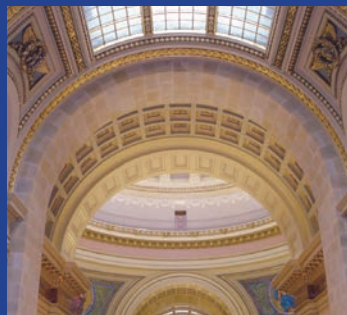


**Report 17-13
August 2017**

Opportunity Schools and Partnership Program

STATE OF WISCONSIN



Legislative Audit Bureau ■

Opportunity Schools and Partnership Program

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STATE OF WISCONSIN | Legislative Audit Bureau

22 East Mifflin St., Suite 500 ■ Madison, WI 53703 ■ (608) 266-2818 ■ Hotline: 1-877-FRAUD-17 ■ www.legis.wisconsin.gov/lab

Joe Chrisman
State Auditor

August 4, 2017

Senator Robert Cowles and
Representative Samantha Kerkman, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Cowles and Representative Kerkman:

As required by s. 13.94 (1) (os), Wis. Stats., we have completed a performance evaluation audit of the opportunity schools and partnership program established by 2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act.

Student achievement and other factors determine whether public schools in a given school district are eligible for transfer into the program as opportunity schools. Statutes include separate eligibility criteria for Milwaukee Public Schools (MPS) and all other school districts. An opportunity school is managed and controlled by a program commissioner selected by the applicable county executive.

No schools have been transferred into the program to date, and no schools will be eligible for transfer into the program in the 2017-18 school year. However, we found that at least 1 of 65 eligible MPS schools should have been transferred into the program in the 2016-17 school year. No school was transferred into the program, in part, because the first commissioner appointed by the Milwaukee County Executive resigned in June 2016, and the commissioner position has remained vacant since then. In the 2018-19 school year, MPS and the Racine Unified School District could have schools eligible for transfer into the program.

We recommend the Milwaukee County Executive notify the Governor and the mayor of the City of Milwaukee that the commissioner position is vacant. We also recommend that the Department of Public Instruction (DPI) either comply with statutes by annually publishing in a timely manner the School and School District Accountability Report, which helps identify schools eligible for transfer into the program, or again request that statutes be modified to provide it with additional time to publish this report.

We appreciate the courtesy and cooperation extended to us by DPI and the Milwaukee County Executive. Responses from DPI and the Milwaukee County Executive follow the Appendix.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joe Chrisman'.

Joe Chrisman
State Auditor

JC/DS/ss

Opportunity Schools and Partnership Program ■

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, established the opportunity schools and partnership program.

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, established the opportunity schools and partnership program. Student achievement and other factors determine whether public schools in a given school district are eligible for transfer into the program. Statutes include separate eligibility criteria for Milwaukee Public Schools (MPS) and all other school districts. An opportunity school is managed and controlled by a program commissioner selected by the applicable county executive. No schools have been transferred into the program to date, and the State Superintendent of Public Instruction indicated that no schools will be eligible for transfer into the program in the 2017-18 school year. However, we found that although the Department of Public Instruction (DPI) identified MPS schools eligible for transfer into the program in the 2016-17 school year, the commissioner did not transfer any MPS schools into the program before resigning in June 2016, and the commissioner position has remained vacant since then. In the 2018-19 school year, MPS and the Racine Unified School District could have schools eligible for transfer into the program.

Beginning in 2017 and biennially thereafter, Act 55 requires the Legislative Audit Bureau to prepare a performance evaluation audit of the program. In this first report, we recommend that the Milwaukee County Executive notify, in accordance with statutes, the Governor and the mayor of the City of Milwaukee that the commissioner position is vacant. We also recommend that DPI either comply with statutes by publishing in a timely manner its annual School and School District Accountability Report, which helps identify schools eligible for transfer into the program, or again

