supplemental Information. Supplemental Information. Complete this part to provide the explanation required by Part II, line 10; Part II, line 17a or 17b; or Part III, line 12. Provide any other additional information. See instructions

Software ID:

Software Version:

EIN: 23-1353340

Name: MILTON HERSHEY SCHOOL AND SCHOOL TRUST

Form 990, Part VII - Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

(A) Name and Title	(B) Average hours per week	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W- 2/1099-MISC)	(E) Reportable compensation from related organizations (W- 2/1099- MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
ROBERT F CAVANAUGH BOARD OF MANAGERS	9 0	X						0	128,913	202,954
RAYMOND L GOVER BOARD OF MANAGERS	5 5	X						0	127,500	2,953
JAMES M MEAD BOARD OF MANAGERS	6 0	X						0	128,539	2,953
JAMES E NEVELS BOARD OF MANAGERS	5 0	X						0	418,566	122,953
VELMA A REDMOND ESQ BOARD OF MANAGERS	6 0	X						0	138,546	2,953
ROBERT M REESE BOARD OF MANAGERS	57 0	X						0	1,415,773	20,822
JOSEPH M SENSER BOARD OF MANAGERS	9 0	X						0	120,000	2,953
LEROY S ZIMMERMAN BOARD OF MANAGERS	6 5	X						0	291,750	218,551
HERSHEY TRUST COMPANY TRUSTEE			X					1,000	0	0
ELLIOTT ROBINSON VP ADMINISTRATION	48 0			X				213,265	0	66,554
JOAN SINGLETON VP HUMAN RESOURCES	50 0			X				206,352	0	64,275
PETER GURT VP OF STUDENT LIFE	50 0			X				248,665	0	65,630
JAMES M SHEEHAN VP LEGAL AFFAIRS	40 0			X				230,418	111,979	63,009
ANTHONY J COLISTRA ED D PRESIDENT (BEG 8/09)	46 0			X				160,782	84,250	71,174
GAYLA M BUSH TREASURER AND VP FINANCE - HTC	43 0			X				0	247,277	49,014
WILLIAM DAVIES BEG 1109 CFO	48 0			X				0	224,229	46,306
ROBERT FEHRS HEAD - MIDDLE DIVISION	55 0				X			195,424	0	47,191
ANNETTE COLE GILL HEAD - ELEMENTARY DIVISION	50 0				X			156,308	0	39,093
BETH SHAW EXEC DIRECTOR STUDENT SUPPORT	48 0				X			173,230	0	39,177
MIKE WELLER HEAD - SENIOR DIVISION	50 0				X			160,061	0	39,959
CONNIE MCNAMARA SR DIRECTOR OF COMMUNICATIONS	50 0				X			111,997	0	32,595
AL CARONARA SR DIRECTOR FINANCIAL SERVICES	40 0				X			164,614	0	39,994
JANICE L BRATTON VP AND INV OFFICER - HTC	35 0				X			0	214,599	40,082
KENNETH GALL DIRECTOR OF RE - HTC	54 0				X			0	124,154	39,907
VINCENT B RUDISILL CHIEF INVESTMENT OFFICER - HTC	29 0				X			0	1,042,319	47,700

(A) Name and Title	(B) Average hours per week	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W- 2/1099-MISC)	(E) Reportable compensation from related organizations (W- 2/1099- MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
MARY LOUISE PORTER ESQ CHIEF COMP OFFICER & SEC - HTC	10 0				X			0	262,344	25,768
MARLENE NAVADOend 311 DIRECTOR DENTAL SERVICES	40 0					X		144,173	0	5,982
JOHN OSMOLINSKI SR DIR FACILITIES&TECH SRVCS	48 0					X		132,957	0	28,514
TIM FAKE SR DIRECTOR INFORMATION TECH	46 0					X		133,072	0	13,787
MARK SEYMOUR SR DIRECTOR ENROLLMENT	40 0					X		131,454	0	33,472
SANDRA CULOTTAend 110 SR DIR APPLIED&INTEGRATED SVCS	40 0					X		129,781	0	22,874
ROBERT C VOWLERend 408 FORMER DIRECTOR-HTC							X	0	2,844,427	36,034
JOHN O'BRIENEND 709 FORMER PRESIDENT							X	630,534	0	75,144

Form 990, Part IX - Statement of Functional Expenses - 24a - 24e Other Expenses

<i>Do not include amounts reported on line 6b, 8b, 9b, and 10b of Part VIII.</i>	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
TRUST EXPENSES	10,353,112		10,353,112	
CONTRACTED SERVICES	6,275,613	2,778,813	3,496,800	
FOOD,CLOTHING,HOUSE ITEMS	6,166,684	5,977,432	189,252	
EQUIPMENT RENTAL&MAINTENANCE	2,781,059	1,616,464	1,164,595	
SUPPLIES	1,959,844	1,819,240	140,604	

SCHEDULE D

(Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

- ▶ Complete if the organization answered "Yes," to Form 990,
Part IV, line 6, 7, 8, 9, 10, 11, or 12.
- ▶ Attach to Form 990. ▶ See separate instructions.

2009

Open to Public
Inspection

Name of the organization MILTON HERSHEY SCHOOL AND SCHOOL TRUST	Employer identification number 23-1353340
--	--

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

	(a) Donor advised funds	(b) Funds and other accounts
1	Total number at end of year	
2	Aggregate contributions to (during year)	
3	Aggregate grants from (during year)	
4	Aggregate value at end of year	
5	Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6	Did the organization inform all grantees, donors, and donor advisors in writing that grant funds may be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part II Conservation Easements.

Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

1	Purpose(s) of conservation easements held by the organization (check all that apply) <input type="checkbox"/> Preservation of land for public use (e g , recreation or pleasure) <input type="checkbox"/> Preservation of an historically importantly land area <input type="checkbox"/> Protection of natural habitat <input type="checkbox"/> Preservation of a certified historic structure <input type="checkbox"/> Preservation of open space
2	Complete lines 2a–2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year
a	Total number of conservation easements
b	Total acreage restricted by conservation easements
c	Number of conservation easements on a certified historic structure included in (a)
d	Number of conservation easements included in (c) acquired after 8/17/06
3	Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the taxable year ▶ _____
4	Number of states where property subject to conservation easement is located ▶ _____
5	Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? <input type="checkbox"/> Yes <input type="checkbox"/> No
6	Staff and volunteer hours devoted to monitoring, inspecting and enforcing conservation easements during the year ▶ _____
7	Amount of expenses incurred in monitoring, inspecting, and enforcing conservation easements during the year ▶ \$ _____
8	Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and 170(h)(4)(B)(ii)? <input type="checkbox"/> Yes <input type="checkbox"/> No
9	In Part XIV, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

1a	If the organization elected, as permitted under SFAS 116, not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education or research in furtherance of public service, provide, in Part XIV, the text of the footnote to its financial statements that describes these items
b	If the organization elected, as permitted under SFAS 116, to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items
(i)	Revenues included in Form 990, Part VIII, line 1 ▶ \$ _____
(ii)	Assets included in Form 990, Part X ▶ \$ _____
2	If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 relating to these items
a	Revenues included in Form 990, Part VIII, line 1 ▶ \$ _____
b	Assets included in Form 990, Part X ▶ \$ _____

Part III

Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets

(continued)

3

Using the organization's accession and other records, check any of the following that are a significant use of its collection items (check all that apply)

a

☒

Public exhibition

d

☐

Loan or exchange programs

b

☒

Scholarly research

e

☐

Other

c

☒

Preservation for future generations

4

Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIV

5

During the year, did the organization solicit or receive donations of art, historical treasures or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection?

☐ Yes

☒ No

Part IV

Escrow and Custodial Arrangements. Complete if the organization answered "Yes" to Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a

Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X?

☐ Yes

☐ No

b

If "Yes," explain the arrangement in Part XIV and complete the following table

	Amount
1c	
1d	
1e	
1f	

c

Beginning balance

d

Additions during the year

e

Distributions during the year

f

Ending balance

2a

Did the organization include an amount on Form 990, Part X, line 21?

☐ Yes

☐ No

b

If "Yes," explain the arrangement in Part XIV

Part V

Endowment Funds. Complete if the organization answered "Yes" to Form 990, Part IV, line 10.

