The Right To Remain Silent In New Orleans: 
The Role Of Non-Politically Accountable 
Charter School Boards In The 
School-To-Prison Pipeline

Steven L. Nelson J.D., PH.D* Jennifer E. Grace M.ED., N.C.C†
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Abstract

Residents and officials of many cities may fantasize about the possibilities of rebuilding their cities from scratch.

KEYWORDS: silent, NOLA, pipeline
work with students with disabilities—parents, educators, advocates, and attorneys—to be knowledgeable and timely in challenging new policies, to assert IDEA protections, and to proactively hasten the demise of discriminatory educational practices. For public education to remain the pathway to true equality for citizens with disabilities, it must remain free, equal, and accessible to all students. ZT practices divert students with disabilities out of school and halts their forward progress toward future prosperity and equal opportunities. Achieving the promise of equality for students with disabilities mandates the cessation of ZT policies.

THE RIGHT TO REMAIN SILENT IN NEW ORLEANS: THE ROLE OF NON-POLITICALLY ACCOUNTABLE CHARTER SCHOOL BOARDS IN THE SCHOOL-TO-PRISON PIPELINE

STEVEN L. NELSON, J.D., PH.D.*
JENNIFER E. GRACE, M.ED., N.C.C.**

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imperative, to assess whether New Orleans’ tradeoff is working. Schools are purportedly better in New Orleans, but what impact do these better schools and different governance structures have on student achievement among school-age students in New Orleans as pertaining to the school-to-prison pipeline? This Article will address this question with a focus on whether politically unaccountable charter schools are neutral towards, disrupt, or aggravate the school-to-prison pipeline in New Orleans.

II. THE SCHOOL-TO-PRISON PIPELINE: THE NEED TO EXAMINE CHARTER SCHOOLS BEYOND STANDARDIZED TEST SCORES IN NEW ORLEANS’ SCHOOLS

A. Defining the School-to-Prison Pipeline and Identifying Its Primary Targets

The school-to-prison pipeline refers to the policies and praxis that shut out, push out, or snatch students out of schools in exchange for a greater likelihood of entry into the juvenile and criminal justice systems. Inadequate access to quality schools, disparate and inconsistent enforcement of disciplinary policies, disproportionate placement into disciplinary alternative settings of some students, and the inappropriate involvement of actors from the criminal justice system are contributing forces in creating and maintaining the school-to-prison pipeline: These forces also act as barriers in the return to traditional public school settings of students who have been shut out, pushed out, or snatched out. The perniciousness of the school-to-prison pipeline is troubling for all students, but the harmful effects do not, in

2. See Paul T. O’Neill & Thukral, supra note 1, at 319-21; infra Part IV.
4. See Frazier-Anderson, supra note 3, at 410-11; O’Neill & Thukral, supra note 1, at 320-21; infra Part IV.
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10. See Michelle Alexander, The New Jim Crow: MASS INCARCERATION IN THE AGE OF COLOURLNEDNESS 185 (rev. ed. 2012); Kim et al., supra note 9, at 9; Deborah Fowler, School Discipline Feeds the “Pipeline to Prison”: As School Discipline Moves from the Principal’s Office to the Courthouse, Children Are Poorly Served, 93 PRo DELTA KAPPAN, Oct. 2011, Smith, Deconstructing the Pipeline, supra note 8, at 1018-19.
fact, affect all students equally. Poor and minority students, particularly black males, are more likely to suffer the direct consequences of the school-to-prison pipeline. The Schott Foundation’s annual report identified that just over half of black male students are graduating from high school on a national level. In Louisiana, the black male graduation rate is under 50%. Many institutional factors contribute to black male students’ struggles for educational equality. These factors include the inequitable access to quality instruction and curriculum and the harsh and uneven implementation of disciplinary policies. Given the concentrated effect of the school-to-prison pipeline on black males, the Schott Foundation has recommended a specific and deliberate focus on black males. Furthermore, some researchers have identified the school-to-prison pipeline as part and parcel to the black male crisis.

The outcomes for black males finishing high school are stark. The outcomes for black males who do not finish high school are, however, much more alarming. Over half of all black males who do not complete high school are incarcerated by the age of thirty. Young black males’ arrest and incarceration numbers are dubiously chart topping. Two of every five black men in their twenties and thirties without a high school diploma are more likely to be incarcerated. Overall, black men are six times more likely to be incarcerated than their white counterparts. Almost three of every four state prison inmates, three of every five federal prison inmates, and seven of every ten jail inmates failed to graduate high school. More than one third of male prison inmates reported that behavior and academic disengagement were the main reasons for not obtaining a high school diploma. Michelle Alexander argues that “[the fate of millions of people—indeed the future of the black community itself]—may depend on the willingness of those who care about racial justice to re-examine their basic assumptions about the role of the criminal justice system in our society.” It is, therefore, reasonable to argue that those who care about racial justice might also need to “re-examine their basic assumptions about the role[s]” that public schools play in our society. In particular, advocates and allies for racial justice may need to identify, confront, and redirect the role of public schools in contributing to the school-to-prison pipeline.

Many adult criminals were tracked for prison from their early experiences in schools, labeled as criminals as they proceeded through their teenage years, and ultimately transitioned from their woefully under-resourced inner-city schools to prisons that are so overly-resourced as compared to their schools, that the comparison is almost pitiful.

