



# POLICY BRIEF

## Empty Handed: How Milwaukee Thwarted a State Law Meant to Help Schools

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### Executive Summary

Milwaukee Public Schools (MPS) recently released their annual report<sup>1</sup> on the status of their vacant school buildings. The Surplus Property Law was supposed to be the answer to Milwaukee's vacant schools crisis, which has garnered national attention.<sup>2</sup> For years, prior to the law, MPS prevented the sale of vacant school buildings to private and public charter schools. The legislature took action in 2015 and now, five years later, it may look like the law was a success since most of the buildings are no longer vacant. But WILL's ongoing research has found that the intent of the law was not met because private and public charter schools were not able to purchase these buildings. Many schools have high demand for seats, yet they do not have access to facilities or funding to help expand. Thus, the challenges surrounding the vacant school crisis persist.

**Over the last five years, the Surplus Property Law only resulted in one sale to a public charter school while the majority of the buildings have been sold to developers. In other words, private and public charter schools are still struggling to access facilities.**

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## A Brief History

In 2015, legislators passed the Surplus Property Law through the budget. Years of reports<sup>3</sup> that MPS refused to sell vacant school buildings to interested private and public charter school buyers despite having at least 17<sup>4</sup> vacant schools across the city, prompted state Senator Alberta Darling and then-State Representative Dale Kooyenga to champion the cause.

The vacant schools issue came into the foreground for many legislators when St. Marcus Lutheran School, a high-performing private school that participates in the parental choice programs, wanted to purchase a vacant MPS building in 2014. Mayor Tom Barrett demanded<sup>5</sup> that St. Marcus pay an additional \$1.3 million, as a “school choice tax.”

Legislators were outraged<sup>6</sup> by the city and district’s failure to be good stewards of taxpayer funds and decided to take action. The Surplus Property Law<sup>7</sup> requires the city and MPS to sell these buildings in good faith to interested buyers, especially private and public charter schools. Among other requirements, the law prevents the buildings from being sold to a non-educational operator for the first 24 months. Following the 24-month period, the building can be sold to any interested buyer.

The St. Marcus debacle and vacant school crisis highlighted the larger education issues in Milwaukee: Less than 70% of MPS high-school students are graduating and less than 30% of all MPS students are proficient in either English Language Arts or Math on the state test.<sup>8</sup> These alarming results have driven many parents to look for other educational opportunities, including those offered by private and public charter schools. Many of these schools have waiting lists<sup>9</sup> and are looking for opportunities to expand their campuses.

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## The Surplus Property Law

The city began implementing the law in 2016 and MPS identified 10 buildings as vacant and available for sale. But MPS immediately went into defensive mode, trying to prevent<sup>10</sup> an additional 11 buildings from being made available for sale under the law.

WILL tracked how the city and MPS enacted this law over the last five years. Our research<sup>11</sup> found that MPS continued to play a shell game with the buildings, labeling buildings to prevent them from being available for sale. For example, MPS labeled Fletcher as a “district support facility” in 2015, as part of an “active expansion plan” in 2016 and finally “surplus” in 2017. The building is still vacant today. The city also ignored specific requirements in the law and allowed MPS to determine which buildings were available for sale allowing for various labeling of the buildings.

Furthermore, the law has not been executed to its full capacity. For example, the law includes a requirement to sell “underutilized buildings.” Specifically, the law defines underutilized buildings as having less than 40% capacity and meeting other criteria, such as declining enrollment in the past three years or not being identified as part of an active expansion plan. However, the city of Milwaukee has never posted an analysis identifying the MPS buildings that qualify under this definition nor have they attempted to clarify the law so it can be implemented.

Despite this broken process, private and public charter school buyers continue to show interest in purchasing these buildings. For example, WILL represented Right Step, a private school in the MPCP that educates students who have been expelled from other schools. Right Step school is the last resort for many of their students to even receive a high-school diploma. However, city politicians and the public school establishment worked together to prevent Right Step from purchasing the building, ultimately preventing<sup>12</sup> the sale at the Board of Zoning Appeals in 2016. The building was eventually sold to a development company in 2018.

Unfortunately, only one public charter school successfully purchased<sup>13</sup> a vacant building in the past five years.

