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## **MPS and the City of Milwaukee Ignore State Law and Policy**

*Open records request shows that nearly all vacant school buildings have had interest from charter, choice schools; But MPS refuses to sell buildings to high-performing schools*

**Background.** Prior to 2011, the City of Milwaukee – despite owning the school buildings – could not sell or lease any empty building without approval from the Milwaukee Board of School Directors. In December 2010, the [Milwaukee Journal Sentinel](#) reported that the City had 27 vacant, unused school buildings and MPS was blocking charter and private schools in the choice program from purchasing those buildings. The article cited an IFF study that showed that 11 of those empty buildings were located in areas of the City that lacked access to adequate public schools.

In response to the public’s outcry for change, the state legislature passed 2011 Act 17 which permits the Milwaukee Common Council to sell unused or underutilized buildings without MPS approval. But, even after enactment of Act 17, the [media](#) showed that the unused school building problem persisted and charter and choice schools were still being turned away from purchasing the buildings. WILL’s [previous report](#), based on an open records request sent to City officials, documented the cause of the problem - the City of Milwaukee was refusing to use its power under Act 17 to directly name and sell unused school buildings. Despite lobbying hard for the bill, the City will not sell any vacant school buildings without the approval of MPS and defers to MPS in labeling what buildings are unused. Moreover, the City prohibits private schools in the choice program from purchasing empty buildings and puts restrictive deeds on the buildings preventing choice schools from ever using the buildings in the future (see Exhibit A for the City’s disposition policy).

This is not what the legislature and public had in mind.

To determine what was actually going on, WILL filed an open records request with three top MPS officials – Michelle Nate, Gina Spang, and Adrienne Woods – asking them for their communications relating to the selling or leasing of unused MPS school buildings. Based on the response, WILL concludes that the City’s policy of giving MPS the authority to designate and sell unused school buildings is a complete failure. High-performing charter and choice schools are still being prevented by MPS from purchasing empty, unused schools, even though there is substantial demand for these buildings. MPS seems actively hostile to the idea, preferring to keep buildings it

does not need in order to restrict alternatives for families because it apparently believes it cannot compete with those alternatives.<sup>1</sup>

**MPS does not keep track of what is happening in their buildings.** This hostility extends to a refusal to adopt basic business practices. As an organization with an annual budget exceeding \$1.1 billion which manages over 160 facilities, you might think that MPS would keep track of what is happening in their buildings on a current basis. It would know, at any given time, whether its buildings are used or unused, the number of students being served in each, expenses incurred, the number of months the buildings are in use, etc. It sounds very routine, but MPS apparently does not keep an updated database of these things.

How do we know? WILL asked for this information in its request. In response, MPS told us that it had no “real-time”, centralized portfolio containing this information. It said it would have to conduct special research by calling all 160 schools to find out what was going on and that, given MPS’ own adamant incuriosity about what’s happening in their own buildings, it would charge WILL over \$7,000 to obtain the information. Instead, MPS referred WILL to a 2011 document.

Think about that. Imagine that Apple's headquarters in Silicon Valley had no idea what was going on in the company’s retail stores. Imagine the reaction of top executives and shareholders, if all they could find out is what the stores’ inventory, expenses, and occupancy was for two years ago. Of course, you can’t imagine it. No organization should function this way.

**MPS plays a “shell game” with its unused property.** Not surprisingly, determining which MPS buildings are vacant or for sale reminds one of a dog chasing its tail. In June 2010, MPS listed 28 buildings as surplus, i.e. vacant buildings that are for sale on the market.<sup>2</sup> This figure was repeated in a February 2011 email from a MPS employee to a private school. However, in April 2013, MPS told WILL that only 4 buildings were surplus - Carleton, El Centro Del Nino, MSE, and North 5<sup>th</sup>.

Had MPS sold or leased 24 buildings in the intervening two years? Apparently not. Another chart, circulated internally in March 2013, showed 23 buildings were vacant. Nevertheless, none of those buildings – except the above 4 – were available to be sold, according to MPS (see Exhibit B).

So what is MPS doing with its at least 19 buildings that are empty, but not on the market? According to its March 2013 “Disposition List” (Exhibit B), these buildings are being used for such purposes as: “alternative use,” “records storage,” unspecified “MPS programming” (yet they are empty), and, of course, “TBD” (to be determined). It appears those buildings seem to be “empty,” but “used.” “Surplus” but, then again, “you never know” when they might be needed. Never mind the fact that MPS enrollment is declining, while enrollment at non-MPS charters and choice schools

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<sup>1</sup> Milwaukee School Board President, Michael Bonds, commented that selling empty, unused school buildings to non-MPS schools was like: “[A]sking the Coca-Cola Company to turn over its facilities to Pepsi.” Richards, Erin, *Milwaukee Journal Sentinel*, “Hines, Darling vow new rules on empty MPS buildings,” Jan., 5, 2011, available at: <http://www.jsonline.com/news/education/112943139.html>.

<sup>2</sup> The dates of these charts are significant. In addition to the powers discussed on page 5, Act 17 allows the Common Council to lease or sell any school building labeled as “surplus” before January 1, 2011. Therefore, the 28 buildings identified on June 2010 as surplus could be sold immediately by the City.

are increasing.<sup>3</sup> To be sure, a few have been recently leased to MPS charters, but that does not excuse MPS' negligence for the rest of the empty buildings.<sup>4</sup>

The shell game continues when choice schools or non-MPS charters inquire about purchasing vacant properties. In June 2012, for example, a private school – Milwaukee Christian Prep – asked for a chart of all the unused schools that might be available to purchase. MPS replied that there are no properties on the market. In that same month, MPS told a different private school that: “MPS has not determined the disposition of the buildings and as such does not have information to provide specific to the purchase price or lease rate for the properties listed.”

