

Why the State of Wisconsin Forced Coca-Cola to Sell to Pepsi

An explanation of the state's new reforms to Milwaukee's unused school buildings problem - and why it was necessary



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I. Introduction

Addressing whether the Milwaukee Public Schools (MPS) ought to sell its unused school buildings to private or charter schools, MPS Board President Michael Bonds said “[i]t's like asking the Coca-Cola Company to turn over its facilities to Pepsi so Pepsi can expand and compete with the Coca-Cola Company.”¹ President Bonds is wrong, but his remarks reveal more than he intended.

The analogy of education operators to business firms usually angers proponents of the status quo. Business firms are disciplined by competition. Failure to provide what the market demands – such as effective educational services – may lead to the firm's replacement by more responsive competitors. The existence of alternatives helps the public find the solutions that work best for them. It's not surprising that individual businesses don't like competition. Competition is rough on competitors, but generally good for consumers.

MPS, not surprisingly, also dislikes competition. It is better, in its view, to have a single supplier of educational services that poor families in Milwaukee can either like or lump. But not, of course, for any self-interested reason. Apparently believing itself to be unreservedly public-minded and omniscient when it comes to discerning what works for kids, it derides competition as “privatization” or “profiteering.” Private schools, it implies, act for themselves. MPS cares only about the children. And we are sure that it does. But like every other organization, it is not immune from self-interest.

Bonds' comment pulls back the veil on MPS' claim that it acts in the public interest in a way that private operators do not. **There are more than 31,000 children enrolled in the 53 MPS' schools that are, by the state's report card, failing to meet expectations, and the overall MPS graduation rate is at 60.6%.**² While not all private and charter schools do better, some do. The expansion of these high-performing alternatives might serve some of these children in a way that MPS currently does not. Yet President Bonds – and his board – block their expansion at great taxpayer expense and in service, not of children, but of the adults who work for the system. MPS turns out to be driven by self interest in the same way as Coke and Pepsi. So much for its screeds against “privatization” and “profiteering.”

But neither is President Bonds embracing the ethos of competition between Coke and Pepsi. In fact, he is rejecting it. And he is able to do so precisely because MPS is not accountable to a market and need not bear the cost of its poor decisions. Imagine, for example, that Coca-Cola owns at least 16 empty facilities that produce no revenue and cost millions just to maintain. The CEO refuses to sell them, preferring to incur a dead weight loss year after year. Although shareholders might want Pepsi to go away, they might well prefer to sell these albatrosses to Pepsi, enabling Coca-Cola to focus its attention on its existing facilities and invest the millions in revenue from the sale back into Coca-Cola products. A recalcitrant CEO might lose his job.

¹ *Milwaukee Journal Sentinel* (2011), “Hines, Darling vow new rules on empty MPS,” by Erin Richards. Jan. 5, 2011. <http://www.jsonline.com/news/education/112943139.html>.

² Rick Esenberg, CJ Szafir, and Dr. Martin Lueken (2015). “Kids in Crisis, Cobwebs in Classrooms,” *Wisconsin Institute for Law & Liberty*. Jan. 12, 2015. Pg. 6.

One would hope that Milwaukee taxpayers would feel the same way. But, there is a problem. Because MPS is, for the most part, funded by the state of Wisconsin, local taxpayers, unlike Coke shareholders, do not feel the sting of the Board's fiscal irresponsibility. State taxpayers are paying the bill but they are not electing the MPS Board.

Last month, the state legislature decided to correct this classic “principal-agent” problem by passing a law to force Milwaukee to sell their unused and underutilized school buildings. By August 14, 2015, MPS must submit an inventory list of all their school buildings, showing which are unused and underutilized. By October 13 of this year, Milwaukee's unused and underutilized school buildings will be on the market, exclusively available to public charter schools and private schools.

This report explains the new reforms (starting on pg 12) and, by using records obtained from MPS, previous reporting, and interviews with interested parties, explains why the state was moved to intervene.

II. Why was State Intervention Necessary?

Some may call this heavy-handed intervention by the state of Wisconsin into a matter that is completely local. After all, a good argument can be made that – as Ronald Reagan proclaimed – the best government is the government that governs closest to the people. If the people of Milwaukee wanted to sell empty school buildings to charter schools, ridding the city of the blight that accompanies it, people could simply elect MPS Board Members and City Council members, and a Mayor, that are more sympathetic to that idea. They have not.

But Milwaukee does not act in a vacuum. The provision of public education is a state responsibility and much of MPS' budget – with which it maintains these unused and underutilized buildings – is funded by the state. Moreover, failing schools in the state's biggest city results in lost economic activity, lower tax collections, and higher expenses for social services and prisons.³ This is a statewide problem.



Garfield (July 2015) – Unused MPS building

Milwaukee Public Schools' (MPS) graduation rate is floundering at 60.6%.⁴ About seven out of every ten MPS students, or 70% of the total student body, are habitually truant, i.e. absent from school for an extended period of time without an excuse.⁵ Simply put, Milwaukee needs more high quality schools.