## Where Did the Buildings Go?

Due to the city and MPS’s poor implementation of the law, it can be difficult to determine whether all of the vacant school buildings were sold.<sup>1</sup> Most of the vacant school buildings were sold for development into housing.

MPS Building	Sold	Interest received from education operators <sup>14</sup>
Carleton	2019 – sale pending, development for mixed housing	2010 – Lighthouse Academies 2016 – Rocketship Southside Community Prep
Centro del Nino	2018 – development into Cream City Hostel	2016 – Right Step
Edison	2020 – pending sale for approval October 2020 for housing	2012 – Milwaukee College Preparatory School 2017 – Milwaukee Environmental Sciences Academy, Milwaukee Collegiate Academy

<sup>1</sup> Appendix A shows the status of each vacant building recorded on MPS’s annual inventory and according to the city’s records from 2015-2020.

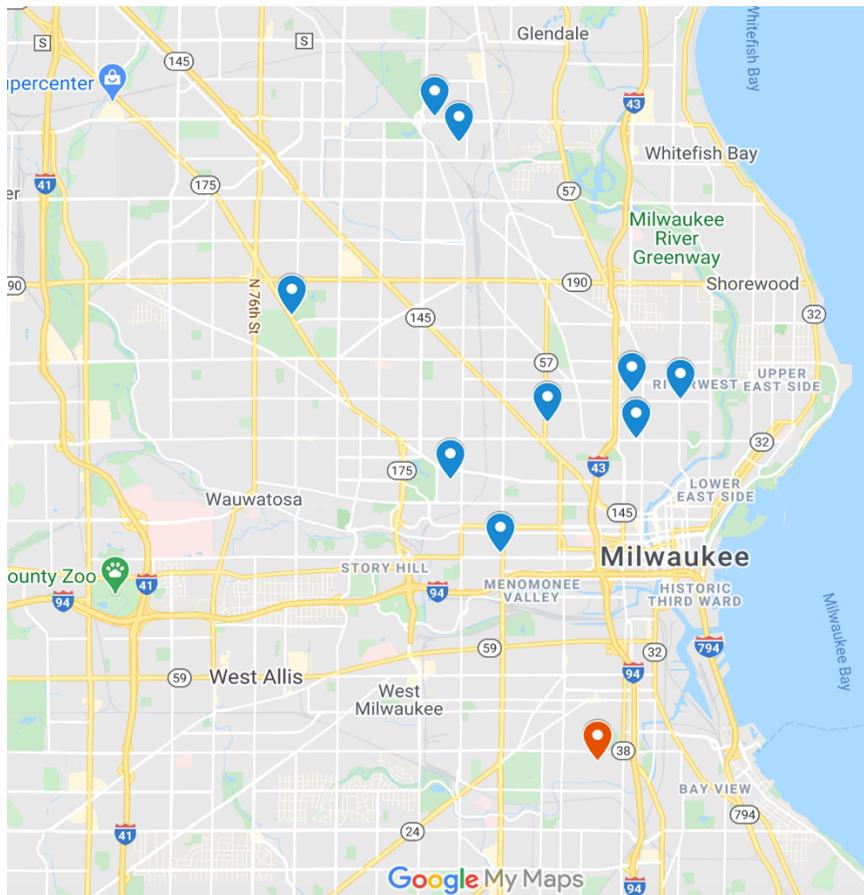
<b>MPS Building</b>	<b>Sold</b>	<b>Interest received from education operators</b>
Garfield	2016 – development into apartments and America’s Black Holocaust Museum	2012 – Milwaukee College Prep
Hayes	2017 – Stellar Collegiate, public charter school	2012 – Woodlands School 2013 – Notre Dame Middle School
Isaac Coggs/ Former Fifth Street	2017 – development into affordable senior housing	2012- Milwaukee Christian Prep
Milwaukee School of Entrepreneurship	2019 – expanding educational training facility for Standard of Excellence & Training Center	2016 – Greater Holy Temple Christian
Thirty-Seventh	2020 – development into senior housing	N/A
Wheatley	2020 – pending sale, apartment building	2012 – National Heritage Academies
Wisconsin Avenue	2017 –development into extended-stay hotel	2011 – Highland Community School

Over the last five years, only one vacant building was sold to a buyer interested in using it for an educational facility. In 2017, Hayes was sold to Carmen Schools, to open a new facility for Stellar Collegiate, a public charter school in Milwaukee.