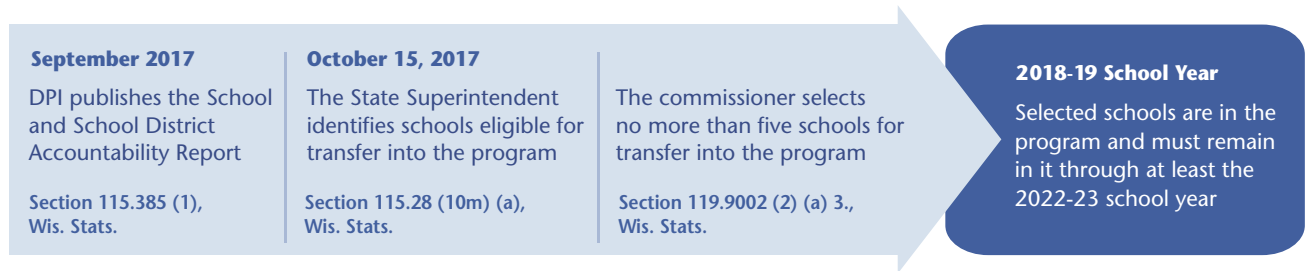
request that statutes be modified to provide it with additional time to publish this report.

Milwaukee Public Schools

Under the program, statutes specify unique eligibility criteria for MPS, compared to all other school districts. The statutorily required process by which eligible MPS schools would be transferred into the program in the 2018-19 school year is shown in Figure 1. After a school has been transferred into the program, statutes prohibit the school from being transferred out of the program for five consecutive school years.

Figure 1

Statutorily Required Process by Which Eligible MPS Schools Would be Transferred into the Program in the 2018-19 School Year



Statutes require DPI to annually publish the School and School District Accountability Report by September. Based on factors such as student achievement, attendance, and graduation rates, DPI places school districts throughout the state into one of five performance categories: significantly exceeds expectations, exceeds expectations, meets expectations, meets few expectations, or fails to meet expectations. DPI also places each school into one of these five performance categories.

By October 15 of each year, statutes require the State Superintendent to identify to the MPS superintendent and the program commissioner selected by the Milwaukee County Executive all MPS schools eligible for transfer into the program. A given school is eligible for transfer into the program if MPS was placed in the fails to meet expectations category in the most-recent School and School District Accountability Report and that school either:

- was placed in the fails to meet expectations category in the most-recent School and School District Accountability Report; or
- is in a vacant or underutilized school building, as defined by statutes.

The Appendix summarizes the process by which schools are eligible for transfer into the program.

Program Commissioner

Statutes require the Milwaukee County Executive to select a program commissioner.

Even if no MPS schools are in the program, statutes require the Milwaukee County Executive to select a program commissioner. Statutes also require the county executive to notify the Governor and the mayor of the City of Milwaukee if the commissioner position becomes vacant. The Governor, the county executive, and the mayor are statutorily required to each appoint an individual who is not an elected official to compile a list of nominees for the commissioner position. No later than 120 days after notifying the Governor and the mayor, statutes require the county executive to select a new commissioner from the list of nominees. In November 2015, the Milwaukee County Executive selected the first commissioner for MPS schools, as required by statutes.

At least 1 of 65 eligible MPS schools should have been transferred into the program in the 2016-17 school year.

In October 2015, DPI formally notified the Milwaukee County Executive that 65 MPS schools were eligible for transfer into the program. As a result, s. 119.9002 (2) (a), Wis. Stats., required the commissioner to select at least one and not more than three MPS schools to be transferred into the program in the 2016-17 school year. However, we found that no MPS school was transferred into the program in the 2016-17 school year.

To select a school, statutes require the commissioner to establish policies for providing qualitative analysis of each eligible school to determine whether the school is suitable for transfer into the program. Statutes provide that a school must be selected based, in part, on the level of interest within the school and the school’s community in transferring the school into the program. Statutes require the commissioner to provide alternative public school attendance arrangements for students who do not wish to attend a school in the program.

The Milwaukee County Executive’s office indicated that the commissioner had not identified a school to be transferred into the program as of June 2016, when the commissioner resigned. Since then, the Milwaukee County Executive has not selected a new

commissioner. Statutes do not indicate the actions that should be taken if a commissioner should have transferred a school into the program in a given school year but did not do so.

No MPS schools will be transferred into the program in the 2017-18 school year because the School and School District Accountability Report that DPI published in 2016 indicated that MPS was not placed in the fails to meet expectations category as a district. If MPS schools are eligible for transfer into the program in subsequent school years, statutes require the commissioner to select no more than five eligible MPS schools for transfer into the program in a given school year.