³ According to a report by the MacIver Institute, in 2011 “dropouts cost the state an estimated \$503 million in Medicaid costs, incarceration costs, and lost income tax in 2011 alone.” See “The High Costs of High School Dropouts in Wisconsin” by Christian D’Andrea, *MacIver Institute*. <http://static.maciverinstitute.com/DroupoutStudyFINALVERSION.pdf>

⁴ *Milwaukee Journal Sentinel* (2014). “Wisconsin graduation rate rises while MPS' edges down,” by Erin Richards, May 8, 2014. <http://www.jsonline.com/news/education/wisconsin-graduation-rate-rises-while-mps-edges-down-b99265610z1-258505011.html>

In January 2015, we released a report saying, at the time, there were at least 17 MPS buildings that were vacant, costing taxpayers over \$1.6 million since 2012 to maintain.⁶ According to MPS records, independent charter schools and private schools in the choice program have made inquiries about buying the vacant buildings. Some of these inquiries are from the best schools in Milwaukee, yet MPS has blocked these schools from expanding, trying desperately to preserve their market share no matter the cost to children.

Recently, MPS Board President Michael Bonds exclaimed that “[the facilities bill] has nothing to do with education.”⁷ He couldn’t be more wrong. It has everything to do with education. His inability to see that speaks volumes about the mindset of the leadership of MPS, and what is wrong with the Milwaukee education landscape. This is not at all about Coke and Pepsi.

A. Interest in buying the vacant schools

MPS has disposed of eight buildings since 2010. In the small number of times they have leased or sold to schools, they have done so to MPS-affiliated schools.⁸ The one exception being



Former MSE (July 2015)

when MPS leased 76th Street to Greater Holy Temple Christian, a private school in the choice program. But, never mind the question of “who” those buildings are leased or sold to, the fact remains that **nearly every single current unused school building has had inquiries or letters of intent submitted.** Despite that, these buildings have sat empty for an average of 7 years.

Consider the following examples of buildings that are apparently *still unused and vacant*:

- 88th Street School was closed in July 2004 and has a fair value of \$3,200,000.⁹ Taxpayers have spent over \$69,421 just on maintenance since 2012.¹⁰ Woodlands School, an independent public charter, approached MPS about purchasing or leasing 88th Street School in early 2012 with the goal of opening

⁵ *Milwaukee Neighborhood News Service* (2014). “Special Report: Nearly three-quarters of MPS high school students labeled ‘truants’,” by Kelly Meyerhofer, November 17, 2014. <http://www.milwaukeeens.org/2014/11/17/special-report-nearly-three-quarters-of-mps-high-school-students-labeled-truants/>

⁶ Esenberg, Szafir, and Lueken (2015). “Kids in Crisis, Cobwebs in Classrooms,” pg. 3.

⁷ *Milwaukee Journal Sentinel*, “Revised GOP plan for MPS also addresses empty buildings,” May 19, 2015. <http://www.jsonline.com/news/education/mps-resolution-gives-driver-autonomy-on-struggling-schools-b99503310z1-304282751.html>.

⁸ Morse Middle School was sold to HAPA, 38th St. School was sold to Milwaukee College Prep, Robinson Middle School became a Senior Living Center, Milwaukee Education Center became Golda Meir High School – a very successful, although selective MPS school, 27th Street School was re-opened as Groppi High School which is currently only 36% used, Happy Hill Elementary was leased to Banner School of Milwaukee, and Webster Middle School was leased to Universal Companies Charter Network. See Erin Richards, “Sold, repurpose, still vacant...”

<http://www.jsonline.com/news/education/sold-repurposed-still-vacant--an-update-on-mps-buildings-b99398435z1-284117061.html>.

⁹ Exhibit GG (Fiscal Year 2011)

¹⁰ Exhibit II

a new school there in the fall of 2013. Woodlands has been in Milwaukee since 1936 and boasts strong test results.¹¹

Woodlands officials toured the school and submitted a letter of interest on July 18, 2012.¹² Woodlands was approved for a charter school application and pre-approved for financing for a building. On August 22, a Woodlands Board member told MPS leadership that it was “more interested than ever at looking at the 88th street school again.¹³” **But, on August 31, 2012, Michelle Nate, MPS Chief Operating Officer, rejected their LOI without any explanation.¹⁴**

- **Hayes Bilingual School** was closed in June 2012. Taxpayers have spent over \$168,262 just on maintenance since 2012.¹⁵ It sits empty today, even though it has had a substantial amount of interest from high profile schools. On November 1, 2013, Notre Dame Middle School—a highly successful private middle school with 99% of their students graduating from a high school and 84% attending college—sent a letter of interest to buy or lease the building and requested additional information.¹⁶

But, MPS designated the building for “repurposing,” so it was, apparently, not for sale.

Moreover, Woodlands Schools requested a tour of the school¹⁷ and submitted a LOI to purchase the

building on July 18, 2012,¹⁸ which was declined on August 31, 2012.¹⁹ Later, on *Philipp (2015)* August 8, 2014, Seeds of Health, a charter school, wanted to discuss terms of a potential lease.²⁰ But, MPS had other plans for Hayes (“MPS programming”), so the building was not for sale.



- **Fletcher** was closed in July 2010 and has a fair value of \$4,347,000.²¹ Taxpayers have spent over \$106,329 just on maintenance since 2012.²² Risen Savior — a private school participating in the choice program performing better than the average MPS school²³ — attempted to lease Fletcher in February 2014. **Like other high performing private schools in the choice program, they were rebuffed.²⁴** In 2013, MPS listed Fletcher as vacant and designated it to be used for “support services.”