In addition to access, the cost of these buildings—both to purchase and complete existing deferred maintenance—is an on-going challenge for school leaders. Deferred maintenance is work and repairs that the buildings needed but MPS failed to do. This includes facility needs like asbestos removal or steam/water damage on ceilings that have not been fixed. These deferred maintenance costs may make these properties less desirable for school leaders who have limited access to funds compared to developers.

<b>Building for sale fall 2020</b>	<b>Deferred maintenance</b>	<b>Listing sale price (for adaptative re-use)</b>	<b>Year available on City’s website</b>
Frederick Douglass	\$137,905	\$240,000	2016
Fletcher	\$0	\$1,400,000	2016
Philipp	\$0	\$495,000	2017

The map<sup>2</sup> shows the location of the 10 buildings MPS sold across the city of Milwaukee. The varied locations may have encouraged developers to focus on housing in specific neighborhoods,



some of which may qualify for tax incentives depending on the community. The blue dots were sold to developers; the red dot is the building sold for educational purposes.

There are plenty of state and federal tax incentives that encourage developers to create more housing. For example, opportunity zones<sup>15</sup> are areas identified by the state and verified by the U.S. Department of Treasury and they offer investors temporary tax deferral or permanent exclusion from capital gains tax to develop in low-income communities. Out of the 10 vacant

school buildings sold, four of the buildings are located in a designated opportunity zone in Milwaukee.<sup>16</sup>

In the recently published Milwaukee County Department of Health & Human Services Housing Division annual action plan, the Department found that there is a continued need to increase the supply of “decent affordable housing” despite the City meeting some of its goals to increase the supply of affordable housing over the last six years.<sup>17</sup> Milwaukee leadership also called<sup>18</sup> for the city to invest in housing outside of downtown Milwaukee this year.

This fall, only three vacant school buildings are listed as available for sale—Philipp, Fletcher and Frederick Douglass. A recent open records request to the city found that all three buildings received letters of interest from education operators at some point:

<sup>2</sup> Wisconsin Institute for Law & Liberty, Vacant Schools Map, <https://www.google.com/maps/d/edit?mid=1yqSXzqRQOnT5c8yPqllTRyiAkaiJqtKP&ll=43.06032816945971%2C-87.9517448&z=12>

Currently vacant MPS Building	Letters of Interest from education operators
Fletcher	2016 – Risen Savior Lutheran School 2017 - Milwaukee Environmental Sciences Academy 2018 - Clara Mohammed School, Inc.
Frederick Douglass	2016 – Pilgrim Rest Missionary Baptist Church
Philipp	2017 - Milwaukee Environmental Sciences Academy 2018 - Clara Mohammed School, Inc. 2018 – Messmer High School

Due to the conclusion of the 24-month purchase period for educational facility operators, these buildings are no longer exclusively available to be sold to those groups. According to the City of Milwaukee Department of City Development, the website will soon reflect that Philipp will be available for adaptive re-use.<sup>19</sup> No other vacant schools are currently exclusively available to educational facility operators.

## Lessons Learned Over the Past Five Years

The vacant school crisis is representative of much bigger challenges for education in Milwaukee. The district's enrollment continues to decline each year and the dynamics of the pandemic will likely result in more parents looking for options outside of MPS. Despite the good intentions of the Surplus Property Law, it has not resulted in public charter and private schools having access to these vacant school buildings.

The last five years of implementing the law highlighted three barriers for education reform in Milwaukee:

- 1. The district and the city have not been good stewards of taxpayer resources.**

These school buildings are owned by the city of Milwaukee but are in the care of MPS. MPS has demonstrated that they are not good stewards of these resources because they have chosen to hold onto vacant buildings for years rather than sell them to interested buyers.

Many of the vacant buildings that were sold have hundreds of thousands of dollars in deferred maintenance costs. An independent study of MPS facilities found \$280 million<sup>20</sup> in deferred maintenance across the district as of 2018.