B. Discovering the Origins of the School-to-Prison Pipeline

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11. See Smith, Deconstructing the Pipeline, supra note 8, at 1010–12.
12. Id. at 1012.
14. Id. at 8 tbl.1.
20. Holzman, supra note 13, at 7; Noguera, supra note 19, at 149.
21. See Bailey, supra note 16, at 16; Noguera, supra note 19, at 149; George Gao, Chart of the Week: The Black-White Gap in Incarceration Rates, PEW RES. CTR. (July
children and adolescents. These policies created racial disparities in the meting out of discipline and increased the involvement of actors from the juvenile and criminal justice systems in public schools. As the school-to-prison pipeline gathered steam, there was much conversation about delinquent juveniles and the need to address the rise of juveniles' errant behaviors. There was less talk about delinquent adults, neglected communities, conspicuously absent educational, and social or occupational opportunities. Some scholars have asserted that the school-to-prison pipeline is the result of a failed primary and secondary education system that does not meet the needs of many of its students. It should be noted, however, that schools are simply microcosms of a larger society; thus, the issues that impact and contribute to the school-to-prison pipeline are, in large part, factors that beset poor black and brown communities at large.

Although the school-to-prison pipeline is beginning to gain deeper and more widespread attention nationally, inequitable practices within the educational system and the impact of those inequitable practices have been documented for years, if not generations. More recently, scholars are working to identify how the many factors of the school-to-prison pipeline are interconnected and to compound the barriers to include educational settings that focus on providing students with the tools to be successful in society. Scholars assert that schools and school districts across the country have opted to instead adopt and implement “policies and procedures that... force... students out of school[s].” This is troubling because the removal of students—from school and into prison—does not often flow in both directions but instead, flows in one direction. Students who are removed from school and enter the school-to-prison pipeline often find themselves enrolled in alternative schools or within the juvenile or criminal justice systems; once students enter this track, it is difficult to re-enter the traditional educational system.

C. Realizing the Final Destinations of the School-to-Prison Pipeline

There are many socioeconomic factors that influence the educational experiences of black students. The criminal justice system is one of those many factors. Many black students have at least one incarcerated parent. These parents, because of their incarceration, are unable to effectively be or become involved in their child or children’s educational processes. If parental involvement is a marker of greater student success in schools, it is reasonable to assume that a larger number of black parents in jail is directly correlated with less parental involvement. Less parental involvement would, therefore, increase the number, and perhaps, depth and breadth of the barriers that black students must overcome to become successful in schools. This set of circumstances could lead to a cycle of incarcerations that betrays attempts to stymie the school-to-prison pipeline. At first glance, intervention in adult incarcerations may be a necessary component of any school-to-prison pipeline interventions.

Another result of the school-to-prison pipeline is that black students are prescribed statuses as second-class citizens. Alexander asserts that the current mass incarceration of blacks is akin to, and the next wave of slavery and Jim Crow laws, which limited the capability of blacks to become productive members of society—if they could become members at all. The

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32. Tuzzolo & Hewitt, supra note 3, at 61.
33. Id.
34. See id.
35. See id. at 61–62.
36. KIM ET AL., supra note 9, at 9.
37. See id. at 9, 112, 128; Noguera, supra note 19, at 149.
39. See Skiba et al., supra note 38, at 104–05; Tuzzolo & Hewitt, supra note 3, at 67.
40. Tuzzolo & Hewitt, supra note 3, at 62.
41. See id.; Alexander, supra note 9, at 128–29; Tuzzolo & Hewitt, supra note 3, at 61.
44. See id. at 26, 29, 31–32.
45. Id. at 24, 29; Alexander, supra note 10, at 180.
46. Alexander, supra note 10, at 180; BREAKING BARRIERS 1, supra note 43, at 26, 29.
47. See Alexander, supra note 10, at 180; BREAKING BARRIERS 1, supra note 43, at 24, 26, 29.
48. See BREAKING BARRIERS 1, supra note 43, at 24, 26, 29.
52. Id. at 20–21, 197.
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school-to-prison pipeline assists in the mass incarceration of blacks.\textsuperscript{53} For black and brown students, criminalization begins early and is often traceable to school settings.\textsuperscript{54} Black and latino students are more likely to be arrested on campus than the white peers of those students; black and brown students comprise 45\% of all juvenile arrests.\textsuperscript{55} Just more than 10\% of students who have been previously incarcerated obtain high school diplomas in the traditional setting, and half are re-arrested within two years of release from custody.\textsuperscript{56} This same group of students is more likely to be referred to alternative educational settings or schools than white students, which often quickens the route to incarceration.\textsuperscript{57}

Harsh disciplinary policies, as well as the disparate implementation of those policies, are not the end of the school-to-prison pipeline.\textsuperscript{58} While these issues lead to excessive suspensions, expulsions, and arrests—both school-based and off-campus—it is important to note that modern-day schools mimic prisons and other incarcerative environments in several ways.\textsuperscript{59} Black students are disproportionately likely to be assigned to school systems that mirror prisons, as opposed to environments conducive to learning with little hope for escape.\textsuperscript{60} For instance, slightly more than 25\% of black students report that they pass through metal detectors upon entering school while only about 5\% of their white counterparts report a similar experience.\textsuperscript{61} Likewise, once criminals are convicted of a felony—which also disproportionately happens to black and brown people—the government is lawfully permitted to deny these citizens protection from discrimination and the right to vote as well as the privilege of gaining public assistance.\textsuperscript{62}