	(a)Current Year	(b)Prior Year	(c)Two Years Back	(d)Three Years Back	(e)Four Years Back
1a	Beginning of year balance	5,872,192,761	6,233,173,623		
b	Contributions				
c	Investment earnings or losses	768,973,328	-360,980,862		
d	Grants or scholarships				
e	Other expenditures for facilities and programs				
f	Administrative expenses				
g	End of year balance	6,641,166,089	5,872,192,761		

2

Provide the estimated percentage of the year end balance held as

a

Board designated or quasi-endowment ▶

b

Permanent endowment ▶ 100.000 %

c

Term endowment ▶

3a

Are there endowment funds not in the possession of the organization that are held and administered for the organization by

(i)

unrelated organizations

3a(i)

No

(ii)

related organizations

3a(ii)

No

b

If "Yes" to 3a(ii), are the related organizations listed as required on Schedule R?

3b

4

Describe in Part XIV the intended uses of the organization's endowment funds

Part VI

Investments—Land, Buildings, and Equipment. See Form 990, Part X, line 10.

Description of investment	(a) Cost or other basis (investment)	(b)Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a Land		77,896,673		77,896,673
b Buildings	45,173,298	889,005,679	307,055,912	627,123,065
c Leasehold improvements				
d Equipment		81,314,866	59,275,142	22,039,724
e Other				
Total. Add lines 1a-1e (Column (d) should equal Form 990, Part X, column (B), line 10(c).)				727,059,462

Part XI Reconciliation of Change in Net Assets from Form 990 to Financial Statements			
1	Total revenue (Form 990, Part VIII, column (A), line 12)	1	211,604,944
2	Total expenses (Form 990, Part IX, column (A), line 25)	2	208,261,700
3	Excess or (deficit) for the year Subtract line 2 from line 1	3	3,343,244
4	Net unrealized gains (losses) on investments	4	761,637,913
5	Donated services and use of facilities	5	
6	Investment expenses	6	
7	Prior period adjustments	7	
8	Other (Describe in Part XIV)	8	-4,890,519
9	Total adjustments (net) Add lines 4 - 8	9	756,747,394
10	Excess or (deficit) for the year per financial statements Combine lines 3 and 9	10	760,090,638
Part XII Reconciliation of Revenue per Audited Financial Statements With Revenue per Return			
1	Total revenue, gains, and other support per audited financial statements	1	973,628,182
2	Amounts included on line 1 but not on Form 990, Part VIII, line 12		
a	Net unrealized gains on investments	2a	761,637,913
b	Donated services and use of facilities	2b	
c	Recoveries of prior year grants	2c	
d	Other (Describe in Part XIV)	2d	-4,890,519
e	Add lines 2a through 2d	2e	756,747,394
3	Subtract line 2e from line 1	3	216,880,788
4	Amounts included on Form 990, Part VIII, line 12, but not on line 1		
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a	
b	Other (Describe in Part XIV)	4b	-5,275,844
c	Add lines 4a and 4b	4c	-5,275,844
5	Total Revenue Add lines 3 and 4c . (This should equal Form 990, Part I, line 12)	5	211,604,944
Part XIII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return			
1	Total expenses and losses per audited financial statements	1	213,537,544
2	Amounts included on line 1 but not on Form 990, Part IX, line 25		
a	Donated services and use of facilities	2a	
b	Prior year adjustments	2b	
c	Other losses	2c	
d	Other (Describe in Part XIV)	2d	5,275,844
e	Add lines 2a through 2d	2e	5,275,844
3	Subtract line 2e from line 1	3	208,261,700
4	Amounts included on Form 990, Part IX, line 25, but not on line 1 :		
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a	
b	Other (Describe in Part XIV)	4b	
c	Add lines 4a and 4b	4c	
5	Total expenses Add lines 3 and 4c . (This should equal Form 990, Part I, line 18)	5	208,261,700
Part XIV Supplemental Information			

Complete this part to provide the descriptions required for Part II, lines 3, 5, and 9, Part III, lines 1a and 4, Part IV, lines 1b and 2b, Part V, line 4, Part X, Part XI, line 8, Part XII, lines 2d and 4b, and Part XIII, lines 2d and 4b. Also complete this part to provide any additional information.

Identifier	Return Reference	Explanation
SCHEDULE D, PART III, LINE 4	MAINTAINING COLLECTIONS OF ART/HISTORICAL TREASURES, OR SIMILAR	THE DEPARTMENT OF SCHOOL HISTORY AND THE MHS HERITAGE CENTER AT KINDERHAUS PROVIDE FOR THE CARE AND MANAGEMENT OF THE HISTORICAL ASSETS OF THE MILTON HERSHEY SCHOOL COMMUNITY. THE HISTORICAL ASSETS (COLLECTION) CONSIST OF ARCHIVAL RECORDS AND DOCUMENTS, THREE DIMENSIONAL OBJECTS, INTERPRETIVE EXHIBITS, AND HISTORICAL CAMPUS BUILDINGS WHICH HELP TO DOCUMENT THE LIVES AND VALUES OF MILTON AND CATHERINE HERSHEY AS FOUNDERS OF OUR SCHOOL, THE HISTORY AND TRADITIONS OF THE SCHOOL AS AN INSTITUTION, AND THE STORIES OF THE STUDENTS, STAFF, AND ALUMNI WHO MAKE UP THE SCHOOL COMMUNITY. EXCLUDED FROM THIS MANDATE ARE LEGAL BOARD RECORDS, STUDENT RECORDS, AND ALUMNI RECORDS.
SCHEDULE D, PART V, LINE 4	ENDOWMENT FUNDS	The endowment funds are intended to be used to fund the general operations of the Milton Hershey School and School Trust. The endowment funds and other investment assets of the Milton Hershey School Trust (the "Assets") are invested for the long term because the school is to exist in perpetuity per the desire of Milton Hershey as stated in the Deed of Trust. The assets are invested to ensure that funds are available to meet current and future obligations of the school. The Board and the Trustee continually review the performance of the Assets. The Board also periodically reviews the process of investing the Assets with the assistance of the Trustee and third-party investment consultants. They have a disciplined process to review asset allocation, manager selection, and outside manager fees, as well as the detailed Investment Policy and Guidelines.
SCHEDULE D, PART X, LINE 2	FIN 48 FOOTNOTE	TAX POSITIONS ARE RECOGNIZED OR DERECOGNIZED BASED ON A "MORE-LIKELY THAN-NOT" THRESHOLD FOR POSITIONS TAKEN OR EXPECTED TO BE TAKEN IN A TAX RETURN. THE MILTON HERSHEY SCHOOL AND SCHOOL TRUST ADOPTED THIS GUIDANCE EFFECTIVE AUGUST 1, 2009. THE MILTON HERSHEY SCHOOL AND SCHOOL TRUST'S ACCOUNTING POLICY FOR EVALUATING UNCERTAIN TAX POSITIONS IS TO RECOGNIZE TAX POSITIONS IF THEY ARE PROBABLE OF BEING ULTIMATELY REALIZED. THE MILTON HERSHEY SCHOOL AND SCHOOL TRUST DOES NOT BELIEVE THERE ARE ANY UNRECOGNIZED TAX BENEFITS OR LIABILITIES THAT SHOULD BE RECORDED.
SCHEDULE D, PART XI, LINE 8	RECONCILIATION OF CHANGE IN NET ASSETS FROM FORM 990 TO AUDITED FIN STMTS	UNRECOGNIZED PENSION & POST RETIREMENT BENEFIT COST (4,890,519)
SCHEDULE D, PART XII, LINE 2D	RECONCILIATION OF REVENUE PER AUDITED FIN STMTS WITH REVENUE PER RETURN	UNRECOGNIZED PENSION & POST RETIREMENT BENEFIT COST (4,890,519)
SCHEDULE D, PART XII, LINE 4B	RECONCILIATION OF REVENUE PER AUDITED FIN STMTS WITH REVENUE PER RETURN	RENTAL EXPENSE (RECLASS) (5,912,369) PROGRAM SERVICE REVENUE (RECLASS) 636,525 ----- (5,275,844)
SCHEDULE D, PART XIII, LINE 2D	RECONCILIATION OF EXPENSES PER AUDITED FIN STMTS WITH EXPENSES PER RETURN	RENTAL EXPENSE (RECLASS) 5,912,369 PROGRAM SERVICE REVENUE (RECLASS) (636,525) ----- 5,275,844

SCHEDULE E

(Form 990 or 990-EZ)

Schools

2009

Open to Public Inspection

▶Complete if the organization answered "Yes" to Form 990, Part IV, line 13, or Form 990-EZ, Part VI, line 48.