¹¹ The state Department of Public Instruction consistently ranks Woodlands as “above expectations.”

<http://www.woodlands-school.org/academic-success/>

¹² Exhibit H

¹³ Exhibit G

¹⁴ Exhibit H

¹⁵ Exhibit II

¹⁶ Exhibit O

¹⁷ Exhibit P

¹⁸ Exhibit C

¹⁹ Exhibit C

²⁰ Exhibit N

²¹ Exhibit GG

²² Exhibit II

²³ According to Risen Savior, “88% of all students in grades 3-5 that have attended Risen Savior since 1st grade are proficient or advanced in reading.”

²⁴ Exhibit U

- Wheatley was closed in July 2011. Taxpayers have spent over \$124,205 just on maintenance since 2012. National Heritage Academies submitted a letter of interest for, among other buildings, Wheatley School on June 15, 2012.²⁵ National Heritage has wanted to expand its Milwaukee program. Its current school, Milwaukee Scholars, ranks in the top 15 for reading among schools in Milwaukee that educate predominantly low-income, black students.²⁶

After MPS didn't respond for a month after the LOI was submitted, National Heritage Academies' Real Estate Acquisition Group inquired again, asking what the next step in the process would be.²⁷ But, MPS refused to sell the building to NHA.

Around the same time, National Heritage also attempted to purchase Green Bay Avenue School. Their letter of interest was denied by Michelle Nate of MPS on August 31, 2012.²⁸



Carleton (July 2015)

- Carleton Elementary was closed in July 2009 and has a fair value of \$1,744,700.²⁹ Taxpayers have spent over \$139,038 just on maintenance since 2012.³⁰ At the time, a private school, Milwaukee Christian Prep, submitted a letter of interest for Carleton (and Fifth Street School) on June 28, 2012.³¹ On August 31, 2012, MPS declined the offer to purchase without any explanation.

On July 23, 2010, Lighthouse Academies, a public charter school, sent a letter of interest to lease Carleton, but MPS refused to negotiate workable terms.³² **Nonetheless, Carleton remains empty,³³ even though MPS placed Carleton on the market in August 2012.³⁴**

- Wisconsin Avenue School was closed in July 2007 and has a fair value of \$2,951,000.³⁵ Taxpayers have spent over \$117,031 just on maintenance since 2012. Highland Community School, a school that has operated successfully in Milwaukee for over 40 years, attempted to lease the vacant Wisconsin Avenue School in 2011.³⁶ However, MPS decided to play hardball, forcing Highland to withdraw its letter of interest by insisting upon a deed restriction that made it impossible to finance the required

²⁵ Exhibit I

²⁶ *Wisconsin Institute for Law & Liberty*, "Apples-to-Oranges?" February 9, 2015.

²⁷ Exhibit J

²⁸ Exhibit K

²⁹ Exhibit GG.

³⁰ Exhibit II

³¹ Exhibit C and see also Exhibit D.

³² Exhibit F

³³ That was not the only interest in Carleton School. On October 29, 2013, Caprice Hill from More Than Conquerors was "very much interested in Carleton" Exhibit E.

³⁴ *Milwaukee Public Schools*, "Items of Business," Action on a request to declare various district properties as surplus, August 21, 2012. https://esb.milwaukee.k12.wi.us/public_itemview.aspx?ItemId=2188&mtgId=347

³⁵ Exhibit GG

³⁶ Exhibit S

renovations. Two years later, Wisconsin Avenue School, which could hold 668 students, was transferred from MPS to the City for an undisclosed purpose. The building has been empty for over 8 years.

- Dover was closed in July 2011. Taxpayers have spent over \$78,362 just on maintenance since 2012. St. Lucas, a private school in the choice program, sent a letter of interest to purchase Dover in October 2013.³⁷ MPS refused to cooperate. Dover is scheduled to be turned into housing for teachers, “TeachTown” for Fall 2015.³⁸
- St. Marcus Lutheran Schools wanted to purchase Malcolm X Academy and Lee. Malcolm X closed in July 2007 and has a fair value of \$423,500.³⁹ Taxpayers have spent \$203,879 just on maintenance since 2012. When St. Marcus first sent a letter of interest to purchase Malcolm X, in December 2012, Martha Brown, Deputy Commissioner of the City, rejected it and said that “city policy does not contemplate the sale of city controlled real estate for use by private schools affiliated with the Milwaukee Parental Choice Program.”⁴⁰

In August 2013, St. Marcus tried again to purchase the vacant Malcolm X Academy. Even though St. Marcus offered over \$1 million for Malcolm X, The MPS Board refused, choosing instead to enter into negotiations with a newly-formed corporation, 2760 Holdings LLC, to turn Malcolm X into a community center. This is



Malcolm X (July 2015)

in contrast to St. Marcus’ above-market offer, MPS would have netted nothing from the sale to 2760 Holdings LLC. They would be able to lease back a portion of the building with an option to purchase at the end of the lease. Since Holdings LLC never applied for tax credits deemed crucial to the transaction, it was not surprising that in September 2014, the deal fell through. **MPS had to pay over \$500,000 to 2760 Holdings LLC as a condition for ending the agreement. This pales in comparison to the million dollar offer they rejected from St. Marcus.**

The following summer, St. Marcus tried to purchase another empty MPS building, Lee. Lee closed in July 2009 and has a fair value of \$1,470,000. Taxpayers have spent \$99,733 just on maintenance since 2012. **The MPS Board decided not to take action on the St. Marcus proposal. Instead, they entertained an offer to turn Lee into an MPS instrumentality charter – i.e. an extension of MPS – that would be run by a leader of the Milwaukee teachers’ union.** But, to no ones surprise, that never happened either and Lee remained vacant.