All in all, MPS' strategy can be summed up succinctly with, as one MPS official put it: “The availability and cost [of the buildings] is dependent on the organization's chartering status with MPS” (May 2013). In other words, if you are in the choice program or a non-MPS charter, you are out of luck.

**There is a huge demand for these unused school buildings.** Perhaps someday and in some way MPS will find a use for these buildings. For now, they sit empty, costing taxpayers at least \$1.2 million every year in utility costs alone (per MPS' 2012 utility cost records). Of the 23 or so school buildings that are apparently vacant, we have identified charter and choice school interest in purchasing nearly *every single one*. In other words, practically every vacant school building could have a charter or private school in it - and no longer drain taxpayer resources - if MPS (or the City) was minimally cooperative. For example:

Woodlands School, an independent charter, has been in Milwaukee since 1936 and boasts strong test results – all eighth grade students achieved proficient or higher in reading, math, language, and science. In July 2012, Woodlands, seeking to expand, sent MPS a letter of intent to purchase three vacant school buildings: Dover (holds 452 students), 88<sup>th</sup> Street (334 students), or Hayes Elementary (280 students). On August 31, 2012, without any justification, MPS declined the offers.

St. Marcus, a private school in the Milwaukee choice program, serves over 600 students, and although 90% come from low-income families, over 95% of its students graduate from high school in 4 years or less. On October 30, 2012, St. Marcus inquired about purchasing one of three vacant MPS buildings - all of which are located within 8 blocks of St. Marcus (see Exhibit C). Henry Tyson, Superintendent of St. Marcus, wanted Garfield, Malcolm X, or Lee Elementary schools. The City's Real Estate Manager said no because “MPCP [choice] schools are not eligible to purchase vacant MPS property.” She also revealed that MPS was using the empty schools as a political pawn by stating that: St. Marcus should “join the City of Milwaukee in *lobbying vigorously for repair of the [funding] formula*” (emphasis added) – meaning that MPS would only sell the empty schools if MPS got a change in the state funding formula.

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<sup>3</sup> In 2010, 27% of all publically funded students in Milwaukee were outside the MPS system, ie choice, non-MPS charters, compared to 73% at MPS. In contrast, in 2000 only 12% of students were outside MPS, compared to 88% at MPS.

<sup>4</sup> 65<sup>th</sup> Street is leased by MTEC, Green Bay Avenue by Universal, Happy Hill by Banner, and Webster by Universal.

That was apparently not true. Even though MPS got their funding fix in the 2013 state budget, last week, [the City rejected St. Marcus'](#) most recent attempt to purchase the empty building. Instead, behind closed doors, MPS decided to turn Malcolm X into a Community Center. President Bonds and the Board claim that they have been committed to turning Malcolm X into a Community Center for over a year.<sup>5</sup> But if that's the case, why did MPS routinely give tours of Malcolm X to charter schools looking for space? From 2012-2013, MPS was clearly showing the building to school operators with no mention that it was not available.<sup>6</sup>

Lighthouse Academies, a charter school, on July 2010 offered to lease or purchase Happy Hill (holds 425 students), Carleton (398 students), or Garfield (453 students). Carleton was prioritized, but MPS told Lighthouse that it was designated for another purpose. MPS refused to negotiate workable terms for Lighthouse's second choice. As a result, Lighthouse purchased and renovated a warehouse, several blocks from Carleton. Carleton and Garfield sit empty today, and Lighthouse's several million dollars that went to warehouse renovation could have gone to the taxpayers.

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. However, MPS decided to play hardball, forcing Highland to withdraw its letter of intent because the deed restriction made it impossible for financing the required renovations (see next page). 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 6 years.

Milwaukee College Prep (MCP), a charter school, is one of the top schools not just in Milwaukee but the entire state. With three campuses in Milwaukee, MCP has over 1,300 students, 92% of which qualify for free and reduced lunches. The schools' WKCE test scores were higher than the State and City averages for all subjects – reading, math, science, social studies, and language arts. Even with these successes, MCP has run into many roadblocks in its mission to expand operations (see Exhibit D):

- At various times, MCP complained that it was “basically operating in the dark in regards to the building acquisition” (July, 2010).
- Robb Rauh, Principal of MCP, told MPS that he was interested in buying Malcolm X and Edison but he wanted a list of other available schools. In August 2012, MPS replied that a "list of unused school buildings was not available at that time." Edison still sits empty - as it had since July 2007.
- Undaunted, MCP inquired about purchasing Green Bay Avenue School and submitted a letter of intent on April 20, 2012. MCP was able to successfully convince the School Board to approve a charter for a school to open in Fall 2013. However, on August 31, MPS rejected MCP's letter of intent. The only justification was that MPS said that it was going to

<sup>5</sup> Taylor, Beverly, *Fox6 Milwaukee*, “Group Looks to Purchase Former MPS School,” September 4, 2013, video at 1:47, available at <http://fox6now.com/2013/09/04/group-looks-to-purchase-neglected-mps-building-mps-says-no-for-now/>.

<sup>6</sup> In 2012, MPS gave tours of Malcolm X to: Believers Institute (4/24/12), CYD and School of Excellence (4/20/12), Milwaukee College Prep (8/20/12), and Heritage (5/1/2012). Superintendent Thornton signed off on the MCP and CYD tours. Emails also indicate that President Bonds was briefed on CYD's tour of Malcolm X.

utilize the building for itself. But MPS kept showing Green Bay to other schools. Once MCP found out about this, in January 2013, it asked if Green Bay was back on the market. MPS said to submit another letter of intent, which MCP did. MPS never responded. The building was leased to a charter company from Philadelphia.