▶ Attach to Form 990 or Form 990-EZ.

Name of the organization MILTON HERSHEY SCHOOL AND SCHOOL TRUST	Employer identification number 23-1353340
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- 1 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?
- 2 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?
- 3 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe If "No," please explain

THE APPLICATION FOR ADMISSION STATES "MILTON HERSHEY SCHOOL ADMITS STUDENTS OF ANY RACE AND DOES NOT DISCRIMINATE IN THE ADMINISTRATION OF ITS POLICIES AND PROGRAMS " WE INCLUDE ON OUR WEBSITE, IN PUBLICATIONS AND IN CORRESPONDENCE WITH PERSPECTIVE STUDENTS, COMPLETE DISCLOSURES OF OUR "NONDISCRIMINATION POLICY "

- 4 Does the organization maintain the following?
- a Records indicating the racial composition of the student body, faculty, and administrative staff?
- b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?
- c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?
- d Copies of all material used by the organization or on its behalf to solicit contributions?
- If you answered "No" to any of the above, please explain If you need more space, use Schedule O (Form 990)

- 5 Does the organization discriminate by race in any way with respect to
- a Students' rights or privileges?

- b Admissions policies?
- c Employment of faculty or administrative staff?
- d Scholarships or other financial assistance?
- e Educational policies?
- f Use of facilities?
- g Athletic programs?

- h Other extracurricular activities?
- If you answered "Yes" to any of the above, please explain If you need more space, use Schedule O (Form 990)

- 6a Does the organization receive any financial aid or assistance from a governmental agency?
- b Has the organization's right to such aid ever been revoked or suspended?
- If you answered "Yes" to either line 6a or line 6b, explain on Schedule O (Form 990)
- 7 Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev Proc 75-50, 1975-2 C B 587, covering racial nondiscrimination? If "No," explain on Schedule O (Form 990)

	YES	NO
1	Yes	
2	Yes	
3	Yes	
4a	Yes	
4b	Yes	
4c	Yes	
4d	Yes	
5a		No
5b		No
5c		No
5d		No
5e		No
5f		No
5g		No
5h		No
6a		No
6b		
7	Yes	

Part II **Grants and Other Assistance to Organizations or Entities Outside the United States** Complete if the organization answered "Yes" to Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Check this box if no one recipient received more than \$5,000 ☐ **Use Schedule F-1 (Form 990) if additional space is needed.**

[illegible]

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter

3 Enter total number of other organizations or entities ►

Use Schedule F-1 (Form 990) if additional space is needed.

[illegible]

Complete this part to provide the information required in Part I, line 2, and any additional information.

[illegible]

Part I

General Information on Grants and Assistance

- 1

Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance?

☒ Yes ☐ No
- 2

Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States

Part II

Grants and Other Assistance to Governments and Organizations in the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 21 for any recipient that received more than \$5,000. Check this box if no one recipient received more than \$5,000. Use Part IV and Schedule I-1 (Form 990) if additional space is needed ▶ ☐

(a) Name and address of organization or government	(b) EIN	(c) IRC Code section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV , appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance

2

Enter total number of section 501(c)(3) and government organizations

▶

3

Enter total number of other organizations

▶

Part III

Grants and Other Assistance to Individuals in the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 22.
Use Schedule I-1 (Form 990) if additional space is needed.

(a)Type of grant or assistance	(b)Number of recipients	(c)Amount of cash grant	(d)Amount of non-cash assistance	(e)Method of valuation (book, FMV, appraisal, other)	(f)Description of non-cash assistance
CONTINUING EDUCATION SCHOLARSHIPS	479	2,762,757			
See Additional Data Table					

Part IV

Supplemental Information. Complete this part to provide the information required in Part I, line 2, and any other additional information.

Identifier	Return Reference	Explanation
SEE SCHEDULE O FOR FURTHER DETAILS		

Department of the Treasury
Internal Revenue Service

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees
▶ Complete if the organization answered "Yes" to Form 990, Part IV, question 23.
▶ Attach to Form 990. ▶ See separate instructions.

Name of the organization MILTON HERSHEY SCHOOL AND SCHOOL TRUST	Employer identification number 23-1353340
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Part I

Questions Regarding Compensation

	Yes	No
1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a Complete Part III to provide any relevant information regarding these items <div><div><input checked="" type="checkbox"/> First-class or charter travel</div><div><input checked="" type="checkbox"/> Housing allowance or residence for personal use</div><div><input checked="" type="checkbox"/> Travel for companions</div><div><input type="checkbox"/> Payments for business use of personal residence</div><div><input checked="" type="checkbox"/> Tax idemnification and gross-up payments</div><div><input checked="" type="checkbox"/> Health or social club dues or initiation fees</div><div><input type="checkbox"/> Discretionary spending account</div><div><input type="checkbox"/> Personal services (e g , maid, chauffeur, chef)</div></div>		
b If any of the boxes in line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all the expenses described above? If "No," complete Part III to explain	1b Yes	
2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a?	2 Yes	
3 Indicate which, if any, of the following the organization uses to establish the compensation of the organization's CEO/Executive Director Check all that apply <div><div><input checked="" type="checkbox"/> Compensation committee</div><div><input type="checkbox"/> Written employment contract</div><div><input checked="" type="checkbox"/> Independent compensation consultant</div><div><input checked="" type="checkbox"/> Compensation survey or study</div><div><input checked="" type="checkbox"/> Form 990 of other organizations</div><div><input checked="" type="checkbox"/> Approval by the board or compensation committee</div></div>		
4 During the year, did any person listed in Form 990, Part VII, Section A, line 1a with respect to the filing organization or a related organization <div><div>a Receive a severance payment or change-of-control payment?</div><div>b Participate in, or receive payment from, a supplemental nonqualified retirement plan?</div><div>c Participate in, or receive payment from, an equity-based compensation arrangement? If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III</div></div>	4a Yes	
	4b Yes	
	4c	No
Only 501(c)(3) and 501(c)(4) organizations only must complete lines 5-9.		
5 For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of <div><div>a The organization?</div><div>b Any related organization? If "Yes," to line 5a or 5b, describe in Part III</div></div>	5a	No
	5b	No
6 For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of <div><div>a The organization?</div><div>b Any related organization? If "Yes," to line 6a or 6b, describe in Part III</div></div>	6a	No
	6b	No
7 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III	7	No
8 Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regs section 53 4958-4(a)(3)? If "Yes," describe in Part III	8	No
9 If "Yes" to line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53 4958-6(c)?	9	

Note. The sum of columns (B)(i)-(iii) must equal the applicable column (D) or column (E) amounts on Form 990, Part VII, line 1a

Schedule J (Form 990) 2009

Part IIISupplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 4c, 5a, 5b, 6a, 6b, 7, and 8 Also complete this part for any additional information