³⁷ Exhibit T

³⁸ *Milwaukee Journal Sentinel*, “Council approves teacher housing at former Dover School” by Don Walker, June 3, 2014. <http://www.jsonline.com/news/milwaukee/council-approves-teacher-housing-at-former-dover-school-b99283393z1-261687691.html>

³⁹ Exhibit GG

⁴⁰ Exhibit FF

St. Marcus Lutheran Schools outperforms comparable schools in Milwaukee. 90% of their students are black and 89% are from low-income families. Yet, to use just one measure of success, 93% of St. Marcus alumni graduate from a traditional high school in four years – well above the MPS average for comparable student bodies.

- Milwaukee College Prep, which runs a system of successful independent and non-instrumentality charters in Milwaukee, has been trying to expand into vacant MPS facilities. Just prior to the state passing 2011 Act 17—which, as explained below, many believed would enable the City to force the sale of the unused buildings—MPS agreed to lease 38th Street and Lloyd buildings to Milwaukee College Prep. But, apparently, that goodwill did not extend to other vacant buildings:

On April 20, 2012, Milwaukee College Prep (MCP) sent a letter of interest to MPS for Green Bay Avenue School, which closed in July 2011.⁴¹ It was declined on August 31, 2012. In summer 2012, MCP also expressed interest in Garfield, Edison, Lee, and Malcolm X.⁴² **MPS expressed no interest in selling those buildings.** MCP sent another - unsuccessful - LOI in January 2013 to purchase Green Bay Avenue School.⁴³

B. Despite having the tools to do so, the City of Milwaukee has failed to fix the problem

In response to a Milwaukee Journal Sentinel story highlighting 27 vacant Milwaukee school buildings, in 2011, the state legislature passed Act 17 that allowed the Milwaukee Common Council to sell or lease unused school buildings without needing the approval of Milwaukee Public Schools.⁴⁴ The City lobbied hard for this bill⁴⁵ and it became law.



Dover (July 2015)

But, in October 2011, mere months after the bill was signed into law, Martha Brown, the Deputy Commissioner of the City of Milwaukee wrote to MPS, saying that they would likely be deferring to MPS in deciding what MPS buildings would be placed on the market.⁴⁶ This was 10 months after Milwaukee Mayor Barrett wrote to State Senator Alberta Darling, lobbying for the ability to unilaterally sell the

buildings because “[he] believe[s] the City is in a better position to use its marketing, real estate, and land use expertise to expedite the reuse of MPS’

⁴¹ Exhibit V

⁴² Exhibit W

⁴³ Exhibit V

⁴⁴ 2011 Act 17 permits the Common Council to school buildings that have been “unused or underutilized for at least 12 consecutive months” if a resolution is adopted. See Wis. Stat. § 119.60(2).

⁴⁵The City lobbied 77 hours for SB 20. <https://lobbying.wi.gov/What/BillInformation/2011REG/Information/8001>

⁴⁶ Exhibit Y

underutilized property.⁴⁷”

Since then, City policy has stated that they would only sell school buildings first declared surplus by MPS.⁴⁸ Furthermore, for most of this period, **City policy also prohibited any sale of facilities to private schools in the choice program and certain non-MPS public charter schools.**⁴⁹

As a result, when private schools in the choice program took their offers right to the City, they found the City no more accommodating than Milwaukee Public Schools. For example:

1. In July 2014, when St. Marcus Lutheran Schools offered to purchase Lee, a vacant school, for its appraised value, as well as to pay property taxes, Milwaukee Mayor Tom Barrett demanded that St. Marcus pay an additional \$1.3 million as a “school choice tax” solely because St. Marcus is in the choice program. This ended the deal.

On November 26, 2013, the Common Council approved the sale of Malcolm X to 2760 Holdings LLC on an 11-4 vote. The deal was described as a “sham transaction” by many, done solely to prevent St. Marcus from obtaining the building.⁵⁰ This should raise serious questions about some members’ sincerity to reform the facilities issue.

2. Because the Common Council will not sell any facilities without approval from MPS, it is not surprising that the **Common Council has been reluctant to use its power to sell or lease unused MPS buildings.**

To some members’ credit, the Common Council passed a resolution that would allow the City to market six unused and underutilized buildings.⁵¹ **But, as our previous report concludes – since there are 17 vacant school buildings and another 27 operating at less than 60% capacity – this is only the very tip of the iceberg.**⁵² Furthermore, Milwaukee also passed an ordinance that would allow the City to continue to prevent independent charters and schools in the choice program from purchasing or leasing the unused and underutilized facilities.⁵³

⁴⁷ Exhibit Y. He also wanted the state to “prohibit the Milwaukee Board of School Directors from negotiating a sale price, setting conditions of sale or vetoing an offer accepted by City.”