- Believing that it had the blueprint to turn around failing schools, MCP offered to purchase the 6 lowest performing MPS schools. MCP wanted to take them over as charter schools and be responsible for turning them around. MPS said no.

**MPS' refusal to sell empty buildings – and the City in enabling MPS – violates the spirit of state law.** 2011 Act 17 was a direct response to the outcry resulting from the news in 2010 that MPS was refusing to sell its unused schools. Under Act 17, the Milwaukee Common Council can adopt a resolution to sell or lease property if a school building has been unused or underutilized for at least 12 consecutive months (including the 12 months prior to passage).<sup>7</sup> Wis. Stat. § 119.60(2m). Once the Common Council adopts a resolution approving the sale or lease of school property, the MPS board *must* provide the City with all documents relating to the property. In other words, the City has complete control over the selling and leasing of its school buildings.

And that is exactly what the bill's main sponsor, Senator Alberta Darling, had intended. In proposing the bill, Senator Darling indicated, "We must focus on educating children and not on whose name is on the front of the building. All of us owe it to the taxpayers to ensure that these schools are used to provide quality education for children."<sup>8</sup> When addressing why MPS was not selling its empty buildings, she said, "They're in no condition to use these buildings because MPS is not growing. It makes no sense at all. What would you want a school for other than to provide some educational environment?"<sup>9</sup> And public opinion was strongly behind her – 70% of Milwaukee residents believe that empty school buildings should be sold to choice or charter schools.<sup>10</sup>

Despite all of that the City refuses to honor Act 17's provisions and, in fact, appears to be complicit with MPS in frustrating Act 17. Local governments are prohibited from frustrating state law and policy. Court precedent in Wisconsin holds that the City cannot adopt policies that infringe on state public policy or the spirit of state law. *Anchor Sav. & Loans Ass'n v. Equal Opportunities Comm'n*, 120 Wis. 2d 391, 397 (1984); *See Fox v. City of Racine*, 225 Wis. 542 (1937) ("municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state.").

<sup>7</sup> *Wisconsin Legislative Council*, Act Memo, 2011 Wisconsin Act 17, May 31, 2011, available at: <https://docs.legis.wisconsin.gov/2011/related/lactmemo/sb20.pdf>.

<sup>8</sup> *MacIver Institute*, "Darling, Hines Continue Push for MPS Building Sales," January 18, 2011, available at: <http://www.maciverinstitute.com/2011/01/darling-hines-push-for-mps-building-sales/>.

<sup>9</sup> Vevea, Becky, *Milwaukee Journal Sentinel*, "Rules tie up Milwaukee Public Schools real estate," December 31, 2010, available at: <http://www.jsonline.com/news/education/112699029.html>.

<sup>10</sup> *Wisconsin Policy Research Institute*, "November Education Poll Toplines," December 2012, available at: <http://www.wpri.org/polls/December2012/December2012Toplines.pdf>

However, with regard to Act 17, the City has been doing just that. It ignored the legislature's request to sell the buildings. It passed policies that explicitly prohibited private schools in the choice program from purchasing the buildings. It has enabled MPS to stonewall, frustrate, and prevent charter and choice schools from buying the buildings.

**MPS deed restrictions may be void on public policy grounds.** The records request confirmed our belief that MPS and the City are using deed restrictions to prevent the buyer from later selling a building to a choice or charter school (see Exhibit E). Through the deed restriction, MPS prohibits buyers – and future buyers – of its property to use the building “at any time for any Competing Use.” And MPS defines “Competing Use” as an independent charter or a private school participating in the school choice program.

These deed restrictions have been the subject of many complaints from potential buyers. In July 2010, the director of a nonprofit real estate firm remarked that the restriction was a major hurdle in the leasing of buildings. This complaint was echoed by other schools, such as HAPA.

The deed restrictions also stand on shaky legal ground. A very similar deed restriction in Cincinnati – prohibiting the sale of empty buildings to charter schools – was held unconstitutional by the Ohio Supreme Court as a violation of public policy. *Cincinnati City School v. Conners*, 132 Ohio St. 3d 468 (2012). Likewise, in Wisconsin, courts can void contracts if they are deemed to be against public policy, *Trumpf v. Shoudy*, 166 Wis. 353 (1917), and generally disfavor deed restrictions, *see Solowicz v. Forward Geneva Nat., LLC*, 323 Wis. 2d 556 (2009) (“Wisconsin public policy favors the free and unrestricted use of property.”).

By preventing potential buyers from reselling buildings to charter and choice schools, MPS and the City are suppressing what state law permits; the full implementation of the choice and charter program requires unused, empty school buildings to be fully available for purchase by choice and charter schools. Because no legitimate government interest is being served by refusing to sell empty buildings, it's likely there is a public policy violation.

And MPS knows that this is a legal issue. It's why MPS officials advised their communications team to “stay silent on the deed restriction . . . it is a complicated issue to explain, so leave it alone for now.” (September 2010).

**Conclusion.** By refusing to sell its vacant, unused school buildings and provide the public with clear information on building availability, MPS and the City are infringing on state public policy, making it difficult for full implementation of the charter and school choice programs. WILL calls upon the City of Milwaukee to use the power the legislature gave it by immediately placing every unused and underutilized school building on the market and allowing choice and charter schools to have a fair opportunity to purchase these buildings.