Identifier	Return Reference	Explanation
SCHEDULE J, PART I, LINE 1A	First Class Travel and Travel for Companions	Board Travel The joint Board Travel Reimbursement Policy of Milton Hershey School AND Hershey Trust Company states "Coach airfare will be reimbursed If Board members choose to fly first or business class, they will be responsible for the cost difference " Infrequently the President and Managing Director of Hershey Trust Company approves first class travel for those board members who live a great distance from Hershey, PA when frequent meetings are scheduled Spouse/Dependent Travel Spousal travel costs to attend the retreat and/or graduation are treated as taxable income to the board of managers member by Hershey Trust Company Dependent travel costs to attend graduation are treated as taxable income to the board of managers member by Hershey Trust Company The Joint Board Travel Reimbursement Policy of Milton Hershey School AND HERSHEY TRUST COMPANY states "Spouses may be invited to Board retreats and graduation at the discretion of the School or Trust Company Children are not invited to attend regular Board meetings or the retreat (If children accompany the Board member, all charges related to the children are the responsibility of the Board member) However, children may be invited to attend the graduation weekend events and celebration For this occasion, transportation, lodging, and meals for the children, as well as for spouses, will be covered and reported as taxable income to the Board member "
SCHEDULE J, PART I, LINE 1A	Housing Allowance or Residence for Personal Use	Certain Milton Hershey School officers are provided with a housing allowance of \$15,457 per year, which is included in reportable compensation and is taxable to them The President of Milton Hershey School is provided a residence on campus for his personal and public use This residence is owned by the Milton Hershey School Trust The value of this benefit (fair market value of rental) plus operating costs are nontaxable benefits The President has an employment contract which includes a provision to provide housing
SCHEDULE J, PART I, LINE 1A	Health Club Dues	All employees of the Milton Hershey School are eligible for reimbursement of health club dues not to exceed \$120 per annum for single membership and \$240 for a family membership Schedule J, Part I, LINE 1A Tax Indemnification and Gross-up Payments Certain officers of the Milton Hershey School receive minor tax gross-up payments
SCHEDULE J, PART I, LINE 4A	SEVERANCE PAYMENT	Robert C Vowler, former President and director of Hershey Trust Company, was paid \$140,000 by the related for-profit company as a severance payment SCHEDULE J, PART I, LINE 4B NONQUALIFIED RETIREMENT PLAN Robert C Vowler, former President and director of Hershey Trust Company, was paid \$2,705,086 by the related for-profit company from a supplemental nonqualified retirement plan
SCHEDULE J, PART II	SPECIAL RETIREMENT PAYMENT & PERFORMANCE BONUS	Reported for Anthony Colistra is \$50,000 as compensation that relates to acceptance of the presidency of Milton Hershey School The amount is reported on Schedule J, Part II "Bonus & Incentive Compensation " Reported for John O'Brien, former president of Milton Hershey School, is a \$200,000 special retirement payment in lieu of an executive retirement plan pursuant to his employment contract executed August 15, 2006 This payment pertains to the period January 1, 2008 through December 31, 2008 and was paid on January 9, 2009 In addition a pro rata payment in lieu of an executive retirement plan of \$125,000 for the period January 1, 2009 through July 31, 2009 was paid in July 2009 Both payments are combined and reported on Schedule J, Part II as "Other Reportable Compensation " SCHEDULE J, PART II CONSULTING ARRANGEMENT The former President John O'Brien was paid \$75,000 to assist the new President Anthony Colistra or any other Milton Hershey School officers with items related to past or ongoing projects The payment is reported as "Bonus & Incentive Compensation" on Schedule J, Part II
SCHEDULE J-2	Reportable Compensation	Mr and Mrs Hershey organized the Milton Hershey School ("the School") in the form of a trust ("School Trust") created under an original 1909 Deed of Trust that, as amended, still governs the operation of the School The Deed of Trust sets forth the respective powers and authorities of the trustee and Managers of the School, names the Hershey Trust Company, a state-chartered trust company, as trustee for compensation of no more than \$1,000 per year and provides for the trustee to appoint the individual Managers of the School from its own Board of Directors The Managers subsequently incorporated That corporation, acting as manager under the deed of trust, together with the School Trust are the components of the integrated tax-exempt organization, the Milton Hershey School and School Trust (EIN 23-1353340) Mr Hershey created the same structure for his other charity, The M S Hershey Foundation As a result of the structure created by Mr Hershey, Hershey Trust Company (A) serves as trustee for the \$7 billion Milton Hershey School & School Trust (administration of which trust includes responsibility for (1) The Hershey Company, a Fortune 500 company, (2) Hershey Entertainment & Resorts Company, a \$218 million resort and entertainment company, (3) an actively managed portfolio of approximately \$3 3 billion in securities and other investments, and (4) approximately 12,000 acres of real estate, (B) serves as trustee for the \$28 million actively managed portfolio of the M S Hershey Foundation Trust, (C) serves as trustee of the actively managed portfolio of the Derry Township School District, and (D) operates a private wealth management business with \$1 1 billion of assets under management The compensation of Board members serving on the boards of any of the related for-profit entities (Hershey Trust Company, Hershey Entertainment & Resorts Company and The Hershey Company) is commensurate with their responsibilities with respect to the relevant for-profit entity The following information details the compensation arrangements of the Board of Managers who are compensated by related for-profit entities None of the compensation was paid directly by Milton Hershey School and School Trust (EIN 23-1353340) Robert F Cavanaugh Compensation reported consists only of director fees received from related for-profit companies, Hershey Trust Company (EIN 23-0692150) and The Hershey Company (EIN 23-0691590) Raymond L Gover Compensation reported consists only of director fees received from a related for-profit company, Hershey Trust Company (EIN 23-0692150) James M Mead Compensation reported consists only of director fees received from a related for-profit company, Hershey Trust Company (EIN 23-0692150) James E Nevels Compensation reported consists only of director fees received from related for-profit companies, Hershey Trust Company (EIN 23-0692150) and The Hershey Company (EIN 23-0691590) Velma A Redmond Compensation reported consists only of director fees received from a related for-profit company, Hershey Trust Company (EIN 23-0692150) Robert Reese Mr Reese served on the boards of Milton Hershey School and School Trust (EIN 23-1353340), Hershey Trust Company (EIN 23-0692150) and Hershey Entertainment & Resorts Company (EIN 23-0691815) He received no compensation for serving on these boards See the description below for his compensation as the Managing Director (Chief Executive Officer) of Hershey Trust Company Joseph M Senser Compensation reported consists only of director fees received from a related for-profit company, Hershey Trust Company (EIN 23-0692150) LeRoy S Zimmerman Compensation reported consists only of director fees received from related for-profit companies, Hershey Trust Company (EIN 23-0692150), The Hershey Company (EIN 23-0691590) and Hershey Entertainment & Resorts Company (EIN 23-0691815) The following information details the compensation arrangements of certain officers and key employees of the Milton Hershey School and School Trust and/or related entities who devote a substantial amount of their time to Milton Hershey School and School Trust matters They are compensated by related for-profit entities Their compensation is determined by independent compensation consultants This process is based on position comparables taking into account responsibilities and duties, authority, and objectives None of their compensation, employee benefit contributions or non-taxable benefits was paid directly by the Milton Hershey School and School Trust during the reporting period Janice L Bratton Ms Bratton serves as Vice President and Investment Officer of Hershey Trust Company, Heritage Trusts (EIN 23-0692150), a for-profit related corporation Gayla M Bush Ms Bush serves as the Treasurer of Hershey Trust Company and Milton Hershey School and School Trust and Vice President, Finance of Hershey Trust Company, Heritage Trusts (EIN 23-0692150), a for-profit related corporation William E Davies Mr Davies served as Treasurer of Hershey Entertainment & Resorts Company (EIN 23-0691815), a for-profit company wholly owned by Milton Hershey School and School Trust, from 1/1/09 to 11/15/09 and commencing 11/16/09, as the Chief Financial Officer of Milton Hershey School and School Trust and Hershey Trust Company (EIN 23-0692150), a for-profit related corporation Kenneth Gall Mr Gall serves as the Director Real Estate of Hershey Trust Company, Heritage Trusts (EIN 23-0692150), a for-profit related corporation Mary Louise Porter, Esq Ms Porter serves as Chief Compliance Officer of Hershey Trust Company and General Counsel and Secretary of Hershey Trust Company, Private Wealth Management Group (EIN 23-0692150), a for-profit related corporation Ms Porter was formerly employed by The Hershey Company prior to the commencement of her employment with Hershey Trust Company on March 2, 2009 As an employee of The Hershey Company, Ms Porter received compensation and benefit coverage from The Hershey Company during calendar year ending December 31, 2009 that is included in the reported compensation Ms Porter succeeded James Sheehan as General Counsel of Milton Hershey School in June 2010 As the current form 990 discloses compensation from the calendar year 2009, none of the amounts disclosed were paid by Milton Hershey School and School Trust during the reporting period Robert Reese In addition to serving on the boards mentioned above, Mr Reese is the Managing Director (Chief Executive Officer) and President of a related, for-profit company, Hershey Trust Company (EIN 23-0692150) Of Mr Reese's compensation of \$1,232,843, \$334,500 is retroactive-pay for his prior year (2008) service as Managing Director and President that was not paid until 2009 Mr Reese retired from The Hershey Company prior to his employment with Hershey Trust Company As a retiree, Mr Reese received pension, deferred incentive payouts and benefit coverage from The Hershey Company during the reporting period that is included in the reported compensation Vincent B Rudisill Mr Rudisill serves as the Assistant Secretary of Hershey Trust Company and the Chief Investment Officer of Hershey Trust Company, Heritage Trusts (EIN 23-0692150), a for-profit related corporation Robert C Vowler Mr Vowler was an officer and director of the related for-profit entity, Hershey Trust Company (EIN 23-0692150) until April 2008 Compensation reported consists of amounts paid by Hershey Trust Company in accordance with an advisor contract executed April 7, 2008 and non-taxable benefits received during 2009 from Hershey Entertainment & Resorts Company as a retired director of the company Hershey Trust Company Hershey Trust Company, Trustee, is paid \$1,000 annually for its services as stipulated in the Deed of Trust The Trustee's actual time spent per week on Milton Hershey School and School Trust matters would be an accumulation of the officer and staff time Each officer's individual time is detailed on Schedule J-2 COMPENSATION DISCLOSURES FOR OTHER OFFICERS AND KEY EMPLOYEES OF THE MILTON HERSHEY SCHOOL AND SCHOOL TRUST James M Sheehan, Esq Mr Sheehan served as General Counsel of Hershey Trust Company (EIN 23-0692150), a for-profit related corporation and as the Vice President, Legal Affairs & External Relations of Milton Hershey School and School Trust (EIN 23-1353340) until June 2010 The compensation reported in column (E) of Part VII and in row (ii) of Schedule J, Part II includes base salary paid by Hershey Trust Company for services as General Counsel of Hershey Trust Company the amounts included in columns (d) and (f) of Part VII and row (i) of Schedule J were paid by Milton Hershey School and School Trust for his services as Vice President, Legal Affairs & External Relations of Milton Hershey School Anthony J Colistra, Ed D In August 2009, Dr Colistra was appointed President of Milton Hershey School Dr Colistra was a board m
SCHEDULE J-2	HOURS SPENT ON RELATED ORGANIZATIONS	The following indicates Milton Hershey School AND School Trust Managers, officers and key employees who are also directors, officers or key employees of related organizations and the hours spent per week on duties for these related organizations Hershey M S Hershey Entertain Hershey Hershey Trust & Resorts Company Fdn Company ROBERT F CAVANAUGH - 6 - Footnote(1) ANTHONY J COLISTRA 1 5 - - - RAYMOND L GOVER - - 1 Footnote(1) JAMES M MEAD - - 1 Footnote(1) JAMES E NEVELS - 17 - Footnote(1) VELMA A REDMOND - - 1 Footnote(1) ROBERT REESE 4 - 3 Footnote(1) JOSEPH M SENSER - - - Footnote(1) LEROY S ZIMMERMAN 2 2 5 1 Footnote(1) JANICE L BRATTON - - 5 20 GAYLA M BUSH - - 2 10 WILLIAM DAVIES - - 2 Footnote(1) KENNETH GALL - - 1 Footnote(1) MARY LOUISE PORTER - - 5 40 VINCENT B RUDISILL - - 2 10 JAMES M SHEEHAN - - 3 15 ROBERT C VOWLER - - - - FOOTNOTE (1)- Time spent on Hershey Trust Company matters is included in the Milton Hershey School and School Trust average hours worked per week on Form 990, Part VII, Section A, Column (b)