⁴⁸ Exhibit HH

⁴⁹ Exhibit HH

⁵⁰ Rick Esenberg and CJ Szafir, *Letter to Milwaukee Common Council*, October 15, 2013. <http://www.will-law.org/home/WILL-Blog/2013/10/15/WILL-Sends-Letter-to-Common-Council-regarding-the-sale-of-Malcolm-X->

⁵¹ City of Milwaukee (2014). *Resolution determining that certain Milwaukee Public Schools’ properties are underutilized and directing the Department of City Development to market the properties, in the 6th, 10th and 15th Aldermanic Districts*. Final action December 16, 2014. <https://milwaukee.legistar.com/LegislationDetail.aspx?ID=2075454&GUID=8DFC0C6B-C5EB-47FB-B9D4-BF7FD420A0C7&Options=ID%7cText%7c&Search=141319>

⁵² Esenberg, Szafir, Lueken. “Kids in Crisis, Cobwebs in Classrooms.”

⁵³ See Milwaukee Ordinance 304-49, City Disposal of School-Purpose Property. City ordinance mandates that members of the Common Council, when considering offers to purchase empty facilities, take into account the “[t]ax consequences of the sale, conveyance or lease for the city and taxpayers, including the impact of the taxpayer share of the Milwaukee parental choice program, if applicable.” While this likely refers to the long-debated and complex “funding flaw” of the MPCP, the ordinance does not define how the Common Council is supposed to calculate tax consequences.

C. MPS refuses to put its empty buildings on the market

Since the City delegates its power to sell buildings to MPS, MPS has been able to play a “shell game” with unused buildings. Over the last 5 years, empty buildings have floated on and off the market. An MPS official conceded this to the Journal Sentinel, saying “not every building that sits empty is categorized as empty by the district.”⁵⁴

In January 2011, MPS labeled every empty building as surplus, i.e. on the market to be purchased.⁵⁵ However, on June 30, 2011, with the state legislature on the verge of passing its first reform bill, **MPS**



took all of its vacant school buildings off of the market.⁵⁶

Ever since then, MPS has refused to market a significant number of their unused buildings. In August 2012, for example, MPS told the Wisconsin Reporter that there were “**21 vacant buildings . . . 17 are not currently for sale.**”⁵⁷ In May 2013, our records request revealed that there are 23 vacant buildings but only 4 buildings on the market.⁵⁸ In

Fifth Street (July 2015) January 2015, MPS declared only five additional buildings as surplus.

D. MPS does not track the status of its own buildings

MPS lacks a universal, real-time (or even relatively current) facility portfolio containing information, such as a building’s utilization rate, enrollment, maximum capacity, and usage. WILL asked for this information in our spring 2013 records request to MPS. In response, MPS told us that it would have to conduct special research by calling all 160 schools to find out what was going on in each of them and that they would charge WILL over \$7,000 to obtain the information. Instead, MPS referred WILL to a 2011 document, titled the “Master Facility Plan.”

Imagine Coca-Cola’s headquarters in Atlanta having no idea the amount of inventory in their distribution centers. Imagine the reaction of top executives and shareholders, if all they could find out is what a center’s inventory, expenses, and occupancy were two years ago.

Without a real-time – or even annual – detailed portfolio of their facilities, it should not be surprising that emails we obtained show MPS officials have difficulty knowing what buildings are categorized as what:

⁵⁴ *Milwaukee Journal Sentinel*, “Hines, Darling vow new rules on empty MPS buildings,” by Erin Richards, Jan. 5, 2011, <http://www.jsonline.com/news/education/112943139.html>.

⁵⁵ Exhibit M

⁵⁶ Exhibit Z

⁵⁷ Exhibit AA.

⁵⁸ Exhibit B and Exhibit BB. The buildings are Milwaukee School of Entrepreneurship, Carleton, Coggs, and Centro

- In May 2013, Tony Tagliavia, MPS’ Media Manager said in an email that there were “11 (or 12?) currently unused facilities.” Yet, around the same time, March 2013, MPS gave WILL list of 23 vacant schools.⁵⁹
- In August 2012, Milwaukee College Prep wanted a “list of schools . . . available [to be purchased] for the 2013-2014 school year,” along with the “square footage and year constructed.” However, Gina Spang of MPS said that the list would not be available “until later in September” when they could “identify properties that we will surplus and turn over to the City of Milwaukee to market.”⁶⁰

On a separate instance, Michelle Nate, Chief Operating Officer of MPS, told Milwaukee Christian Prep that “MPS has not determined the disposition of the buildings [Carlton, Philipp, 5th Street] and as such does not have information to provide specific to the purchase price or lease rate for the properties listed.”⁶¹ However, she added that “[a]ll the buildings on your list are currently vacant.”

- At times, MPS has categorized certain buildings to be used for “swing space.” For example, both Malcolm X⁶² and Edison⁶³ have been designated for swing space. But it is unclear what this means. For example, in an email exchange with other MPS officials on May 28, 2013 about responding to a reporter from the Milwaukee Journal Sentinel’s inquiry on unused schools, the Executive Director of Community Engagement at MPS asked whether MPS has a definition of “swing space?”⁶⁴ This was an important question, she said, because “we should be able to define what we mean using that term.”
- In a discussion over whether they would be disposing of unused schools, the Director in the Office of Contracted School Services proclaimed that, “[h]onestly, I don’t even know what buildings we have on the northside that are vacant.” In response, a top MPS official exclaimed that: “For both Garfield and Wisconsin [unused schools], I thought the City had ‘returned’ the buildings to MPS although I don’t know what official action would have taken place.”⁶⁵