\begin{itemize}
\item See Fowler, supra note 10.
\item See Skiba et al., supra note 38, at 86–87.
\item KIM ET AL., supra note 9, at 35.
\item Id. at 128–29.
\item See id. at 35, 128; Ivory A. Toldson, Insecurity at Black Schools: When Metal Detectors Do More Harm Than Good, 81 J. NEGRO EDUC. 303, 304 (2012).
\item See KIM ET AL., supra note 9, at 9, 128; MARSHA WEISSMAN, PRELUDE TO PRISON: STUDENT PERSPECTIVES ON SCHOOL SUSPENSION 41 (2015); Skiba et al., supra note 38, at 86, 88.
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\item BAHENA ET AL., supra note 59, at 33, 35 (one middle schooler described were referred to as "assholes and animals"); KIM ET AL., supra note 9, at 112 (schools are places time police officers on campus—school resource officers); see also WEISSMAN, supra note 58, at 53; Toldson, supra note 57, at 304.
\item Toldson, supra note 57, at 304; see also BREAKING BARRIERS I, supra note 43, at 5.
\item ALEXANDER, supra note 10, at 4.
\item 60. 20 U.S.C. §§ 6301 et seq. (2012).
\item Id. § 1400.
\item See Gagnon et al., supra note 63, at 674–75.
\item See Leone & Cutting, supra note 63, at 262–63.
\item See id. at 262; Leone et al., supra note 63, at 47.
\item See BROCK & KERGAN, supra note 63; Baltodano et al., supra note 63, at 104; Mears & Travis, supra note 63, at 11.
\item 70. Leone & Cutting, supra note 63, at 262; Leone et al., supra note 63, at 46.
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Harsh disciplinary policies, as well as the disparate implementation of those policies, are not the end of the school-to-prison pipeline.\(^8\) While these issues lead to excessive suspensions, expulsions, and arrests—both school-based and off-campus—it is important to note that modern-day schools mimic prisons and other incarcerative environments in several ways.\(^9\) Black students are disproportionately likely to be assigned to school systems that mirror prisons, as opposed to environments conducive to learning with little hope for escape.\(^10\) For instance, slightly more than 25% of black students report that they pass through metal detectors upon entering school while only about 5% of their white counterparts report a similar experience.\(^11\) Likewise, once criminals are convicted of a felony—which also disproportionately happens to black and brown people—the government is lawfully permitted to deny these citizens protection from discrimination and the right to vote as well as the privilege of gaining public assistance.\(^12\)

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\(^{62}\) ALEXANDER, supra note 10, at 4.

For an educational comparison, students are in some sense—though certainly not in accord with law and equity—denied their educational rights when they are referred to alternative schools, police agencies, or court systems.\(^6\) Although incarcerated youth and youth in alternative education programs are entitled to similar, if not the same, educational rights as traditional primary and secondary students under the Elementary and Secondary Education Act\(^4\) and the Individual with Disabilities Education Act,\(^5\) the students often do not have the opportunity to access equitable educational opportunities due to the misalignment of the curriculum to state standards,\(^6\) low level instruction as compared to instruction focusing on higher order skills,\(^7\) lack of accommodations for students who are entitled to services under appropriate special education and disability laws,\(^8\) and poor planning for the transition back to traditional public schools after the completion of incarceration or removal.\(^9\) The combination of these factors precipitates the recurrence of incarceration or removal for students who were previously removed from the traditional education setting.\(^7\) If Gladwell is correct in arguing that children are shaped by their physical and external environments and that heavy emphasis on having control over students is very similar to the need to exhibit control over inmates, there is little need to wonder why black students are becoming less prepared for college and careers and more ready for entrance into the criminal justice system.\(^7\) Although some argue that removal from the traditional school environment is tantamount to an intervention that will prevent continued misbehaviors of disciplined students by removing misbehaving students from the traditional school environment.
this argument is easily rebutted by the voluminous data proving the contrary. Some scholars have noted that the roots of the school-to-prison pipeline are much more nefarious. Several scholars have associated the rise of the school-to-prison pipeline with the continued criminalization of black Americans, which began with the arrival of enslaved Africans to the United States. Other scholars have not gone as far back as the arrival of enslaved Africans to track the development of the school-to-prison pipeline. For instance, Lia Epperson asserts that the school-to-prison pipeline is yet another form of interposition to efforts at racial integration in public schools as well as the continuation of state-sanctioned violence against blacks in the United States. Thus, it is arguable and has been argued that addressing the school-to-prison pipeline is an extension of efforts towards civil rights.

D. Teacher Expectations, Student Relationships, and the School-to-Prison Pipeline

Teacher expectations and relationships with students are also factors that contribute to the school-to-prison pipeline. The disposition of teachers towards black and brown students is a substantial factor in the path that these students will ultimately take. When a student encounters a teacher with high expectations who exhibits a caring student-teacher relationship, the student is more likely to experience success. Establishing and maintaining relationships is important to blacks in various settings, including schools. In particular, black males who perceive their teachers to be nurturing people are more academically successful than black males who do not perceive their teachers in a similar manner. In the school setting, black students may find it difficult to fully engage in their educational processes without positive relationships with their teachers and other school personnel. This assertion is reasonable, given the fact that building a positive rapport with students also helps school personnel become aware of and address the needs of individual students.