DEPARTMENT OF CITY DEVELOPMENT POLICY  
DISPOSITION OF MILWAUKEE PUBLIC SCHOOLS PROPERTY

Background

2011 Wisconsin Act 17 gave the City of Milwaukee new authority to sell property owned by the Milwaukee Public Schools. This policy describes how the Department of City Development's real estate section will administer this authority.

All property inquiries should be directed to Elaine Miller, City Real Estate Manager at (414) 286-5732.

Properties to be sold

The City will sell properties that have been declared surplus by the Milwaukee Board of School Directors as well as any other properties MPS indicates it wishes to sell. If a party expresses interest in a property that is not currently available for sale, the City will facilitate a discussion with MPS regarding whether that property can be sold. The City will not use its authority under Act 17 to declare property underutilized at this time.

Sale prices

Sale prices will be set on a case by case basis subject to evaluation of the property and determination of its highest and best use. Prices will be adjusted upward or downward for specific properties, based on factors such as renovation costs, the availability of air conditioning or an elevator in the school, the age of the property, the amount of open space adjacent to the building, length of time on the market and the location of the property.

Leases

The City will not enter into lease agreements for MPS buildings. If a customer seeks a long-term lease or lease-option arrangement, the interested party should work directly with MPS on property disposition.

Sale through requests for proposal

Consistent with general City procedures for the sale of commercial property, all MPS property will be offered for sale initially through a competitive request for proposal process. The use of the RFP allows all eligible parties to be considered for the property.

Consistent with general City procedures for the sale of commercial property, offers to purchase will be evaluated with respect to the quality of the real estate project. Evaluation factors include the amount of proposed investment, exterior design quality, use of emerging businesses and workers qualifying for the resident preference program, and the financial capability of the prospective buyer. Properties proposed for educational use must provide evidence of viability including approval of its operation by the relevant chartering authority. If an RFP attracts multiple responses, these types of factors will be scored by a selection committee to determine the "winning" proposal.

If an RFP does not attract responses by the deadline, or if none of the proposals is judged to be feasible, the property will be moved to "extended listing" status, and offers will be entertained on a first-come, first-served basis.

If staff receives an inquiry about a property before that property is offered for sale by the City, and if MPS no longer chooses to operate the property, the property would be put at the "top of the list" for the next round of RFPs.

Consistent with general City practice for the sale of commercial property, the City may provide an option to purchase for a prospective buyer that takes the property off the market during the option period.

Eligible buyers (educational users)

Because of the continuing negative impact of the State funding formula for voucher schools, sales to educational institutions will be limited to non-profit charter schools, and to private schools not enrolled in the voucher program. The following table provides more detail:

Type of educational user	Can this school type buy MPS property?	Is the buyer permitted to apply for tax-exempt status?
Private voucher school	NO	n/a
Private non-voucher school	YES	NO
For-profit charter (EMO) school	NO	n/a
Non-profit charter (CMO) school	YES	YES

This policy addresses the continuing inequity caused by the school choice “funding flaw” which penalizes Milwaukee taxpayers for the growth of voucher schools. Even though Milwaukee taxpayers pay for 38.4% of voucher costs, these pupils are not counted toward MPS funding in the state’s equalization aid formula. This results in Milwaukee’s property value per pupil being artificially inflated, causing a large, extra reduction in aid. This funding problem was made worse in the 2011-13 State Budget when the High Poverty Aid program intended to partially offset the “funding flaw” was underfunded and school choice enrollment was expanded. The policy may be adjusted if the school funding formula is repaired.

Properties sold to non-profit charter schools for school use will be non-taxable, and no PILOT payment will be required. Properties sold to private non-voucher schools for school use will be fully taxable.

Offers will not be accepted from third-party representatives of charter schools who hope to make a match between a building and a charter school operator.

Showings and property information

Department of City Development real estate staff will provide property information and arrange scheduled showings of MPS property that is offered for sale.

Reversionary clauses and deed restrictions

Consistent with general City procedures for the sale of commercial property, the City will include a reversionary clause that allows the City to recapture the building if it is not occupied within a reasonable amount of time by the buyer. Sales of buildings to educational users will be subject to a deed restriction that requires perpetual educational use of the building by a non-profit, non-voucher school operator. Should a future buyer wish to use the property for some purpose other than a school, the buyer would need to seek Common Council approval to release the deed restriction. Sales of buildings to educational users will require that, in the event the property is no longer used as a non-profit, non-voucher school, the property will become fully taxable.

Financial capability of buyers

Consistent with general City procedures for the sale of commercial property, prior to closing the sale, the buyer will be required to submit evidence that all required financing has been secured for acquisition and renovation of the building.

Sale Authority and Proceeds

Pursuant to 2011 Wisconsin Act 17, the Milwaukee Common Council has the sole authority to approve the sale of MPS real estate that the Council has found to be unused or underutilized. The net proceeds of the sale of MPS real estate shall be deposited in the school operations fund.