E. MPS refuses to cooperate with the best schools in the City

i. Carmen attempts to co-locate with Bradley Tech

Carmen High School of Science and Technology, a non-instrumentality charter school, wanted to partner with Bradley Tech, a MPS school. Some would call this a match made in heaven. Carmen is one of the highest performing schools in Milwaukee, and according to U.S. News & World Report, one of the best schools in the entire state. On the complete other end of the spectrum, Bradley Tech,

⁵⁹ Exhibit B
⁶⁰ Exhibit X
⁶¹ Exhibit D
⁶² Exhibit CC
⁶³ Exhibit A
⁶⁴ Exhibit CC
⁶⁵ Exhibit DD

according to the 2013-2014 state report card, is the single worst school in Milwaukee and second lowest performing in the state.⁶⁶ One would think that Bradley Tech would have a lot to learn from Carmen. But, the MPS Board rejected this proposal. Another school year is about to begin with Bradley Tech “educating” over 900 children. **How does not working with Carmen make MPS better?**

ii. Milwaukee College Prep wants to run the 6 worst MPS schools

On January 2013, Robb Rauh of Milwaukee College Prep reached out to Superintendent Thornton about purchasing the 6 lowest performing schools at MPS: Auer Avenue, Lloyd, Barbee Montessori, Sherman, Thurston Woods, Townsend, and Westside. His letter stated he “would welcome the opportunity to provide a Milwaukee College Prep takeover model, with the plan to retain as many of the currently enrolled scholars as possible.”⁶⁷ The offer was not accepted. Those schools are still some of the worst in the city. In contrast, last year, according to state testing scores, Milwaukee College Prep ranked in the top 15 for reading and math among all Milwaukee schools that educate at least 80% African American and 80% low-income students.⁶⁸

III. The Tools to Reform Milwaukee’s Unused Schools Issue

The 2015-2017 state budget, Act 55, forces Milwaukee to address its unused schools problem. Here is what was included in the budget:⁶⁹

A. Who can buy school buildings: As explained in part C on page 15, **MPS must produce an inventory of all of their school buildings, in addition to enrollment and usage information, by August 14, 2015.** See Wis. Stat. § 119.61(2)(a). This will show which buildings are vacant and will help – although not completely determine – which buildings are eligible for sale, as more fully explained on page 15.

With respect to those buildings eligible for sale, for the first 60 days after August 14, 2015, the Superintendent of MPS or the Commissioner of the Opportunity Schools and Partnership Program (OSPP) – if appointed – can submit letters of interest to purchase unused or underutilized school buildings.⁷⁰ See Wis. Stat. § 119.61(3). After that, except in the case of schools that have been vacant for 24 consecutive months or a longer period of time, only “education operators” as defined in the state budget can submit letters of interest. See Wis. Stat. § 119.61(4). An education operator is the operator of an independent public charter school, private school, or non-instrumentality charter school, or a person who is pursuing a contract with a school board to be a non-instrumentality charter. See Wis. Stat. § 119.61(1)(a).

⁶⁶ *Milwaukee Journal Sentinel*, “At MPS, the status quo is unacceptable,” by Charles Szafir. May 29, 2015. <http://www.jsonline.com/news/opinion/at-mps-the-status-quo-is-unacceptable-b99507797z1-305531811.html>

⁶⁷ Exhibit EE

⁶⁸ *Wisconsin Institute for Law & Liberty*, Apples-to-Oranges

⁶⁹ Newly created Wis. Stat. § 119.61

⁷⁰ It is unclear what it would mean for the Superintendent or Commissioner to purchase or lease and MPS building.

If a building has remained empty for 24 consecutive months after July 14, 2015, then anyone can submit a letter of interest. Wis. Stat. § 119.61(4)(e).

B. What MPS buildings are eligible to be sold: Eligible buildings satisfy either one of the following conditions:

1. A school building that “has been designated as surplus, underutilized, or vacant on any resolution adopted within the previous 5 years by the board, and the board is unable to demonstrate that the school building is no longer surplus, underutilized, or vacant” or
2. “The school building has been unused or satisfies any condition qualifying the building as an underutilized school building for a period of 12 consecutive months, including the 12 months preceding the effective date of July 14, 2015.” See Wis. Stat. § 119.61(1)(b).

We have some idea of what buildings may be listed as unused because we know that the following buildings were listed as “vacant facilities” by MPS in May 2014 and November 2014.⁷¹

<u>Facility</u>	<u>Address</u>	<u>Facility</u>	<u>Address</u>
88th St.	3575 S. 88th St.	Edison	5372 N. 37th St.
Dover	619 E. Dover Street	Philipp	4310 N. 16th St.
Malcolm X Academy	2760 N. 1st St.	Wheatley	2442 N. 20th St
Hayes Bilingual	2431 S. 10th St	Garfield	2215 N. 4th St.
37th St.	1715 N. 37th St	Centro del Nino	500 E. Center St.
Carleton	4116 W. Silver Spring Dr.	Fifth St.	2770 N. 5th St.
Frederick Douglass	3409 N. 37th St.	Wisconsin Ave.	2708 W. Wisconsin Ave.
Lee School	921 W. Meinecke St.	Milw. School of Entrepreneurship	6914 W Appleton Ave.