Teacher expectations heavily impact teacher-student interactions. Black male students have been found to have poor self-efficacy in regard to their academic abilities. The transition into high school is particularly worrisome for black students, especially black males. Black males entering high school are viewed more negatively than their female counterparts, and only 40% of black males graduated as opposed to 80% of their female counterparts in one study. The same study found that black males were often counseled out of schools after “failure and withdrawal” were presented as punishment for their behavior. Similarly, successful students, without regard to race, often feel that they are supported and become successful because their reputations precede them; while unsuccessful students, also without regard to race, feel that they are unsuccessful because their reputations precede them and sometimes prompt teachers to fail to support the unsuccessful students in necessary ways. Likewise, successful students universally felt that at least one of their teachers cared for them.

82. See BREAKING BARRIERS 1, supra note 43, at 40-42; Baker et al., supra note 80, at 4; Townsend, supra note 81, at 387-88.
83. See Baker et al., supra note 80, at 4; Townsend, supra note 81, at 387-88.
84. See Baker et al., supra note 80, at 4; Townsend, supra note 81, at 388.
85. BREAKING BARRIERS 1, supra note 43, at 40-42; Baker et al., supra note 80, at 4; Antoine M. Garibaldi, Educating and Motivating African American Males to Succeed, 61 J. NEGRO EDUC. 4, 8 (1992).
86. Don Martin et al., Increasing Prosocial Behavior and Academic Achievement Among Adolescent African American Males, 42 ADOLESCENCE 689, 691 (2007) (arguing that a lack of motivation to perform or achieve exists because of black males’ beliefs regarding their teachers’ expectations); see also Garibaldi, supra note 85, at 6-7 (citing that two of every five black males believed teachers had lower expectations for them as opposed to other groups, and also that three of every five black males believed that their teacher did not challenge them); Whiting, supra note 78, at 224.
88. Id. at 538.
89. Id. at 579.

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Teacher expectations heavily impact teacher-student interactions. Black male students have been found to have poor self-efficacy in regard to their academic abilities. The transition into high school is particularly worrisome for black students, especially black males. Black males entering high school are viewed more negatively than their female counterparts, and only 40% of black males graduated as opposed to 80% of their female counterparts in one study. The same study found that black males were often counseled out of schools after “failure and withdrawal . . . were presented as punishment for their behavior.” Similarly, successful students, without regard to race, often feel that they are supported and become successful because their reputations precede them; while unsuccessful students, also without regard to race, feel that they are unsuccessful because their reputations precede them and sometimes prompt teachers to fail to support the unsuccessful students in necessary ways. Likewise, successful students universally felt that at least one of their teachers cared for them.

82. See BREAKING BARRIERS 1, supra note 43, at 40–42; Baker et al., supra note 80, at 4; Townsend, supra note 81, at 387–88.
83. See Baker et al., supra note 80, at 4; Townsend, supra note 81, at 387–88.
84. See Baker et al., supra note 80, at 4; Townsend, supra note 81, at 388.
85. BREAKING BARRIERS 1, supra note 43, at 40–42; Baker et al., supra note 80, at 4; Antoine M. Garibaldi, Educating and Motivating African American Males to Succeed, 61 J. NEGRO EDUC. 4, 8 (1992).
86. Don Martin et al., Increasing Prosocial Behavior and Academic Achievement Among Adolescent African American Males, 42 ADOLESCENCE 689, 691 (2007) (arguing that a lack of motivation to perform or achieve exists because of black males’ beliefs regarding their teachers’ expectations); see also Garibaldi, supra note 85, at 6–7 (citing that two of every five black males believed teachers had lower expectations for them as opposed to other groups, and also that three of every five black males believed that their teacher did not challenge them). Whiting, supra note 78, at 224.
88. Id. at 538.
89. Id. at 579.
successful student on a personal level, whereas only half of unsuccessful students felt that at least one of their teachers cared for the unsuccessful students on a personal level.94 Struggling students often report that they are isolated and targeted in school environments by teachers and peers alike.95 Teacher expectations and teacher-student relationships are important because they impact student access to challenging curriculum, quality instruction, and social self-efficacy.96 Most importantly, teacher expectations and teacher-student relationships impact how discipline is meted out.94 Both of these may contribute to or disrupt the school-to-prison pipeline.95

III. CIVIL RIGHTS OR CIVIL WRONGS: THE NATIONAL CHARTER SCHOOL MOVEMENT

The following summary can contextualize and summarize the longstanding crisis concerning black males, which is undoubtedly spreading to black females.96 The devolving status of black males is of serious concern.97 This concern is paramount and touches the “social, economic, and educational status” of all black males but particularly school-aged black males.98 The grave reality for young black males is they own the dubious honor of leading the nation as both perpetrators and victims of homicide.99 More poignantly, black males lead the nation in all but one cause of death: accidental death.100 Black males are the only segment of the United States’ population that is suffering a decline in life expectancy.101 Black males are expected to live eight years less than the average American.102 Black males have long led the nation in arrests, convictions, and incarcerations.103 While college enrollment has grown until recently, black males still comprise less than 4% of all students enrolled in collegiate studies.104 Finally, black males have the highest unemployment rates in the nation and are often the last selection options for employers.105 In relation to white students, black students continue to lag behind in several important achievement markers; high school dropout rates and matriculation in postsecondary education.106 Black students lead the nation in terms of removals from school.107 Evidence of academic struggles is found not only among populations of black students with cognitive disabilities but also among black students with above average intelligence.108 This should come as no surprise as young black men are often denied access to, or encouraged not to, pursue opportunities that could help them succeed academically.109 Despite the graveness of this concern, it has been ignored in the minds of education reformers.110 We must ask, then, is school reform a civil right—as it has been framed—or a civil wrong?111 Charter schools—the now standard-bearing of school reform in the United States—possess only a small market share of total student enrollment112 and total number of schools operating113 in the country;