# Milwaukee Public Schools

## Disposition of Vacant Facilities

Facility	Address	Disposition	FCI	Sq. ft.	Capacity	Enrollment	Year Built	Repurpose Date
65th Street	6600 W. Melvina Street	alternative use		54,776	614	360	1956	7/2013
68th Street	6720 W. Moltke Avenue	records storage		22,259	290	262	1917	7/2013
88th Street	3575 S. 88th Street	lease to MPS charter		36,227	334	0	1957	7/2014
Dover	2969 S. Howell Avenue	lease to MPS charter		66,629	452	0	1890	7/2014
Edison	5372 N. 37th Street	TBD		152,240	800	0	1924	7/2014
Fletcher	9520 W. Allyn Street	MPS use - support services		60,754	135	0	1973	7/2013
Garland	1420 W. Goldcrest Avenue	MPS programming		31,950	253	297	1967	7/2013
Green Bay Avenue	3872 N. Eighth Street	MPS programming		77,600	506	0	1917	7/2013
Happy Hill	7171 W. Brown Deer Road	lease to MPS charter		53,900	425	0	1958	7/2013
Hayes Bilingual	2431 S. 10th Street	lease to MPS charter		43,396	280	346	1906	TBD
Webster	6850 N. 53rd Street	lease to MPS charter		242,597	1,164	0	1972	7/2013
37th Street	1715 N. 37th Street	alternative use		62,555	375	0	1903	TBD
Carleton	4116 W. Silver Spring Drive	sale and/or re-development		53,290	398	0	1950	TBD
El Centro Del Nino	500 E. Center Street	sale and/or re-development		7,980	-54	0	1925	TBD
Former MSE	6914 W. Appleton Avenue	sale and/or re-development		10,649	54	0	1965	TBD
Frederick Douglas	3409 N. 37th Street	TBD		45,110	253	0	1954	TBD
Lee School	921 W. Meinecke Avenue	possible sale		78,013	533	0	1892	TBD
Malcolm X Academy	2760 N. 1st Street	MPS programming		170,948	1,032	0	1961	TBD
North 5th Street	2770 N. 5th Street	sale and/or re-development		75,298	199	0	1888	TBD
Philipp	4310 N. 16th Street	TBD		53,900	361	0	1932	TBD
Wheatley	2442 N. 20th Street	TBD		84,222	705	0	1902	TBD
Garfield	2215 N. 4th Street	transferred to city		52,804	453	0	1888	TBD
Wisconsin Avenue	2708 W. Wisconsin Avenue	transferred to city		92,600	668	0	1919	TBD

- Retained by MPS for future use
- Awaiting disposition from the Common Council
- Transferred to the city for future development

EXHIBIT B



October 30, 2012

Elaine Miller  
Real Estate Manager  
City of Milwaukee  
809 N. Broadway Street, 2<sup>ND</sup> Floor  
Milwaukee, WI 53202

Dear Ms. Miller:

As you may know, over the past decade, St. Marcus Lutheran School has grown from about 100 students to serving over 600. Despite being almost 90% low-income, St. Marcus students perform at a very high level and over 95% go on to graduate from high school in four years or less. Finally, over the past decade, St. Marcus has invested over \$17,000,000 privately raised dollars to build infrastructure, improve the neighborhood and increase capacity.

As a result of these successes and the extraordinary demand for seats from parents and students, the St. Marcus Board of Directors has authorized a task force to consider the possibility of opening a second campus. The task force is due to complete its work over the next six months and report to the Board in January of 2013.

One critical aspect of the task force's work is to identify potential sites for a second campus. Given that St. Marcus is surrounded by vacant MPS facilities (there are three within 8 blocks of St. Marcus), we are compelled to look at these facilities as potential options.

I am writing to request an explanation as to the process by which St. Marcus could acquire one of the vacant MPS buildings for use as a second campus for St. Marcus School. In order to be able to move the task force's work forward in a timely manner, I would be grateful for the courtesy of a written response by November 15, 2012.

Should you have any questions, or need further information, I can be reached at (414) 303-2133 or via email at [henry.tyson@stmarcus.org](mailto:henry.tyson@stmarcus.org).

Thank you so much for your time, consideration, and a prompt response. Thank you for partnering with us to provide excellence in education to even more of Milwaukee's lower-income youth.

Sincerely,

Henry Tyson  
Superintendent

EXHIBIT C



Department of City Development  
City Plan Commission  
Redevelopment Authority of the City of Milwaukee  
Neighborhood Improvement Development Corporation

Rocky Marcoux  
Commissioner  
rmarco@milwaukee.gov

Martha L. Brown  
Deputy Commissioner  
mbrown@milwaukee.gov

December 5, 2012

Mr. Henry Tyson  
Superintendent  
St. Marcus School  
2215 N. Palmer St.  
Milwaukee, WI 53212

Dear Mr. Tyson:

I am writing to respond to your letters of October 30, 2012 and November 21, 2012, regarding acquisition of vacant Milwaukee Public Schools buildings for use as a second campus by St. Marcus School.

At this point, the City of Milwaukee is working with MPS to market only buildings that have been declared surplus by the Milwaukee Board of School Directors. These properties are made available for sale through a request for proposal process. Department of City Development real estate staff provide property information and arrange showings of MPS property that is offered for sale.

When purchase is proposed for educational re-use as a school, City policy permits buyers that operate non-profit charter schools and private schools not affiliated with the Milwaukee Parental Choice Program. In light of the continuing inequity caused by the school choice "funding flaw," which reduces State funding to MPS, MPCP schools are not eligible to purchase vacant MPS property. (Ms. Miller's statement that MPCP schools could purchase MPS property subject that they pay full property taxes was incorrect.) This policy may be adjusted if the school funding formula is repaired. We encourage successful MPCP schools such as St. Marcus to join the City of Milwaukee in lobbying vigorously for repair of the formula.

I trust this responds to your questions. Please contact me if you require any further information.

