

**Report 19-11**  
**July 2019**

# **Opportunity Schools and Partnership Program**

STATE OF WISCONSIN



Legislative Audit Bureau ■



# **Opportunity Schools and Partnership Program**

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Process by Which Schools Are Eligible for Transfer into the Program	
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From the Department of Public Instruction	
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# STATE OF WISCONSIN | Legislative Audit Bureau

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Joe Chrisman  
State Auditor

July 17, 2019

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 for 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 transferred into the program for the 2019-20 school year. MPS could have schools eligible for transfer into the program for the 2020-21 school year, and the Madison Metropolitan and Racine Unified school districts could have schools eligible for transfer into the program for the 2021-22 school year.

We recommend that the Department of Public Instruction (DPI) comply with statutes by annually notifying certain individuals in Milwaukee about the eligibility of MPS schools for transfer into the program. In addition, we again recommend that the Milwaukee County Executive comply with statutes by notifying the Governor and the mayor of the City of Milwaukee that the program commissioner position is vacant.

We appreciate the courtesy and cooperation extended to us by DPI and the Milwaukee County Executive. A response from DPI follows 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 ■

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***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 as opportunity schools. Statutes include separate eligibility criteria for Milwaukee Public Schools (MPS) and for 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 transferred into the program for the 2019-20 school year. For the 2020-21 school year, MPS could have schools eligible for transfer into the program. Although the Governor's 2019-21 Biennial Budget Proposal would have eliminated the program, 2019 Wisconsin Act 9, the 2019-21 Biennial Budget Act, retained it.

Beginning in 2017 and biennially thereafter, s. 13.94 (1) (os), Wis. Stats., requires the Legislative Audit Bureau to prepare a performance evaluation audit of the program. In August 2017, we issued report 17-13, which was our first statutorily required biennial performance evaluation audit of the program. We found that the Department of Public Instruction (DPI) did not comply with statutes by publishing in a timely manner the annual School and School District Accountability Report, which helps identify schools eligible for transfer into the program. We recommended that DPI comply with statutes or request a statutory modification to provide it with additional time to publish this report. We also found that the Milwaukee County Executive did not comply with statutes by notifying the Governor and the mayor of the City of Milwaukee that

the commissioner position was vacant, and we recommended that the Milwaukee County Executive provide such notification. After we issued report 17-13, 2017 Wisconsin Act 209, which was enacted in April 2018, modified from September to November 30 the deadline for DPI to annually publish the School and School District Accountability Report.

To complete this second performance evaluation audit of the program, we contacted DPI and the office of the Milwaukee County Executive. In addition, we determined the process by which schools could be transferred into the program, and we reviewed the statutory provisions pertaining to the program that changed since we issued report 17-13.

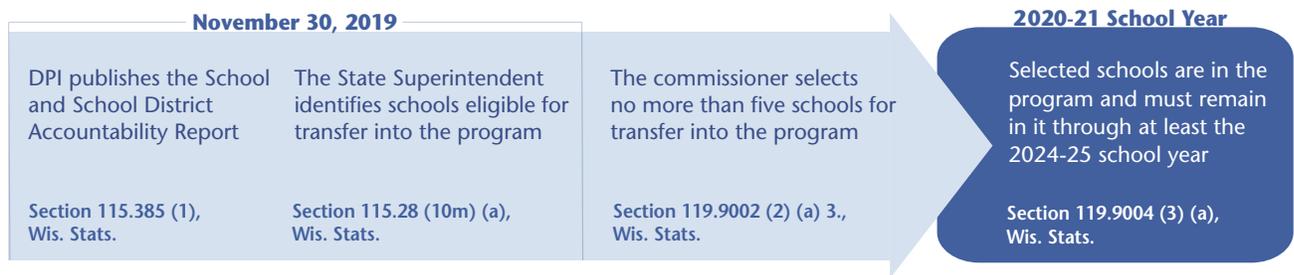
### Milwaukee Public Schools

***Under the program, statutes specify unique eligibility criteria for MPS.***

Under the program, statutes specify unique eligibility criteria for MPS. Figure 1 shows the statutorily required process by which MPS schools would be eligible for transfer into the program for the 2020-21 school year. After a school has been transferred into the program, statutes prohibit it from being transferred out of the program for five consecutive school years.