The Milwaukee County Executive's office indicated that it has not notified the Governor and the mayor of the vacancy in the commissioner position, although such notification is required by statutes. Statutes do not provide a timeline for the Milwaukee County Executive to notify the Governor and the mayor of a vacancy in the commissioner position, but this position has been vacant for more than one year. The Milwaukee County Executive should notify the Governor and the mayor of the vacancy, which will allow the statutorily prescribed process for selecting a new commissioner to begin. If the School and School District Accountability Report that DPI must publish by September 2017 indicates that MPS schools are eligible for transfer into the program, the new commissioner will need to begin the process for identifying one or more schools to transfer into the program in the 2018-19 school year.

Recommendation

We recommend the Milwaukee County Executive notify, in accordance with statutes, the Governor and the mayor of the City of Milwaukee that the position of commissioner of the partnership program is vacant.

Other School Districts

Under the program, statutes specify separate eligibility criteria for all school districts other than MPS. Each October, statutes require the State Superintendent to notify the Governor, the appropriate county executive, and the appropriate mayor if a school district other than MPS is eligible to have its schools transferred into the program. Within 120 days of receiving such notification, statutes require the Governor, the county executive, and the mayor to compile a list of candidates for the position of program commissioner for the school district. Statutes indicate that the county executive must select a commissioner from the list no later

than 120 days after having been provided the list. Upon selection, statutes require a commissioner to establish a program that is “substantially similar” to the program for MPS schools. Statutes do not define “substantially similar.”

To be eligible for transfer into the program, a school must be in a school district that:

- had a membership of more than 15,000 students in the most-recent school year;
- was placed in the fails to meet expectations category in the School and School District Accountability Report for the two most-recent school years; and
- received intradistrict transfer aid, which is intended to help improve the racial balance among a district’s schools, in the two school years the school district was placed in the fails to meet expectations category.

The Appendix summarizes the process by which schools are eligible for transfer into the program.

As shown in Table 1, five school districts in addition to MPS had a membership of more than 15,000 students in the 2015-16 school year, but only the Madison Metropolitan School District and the Racine Unified School District also received intradistrict transfer aid. If either of these districts is placed in the fails to meet expectations category for two consecutive school years and continues to receive intradistrict transfer aid in those two school years, its schools will be eligible for transfer into the program. Only the Racine Unified School District was placed in the fails to meet expectations category for the 2015-16 school year. It was not placed in any category in the 2014-15 school year because 2015 Wisconsin Act 20 prohibited DPI from publishing the School and School District Accountability Report in 2015.

Table 1

Program Eligibility Criteria
Results for the 2015-16 School Year

School District ¹	Program Eligibility Criteria		
	Student Membership	Received Intradistrict Transfer Aid	Fails to Meet Expectations ²
Madison Metropolitan	27,942	✓	
Kenosha Unified	22,463		
Green Bay Area	22,338		
Racine Unified	21,279	✓	✓
Appleton Area	15,397		

¹ In addition to MPS.

² As indicated in the School and School District Accountability Report that DPI published in 2016.

The Racine Unified School District could have schools eligible for transfer into the program in the 2018-19 school year.

As noted, no schools will be transferred into the program in the 2017-18 school year. However, if the Racine Unified School District were placed in the fails to meet expectations category for the 2016-17 school year, as indicated in the School and School District Accountability Report that DPI must publish by September 2017, its schools will be eligible for transfer into the program in the 2018-19 school year. Its schools will be eligible for transfer into the program because the school district will have been placed in the fails to meet expectations category for two consecutive school years, received intradistrict transfer aid in both of those school years, and had a membership of more than 15,000 students in the most-recent school year.

We note that 2015 Wisconsin Act 55 modified statutes related to intradistrict transfer aid. Under Act 55, the aid will be provided only for students participating in intradistrict transfer programs in the 2015-16 school year. In subsequent school years, Act 55 prohibits school districts from receiving such aid for students who did not participate in intradistrict transfer programs in the 2015-16 school year. After school districts other than MPS no longer receive intradistrict transfer aid, only schools in MPS will be eligible for transfer into the partnership program, unless statutes are modified.