Sincerely,

Martha L. Brown  
Deputy Commissioner



## Stacy

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**From:** Nate, Michelle J  
**Sent:** Tuesday, February 19, 2013 7:25 PM  
**To:** Gubernick, Naomi  
**Subject:** FW: Friday's meeting  
**Attachments:** SKMBT\_65213012218310.pdf

#5 mentions leasing Will send the LOI if I can find it in my e-mails

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**From:** Robert Rauh [mailto:Robert.Rauh@milwcollegeprep.com]  
**Sent:** Tue 1/22/2013 5:55 PM  
**To:** Woods, Adrienne L; Gubernick, Naomi  
**Cc:** Kristi Cole; Nate, Michelle J  
**Subject:** Friday's meeting

January 22, 2013

Dear Dr. Thornton,

I wanted to clarify a few points in regards to our meeting last Friday:

1. An e-mail was sent to your office on November 30, 2012, that concluded with the following 2 paragraphs. There had been no follow-up discussion of this matter in the seven weeks since it was sent prior to Friday.

*After reviewing the new statewide report card results, there are a number of elementary schools that are struggling with student academic outcomes in MPS. Amongst these schools are: Auer Avenue (41.7), Lloyd Barbee Montessori (43.8), Sherman (46.9), Thurston Woods (46.2), Townsend (43.2) and Westside I (43.8). I 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, for any of the above sites. (NOTE: "Milwaukee College Prep takeover model" means MCP taking over and running the school as a NI charter for as long as our 5 year contract mutually continues to be renewed.)*

*Milwaukee College Prep is committed to supporting the scholars of Milwaukee Public Schools and would like to charter more schools with you. Please feel free to contact me for further discussion. I look forward to continuing our positive working relationship in providing excellence in education for our children in the city of Milwaukee.*

2. An e-mail that was sent to Ms. Woods on November 30, 2012, as well, with revisions we were recommending to basically act as our own LEA while being chartered with MPS. Ms. Woods said she would discuss this with you and get back to us. There had been no response to this letter in the seven weeks since it was sent prior to our meeting.
3. With your positive endorsement, we were unanimously approved by the MPS School Board to open a new NI charter school in the Fall of 2013 on August 30, 2012. It was at this same meeting that Universal Charter from Philadelphia was approved to open a new NI charter school in the Fall of 2013.
4. We submitted a Letter of Intent for the Green Bay Avenue School on April 20, 2012. We were informed by Michele Nate on August 31, 2012, that our LOI was declined. On September 19, 2012, you, Ms. Gubernick and I met at Amaranth Coffee Shop. You told me then that you were going to propose a \$90m facilities bond and were going to invest \$6m of that money in Green Bay Avenue in order to convert it to a 6-12 school. There was never any discussion of our LOI being denied for any reason other than MPS deciding to utilize that facility itself from you that day or from any of your staff in either prior or subsequent conversations until Friday.
5. When we heard that MPS had shown the Green Bay Avenue building to Rocketship in December, I called Ms. Nate back to reiterate our interest in this site if it was truly back on the market. She recommended I resubmit our Letter of Intent, which I did on 1/8/12. When talking with Ms. Nate about our interest in Green Bay Avenue, I raised the issue of leasing vs. buying. I reiterated our interest in buying so we had full control over a building that we were investing money in, but I also said that I would be willing to sign a long term lease as long as we were

able to make revisions to our contract as suggested in #2 above. I also did mention that we already had the funds raised to purchase the building, so that part of conversation was obviously forwarded to you. I was told by Ms. Nate earlier last week that she was working to take our LOI to a closed door Board meeting in the next few weeks. No one ever mentioned anything about Universal Charter being in negotiations for that building until you stated this in our meeting. Obviously, that came as quite a shock and disappointment.

We entered into our relationship with MPS two years ago with the high hopes of being a strong and long-term partner, a strong provider of a great education for our scholars, a strong provider of a great environment for our families and a provider of great outcomes. I believe that the above points, along with the data that was given to you on Friday, indicate that we have been proactive and committed to moving that agenda forward.

Sincerely,



Robert Rauh

Notes:

1. Attached are e-mails referenced above.
2. Ms. Woods, I do not have Dr. Thornton's e-mail address. Can you please forward this e-mail to him? Thank you.

ROBERT RAUH, CEO

**WWW.MILWCOLLEGEPREP.COM**

36<sup>TH</sup> STREET CAMPUS ~ 2449 N. 36<sup>TH</sup> STREET ~ MILWAUKEE, WI 53210

38<sup>TH</sup> STREET CAMPUS ~ 2623 N. 38<sup>TH</sup> STREET ~ MILWAUKEE, WI 53210

LLOYD STREET CAMPUS ~ 1228 W. LLOYD ST. ~ MILWAUKEE, WI 53205

414-445-1000 (EXT 291) ~ 414-339-9887 (CELL) ~ 414-445-8167 (FAX)

Sample  
DEED RESTRICTION  
Document Title

Document Number

Name and Return Address  
City of Milwaukee  
Attn: Real Estate Section  
809 North Broadway  
Milwaukee, WI 53202-3617

Tax Key No.:

Recording Area

This DEED RESTRICTION (this “**Restriction**”), made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 (the “**Effective Date**”) by the City of Milwaukee, a Wisconsin municipal corporation, acting upon the request of the Board of School Directors of the Milwaukee Public Schools under Wis. Stat. § 119.60(2) (the “**Declarant**”) and \_\_\_\_\_ Buyer Name \_\_\_\_\_, a Wisconsin corporation (“**Buyer**”).

**Witnesses:**

**A.** Declarant is the owner in fee simple absolute of certain real property located in the City of Milwaukee, Milwaukee County, Wisconsin, which real property is more particularly described on the **Attachment A** attached to and made a part of this Restriction (with all improvements thereon, whether as of or at any time after the Effective Date, the “**Property**”).