Figure 1

#### Statutorily Required Process by Which MPS Schools Would be Eligible for Transfer into the Program for the 2020-21 School Year



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, which are published in the School and School District Accountability Report.

2017 Wisconsin Act 209 modified from October 15 to November 30 the deadline for the State Superintendent to annually identify the MPS schools eligible for transfer into the program. Statutes require the State Superintendent to identify these schools to the MPS superintendent and the program commissioner selected by the Milwaukee County Executive. 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.

**No MPS schools will be transferred into the program for the 2019-20 school year.**

No MPS schools will be transferred into the program for the 2019-20 school year because the School and School District Accountability Report published by DPI in November 2018 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 to transfer into the program in a given school year.

**In 2018, the State Superintendent did not provide timely notification about the eligibility of MPS schools for transfer into the program.**

We found that the State Superintendent notified the MPS superintendent and the Milwaukee County Executive on December 20, 2018, that no MPS schools were eligible for transfer into the program for the 2019-20 school year. In the future, the State Superintendent should provide such annual notifications by November 30, as is statutorily required. Providing notifications later than is statutorily required results in less time for MPS, the commissioner, parents, and students to plan for the transfer of schools into the program in the following school year.

**Recommendation**

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*We recommend the State Superintendent of Public Instruction comply with statutes by annually notifying by November 30 the superintendent of Milwaukee Public Schools and the program commissioner selected by the Milwaukee County Executive about the eligibility of schools for transfer into the opportunity schools and partnership program.*

## Program Commissioner

Statutes require the Milwaukee County Executive to select a program commissioner, even if no MPS schools are in the program. Statutes also require the county executive to notify the Governor and the Milwaukee mayor 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.

To select an MPS school to transfer into the program, 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 an opportunity school.

***The Milwaukee County Executive has not notified the Governor and the Milwaukee mayor that the commissioner position has been vacant for more than three years.***

The Milwaukee County Executive has not notified the Governor and the Milwaukee mayor that the commissioner position has been vacant since June 2016. The county executive's office indicated that such notification has not occurred because no MPS schools are currently eligible for the program. Although statutes do not provide a timeline for the county executive to notify the Governor and the mayor of a vacancy in the commissioner position, this position has been vacant for more than three years.

The Milwaukee County Executive should comply with statutes by notifying the Governor and the Milwaukee mayor that the commissioner position is vacant, which will allow the statutorily prescribed process for selecting a new commissioner to begin. If the notification that DPI is statutorily required to provide by November 30, 2019, indicates that MPS schools are eligible for transfer into the program, the commissioner will need to begin the process of identifying one or more such schools to transfer into the program for the 2020-21 school year.

### Recommendation

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*We recommend the Milwaukee County Executive comply with statutes by notifying the Governor and the mayor of the City of Milwaukee that the position of commissioner of the opportunity schools and partnership program is vacant.*

## Other School Districts

Under the program, statutes specify separate eligibility criteria for all school districts other than MPS. 2017 Wisconsin Act 209 modified from October 15 to November 30 the deadline for the State Superintendent to notify the Governor, the appropriate county executive, and the appropriate mayor if a school district other than MPS is eligible for its schools to be 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.

As shown in Table 1, five school districts in addition to MPS had memberships of more than 15,000 students in the 2017-18 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 receives intradistrict transfer aid in those two school years, its schools could be eligible for transfer into the program.