Software ID:

Software Version:

EIN: 23-1353340

Name: MILTON HERSHEY SCHOOL AND SCHOOL TRUST

Form 990, Schedule J, Part II - Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

(A) Name		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported in prior Form 990 or Form 990-EZ
		(i) Base Compensation	(ii) Bonus & incentive compensation	(iii) Other compensation				
ELLIOTT ROBINSON	(i)	186,223	0	27,042	48,394	18,160	279,819	0
	(ii)	0	0	0	0	0	0	0
JOAN SINGLETON	(i)	182,174	0	24,178	43,447	20,828	270,627	0
	(ii)	0	0	0	0	0	0	0
PETER GURT	(i)	224,336	0	24,329	48,909	16,721	314,295	0
	(ii)	0	0	0	0	0	0	0
JAMES M SHEEHANend 610	(i)	200,872	0	29,546	50,519	12,490	293,427	0
	(ii)	111,979	0	0	0	0	111,979	0
ANTHONY J COLISTRA ED D	(i)	100,829	50,000	9,953	30,172	26,286	217,240	0
	(ii)	44,250	40,000	0	0	14,716	98,966	0
JOHN O'BRIENEND 709	(i)	208,165	75,000	347,369	36,995	38,149	705,678	0
	(ii)	0	0	0	0	0	0	0
ROBERT FEHRS	(i)	171,185	0	24,239	29,604	17,587	242,615	0
	(ii)	0	0	0	0	0	0	0
ANNETTE COLE GILL	(i)	148,315	0	7,993	20,699	18,394	195,401	0
	(ii)	0	0	0	0	0	0	0
BETH SHAW	(i)	173,009	0	221	22,664	16,513	212,407	0
	(ii)	0	0	0	0	0	0	0
MIKE WELLER	(i)	159,179	0	882	26,400	13,559	200,020	0
	(ii)	0	0	0	0	0	0	0
AL CARBONARA	(i)	154,878	0	9,736	24,884	15,110	204,608	0
	(ii)	0	0	0	0	0	0	0
MARLENE NAVADOend 311	(i)	144,063	0	110	0	5,982	150,155	0
	(ii)	0	0	0	0	0	0	0
JOHN OSMOLINSKI	(i)	132,529	0	428	11,755	16,759	161,471	0
	(ii)	0	0	0	0	0	0	0
MARK SEYMOUR	(i)	131,308	0	146	17,234	16,238	164,926	0
	(ii)	0	0	0	0	0	0	0
ROBERT F CAVANAUGH	(i)	0	0	0	0	0	0	0
	(ii)	128,913	0	0	200,000	2,954	331,867	0
JAMES E NEVELS	(i)	0	0	0	0	0	0	0
	(ii)	418,566	0	0	120,000	2,953	541,519	130,953
ROBERT M REESE	(i)	0	0	0	0	0	0	0
	(ii)	1,232,843	165,983	16,947	0	20,822	1,436,595	0
LEROY S ZIMMERMAN	(i)	0	0	0	0	0	0	0
	(ii)	251,750	40,000	0	200,000	18,551	510,301	0
GAYLA M BUSH	(i)	0	0	0	0	0	0	0
	(ii)	161,636	84,475	1,166	36,759	12,255	296,291	0
JANICE L BRATTON	(i)	0	0	0	0	0	0	0
	(ii)	136,003	77,968	628	32,134	7,948	254,681	0
KENNETH GALL	(i)	0	0	0	0	0	0	0
	(ii)	101,855	21,998	301	19,050	20,857	164,061	0
VINCENT B RUDISILL	(i)	0	0	0	0	0	0	0
	(ii)	354,744	675,298	12,277	36,750	10,950	1,090,019	0
MARY LOUISE PORTER ESQ	(i)	0	0	0	0	0	0	0
	(ii)	208,181	53,521	642	6,895	18,873	288,112	0
ROBERT C VOWLERend 408	(i)	0	0	0	0	0	0	0
	(ii)	139,341	0	2,705,086	15,400	20,634	2,880,461	2,705,086
WILLIAM DAVIESBEG 1109	(i)	0	0	0	0	0	0	0
	(ii)	172,740	34,551	16,938	20,020	26,286	270,535	0
SANDRA CULOTTAend 110	(i)	129,781	0	0	0	22,874	152,655	0
	(ii)	0	0	0	0	0	0	0

EXHIBIT F



Fact Sheets

11/2004

**Early Childhood Education Linkage System (ECLS)
Healthy Child Care Pennsylvania
PA Chapter of the American Academy of Pediatrics
Rosetree Corporate Center II, Suite 3007
1400 North Providence Road
Media, PA 19063**

(484)446-3003

(In PA only—1-800-24-ECLS/1-800-243-2357)



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American Academy of Pediatrics



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Pennsylvania Chapter

FACT SHEETS on Child Health Issues

Table of Contents

Many fact sheets on infectious disease are now available in Managing Infectious Diseases in Child Care and Schools: A Quick Reference Guide – published by the American Academy of Pediatrics, 2004*. ECELS offers the following Fact Sheets-

♦ INFECTIOUS DISEASE

- Bronchiolitis
- Fever
- Preventing Spread of Infectious Disease
- Universal and Standard Precautions

♦ MENTAL / BEHAVIORAL HEALTH

- ADHD (Attention Deficit Hyperactivity Disorder)
- Behavior Problems – Overview
- Biting
- Discipline: Changing a Young Child's Behavior
- Repetitive Behavior

♦ SPECIAL HEALTH NEEDS

- Asthma
- Asthma & Tobacco Smoke
- Children with Diabetes
- Children with Seizures
- Clean Intermittent Catheterization
- Pediatric Gastroesophageal Reflux
- Spina Bifida
- Tube Feeding

♦ OTHER

- Hand Hygiene
- Poison Ivy, Oak, Sumac

* **References:** American Academy of Pediatrics print publications can be purchased from the bookstore of the American Academy of Pediatrics at: <http://www.aap.org>.