**B.** Declarant and Buyer on \_\_\_\_\_, 2011 entered into a purchase and sale agreement ( “**Sale Agreement**”), pursuant to which Declarant shall, of even date herewith, convey title to the Property to Buyer for the sum of \_\_\_\_\_ and No/100ths (\$\_\_\_\_.00) (“**Purchase Price**”).

**C.** By action adopted on \_\_\_\_\_, 2011, the Board of School Directors of the Milwaukee Public Schools, a public school district organized and existing under the Constitution and laws of the State of Wisconsin (“**MPS**”), found and determined (i) that the Competing Uses (as defined in this Restriction) detract from MPS’s ability to establish, provide, and improve MPS’s programs, functions, and activities for the benefit of its pupils, and thus (ii) that prohibiting such Competing Uses would promote the cause of education in MPS;

**D.** Pursuant to the expressed terms and conditions of the Sale Agreement, Declarant and Buyer—the latter for itself and for all of its successors and assigns in title to all or any portion of the Property—wish to ensure that the Property shall be used for purposes, and in a fashion, that are consistent with the mandate and authority of the Milwaukee Public Schools (“**MPS**”) under (i) Chapters 115 to 121 of the Wisconsin Statutes and (ii) policies, procedures, and findings of the Milwaukee Board of School Directors in effect as of the Effective Date.

**NOW, THEREFORE**, the Declarant, for itself and for all Governed Persons, does hereby declare that the Declarant’s Property shall be held, sold, conveyed, transferred, used, and improved only subject, in every instance, to the conditions, covenants, restrictions, and reservations set forth below in this

**Deed Restriction;**

all of which covenants, conditions, restrictions, and reservations shall (i) govern all Governed Persons, and (ii) run with and bind all and any portion of the Property.

**1. Definitions.** For purposes of this Restriction, the following terms shall have the stated meanings:

- a. **“Competing Use”** shall mean the following: (i) use by any school operating under Wis. Stat. § 119.23; (ii) use by any school operating under Wis. Stat. § 118.40(2r); and (iii) use by any other school if enrollment in such school would, in any School Year, have the incident or effect of diminishing Pupil Enrollment as compared to Pupil Enrollment in the immediately preceding School Year.
- b. **“Deed of Conveyance”** shall mean the Special Warranty Deed, of even date herewith, by which the Declarant shall convey title to the Property to the Buyer.
- c. **“Governed Person”** shall mean every Person who may at any time after the Effective Date purchase or otherwise accede or succeed to any right, title, or interest in or to, or otherwise enjoy any right to use or occupy, any portion (or all) of the Property.
- d. **“Person”** shall mean an individual, corporation, partnership, association, or other legal entity.
- e. **“Proposed Improvements”** shall mean such building improvements as shall be required to improve the Property for use as \_\_\_\_\_.
- f. **“Pupil Enrollment”** shall mean, with respect to any School Year, the annual average number of “pupils enrolled” (as defined in Wis. Stat. § 121.004(7)) in MPS, as determined for such School Year under Wis. Stat. § 121.05(1)(a).
- g. **“School Year”** shall mean each period of July 1 to June 30 commencing on or after June 1, 2010.

**2. Defeasance upon Introduction of a Competing Use (Fee Simple Subject to a Condition Subsequent).**

- a. Competing Uses Prohibited. The Property shall not be used at any time for any Competing Use. If MPS shall determine that the Property is being used for any Competing Use, Either MPS or Declarant may deliver to Buyer written notice of Buyer’s breach of this prohibition (the **“Notice of Default”**), and Buyer shall have thirty (30) days after delivery to cure such default by fully and finally terminating the Competing Use.
- b. Arbitration. If, in MPS’s view, the Competing Use shall not be fully and finally terminated by the thirtieth (30<sup>th</sup>) day after MPS or Declarant shall deliver the Notice of Default (such thirty (30) days being known as the **“Cure Period”**), then each of Declarant and Buyer may, not more than three (3) days after the expiration of the Cure Period, appoint one (1) arbitrator apiece, after which the arbitrator(s) so selected shall immediately appoint another arbitrator (the **“Deciding Arbitrator”**). The appointment of arbitrators in accordance with the foregoing shall be binding on Declarant and Buyer.

Immediately upon identification of the Deciding Arbitrator, MPS and Buyer shall agree on a location for arbitration and a date for the same, which date shall not be more than thirty (30) days after the Notice of Default’s delivery. The sole issue to be determined at the arbitration hearing shall be whether, after the expiration of the Cure Period, the Property shall then be used in any part for any Competing Use. Declarant and Buyer may submit relevant information to the arbitrators in connection with such dispute by such means and pursuant to such procedures as the Deciding Arbitrator shall determine. The Deciding Arbitrator alone shall make a final decision on the claim, which determination shall be conclusive, final and binding on both Declarant and Buyer, and may be enforced as a judgment at law or in equity in any court of competent jurisdiction.

If the Deciding Arbitrator shall determine that the Property is not, at any time after the expiration of the Cure Period, then used in any part for any Competing Use, then MPS and Declarant shall jointly be responsible for all costs and expenses incurred in connection with the arbitration under this Section 2(b), including all reasonable and out-of-pockets costs, fees, and expenses of MPS, Declarant, and Buyer. Otherwise, the Buyer shall be responsible for all such costs and expenses incurred in connection the arbitration under this Section.