Table 1

**Program Eligibility Criteria**  
2017-18 School Year

School District <sup>1</sup>	Program Eligibility Criteria		
	Student Membership	Received Intradistrict Transfer Aid	Fails to Meet Expectations <sup>2</sup>
Madison Metropolitan	27,778	✓	
Green Bay Area	22,534		
Kenosha Unified	21,835		
Racine Unified	21,647	✓	
Appleton Area	15,434		

<sup>1</sup> In addition to MPS.

<sup>2</sup> As indicated in the School and School District Accountability Report that DPI published in November 2018.

***No schools from the Madison Metropolitan or Racine Unified school districts will be transferred into the program for the 2019-20 or 2020-21 school years.***

The Madison Metropolitan and Racine Unified school districts were not placed in the fails to meet expectations category of the School and School District Accountability Report for the two most-recent school years. As a result, no schools from these two districts will be transferred into the program for the 2019-20 or 2020-21 school years.

2015 Wisconsin Act 55 modified statutes pertaining to intradistrict transfer aid. Under Act 55, such aid will be provided only for students participating in intradistrict transfer programs for 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 for the 2015-16 school year. After school districts no longer receive intradistrict transfer aid, only MPS schools will be eligible for transfer into the program, unless statutes are modified.

2017 Wisconsin Act 59, the 2017-19 Biennial Budget Act, modified how the schools of certain unified school districts are eligible for transfer into the program. Act 59 defined these unified school districts to be school districts that were already eligible for the program, contain a city with more than 75,000 residents, and contain at least two villages. Only the Madison Metropolitan and Racine Unified school districts meet this statutory definition.

After the State Superintendent has provided notification that the schools of an eligible unified school district are eligible for transfer into the program, Act 59 stipulates that a unified school district has

120 days to demonstrate to the Department of Administration (DOA) that it has not delegated its authority to make decisions about providing benefits to its employees. If DOA certifies that a unified school district has delegated its authority to make decisions about providing benefits to its employees, then any school in that district is eligible for transfer into the program.

However, if DOA certifies that an eligible unified school district has not delegated its authority to make decisions about employee benefits, then any school in that district is eligible for transfer into the program only if that district:

- 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 three most-recent school years; and
- received intradistrict transfer aid in the three school years the school district was placed in the fails to meet expectations category.

If the Madison Metropolitan or the Racine Unified school district is placed in the fails to meet expectations category in the School and School District Accountability Reports published by DPI in November 2019 and November 2020, and if DOA then certified that district had delegated its authority to make decisions about providing benefits to its employees, then any of that district's schools would be eligible for transfer into the program for the 2021-22 school year.

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

## **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 the commissioner or operator of a school a per-student amount equal to the per-student amount paid to an operator of a charter school. For the 2018-19 school year, this per-student amount was \$8,619. Statutes require that a school district's state aid be reduced by an amount equal to the total amount paid to the commissioner or school operator. 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 in 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.

We will prepare our next biennial performance evaluation audit of the program in 2021, as required by statutes. If any MPS schools are transferred into the program for the 2020-21 school year, we will report relevant information, including the number of such schools.

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## **Appendix ■**

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Appendix

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

**Milwaukee Public Schools**

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**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**

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**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



**However,** if DOA certifies that an eligible unified school district has not delegated its authority to make decisions about employee benefits, **then** the district's schools are eligible only if the 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 **three most-recent** school years
- AND**
- received intradistrict transfer aid in the **three most-recent** school years



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## **Response ■**

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July 15, 2019

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) appreciates the opportunity to review the performance evaluation audit of the opportunity schools and partnership program established by 2015 Wisconsin Act 55, the 2015-17 Biennial Budget.

The DPI has no changes to the report. Further, the DPI acknowledges the recommendation to comply with state statute by notifying certain individuals in Milwaukee in a timely manner whether any Milwaukee public schools are eligible for transfer into the program. DPI staff members have put measures into place to ensure notifications are sent in a timely manner in the future.

Sincerely,



Mike Thompson, PhD  
Deputy State Superintendent

cc: Laura Pinsonneault, Director, Office of Educational Accountability