ECELS – also known as Healthy Child Care Pennsylvania – is a program of the PA Chapter of the American Academy of Pediatrics. ECELS is supported by funds from the PA Department of Public Welfare, PA Department of Health, Contributions and Grants from federal agencies, corporations, foundations and individuals.

Updated: November, 2004

**FACT SHEET**

Pennsylvania Chapter

**UNIVERSAL, STANDARD AND
TRANSMISSION-BASED PRECAUTIONS
AS THEY APPLY TO CHILD CARE SETTINGS**

The terms "Universal Precautions" "Standard Precautions" and "Transmission-based Precautions" were developed for applications in medical and industrial settings. They apply to child care with some adjustments from their meaning in other settings.

What are Standard Precautions?

Standard Precautions apply to contact with non-intact skin, mucous membranes, blood, all body fluids, and excretions except sweat, whether or not they contain visible blood. They include general methods of infection prevention are indicated for both children and adults in the early education and child care setting. These methods reduce the risk of transmission of microorganisms that can cause infection, even when those spreading the micro-organisms do not appear to be ill.

Standard precautions involve cleaning and sanitizing contaminated surfaces in addition to the use of barriers described in Universal Precautions. Unlike medical care settings, gowns and masks are not required in early education and child care facilities. Appropriate barriers to use in include materials such as disposable diaper table paper, disposable towels, and surfaces that can be sanitized. Use of non-porous gloves is optional except when blood or blood containing body fluids may be involved. (See "Wearing Gloves" below.)

What are Universal Precautions?

Universal Precautions apply to blood, other body fluids containing blood, semen, and vaginal secretions, but not to feces, nasal secretions, sputum, sweat, tears, urine, saliva and vomit unless these others contain visible blood or are likely to contain blood. Universal precautions include avoiding injuries caused by sharp instruments or devices and the use of protective barriers such as gloves, gowns, aprons, masks, or protective eyewear, which can reduce the risk of exposure of the worker's skin or mucous membranes that could come in contact with materials that may contain blood-borne pathogens while the worker is providing first aid or care.

What are Transmission-based Precautions?

Transmission-based Precautions are precautions in addition to Standard Precautions that are required where airborne, droplet and contact transmission of infectious organisms may occur. In addition to hand washing, cleaning and sanitation of surfaces, these include use of a room shared only by those who are infected with the same infectious agent (with negative-pressure ventilation when airborne spread is involved), use of masks for infections spread by the airborne and droplet routes, and use of gowns and gloves for diseases spread by contact.

Although gloves need not be worn in feeding human milk (breastmilk) or cleaning up spilled human milk, human milk can be contaminated with infectious materials. Wearing gloves to clean up a big spill of human milk is a reasonable, but is an optional additional precaution. While human milk can be contaminated with blood from a cracked nipple, the risk of transmission of infection to caregivers who are feeding expressed breast milk is very low.

Either single-use disposable gloves or utility gloves should be used. Single-use disposable gloves should be used only once and then discarded immediately without being handled. If utility gloves are used, they should be cleaned after every use with soap and water and then dipped in bleach solution up to the wrist. The gloves should then be taken off and hung to dry. The utility gloves should be worn, not handled, during this cleaning and sanitizing procedure.

What method should be used to apply Standard Precautions?

For spills of body fluids, urine, feces, blood, saliva, nasal discharge, eye discharge, injury or tissue discharges, and human milk, use the following step-by-step approach:

1. Pick up the spill using disposable towels and tools that can be sanitized afterward. Be careful not to splash any of the contaminated materials around.
2. Use a detergent to clean all surfaces in contact with the spill. Clean floors, rugs and carpeting that have been contaminated by body fluids by blotting to remove the fluid as quickly as possible, then clean and sanitize by spot-cleaning, shampooing, or steam-cleaning the contaminated surface. Cleaning and sanitizing rugs and carpeting that have been contaminated by body fluids is challenging. Trying to extract as much of the contaminating material as possible before it penetrates the surface to lower layers helps to minimize this challenge. Cleaning and sanitizing the surface without damaging it requires use of special cleaning agents designed for use on rugs, or steam cleaning.
3. For spills of vomit, urine, human milk, and feces, on floors, walls, bathrooms, tabletops, toys, kitchen counter tops, and diaper-changing tables: first clean the surface with detergent, then rinse the cleaned surface, and then apply a sanitizing solution. If the solution is a 1:64 dilution of bleach water (1 tablespoon of bleach to a quart of water prepared fresh daily from domestic bleach) the surface must be thoroughly wet and left in contact with the bleach solution for 2 minutes. If some other dilution or chemical is used to sanitize, follow the manufacturer's instructions.
4. Dispose of any blood-contaminated material in a plastic bag with a secure tie.

What should caregivers do when there has been a possible exposure to blood?

Stay calm and rational. Bacteria and viruses carried in the blood, such as hepatitis B virus, pose a small but specific risk in the child care setting. Blood and direct blood-derived fluids (such as watery discharges from injuries) pose the highest potential risk, because these body fluids contain the highest concentration of viruses. Hepatitis B virus can survive in a dried state in the environment for at least a week and perhaps even longer. Some other body fluids such as saliva contaminated with blood or blood-associated fluids may contain live virus (such as hepatitis B virus) but at lower concentrations than are found in blood. Other body fluids, including urine and feces, do not pose a risk with blood borne diseases unless they are visibly contaminated with blood, although these fluids do pose a risk with other infectious diseases.

Mucous membrane exposure to blood is unlikely to cause disease unless the person whose blood was transferred has a blood-borne disease. Instances in which one child draws blood of another individual during biting or otherwise gets blood from another person on mucous membranes are very rare, but can cause considerable concern. Child bites do not often break the skin and when the skin is broken, bleeding begins a few seconds later, usually after the biter releases the bitten flesh. Despite the fact that biting is a common behavior by young children, transmission of blood borne disease by biting in child care has not been reported. Nevertheless, if blood transfer has occurred, exposing a mucous membrane to blood from another individual (e.g. blood from another individual is visible in the mouth of a biter), this should be treated as an accidental exposure to a potential HIV-containing body fluid. HIV testing may not account for a potential exposure to the virus from the time between a previous test and the exposure. The person who has experienced a mucous membrane exposure to blood should be tested up to 9 months after the exposure if the status of the donor of the blood is unknown.

When a mucous membrane blood exposure occurs, child care providers should:

- Inform the exposed adult or the parents of the child who had a mucous membrane exposure to someone else's blood that:
 - 1) The adult or child was exposed to another person's blood;
 - 2) The risk of transmission of HIV is very small;
 - 3) The exposed adult or the parents of the exposed child should notify the primary care physician of the exposure;
 - 4) The person who was exposed to blood should have a baseline test for HIV.
- Inform the person whose blood was involved (or the legal guardians if that person is a child) about the incident and ask:
 - 1) If the person whose blood is involved ever had an HIV test and, if so, if those results could be shared with the exposed adult or parents of the exposed child;
 - 2) If that person does not know or has never had an HIV test if that person would be willing to have one and share results with the exposed adult or the parents of the child who was exposed.

Some children and adults may unknowingly be infected with HIV or other infectious agents, such as hepatitis B virus, as these agents may be present in blood or body fluids. Thus, the staff in all facilities should adopt standard precautions for all blood spills and possible exposure to blood. The Occupational Safety and Health Administration (OSHA) requires a facility plan and annual training of staff members who may be exposed to blood as a condition of their employment. These OSHA requirements apply to child care workers who are employees. The sanctions for failing to comply with OSHA requirements can be costly, both in fines and in health consequences. Child care providers should take the necessary steps to meet OSHA requirements. Regional offices of OSHA are listed with other federal agencies in the telephone directory. ECELS-Healthy Child Care PA has an On-line Self-Learning Module that guides early education and child care providers through the development of a facility plan at www.ecels-healthychildcarepa.org.

What should caregivers do if a child has been fed the milk of another child's mother?