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91. Id.
92. Id. at 114.
93. Baker et al., supra note 80, at 4; see also Martin et al., supra note 86, at 691; Whiting, supra note 78, at 224.
94. Townsend, supra note 81, at 382, 387–88; see also Baker et al., supra note 80, at 4.
95. Smith, Deconstructing the Pipeline, supra note 8, at 1027–28, 1037–38.
96. See also Baker et al., supra note 80, at 4; Townsend, supra note 81, at 382, 387–88.
97. See id. at 4–5.
98. See id. at 4.
99. Noguera, supra note 42.
100. Amadu J. Kaba, Progress of African Americans in Higher Education Attainment: The Widening Gender Gap and Its Current and Future Implications, EDUC. POL’Y ANALYSIS ARCHIVES, Apr. 6, 2005, at 1, 16.
101. Noguera, supra note 42.
102. See Patricia J. Kolb, Developmental Theories of Aging, in 2000.
103. Noguera, supra note 42.
105. Kaba, supra note 100, at 14–15; Noguera, supra note 19, at 148–49.
106. See Donna Y. Ford & J. John Harris III, Perceptions and Attitudes of Black Students Toward School, Achievement, and Other Educational Variables, 67 CHILD DEV. 1141, 1144 (1996); Strayhorn, supra note 104.
107. See Garibaldi, supra note 85, at 5.
108. Ford & Harris III, supra note 106, at 1141.
109. See Strayhorn, supra note 104; Noguera, supra note 42. One of every six black male students has been told that they should consider postsecondary work as opposed to postsecondary education, as juxtaposed to white males where one in every twenty students is encouraged to work as opposed to seek postsecondary education. Strayhorn, supra note 104. The number for black females is one in every twelve students.
110. See James Earl Davis & Will J. Jordan, The Effects of School Context, Structure, and Experiences on African American Males in Middle and High School, 63 J. NEGRO EDUC. 570, 571, 586 (1994).
112. Nat’l All. for Pub. Charter Schs., Total Number of Students, PUBLICCHARTERS.ORG, http://www.dashboards.publiccharters.org/dashboard/students/page/overview/year/2014 (last visited Mar. 10, 2016) [hereinafter Total Number of Students] (stating that there are just over 2.5 million students enrolled in public charter schools and that there are 46.6 million students enrolled in non-charter schools).
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\textsuperscript{91} Id.
\textsuperscript{92} Id. at 114.
\textsuperscript{93} Baker et al., supra note 80, at 4; see also Martin et al., supra note 86, at 691; Whiting, supra note 78, at 224.
\textsuperscript{94} Townsend, supra note 81, at 382, 387–88; see also Baker et al., supra note 80, at 4.
\textsuperscript{95} Smith, Deconstructing the Pipeline, supra note 8, at 1027–28, 1037–38.
\textsuperscript{96} See Baker et al., supra note 80, at 4; Townsend, supra note 81, at 382, 387–88.
\textsuperscript{97} See id. at 4–5.
\textsuperscript{98} See id. at 4.
\textsuperscript{99} Noguera, supra note 42.
\textsuperscript{100} Amadu J. Kaba, Progress of African Americans in Higher Education Attainment: The Widening Gender Gap and Its Current and Future Implications, EDUC. POL’Y ANALYSIS ARCHIVES, Apr. 6, 2005, at 1, 16.
\textsuperscript{101} Noguera, supra note 42.
\textsuperscript{103} Terrell Strayhorn, Teacher Expectations and Urban Black Males’ Success in School: Implications for Academic Leaders, 6 ACAD. LEADERSHIP J. no. 2, 2008.
\textsuperscript{104} See Donna Y. Ford & J. John Harris III, Perceptions and Attitudes of Black Students Toward School, Achievement, and Other Educational Variables, 67 CHILD DEV. 1141, 1141 (1996); Strayhorn, supra note 104.
\textsuperscript{105} See Garibaldi, supra note 85, at 5.
\textsuperscript{106} Ford & Harris III, supra note 106, at 1141.
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nevertheless, charter schools receive a disproportionate share of scholarly attention and federal funding for education. Charter schools are, however, experiencing exponential increases in student enrollment and total schools operating in the United States. Charter schools did not exist in the United States only a quarter of a century ago; now, charter school authorizing legislation can be found almost universally across the country. The rise in charter school authorizing legislation has been in part fueled by increased national popularity, which has in turn been buoyed by extreme popularity among black and brown stakeholders. Though many scholars worried that charter schools would become white-flight schools, recent research should assuage those concerns. Charter schools are not, in fact, white-flight schools; at the national, regional, state, and most metropolitan area levels, charter schools are disproportionately minority as a whole.

That black and brown stakeholders prefer charter schools is unsurprising. Those advocating for the school choice movement have, in general, been able to effectively frame debates about the charter school movement in terms of school choice as a civil right. The release of A Nation at Risk in 1983 helped create the space and public sentiment necessary to frame school choice as a necessary component of civil rights. This is particularly the case since A Nation at Risk keyed in on the fact that our nation’s schools were failing our most vulnerable student populations—poor and minority students. Equal or perhaps equitable access to quality schools—as defined almost exclusively by test scores—became a mandate of the school choice movement. At its core, the movement would grant poor and minority stakeholders an option for escaping ineffective inner-city schools that limited the educational, social, and occupational opportunities for poor and minority students. School choice was, and is indeed, a civil right under this framing of the movement’s purposes and objectives.