Oversight of Opportunity Schools

A program commissioner selected by any county executive throughout the state is statutorily responsible for the overall management and control of an opportunity school, including the budget, staffing,

facilities, and student transportation. A commissioner may determine a school's calendar and hours and the compensation of its staff, who are not employees of the school district.

A commissioner must determine through a request for proposal process which of the following statutorily identified entities will operate an opportunity school:

- an individual or group not currently operating a school;
- an individual operating a non-profit charter school that met certain performance requirements in recent school years; or
- the governing body of a nonsectarian non-profit private school in a parental choice program that met certain performance requirements in recent school years.

Statutes prohibit students enrolled in an opportunity school from being charged tuition. Instead, the State Superintendent must use funds from a sum-sufficient appropriation to pay a commissioner a per-student amount equal to the per-student amount paid to an operator of a charter school. In the 2016-17 school year, this per-student amount was \$8,188. Statutes require that a school district's state aid be reduced by an amount equal to the amount paid to a commissioner. A commissioner may charge each entity operating an opportunity school a fee of up to 3.0 percent of the total per-student payment the entity receives, not to exceed a combined total of \$750,000 annually from all entities.

Statutes prohibit a school from being transferred out of the program for five consecutive school years.

As noted, statutes prohibit a school from being transferred out of the program for five consecutive school years. Thereafter, a commissioner may transfer a school out of the program if the school was placed in the significantly exceeds expectations, exceeds expectations, or meets expectations category in each of the three preceding school years, as indicated in the School and School District Accountability Report. A commissioner may transfer the operation of such a school to:

- the school district, if the school district has not been placed in the fails to meet expectations category for any of the three preceding school years;
- an individual or group that will operate the school as a charter school; or
- the governing body of a private school.

School and School District Accountability Report

Although statutes require DPI to annually publish the School and School District Accountability Report by September, DPI did not publish the 2016 report until November 17, 2016. DPI indicated that it is not possible to publish this report by September, in part, because the statewide examinations that DPI uses to complete this report are administered in the spring. Before the 2014-15 school year, these examinations were administered in the fall. Because this report is based on information reported by school districts, DPI indicated that it needs sufficient time to obtain and analyze the data, and then to share the preliminary results of its analyses with school districts in order to provide them with an opportunity to correct any potential errors before the final report is published. During the Legislature's deliberation of the 2015-17 biennial budget proposal, DPI advocated for a later deadline to publish the report, but the deadline remained unchanged.

DPI should comply with statutes and publish its School and School District Accountability Report on time or again request that statutes be modified to provide it with additional time to do so.

Publishing the School and School District Accountability Report after the September statutory deadline affects the program because DPI is statutorily required to notify public officials in October if school districts contain schools eligible for transfer into the program. DPI indicated that it provides public officials with a preliminary notification by the statutorily required October 15 deadline and at a later date provides them with a final notification regarding school districts that contain schools eligible for transfer into the program. Nevertheless, delaying final notification results in less time for program commissioners, school districts, parents, and students to plan the transfer of schools into the program in the following school year. However, if DPI believes it is not possible to comply with the statutory deadline, it should again request that statutes be modified to provide it with additional time to publish this report.

Recommendation

We recommend the Department of Public Instruction either comply with statutes by annually publishing the School and School District Accountability Report by September or again request that the Legislature modify statutes to provide it with additional time to publish the report.

Future Considerations

Individuals we contacted to complete this evaluation indicated that various statutory requirements for the program may be challenging to implement or are unclear. For example, they indicated that statutes:

- require a program commissioner to provide alternative public school attendance arrangements for students who do not wish to attend a school that has been transferred into the program, even though statutes do not provide a commissioner with the authority to place a student in a public school;
- provide a school transferred into the program with no start-up funding to cover operational costs, such as hiring staff and purchasing supplies before the school year begins;
- are unclear whether the desks, computers, and other equipment of a public school transferred into the program are also transferred into the program, or whether those items remain the property of the school district; and
- stipulate that if an MPS school is transferred into the program, the program commissioner must terminate all of the school's existing employees who are MPS employees and may reassign the school's staff out of the school. DPI indicated that the employees of a school transferred into the program are employees of the school district and, thus, the commissioner cannot reassign them. Statutes are unclear whether this provision also applies to school districts other than MPS.