We note that this list is likely not exclusive and that there may be other vacant facilities. Fletcher Elementary, for example, was closed on July 2010. In 2013, MPS said it was for “support services⁷²” and in 2014, claimed it was used for “staging and storage.⁷³” It has not, however, been listed as vacant. In the alternative, some of the above buildings listed above may no longer be vacant. According to MPS, for example, Lee School will be occupied by Universal Academies, a MPS affiliated charter school, for the Fall 2015.⁷⁴

In addition to unused school buildings, eligible schools include existing MPS schools that are deemed “underutilized” for a period of 12 consecutive months (as stated in condition 2 above). An “underutilized” school satisfies any of the following conditions:

⁷¹ Exhibit A; *Milwaukee Journal Sentinel* (2014), “Want to know which MPS facilities are vacant? We can help” by Don Walker, May 2, 2014. <http://www.jsonline.com/blogs/news/257594221.html>.

⁷² Exhibit B

⁷³ *Milwaukee Journal Sentinel* (2014), “Sold, repurposed, still vacant — an update on MPS buildings,” by Erin Richards, November 27, 2014. <http://www.jsonline.com/news/education/sold-repurposed-still-vacant--an-update-on-mps-buildings-b99398435z1-284117061.html>.

⁷⁴ *Milwaukee Public Schools* (2015), “Two successful charter schools to expand . . .” June 25, 2015. <http://mps.milwaukee.k12.wi.us/News/Two-successful-MPS-charter-schools-to-expand-one-in-a-once-closed-building.htm>.

1. Less than 40% of the capacity of the school building is used for instruction of pupils on a daily, school day basis and either:
 - a. The building is not part of an active expansion plan or
 - b. Pupil enrollment has declined in at least 2 of the 3 school years preceding the year where it has less than 40% capacity or
 - c. The school has placed in one of the 2 lowest performance categories according to the school report cards for the year that it is less than 40% capacity and: 1) the building is located within 5 miles of another school building, 2) the other building serves the same grade levels, and 3) no more than 60% of that other school building is used for instruction.
2. The school building is not staffed on a full-time basis by a principal and staff.⁷⁵
3. The number of hours of pupil instruction offered in the building in the previous year was less than 80% of the number of hours required under Wis. Stat. 121.02(1)(f)2.

See Wis. Stat. § 119.61(1)(c).

Most, if not all, of the information needed to determine which buildings meet these criteria must be provided by MPS by August 14, 2015. See Wis. Stat. § 119.61(2)(a). For example, the following schools may be declared underutilized because the “pupil enrollment has declined in at least 2 of the 3 school years preceding the year where it has less than 40% capacity”:

MPS Capacity and Student Enrollment						
School	Utilization⁷⁶	2010-2011 Enrollment⁷⁷	2011-2012	2012-2013	2013-2014	2014-2015
Auer Ave. School	37.72%	377	331	329	256	251
Groppi High	36.73%	523	464	408	249	248

The identification of underutilized schools may lead to co-locating between high performing public charter schools and struggling traditional MPS schools. This has been prominent in cities across the country, where the supply of space is limited and demand for facility space by charter operators is very high.⁷⁸

⁷⁵ Unless the principal of the school also serves as the principal of another school

⁷⁶ Obtained from Milwaukee Public Schools, “MPS FY14 Enrollment Worksheet.”

⁷⁷ Department of Public Instruction, <http://wisedash.dpi.wi.gov/Dashboard/portalHome.jsp>

⁷⁸ In New York City, over half of all of its traditional public schools and public charter schools share building space. New York City Charter School Center (2013), “Co-Location: How Public Schools Share Space in New York City,” 2012-2013. http://www.nyccharterschools.org/sites/default/files/resources/nyccsc_colocation_fact_sheet.pdf (accessed 12/5/2014). In addition, the Los Angeles Unified School District (LAUSD) currently has over 100 co-located charter schools. Los Angeles Unified School District (2014). “Charter Schools Directory 2014-15.” <http://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/106/Charter%20Schools%20Directory%202014-15%20Complete.xls>

C. The following is the process to buy or lease a school building:

1. As noted above, “no later than 30 days after July 14, 2015,” the MPS Board must “prepare an inventory of all school buildings in the school district.” See Wis. Stat. § 119.61(2)(a). The inventory must include all of the following for every school building:

1. The total square footage of and the number of classrooms in the school building.
2. The portion of the total square footage being used for direct pupil instruction.
3. The number of pupils the school building can accommodate and the number of pupils receiving instruction in the school building.
4. The name of the principal and the number of full-time instructional staff assigned to the school.
5. For any school building not being used for direct pupil instruction, the manner in which the school building is being used, including whether the building is vacant or is being used for administration, storage, or professional development.
6. The duration over the past 36 months that the school building has been used in the manner identified under sub sections 2 or 5.
7. Whether the board has designated the school building as surplus, underutilized, or vacant on any resolution adopted by the board within the previous 5 years.
8. Facility condition index information, including estimated short-term and long-term maintenance costs of the school building.

By **August 14 – and annually thereafter, MPS must submit this inventory list to the Department of Public Instruction, Superintendents of MPS, Wisconsin State Joint Committee on Finance, Commissioner of the OSPP, and City Clerk.**⁷⁹ See Wis. Stat. § 119.61(2)(b).