The school choice movement created strange bedfellows of perpetual enemies: Conservatives could introduce free market concepts into public education, and liberals could provide equal and equitable education to all students through school choice. Many scholars envisioned that charter schools would be a civil rights boon for poor and minority parents who were largely trapped in failing and declining schools and school districts after the Supreme Court of the United States effectively banned the mandatory incorporation of suburban districts into urban desegregation plans in Milliken v. Bradley. The combination of white flight to the suburbs and the Court’s decision in Milliken thwarted the nation’s attempts at integration, but advocates for educational equity hoped that school reform would provide reason for middle class and white families to return to inner city school districts or—at a minimum—equal educational opportunity in lieu of integrated schools for poor and minority students.
nevertheless, charter schools receive a disproportionate share of scholarly attention and federal funding for education. Charter schools are, however, experiencing exponential increases in student enrollment and total schools operating in the United States. Charter schools did not exist in the United States only a quarter of a century ago; now, charter school enrolling legislation has been found almost universally across the country. The rise in charter school authorizing legislation has been in part fueled by increased national popularity, which has in turn been buoyed by extreme popularity among black and brown stakeholders. Though many scholars worried that charter schools would become white-flight schools, recent research should assuage those concerns. Charter schools are not, in fact, white-flight schools: at the national, regional, state, and most metropolitan area levels, charter schools are disproportionately minority as a whole.

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123. Id. at 33.
125. See id. at 7–8.
126. Scott, supra note 122, at 33.
127. Id. at 38.
128. Id. at 34–35.
129. Id. at 34, 36–37.
132. See id. at 752–53; Scott, supra note 122, at 34, 44–45.
133. See Scott, supra note 122, at 45.
Some scholars have openly questioned the school choice movement in advancing or retrenching civil rights, notwithstanding attempts by school choice advocates to frame the charter school movement as a modern extension of the Civil Rights Movement. Of specific importance to this paper, charter schools have been cited as having a racially segregated effect. Most charter schools are also managed—nearly exclusively—by self-selected or appointed boards that are disproportionately white, and many charter schools prevent poor black and brown stakeholders from obtaining, maintaining or retaining political power over education policy and politics. In some extreme cases, disproportionately white, self-selected charter school boards have been allowed to practically displace popularly-elected, predominantly black, school boards. Given that the quest for integrated schools and the electoral franchise were among the most sought after rights in the Civil Rights Movement, it is important to consider whether the school choice movement—and specifically charter schools—have been civil rights or civil wrongs. Whether civil rights or civil wrongs, even when poor and minority students are able to access charter schools associated with high academic achievement for their disproportionately poor and minority student bodies, these students are often not completing their studies with their classmates. One report cited that the Knowledge Is Power Program charter network, commonly known as “KIPP,” loses roughly one of every six of its students. This number is more than one of every three for the charter management organization’s middle school cohorts. Most shockingly, the same report suggests that two of every five of its black male student enrollees disappear before the students would enroll in or complete high school. One might then surmise that the charter school movement’s association as a civil right are exaggerated. Charter schools often nullify minority efforts at electing school board members, which may be and are often disproportionately black and segregate minority students. Other charter schools are shutting out students, pushing out


135. See FRANKENBERG ET AL., supra note 121, at 82; Green III et al., supra note 118, at 255; Nelson, supra note 134, at 240.


137. See Nelson, supra note 134, at 248–49.

138. See ORFIELD & FRANKENBERG, supra note 134, at 3; Scott, supra note 122, at 32; Green III et al., supra note 118, at 255; Nelson, supra note 134, at 240.

139. See FRANKENBERG ET AL., supra note 121, at 7.

140. MIRON ET AL., supra note 139, at 3; Salt, supra note 122, at 30; Green II et al., supra note 118, at 255; Nelson, supra note 134, at 239–40.

141. See Nelson, supra note 134, at 252.

142. See id.

143. See ORFIELD & FRANKENBERG, supra note 134, at 3; Scott, supra note 122, at 32; Green II et al., supra note 118, at 255; Nelson, supra note 134, at 239–40.


145. See MIRON ET AL., supra note 139, at 13–14; P.B. ET AL. V. POVERTY LAW CENTER. http://www.splcenter.org/seeking-justice/case-docket/pb-et-al-v-poverty-law-center (last visited Mar. 10, 2016). For purposes of this discussion, shut out is defined as a refusal to recruit or enroll students. See MIRON ET AL., supra note 139, at iii; P.B. ET AL. V. POVERTY LAW CENTER. supra. In many ways, this definition extends from the argument that charter schools cream their student populations; or in other words, accept only the least challenging students. MIRON ET AL., supra note 139, at iii, 3. Reform advocates often argue that demographic statistics rebut claims of creaming since charter schools often enroll higher numbers of poor and minority students. See id. at 3. This argument misses the mark. See id. It is perfectly possible for poor and minority students to be academically astute. Thus, it is absolutely possible for a school to enroll large numbers of academically high performing poor and minority students while excluding more challenging poor and minority students. For instance, KIPP schools under-enroll students with disabilities and student who limit English proficiency. See id.; P.B. ET AL. V. POVERTY LAW CENTER. supra. Furthermore, the Southern Poverty Law Center accused charter schools in New Orleans of systematically excluding students with disabilities. See P.B. ET AL. V. POVERTY LAW CENTER. supra. In open court, the State of Louisiana admitted that these exclusions were precipitated by the system of school reform chosen by the State of Louisiana. Interview with Jessica L., Carter, former Outreach Paralegal, S. POVERTY LAW CENTER, in New Orleans, La. (Apr. 14, 2015).