It was outside the scope of this report to examine such issues. However, the Legislature could consider whether statutory modifications are necessary in order to clarify certain statutory requirements for the program and address the concerns raised.

We will prepare our next statutorily required performance evaluation audit of the program in 2019. If any school is transferred into the program in the 2018-19 school year, we will begin our audit after relevant information, such as student test scores, becomes available. Based on currently established timelines, the availability of such information would likely occur later in calendar year 2019.

■ ■ ■ ■

Appendix ■

Appendix

Process by Which Schools Are Eligible for Transfer into the Partnership Program

Milwaukee Public Schools

If MPS was placed in the fails to meet expectations category in the **most-recent** School and School District Accountability Report



Then an MPS school is eligible for transfer into the program if it:

- was placed in the fails to meet expectations category in the **most-recent** School and School District Accountability Report

OR

- is in a vacant or underutilized school building

Other School Districts

If a school district:

- had a membership of more than 15,000 students in the the **most-recent** school year
- AND**
- was placed in the fails to meet expectations category in the **two most-recent** school years
- AND**
- received intradistrict transfer aid in the **two most-recent** school years



Then any school in the district is eligible for transfer into the program

Responses ■

August 2, 2017

State Auditor Joe Chrisman
Legislative Audit Bureau
22 E. Mifflin Street, Suite 500
Madison, WI 53703

Dear Mr. Chrisman:

The Department of Public Instruction (DPI) strongly supports a statutory change to require publication of the district and school report cards (hereafter report cards) in October or November.

However, we are concerned with the recommendation in this report regarding the publication of district and school report cards. It is impossible to publish district and school report cards in September due to (1) the implementation of spring testing for the Badger (now Forward) and ACT exams adopted under 2013 Act 20; and (2) the required use of value-added growth adopted under 2015 Act 55.

To calculate proficiency at the school- or district-level, DPI needs the assessment data from the Forward, ACT, and Dynamic Learning Maps (DLM)^[1] exams. Since all three are required for the school and district proficiency calculation, the data most recently received drives the timeline. Generally, assessment data is available to DPI in late July.

Once assessment data is received, proficiency rates are calculated and, per state law, the data is sent to the Value-Added Research Center at the University of Wisconsin-Madison, which takes a month to complete their work.

DPI then creates preliminary report cards with the value-added data and makes them available to school districts in a secure release for review through an inquiry process. Changes are made based on submitted evidence, with final publication likely occurring in October or November, depending on the number of inquiries. Changes in report card calculations, such as the poverty weighting and use of value-added growth adopted in the 2015-17 state budget, can result in a significant increase in inquiries.

Thus, the aforementioned timeline makes September publication of district and school report cards impossible.

We also want to note that since 2014, DPI has regularly communicated to Legislative leaders, the Governor's Office, and the Legislature Fiscal Bureau (LFB) the report card timeline challenge and requested a statutory modification. It is of note that, two readily available documents

^[1] DLM is the alternative assessment for students with severe disabilities.

demonstrate this request: *2015 LFB Paper #531 (see Alternative 3)* and *DPI's Ten Things to Know about School Accountability 2015-16*.

2015 LFB Paper #531 (Alternative 3g)

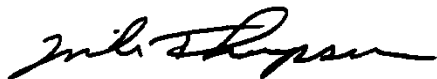
29. DPI staff indicate that, following the transition to spring testing beginning in 2014-15, it may be preferable to require that the report cards are published annually in the fall, rather than specifying that they must be published in September, because data files with results from spring assessments are not available until the summer or early fall. The additional time would be particularly beneficial for years in which a new assessment is administered, as is the case in 2014-15 and would also be the case in 2015-16 under the bill, because additional work is required to link data from new assessments with data from prior year assessments. DPI staff indicates that a later release would also be necessary in future years to allow time for a secure release of data to school districts to allow them to review their results and check for any data errors prior to the public release of the report cards. In 2014, preliminary report cards were released to schools and school districts approximately one month before they were publicly available. [Alternative 3g]

DPI's Ten Things to Know about School Accountability 2015-16

1. Accountability report cards will be created for the 2015-16 school year and released in Fall 2016. As we have done in the past, we plan to release secure report cards to districts prior to a public release. The secure release would initiate a report card inquiry process. Per state statute, report cards are to be released late in September. Due to these statutory timeline constraints, the inquiry process will be much shorter than in prior years. All timelines and dates are dependent on the timely receipt of all necessary data from our test vendors. The shift to Spring testing for our statewide assessments greatly shortens the timeline for transfer of data, conducting quality assurance checks on the data, and producing the report card calculations.