- c. **Right of Entry and Power of Termination.** If the Deciding Arbitrator shall determine that the Property is being or has been, at any time after the expiration of the Cure Period, used for any Competing Use, then Declarant may, at its sole discretion, immediately terminate all intervening interests in the Property and cause title to be recovered by Declarant. Such right of entry shall be deemed exercised immediately upon (i) Declarant’s securing approval from the City of Milwaukee’s Common Council for such revesting, and (ii) Declarant’s recording against the Property, in the Office of the Milwaukee County Register of Deeds (“**Register of Deeds**”), a “Declaration of Termination” evidencing both such Common Council approval and Declarant’s election to exercise its right of entry in the Property, and in so doing to reacquire all right, title, and interest in and to the same. If Declarant records such a “Declaration of Termination,” then title to the Property in fee simple absolute shall immediately become forfeit to, shall revert to, and shall be revested in Declarant, all without need for Declarant to take any other act, and without any right of Buyer (or of any successor in interest to all or any portion of the Property) to reclaim the Property (or any interest in it) or to receive compensation for monies paid for, or improvements made to, the Property. Thereafter, title to the Property shall be vested in Declarant in fee simple absolute as absolutely, fully, and perfectly as if no deed of conveyance from Declarant had ever been made.

**3. Restriction against tax exemption.**

- a. **Property to Remain Taxable.** The Property shall at all times be and remain fully taxable for purposes of all *ad valorem* real property taxes payable under Wisconsin law, and thus no Governed Person shall apply for, seek, or accept, any property tax exemption (whether under Wis. Stat. § 70.11 or otherwise) for the Property, or any portion of the Property.
- b. **Release.** Notwithstanding the foregoing, the restriction arising under this Section 3 may be released by a resolution passed by the Common Council of the City of Milwaukee for the purpose of granting such release.

**4. Covenants to Commence and Complete Proposed Improvements.**

- a. **Approval, Commencement, Prosecution, and Completion.** Within eighteen (18) months after the Effective Date, Buyer shall obtain (at its sole cost and expense) all reviews, approvals, and permits required by Declarant as a condition to Buyer’s immediately commencing construction of the Proposed Improvements. Furthermore, within twenty-four (24) months after the Effective Date, there shall be commenced (and thereafter diligently and without interruption prosecuted) upon the Property the construction of the Proposed Improvements. Finally, not later than thirty-six (36) months after the Effective Date, the Proposed Improvements shall be complete and ready for occupancy.
- b. **Declarant’s Option to Repurchase.** If all necessary reviews, approvals, and permits required by Declarant shall not be timely obtained by Buyer as required under Section 4(a), or if the Proposed Improvements shall not be timely commenced as required under Section 4(a), or if the Proposed Improvements shall not (once commenced) be prosecuted diligently and without interruption as required under Section 4(a), or shall not (once commenced) be timely completed and ready for occupancy as required under Section 4(a), then—in any such instance—the Declarant shall have the sole and exclusive option, exercisable upon at least ten (10) days’ written notice given to all Governed Person, to repurchase the Property for ninety-five percent (95%) of the Purchase Price, upon which all Governed Persons shall then join in reconveying the Property to Declarant by special warranty deed, free and clear of all liens, encumbrances, taxes, assessments and rights of others, except only those excepted from the limited warranty of title provided in the Deed of Conveyance.

**5. Severability.** If any term or provision of this Restriction is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any other terms or provisions of this Restriction, and the same shall continue to be effective to the fullest extent permitted by law.

**6. Governing Law.** This Restriction concerns property located in the State of Wisconsin and shall be construed in accordance with the internal laws of the State of Wisconsin.

**7. Binding Effect.** The conditions, covenants, restrictions, and reservations contained herein shall be deemed at all time to touch and concern the land, and thus to run with title to the Property. This Restriction shall thus be binding on all Governed Persons. In addition, given the nature of Declarant's interest in the Property, this Restriction (i) shall be deemed to benefit both the City of Milwaukee a Wisconsin municipal corporation (for purposes of this Section, the "City"), as well as MPS, and hence (ii) shall be enforceable (whether at law or in equity) by the City and by MPS, whether acting alone or acting in concert.

**8. Entire Restriction.** This Restriction includes the entire understanding of the Declarant and the Buyer with respect to the subject matter hereof.

**9. Amendment.** This Restriction may not be amended, modified, terminated, or in any manner altered except by means of a written instrument, in recordable form, executed by the Declarant and by all Governed Persons.

**IN WITNESS WHEREOF**, the Declarant has executed this Restriction, by its duly authorized representatives, on the Effective Date.

**Declarant**

**CITY OF MILWAUKEE,**

acting upon request of the Board of School Directors of Milwaukee Public Schools under Wis. Stat. § 119.60(2)

**Comptroller Countersignature**

(Milwaukee City Charter § 3-18-2)

By: \_\_\_\_\_  
Tom Barrett, Mayor

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
City Comptroller

Attest: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
City Clerk

**City Attorney's Office**

(Milwaukee Code of Ordinances § 304-21)

By: \_\_\_\_\_  
Michael Bonds, President,  
Board of School Directors

Approved by: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Gregory E. Thornton, Superintendent

STATE OF WISCONSIN        )  
  )ss.  
MILWAUKEE COUNTY        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, Tom Barrett, Mayor of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My commission Expires: \_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, Michael Bonds, President of the Board of School Directors, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My commission Expires:\_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, Gregory E. Thornton, Superintendent of Milwaukee Public Schools, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My commission Expires:\_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, \_\_\_\_\_, the \_\_\_\_\_ City Clerk of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My commission Expires:\_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, \_\_\_\_\_, the \_\_\_\_\_ City Comptroller, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My commission Expires:\_\_\_\_\_

**This instrument drafted by:**  
The City of Milwaukee, Department of City Development (Miller)