146. See HOLZMAN, supra note 13, at 29, 32; KIM ET AL., supra note 9, at 9; P.B. ET AL. V. POVERTY LAW CENTER, supra note 146. As opposed to never letting some students into school, some schools simply ask students to leave or demand that students leave in lieu of some other—often morally reprehensible—consequence. See KIM ET AL., supra note 9, at 9. In these cases, no paperwork follows the request for removal, so the student’s removal from the school community is not registered as a suspension or an expulsion. See Complaint at 16–17, P.B. ET AL. V. POVERTY LAW CENTER, No. 2:10-CV-04049 (E.D. La. Oct. 26, 2010); HOLZMAN, supra note 13, at 32, 37; KIM ET AL., supra note 9, at 9. The school’s actions are, however, tantamount to a long-term removal from the school setting and in the case of a student with an Individual Education Plan, a change in placement. Complaint at 2, 29, P.B., (No. 2:10-CV-04049); KIM ET AL., supra note 9, at 9. This practice is commonly referred to as “counseling out in education circles. See KIM ET AL., supra note 9, at 9. There is no substantive difference between counseling a student out-of-school and pushing a student out of school. See HOLZMAN, supra counseling a student out-of-school and pushing a student out of school. See HOLZMAN supra. This paper, therefore, defines push out as all cases where a student is removed from the student’s initial school placement without proper and due process. In the years immediately following the mass chartering of New Orleans’ public schools, there was no method of tracking students who had been pushed out of school. See Complaint at 16–17, P.B., (No. 2:10-CV-04049). Thus, some students such as P.B., the named plaintiff in the Southern Poverty Law Center’s lawsuit, have been arrested for truancy after being pushed out of school. Id. at 36–38.
Some scholars have openly questioned the role of the school choice movement in advancing or redefining civil rights, notwithstanding attempts by school choice advocates to frame the charter school movement as a modern extension of the Civil Rights Movement.134 Of specific importance to this paper, charter schools have been cited as having a racially segregated effect.135 Most charter schools are also managed—nearly exclusively—by self-selected or appointed boards that are disproportionately white, and many charter schools prevent poor black and brown stakeholders from obtaining, maintaining, or retaining political power over education policy and politics.136 In some extreme cases, disproportionately white, self-selected charter school boards have been allowed to practically displace popularly-elected, predominately black, school boards.137 Given that the quest for integrated schools and the electoral franchise were among the most sought after rights in the Civil Rights Movement, it is important to consider whether the school choice movement—and specifically charter schools—have been civil rights or civil wrongs.138 Whether civil rights or civil wrongs, even when poor and minority students are able to access charter schools associated with high academic achievement for their disproportionately poor and minority student bodies, these students are often not completing their studies with their classmates.139 One report cited that the Knowledge Is Power Program charter network, commonly known as “KIPP,” loses roughly one of every six of its students.140 That number is more than one of every three for the charter management organization’s middle school cohorts.141 Most shockingly, the same report suggests that two of every five of its black male student enrollees disappear before the students would enroll in or complete high school.142 One might then surmise claims that the charter school movement’s association as a civil right are exaggerated.143 Charter schools often nullify minority efforts at electing school board members, which may be and are often disproportionately black144 and segregate minority students.145 Other charter schools are shutting out146 students, pushing out147

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138. See ORFIELD & FRANKENBERG, supra note 134, at 3; Scott, supra note 122, at 32; FRANKENBERG ET AL., supra note 121, at 7.
140. MIRON ET AL., supra note 139, at 1, 3, 11 (reporting that KIPP’s dropout rate is approximately five times the estimates for comparative local schools).
141. See id. at 12.
142. See id.
143. See ORFIELD & FRANKENBERG, supra note 134, at 3; Scott, supra note 122, at 32; Green III et al., supra note 118, at 255; Nelson, supra note 134, at 239–40.
144. See Nelson, supra note 134, at 252.
145. FRANKENBERG ET AL., supra note 121, at 4.
146. See MIRON ET AL., supra note 139, at 13–14; P.B., et al. v. Pastorek, S. POVERTY L. CTR., http://www.splcenter.org/seeking-justice/case-docket/pb-et-al-v-pastorek (last visited Mar. 10, 2016). For purposes of this discussion, shut out is defined as a refusal to recruit or enroll students. See MIRON ET AL., supra note 139, at iii; P.B., et al. v. Pastorek, supra. In many ways, this definition extends from the argument that charter schools cream their student populations; or in other words, accept only the least challenging students. MIRON ET AL., supra note 139, at iii, 3. Reform advocates often argue that demographic statistics rebut claims of creaming since charter schools often enroll higher numbers of poor and minority students. See id. at 3. This argument misses the mark. See id. It is perfectly possible for poor and minority students to be academically astute. Thus, it is absolutely possible for a school to enroll large numbers of academically high performing poor and minority students while excluding more challenging poor and minority students. For instance, KIPP schools under-enroll students with disabilities and students who have limited English proficiency. See id.; P.B., et al. v. Pastorek, supra. Furthermore, the Southern Poverty Law Center accused charter schools in New Orleans of systematically excluding students with disabilities. See P.B., et al. v. Pastorek, supra. In open court, the State of Louisiana admitted that these exclusions were precipitated by the system of school reform chosen by the State of Louisiana. Interview with Jessica L. Carter, former Outreach Paralegal, S. POVERTY L. CTR., in New Orleans, La. (Apr. 14, 2015).
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students, or snatching out 148 students. 149 Or perhaps civil rights are not good for black stakeholders? 150