WILL's previous report also found that the district's failure to sell the vacant buildings have cost taxpayers millions of dollars—more than \$10 million in utility costs alone—in order to maintain the vacant school buildings over a ten-year period.<sup>21</sup> While the district was failing to properly care for these buildings and refusing to sell, they were relying on taxpayers to help keep the lights on.

The Surplus Property Law gave the city the opportunity to address these concerns by selling the buildings to interested school leaders. But through the city's failure to implement the law, i.e. ignoring various parts of the law and allowing MPS to determine the status of the buildings, the city is a willing contributor to these problems.

Milwaukee taxpayers deserve to have their hard-earned dollars managed effectively but the vacant school crisis demonstrates that the city and district are unable and unwilling to do so.

## **2. The city is not able to function as an honest broker in the sale of the buildings.**

The Surplus Property Law depended on the city of Milwaukee to implement the sales process for the buildings. From the very beginning, it was clear that the city was not interested in this authority. The city dragged its feet to even implement the law—not starting the purchasing process until late 2016.

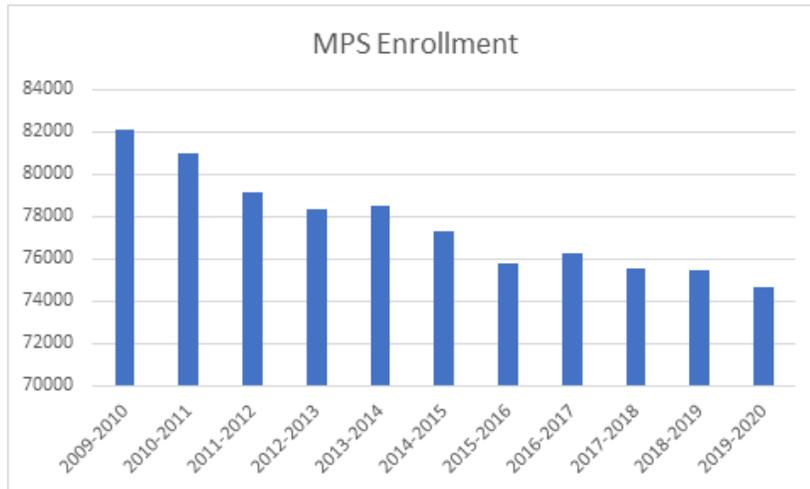
Additionally, the Milwaukee Common Council actively fought against the sale of the buildings to private and public charter-school operators. For example, throughout the sale process, the Common Council would force school leaders to jump through several hoops, including holding public hearings, showing community support, and requiring schools to show that they will not harm MPS. None of these requirements are included in the law.

As the law has been implemented over the last several years, the city also has not taken the opportunity to embrace the authority given to them through this law. For instance, the requirement for underutilized buildings has never been implemented. This is a huge missed opportunity with at least 30 school buildings<sup>22</sup> with less than 70% capacity and over 900,000 vacant instructional square feet.

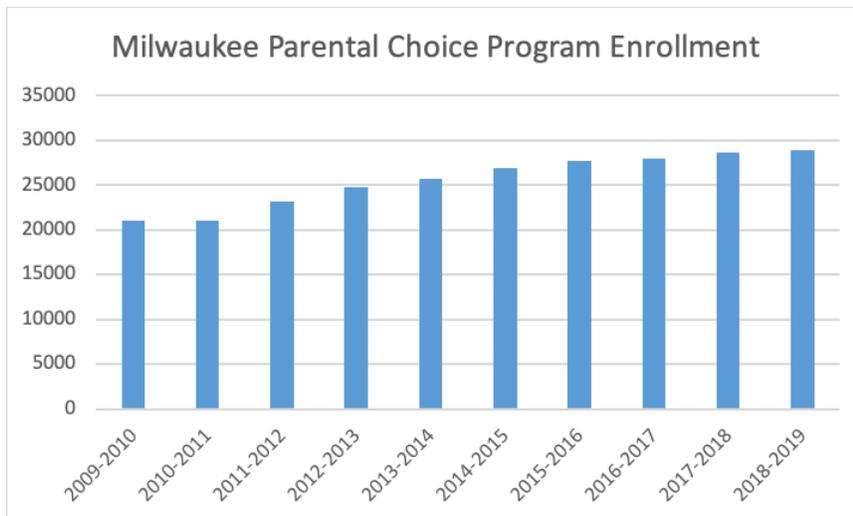
In order for the Surplus Property Law to be effective, the city must implement the law in a nonpartisan manner. Given the past few years, it is not likely that the city could ever meet that requirement.