Promote breastfeeding at every opportunity, but be careful so a human milk mix-up doesn't happen. Feeding human milk to babies has benefits that include preventing disease in the short term as well as throughout life. Child care providers should do everything they can to encourage families of infants to try to use human milk for as many milk feedings as possible. Human milk is a body fluid, and can carry infectious agents. So, with rare exceptions, babies should drink their own mother's milk only.

Instances in which one child is mistakenly fed another child's bottle should not occur if proper procedures are used. Caregivers must be sure that all infant feeding bottles are labeled with the child's name and date of preparation and that they check the label on the bottle every time they start to feed. A mix-up could happen if the caregiver picks up a bottle that was prepared for another child, or one that another child dropped or put down. Risk of HIV transmission from expressed human milk that another child has drunk is believed to be low because:

- In the United States, women who know they are HIV-positive are advised not to breastfeed their infants;
- Compounds present in human milk, together with time and cold temperatures, act to destroy the HIV present in expressed human milk.

If a mix-up occurs, it must be treated as an accidental exposure to a potential hepatitis B, hepatitis C, CMV (cytomegalovirus) or HIV-containing body fluid. All infants should have been immunized against hepatitis b, and CMV is a common infection for young children. To address the concern about transmission of HIV by human milk when a mix-up occurs, providers should:

- Inform the parents of the child who was given the wrong bottle that:
 1. Their child was given another child's bottle of expressed human milk;
 2. The risk of transmission of HIV is very small;
 3. They should notify the child's physician of the exposure;
 4. The child should have a baseline test for HIV.
- Inform the mother who expressed the human milk of the bottle switch and ask:
 1. If she has ever had an HIV test and, if so, if she would be willing to share the results with the parents of the exposed child;
 2. If she does not know if she has ever had an HIV test, if she would be willing to contact her obstetrician and find out, and if she has, share the results with the parents;
 3. If she has never had an HIV test, if she would be willing to have one and share results with the parents;
 4. When the human milk was expressed and how it was handled before being brought to the facility.
- Since HIV testing may not account for a potential exposure to the virus from the time in between the previous test and the exposure, an infant should be tested up to 9 months after the exposure if the status of the donor mother is unknown. If an infant is exposed to expressed human milk from someone else's mother, that infant should complete the hepatitis b vaccination series, if the series is not complete already.

Reference: American Academy of Pediatrics and the American Public Health Association. *Caring for Our Children, the National Health and Safety Performance Standards: Guidelines for Out-of-Home Care*, 2nd edition, 2002.

Prepared by: Susan S. Aronson MD, FAAP 11-04





EXHIBIT G

GPS Visualizer

- [About GPSV](#)
- [DRAW A MAP](#)
- [DRAW A PROFILE](#)
- [CONVERT A FILE](#)
- [Atlas: Share a map](#)
- [Geocode an address](#)
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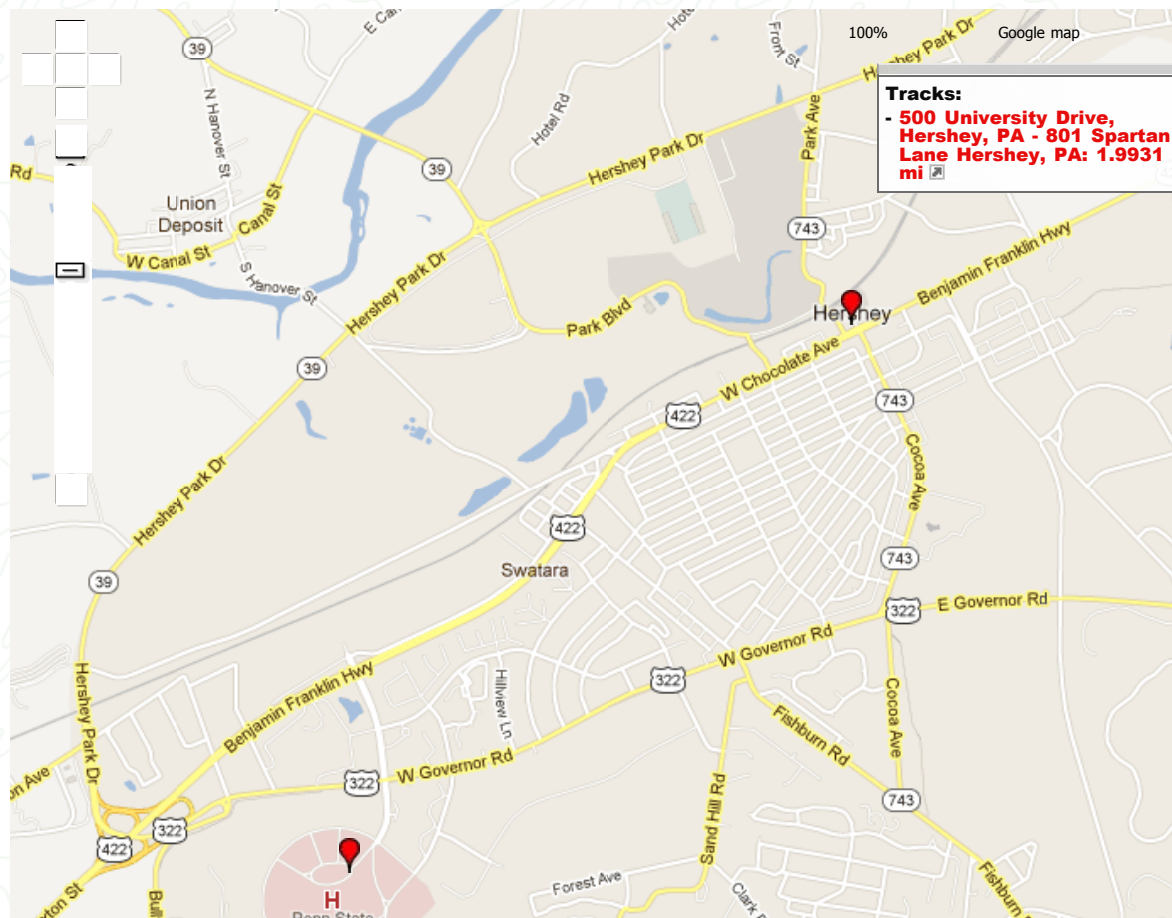
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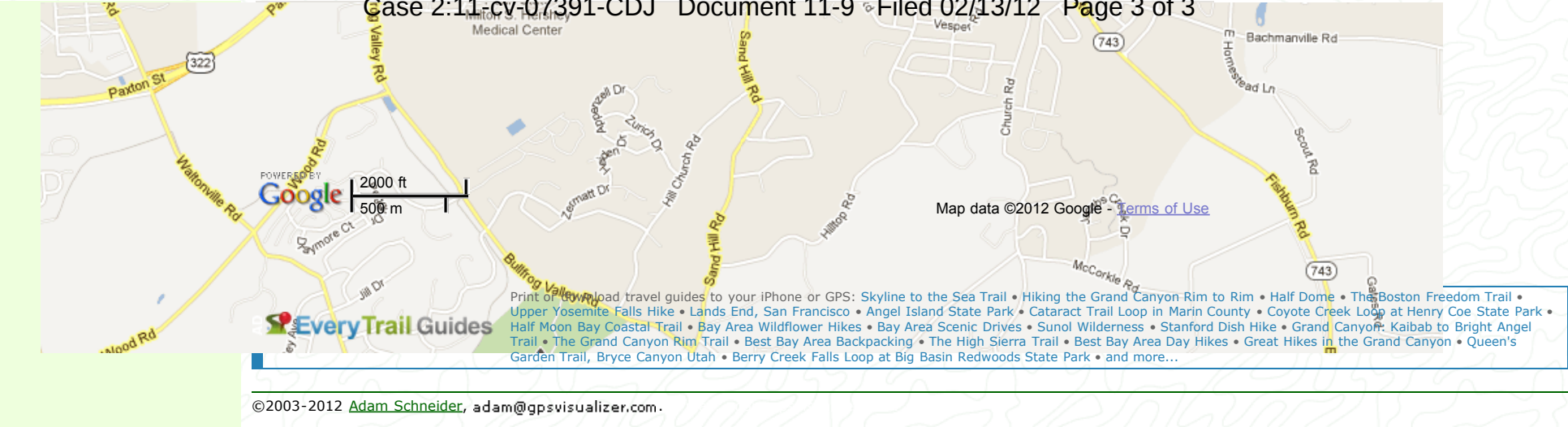


EXHIBIT H

HIV in the United States*

November 2011

Fast Facts

- 1.2 million people in the United States are living with HIV infection and 1 in 5 are unaware of their infection.
- MSM, particularly young, black MSM, are most severely affected by HIV.
- By race, African Americans face the most severe HIV burden.