2. After the inventory is submitted, the Commissioner of the Opportunity Schools and Partnership Program and **Superintendent of MPS have up to 60 days to submit a letter of interest (LOI) on any unused or underutilized school building.** If they do submit a LOI, then as explained in Step 3 (B) below, other education operators, such as private and choice schools, have 28 days to submit a LOI. See Wis. Stat. § 119.61(3). The City clerk must indicate this on their website. See Wis. Stat. § 119.61(4)(b).

After 60 days, the city clerk posts a public notice on the city’s website with the building inventory list of each unused or underutilized school building. The city clerk will let education operators know how to submit a letter of interest to purchase an eligible school building. See Wis. Stat. § 119.61(3)(b).

⁷⁹ The Board also has to notify the parties “any time a change is made to the use of a school building.” Wis. Stat. § 119.61(2)(c).

3. After the city clerk posts a public notice on their website, only education operators – charter schools and private schools – can submit letters of interest for eligible buildings. Once the City receives a letter of interest from an education operator, other education operators can submit a letter of interest on that same building for up to 28 days.

If no other operators submit a LOI at the end of the 28 day period, the Common Council has 60 days to: 1) determine whether the buyer is an education operator, 2) make information about eligible school buildings available and show the building to the education operator, 3) consider the financial capability of the education operator, 4) “negotiate a reasonable purchase price and terms with the education operator”⁸⁰ and 5) complete the sale of the building. In selling the building, the Common Council is prohibited from requiring an education operator to make a payment in lieu of taxes (PILOT).⁸¹ See Wis. Stat. § 119.61(4)(c).

The later restriction should prevent the city from offering buildings embedded with a “poison pill” of unreasonable PILOT fees. An example of this tactic took place last summer. Milwaukee Mayor Tom Barrett refused to sell Lee School, an unused building, to St. Marcus Lutheran Schools, a private school, unless St. Marcus paid over \$2.3 million for a building appraised at \$880,000.⁸²

If other education operators do submit a LOI at the end of the 28 day period, then a Committee – its members chosen by the Common Council – must choose who can purchase the building. The common council has 50 days to do a “competitive, request for proposal process.” The Common Council must also select a “Committee” that would “select the most suitable buyer of the eligible school building.” The Committee *cannot* consider “the organizational status of the education operator” and *must* consider the: “quality of the design proposed for the school,” “nature of any improvements,” and the “fiscal capability of the education operator.” See Wis. Stat. § 119.61(4)(b).

Once a buyer is selected by the Committee, the City negotiates with the education operator as described by the paragraph above. See Wis. Stat. § 119.61(4)(d). If a school building has been unused or underutilized for more than 24 consecutive months since July 14, 2015 and no education operator has purchased the building, then “any person may submit a letter of interest to purchase” the building. If a letter of interest is submitted, then a 28 day window is open for others to submit bids, as described in step 3 above. See Wis. Stat. § 119.61(4)(e).

This process repeats itself every year, starting August 14, at the latest, with MPS having to submit an updated inventory on its schools. See Wis. Stat. § 119.61(2)(a).

⁸⁰ Price must be based on either: A) what was paid for “other comparable school buildings sold within the previous 5 years, with adjustments to take into account “square footage, age, condition and location” or B) an appraisal prepared for the eligible school building.” Wis. Stat. § 119.61(4)(c)4.

⁸¹ Private schools are exempt from paying property taxes, so, at times, municipalities have made private schools pay a PILOT in order to buy a facility - in addition to the purchase price.

⁸² The City of Milwaukee wanted St. Marcus to pay \$880,000 for the building, \$204,151 in a PILOT, and \$1.3 million in a school choice tax to compensate the city for any loss to local property taxpayers when MPS children leave to attend St. Marcus. See *Milwaukee Journal Sentinel*, “City, MPS decision harms poor students” by CJ Szafir. August 14, 2014. <http://www.jsonline.com/news/opinion/city-mps-decision-harms-poor-students-b99328723z1-271317111.html>

IV. Conclusion

Milwaukee Public Schools has long been the biggest supplier of education in Milwaukee, at times enjoying, if not a monopoly, then a clear oligopoly. As with many protected suppliers, quality has deteriorated. And, as happens to such suppliers when competition is introduced, it has seen demand for its product plummet. Since 2009, the total enrollment at MPS has declined by 11%. This coincided with an increase in enrollment at private schools in the choice program by 33% and independent charter schools by 175%.⁸³ MPS' current position is not sustainable; like Coca-Cola, it must innovate and improve or risk going the way of Blockbuster or BlackBerry.

Unfortunately, Milwaukee Public Schools refuses to accept these realities, preferring to fight a rearguard battle against the inevitable.

Forcing the City and MPS to sell its unused buildings is not a silver bullet, but it is a step in the right direction. The most successful private schools in the choice program and charter schools – the ones for which there is great demand – will now have greater access to taxpayer-funded facilities to expand their programs and give children more access to high-quality schools. Perhaps, this will also have the indirect effect of encouraging Coca-Cola to focus more on improving itself and less on blocking the expansion of Pepsi.

⁸³ *Milwaukee Journal Sentinel* (2014). "Amid signs of life, MPS' piece of the pie keeps shrinking," by Alan J. Borsuk, December 6, 2014. <http://www.jsonline.com/news/education/amid-signs-of-life-mps-piece-of-the-pie-keeps-shrinking-b99403015z1-284982751.html>