## **3. The vacant school issue is not resolved and remains a challenge for expansion for private and public charter schools.**

Milwaukee educational trends indicate that families are looking for educational opportunities. MPS's own projections show the enrollment will continue to decline.<sup>23</sup> These projections were prior to the COVID-19 pandemic, but already national evidence<sup>24</sup> is demonstrating that more families are moving away from the traditional public school system as a result of the pandemic.



The impact of the COVID-19 pandemic will likely show that parents continue to look for options that fit their child, whether that be found in the overall mission of the school or how educational services are being provided. In order to accommodate the growing interest in the MPCP and non-traditional schools generally, private and public charter schools will have to expand their facilities. Many of the highest-performing schools already have waitlists.



For example, St. Marcus recently announced that they are purchasing a third campus to accommodate another 600 students.<sup>25</sup> But the reality is that for St. Marcus, and other schools, to do this requires immense fundraising, to the tune of \$10 million. This reality is a huge barrier in and of itself for school expansion in Milwaukee.

## Conclusion

This issue must remain a priority for policymakers who are committed to expanding high-quality education options in Milwaukee.

While policymakers could amend the existing Surplus Property Law to address some of these barriers, such as underutilized schools, we must also learn from the experiences of the past five years and focus on how to help school leaders who want to grow their schools and provide a high-quality education. This includes helping school leaders access funding for new buildings, removing barriers for participation and growth in the Wisconsin Parental Choice Program, and taking best practices from other states to help expand access to facilities.

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<sup>1</sup> MPS Inventory Submitted to JFC, August 10, 2020. <http://www.will-law.org/wp-content/uploads/2020/09/mps-report-to-jfc-on-facility-inventory08.10.2020.pdf>.

<sup>2</sup> Editorial Board, “Milwaukee’s Public School Barricade,” The Wall Street Journal, August 13, 2018. <https://www.wsj.com/articles/milwauees-public-school-barricade-1534203534>

<sup>3</sup> Wisconsin Institute for Law & Liberty, “MPS and the City of Milwaukee Ignore State Law and Policy,” September 5, 2013. <https://www.will-law.org/wp-content/uploads/2015/07/2013-09-05-WILL-Report-with-Exhibits.pdf>

<sup>4</sup> Esenberg, Szafir, Lueken, “Kids in Crisis, Cobwebs in Classrooms,” Wisconsin Institute for Law & Liberty, January 12, 2015. <https://www.will-law.org/wp-content/uploads/2016/01/WILL-Report-Kids-in-Crisis.pdf>

<sup>5</sup> Szafir, CJ, “The war on school choice in Milwaukee,” Washington Times, January 23, 2015. <https://www.washingtontimes.com/news/2015/jan/23/cz-szafir-war-school-choice-milwaukee/>

<sup>6</sup> Esenberg, Szafir, Ramlow, “Why the State of Wisconsin Forced Coca-Cola to Sell to Pepsi,” Wisconsin Institute for Law & Liberty, August 12, 2015. [https://www.will-law.org/wp-content/uploads/2015/09/Why\\_Coca\\_Cola\\_Must\\_Sell\\_to\\_Pepsi.pdf](https://www.will-law.org/wp-content/uploads/2015/09/Why_Coca_Cola_Must_Sell_to_Pepsi.pdf)

<sup>7</sup> Wis. Stat. § 119.61

<sup>8</sup> WISEDash, Wisconsin Department of Public Instruction, last accessed September 30, 2020. <https://wisedash.dpi.wi.gov/Dashboard/dashboard/16840>

<sup>9</sup> Szafir, Petersen, “This building is for sale (but not to a charter school),” The Wall Street Journal, November 9, 2018. <https://www.wsj.com/articles/this-building-is-for-sale-but-not-to-a-charter-school-1541806377>