As evidenced by this information, we believe we have already complied with Recommendation #2 in this report and will continue to request the Legislature to modify state law so that we can publish report cards in a thorough and timely manner.

Sincerely,



Mike Thompson, PhD
Deputy State Superintendent

MT/mjc



OFFICE OF THE COUNTY EXECUTIVE
Milwaukee County
CHRIS ABELE • COUNTY EXECUTIVE

August 1, 2017

Mr. Joe Chrisman
State Auditor, Legislative Audit Bureau
22 E. Mifflin St, Ste 500
Madison WI 53703

Dear Auditor Chrisman –

Thank you for the opportunity to respond to the Legislative Audit Bureau's (LAB) statutorily required performance evaluation audit of the Opportunity Schools and Partnership Program (OSPP). I appreciate the work on this report and the professional courtesy your staff has accorded my office in completing the report. I will briefly offer a response to the main recommendation raised in the audit in relation to my office.

As the report identifies, the Legislature created the OSPP program in the 2015-17 state budget act to provide for better academic outcomes in schools that were designated as failing by performance standards. In the months following the enactment of OSPP, I pushed forward on processes to gather community input regarding the appointment of a commissioner and the program in general. Part of the challenge of recruiting and implementing the OSPP program is the unfunded nature of the Commissioner's office. OSPP is not a state- or county- funded office. The statutes call for the program to raise its own funds, which was a significant challenge.

Ultimately, I appointed the first Commissioner of OSPP, Dr. Demond Means. Dr. Means and I engaged in more public input centering on what OSPP could do and must do under the law to help improve the educational outcomes for Milwaukee children. We attempted to reach agreement with Milwaukee Public Schools to partner together. It must be noted that through all of this there was considerable community debate, both for and against the OSPP program, which made it difficult to gather consensus and partnerships necessary for success.

Following Dr. Mean's resignation, I began the work of attempting to find another commissioner for OSPP. This was particularly challenging given the nature of the political discourse in the Milwaukee area surrounding the program. Quite simply, qualified persons from both "sides" of the education reform debate were trepidatious to consider the possibility of being appointed commissioner or engage in meaningful partnerships. With the lack of willing nominees, it seemed to be imprudent to notify the Governor and Mayor which would only continue a debate that would not be able to reach intended positive outcomes. In the midst of this recruitment, DPI informed me that no longer was MPS identified as an eligible district for the OSPP program due to the new standards that the Legislature has also adopted in the 2015-17 budget act.

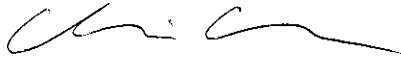
The report correctly identifies that a new commissioner for the OSPP program in Milwaukee has not been named. The recommendation of the LAB that I should appoint a commissioner certainly follows the letter of the law. However, the spirit of the law, in my estimation, is to create a change in educational outcomes

for school that are identified for improvement. To appoint a person to a position that has no duty to perform, no funding, and no mandate does not seem to be in the best interest of government operation or educational outcomes.

Conversely, if the guidance of the Legislature is to appoint a commissioner for this role despite its dormancy I would raise a few recommendations to the Legislature for statutory changes to improve the outcomes of the program: **the program should be funded; the timeline for implementation of the OSPP program should be lengthened to accommodate appropriate procurement processes; enact clear requirements for partnerships between the various local governments, including MPS, to better implement wrap-around services.** A cornerstone of OSPP is the ability to wrap services offered by local partners around the community that populates the schools selected. Specific requirements for the County, City, and local schools to partner on the provision of services is crucial to ensure that the success of students and families rises above politics.

Thank you again for the opportunity to respond to the performance evaluations of the OSPP program. As always, I am eager to collaborate in a meaningful, bipartisan manner on all the issues facing the greater Milwaukee community.

Sincerely,



CHRIS ABELE
County Executive
Milwaukee County

CSA:emp