CDC estimates 1.2 million people in the United States (US) are living with HIV infection. One in five (20%) of those people are unaware of their infection. Despite increases in the total number of people in the US living with HIV infection in recent years, the annual number of new HIV infections has remained relatively stable. However, new infections continue at far too high of a level, with approximately 50,000 Americans becoming infected with HIV each year.

In 2009, an estimated 42,011 people were diagnosed with HIV infection in the 40 states with confidential name-based HIV infection reporting since at least January 2006. In that same year, an estimated 34,247 people throughout the US (50 states and the District of Columbia) were diagnosed with AIDS. Since the epidemic began, an estimated 1,108,611 people in the US have been diagnosed with AIDS.

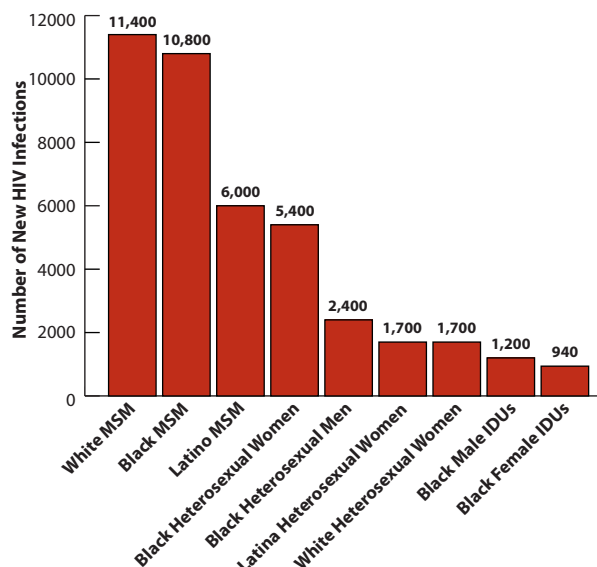
More than 16,000 people with AIDS were estimated to have died in 2008, and nearly 594,500 people with AIDS in the US have died since the epidemic began.

By Risk Group

Gay, Bisexual, and Other Men Who Have Sex with Men (MSM)¹ of all races and ethnicities remain the population most severely affected by HIV.

- CDC estimates that MSM account for just 2% of the US population, but accounted for 61% of all new HIV infections in 2009. MSM accounted for 49% of people living with HIV infection in 2008 (the most recent year prevalence data are available).

Estimates of New HIV Infections in the United States, 2009, for the Most-Affected Subpopulations



Subpopulations representing 2% or less of the overall US epidemic are not reflected in this chart.

- In 2009, white MSM accounted for the largest number of new HIV infections of any group in the US, followed closely by black MSM.
- Young, black MSM were the only risk group in the US to experience statistically significant increases in new HIV infections from 2006–2009.

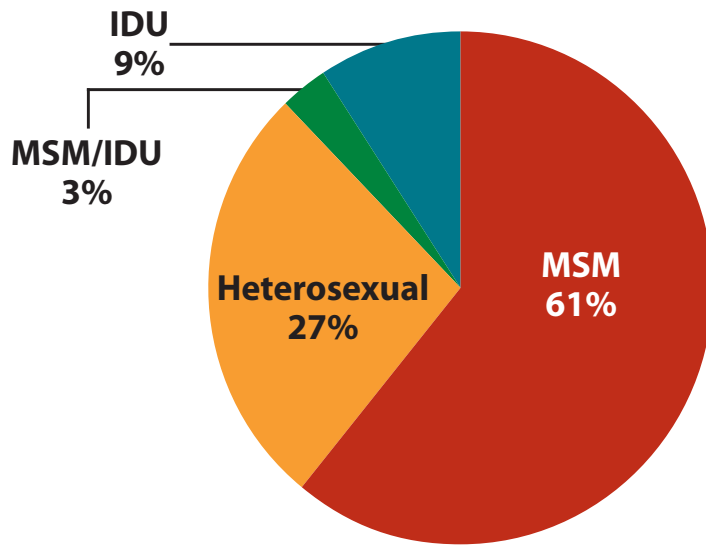
Heterosexuals and Injection Drug Users also continue to be affected by HIV.

- Heterosexuals accounted for 27% of estimated new HIV infections in 2009 and 28% of people living with HIV infection in 2008.
- Injection drug users represented 9% of new HIV infections in 2009 and 17% of those living with HIV in 2008.
- HIV infections among women are primarily attributed to heterosexual contact or injection drug use. Women accounted for 23% of estimated new HIV infections in 2009 and 25% of those living with HIV infection in 2008.

*This fact sheet highlights key information about those most affected by HIV infection in the United States. For information about other risk populations, visit www.cdc.gov/hiv.

¹The term **men who have sex with men (MSM)** is used in CDC surveillance systems. It indicates the behaviors that transmit HIV infection, not how individuals self-identify in terms of their sexuality.

Estimated New HIV Infections, 2009, by Transmission Category



By Race/Ethnicity

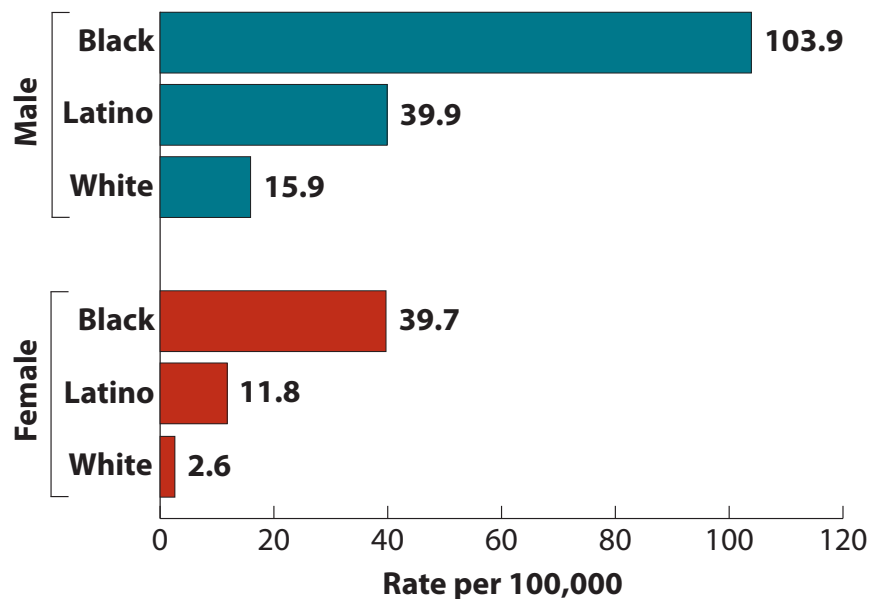
Blacks continue to experience the most severe burden of HIV.

- Blacks represent approximately 14% of the US population, but accounted for an estimated 44% of new HIV infections in 2009.
- At some point in their life, approximately 1 in 16 black men will be diagnosed with HIV infection, as will 1 in 32 black women.
- In 2009, the estimated rate of new HIV infections among black men was six and a half times as high as that of white men, and more than two and a half times as high as that of Latino men and of black women. In the same year, the estimated rate of new HIV infections among black women was 15 times that of white women and over three times that of Latina women.

Latinos are also disproportionately affected by HIV.

- Latinos represented 16% of the population but accounted for 20% of new HIV infections in 2009.
- In 2009, the estimated rate of new HIV infections among Latino men was two and a half times that of white men. That same year, the rate of new HIV infections among Latina women was four and a half times that of white women.

Estimated Rate of New HIV Infections, 2009, by Gender and Race/Ethnicity



Additional Resources:

CDC-INFO
1-800-CDC-INFO (232-4636)
cdcinfo@cdc.gov
Get answers to questions and locate HIV testing sites.

CDC HIV Web Site
www.cdc.gov/hiv

Locate an HIV Testing Site
www.hivtest.org

CDC National Prevention Information Network (NPIN)
1-800-458-5231
www.cdcnpin.org
Technical assistance and resources.

AIDSInfo
1-800-448-0440
www.aidsinfo.nih.gov
Treatment and clinical trials.

AIDS.gov
www.aids.gov
Comprehensive government HIV resources.