<sup>10</sup> Richards, Erin, “MPS submits inventory of empty buildings for possible sale,” Milwaukee Journal Sentinel, August 14, 2015. <https://archive.jsonline.com/news/education/mps-submits-inventory-of-empty-buildings-for-possible-sale-b99556700z1-321878281.html/>

<sup>11</sup> Szafir, Sobic, Petersen, “What Goes Around Comes Around,” Wisconsin Institute for Law & Liberty, August 2018. <http://www.will-law.org/wp-content/uploads/2018/07/what-goes-around-by-the-numbers.pdf>

<sup>12</sup> Johnson, Annysa, “Military-style voucher school denied vacant bulding,” Milwaukee Journal Sentinel, October 6, 2016. <https://www.jsonline.com/story/news/education/2016/10/06/military-style-voucher-school-denied-vacant-building/91564268/>

<sup>13</sup> Sobic, Libby, “City of Milwaukee finally sells a vacant school building,” RightWisconsin, August 5, 2019. <https://rightwisconsin.com/2019/04/05/city-of-milwaukee-finally-sells-a-vacant-school-building>

<sup>14</sup> Previous WILL reports identified interest from school leaders in vacant school buildings. See: [https://gallery.mailchimp.com/39c521bbcac5b6d120370b773/files/Why\\_Coca\\_Cola\\_Must\\_Sell\\_to\\_Pepsi.pdf](https://gallery.mailchimp.com/39c521bbcac5b6d120370b773/files/Why_Coca_Cola_Must_Sell_to_Pepsi.pdf); <https://www.will-law.org/wp-content/uploads/2017/03/Final.pdf>; and <http://www.will-law.org/wp-content/uploads/2018/07/what-goes-around-by-the-numbers.pdf>

<sup>15</sup> Opportunity Zones, Wisconsin Housing and Economic Development Authority, last accessed September 30, 2020. <https://www.wheda.com/about-wheda/opportunity-zones>

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<sup>16</sup> Edison, Garfield and Wheatley and Wisconsin Avenue according to Wisconsin Housing and Economic Development Authority.

<sup>17</sup> Milwaukee County 5-Year Consolidated Plan on Housing, OMB Control No: 2506-0117 (exp. 6-20-2018), last accessed on September 30, 2020.

<https://county.milwaukee.gov/files/county/DHHS/Housing/FiveYearConsolidatedand2020AnnualPlan.pdf>

<sup>18</sup> Ryan, Sean, “Alderman contemplate housing grants to help around Century City,” Milwaukee Business Journal, March 3, 2020. <https://www.bizjournals.com/milwaukee/news/2020/03/03/aldermen-contemplate-housing-grants-to-help-around.html>

<sup>19</sup> WILL communicated with the Development of City Development to confirm this September 14, 2020.

<sup>20</sup> “What Goes Around Comes Around,” <http://www.will-law.org/wp-content/uploads/2018/07/what-goes-around-by-the-numbers.pdf>

<sup>21</sup> “What Goes Around Comes Around,” <http://www.will-law.org/wp-content/uploads/2018/07/what-goes-around-by-the-numbers.pdf>

<sup>22</sup> “What Goes Around Comes Around,” <http://www.will-law.org/wp-content/uploads/2018/07/what-goes-around-by-the-numbers.pdf>

<sup>23</sup> Milwaukee County 5-Year Consolidated Plan on Housing, OMB Control No: 2506-0117 (exp. 6-20-2018), last accessed on September 30, 2020.

<https://county.milwaukee.gov/files/county/DHHS/Housing/FiveYearConsolidatedand2020AnnualPlan.pdf>

<sup>24</sup> Gray, Peter, “Registrations for homeschooling are soaring.” Psychology Today, September 7, 2020, <https://www.psychologytoday.com/us/blog/freedom-learn/202009/registrations-homeschooling-are-soaring>

<sup>25</sup> Lesk, Sari, “St. Marcus Lutheran School to expand with third campus,” Milwaukee Business Journal, July 29, 2020. <https://www.bizjournals.com/milwaukee/news/2020/07/29/st-marcus-lutheran-school-to-expand-with.html>

## Appendix A

The following chart shows the status of each building recorded each year on MPS’s inventory submitted in August and the status of the building according to the City of Milwaukee Department of City Development since the Surplus Property law’s creation in 2015.

<b>MPS Building</b>	<b>August 2015</b>	<b>August 2016</b>	<b>August 2017</b>	<b>August 2018</b>	<b>August 2019</b>	<b>August 2020</b>
Carleton	Vacant	Vacant	Under contract	Vacant	sale pending for mixed housing	<a href="#">Sale pending for mixed housing</a>
Centro del Nino	Vacant	Vacant	Vacant	Sale pending	<a href="#">Sold- January 2018</a> for development into Cream City Hostel	
Dover	Teacher Housing- Under option	Under option	Active expansion plan	Milwaukee Montessori campus	Milwaukee Montessori campus	Milwaukee Montessori campus
F. Douglass	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant
Edison	Regional development plan	Active expansion plan – school	Vacant	Vacant	Vacant - For sale for educational operators only	<a href="#">received letter of intent for adaptive reuse, negotiations ongoing</a>
Eighty Eighth	Regional development plan – school	Milwaukee Spanish Immersion School	Milwaukee Spanish Immersion School	Milwaukee Spanish Immersion School	Milwaukee Spanish Immersion School	Milwaukee Spanish Immersion School
Fletcher	District support facilities	Active expansion plan – district support / school	Vacant	Vacant	Vacant	Vacant

Wisconsin Institute for Law & Liberty

MPS Building	August 2015	August 2016	August 2017	August 2018	August 2019	August 2020
Garfield	Vacant- RFP issued	<a href="#">Sold – November 2016</a> and converted to apartments and America’s Black Holocaust Museum				
Happy Hill	Regional development plan	Leased to HAPA, public charter school	Leased to HAPA, public charter school	Leased to HAPA, public charter school	Leased to HAPA, public charter school	Leased to HAPA, public charter school
Hayes	Regional development plan	Active expansion plan	Vacant	Vacant	<a href="#">Sold May 2019</a> - Sold to Carmen Charter schools for Stellar Collegiate, a public charter school	
Isaac Coggs/Fifth street	Vacant- RFP issued	Under option	<a href="#">Sold – June 2017</a> for development of affordable senior housing			
Lee	Regional development plan	MPS Grant Gordon Early Learning Center / Head Start Welcome Center	MPS Grant Gordon Early Learning Center / Head Start Welcome Center	MPS Grant Gordon Early Learning Center / Head Start Welcome Center	MPS Grant Gordon Early Learning Center / Head Start Welcome Center	MPS Grant Gordon Early Learning Center / Head Start Welcome Center

Wisconsin Institute for Law & Liberty

MPS Building	August 2015	August 2016	August 2017	August 2018	August 2019	August 2020
Malcolm X	Regional development plan	Rufus King Middle School	Rufus King Middle School	Rufus King Middle School	Rufus King Middle School	Rufus King Middle School
Milwaukee School of Entrepreneurship	Vacant	Vacant	Vacant	Vacant	<a href="#">sold –January 2019</a> to Standard of Excellence & Training Center to expand its educational training facility for caregivers and office space for the workforce.	
Philipp	Regional development plan	Active expansion plan – fine arts center/school	Vacant	Vacant	Vacant- For sale for educational operators only	vacant – for sale for adaptive reuse fall 2020
Sixty-eighth	District support facilities	Active expansion plan – district support/school	Vacant	Active expansion plan	Active expansion plan	Virtual education programming – school
Thirty-Seventh	Vacant	Vacant	Vacant – RFP issued	Vacant	Sale pending	<a href="#">Sale pending</a> – in process to be sold by end of 2020 for converting the property into senior apartment units.

Wisconsin Institute for Law & Liberty

MPS Building	August 2015	August 2016	August 2017	August 2018	August 2019	August 2020
Wheatley	Vacant	vacant	Vacant	Vacant	Sale pending	<a href="#">Sale pending</a> – in process to be sold by end of 2020 for converting the property to an apartment building for families and construct new townhomes on site.
Wisconsin Ave.	Vacant	Vacant	<a href="#">Sold – September 2017</a> to Ambassador Enterprises purchased it for development into an extended-stay hotel.			
Webster	Leased – Universal	Leased – Universal	MPS school	MPS school	Active expansion plan-school	Virtual education programming –MPS school