IV. A PERFECT STORM: THE CHARTER SCHOOL MOVEMENT IN NEW ORLEANS

A. Pre-Katrina Struggles in New Orleans' Public Schools

No reasonable person in favor of student achievement and educational equity could stipulate that New Orleans' public schools worked well before Hurricane Katrina. 151 All stakeholders agreed that change was needed in the struggling school district. 152 The situation was bleak, and stakeholders were rightfully desperate for change. 153 Students entered the New Orleans' public schools with an even chance of exiting with or without a high school diploma. 154 For those students fortunate enough to reach high school graduation, educational, social, and occupational opportunities were almost certainly limited, if not completely foreclosed. 155 The low literacy

was no method, however, of tracking the status of these students for educational or truancy purposes. Id. at 16–17. Like many students with disabilities who were purportedly protected by the Individuals with Disabilities Education Act, P.B. was a poor and minority student who presented a challenge for the reformed New Orleans' public schools and needed to be removed from the school community to assure that his troubling behaviors and academic challenges did not show up in the school's test scores. See id. at 5, 36–38; MIRON ET AL., supra note 139, at 3, 26.

148. See Supplemental Complaint at 2, 5, Q.B. v. Jefferson Parish Pub. Sch. Sys., No. 06121151 (U.S. Dept. of Educ. May 7, 2015). Students are considered to be snatched out of school when the police remove the student from campus. See id.; KIM ET AL., supra note 9, at 9. The first time I heard this phrase was in a conversation with a classroom charter school context, the focus on school improvement in Louisiana, in combination with Supplemental Complaint at 5, 8 Q.B. (No. 06121151). In Jefferson Parish, the largest and perhaps most diverse school system in Louisiana, over seven hundred students were arrested on campus, and the district referred almost one thousand students to the criminal system for minor rule violations. Id. at 5, 8.

MIRON ET AL., supra note 139, at ii, 12–14, 26; P.B. ET AL. v. Pastorek, supra note 146.


151. See id. at 242; O'Neil & Thukral, supra note 1, at 319–20.

152. See id.

153. See id. at 320–21.

154. See id. at 319–20.

155. See HOLTZMAN, supra note 13, at 2, 7. This should not be construed to beamish the reputation of a largely hardworking, predominately black teaching force in New Orleans' public schools prior to Hurricane Katrina. See Leigh Dingerson, Dismantling a Community Timeline, High Sch. J., Dec. 2006–Jan. 2007, at 8, 8–9. Those teachers faced rates of the City of New Orleans gave developing countries reason to pity the city once known as the crown jewel of the American South. 156 The low literacy rates could be directly tied to the nonfeasance, misfeasance, and malfeasance that plagued the finances and management of school districts. 157 Stakeholders wanted and demanded change. 158 This change came in the form of a state takeover followed by the proliferation of charter schools. 159 It is important to note that parents wanted educational change, but the only change that the Louisiana Board of Elementary and Secondary Education afforded stakeholders in New Orleans was the change that occurred after Hurricane Katrina's landfall. 160 Thus, the concept of school choice as implemented in New Orleans during the city's recovery after Hurricane Katrina was a forced choice, at best, and no choice at all, in the worst case; moreover, schools—until recently—had expansive power in choosing what students attended their schools as opposed to students and families choosing which schools they, themselves, would attend. 161 To this day, the most popular and sought after schools in New Orleans are managed by the Orleans Parish School Board, the popularly elected and predominately black governing body constitutionally tasked under Louisiana's state constitution with managing the city's schools. 162 Poor and black parents and students in New Orleans' public schools had little choice in choosing the school reform

many of the problems that some school reform advocates are willing to use as an excuse or mitigating factor in the poor performance of school reform in New Orleans when such poor performance is acknowledged. See id.


157. NELSON, supra note 111, at 10.


159. See Beabout, Stakeholder Organizations, supra note 158, at 43–46; Dingerson, supra note 155, at 8, 12–13; Nelson, supra note 134, at 245.

160. See Miron, supra note 158, at 240–41; Nelson, supra note 134, at 244–46.

161. See Nelson, supra note 134, at 240, 244.

students, or snatching out students. Or perhaps civil rights are not good for black stakeholders?

IV. A PERFECT STORM: THE CHARTER SCHOOL MOVEMENT IN NEW ORLEANS

A. Pre-Katrina Struggles in New Orleans Public Schools

No reasonable person in favor of student achievement and educational equity could stipulate that New Orleans’ public schools worked well before Hurricane Katrina. All stakeholders agreed that change was needed in the struggling school district. The situation was bleak, and stakeholders were rightfully desperate for change. Students entered the New Orleans’ public schools with an even chance of exiting with or without a high school diploma. For those students fortunate enough to reach high school graduation, educational, social, and occupational opportunities were almost certainly limited, if not completely foreclosed. The low literacy was no method, however, of tracking the status of these students for educational or truncy purposes. Id at 16–17. Like many students with disabilities who were purportedly protected by the Individuals with Disabilities Education Act, P.B. was a poor and minority student who presented a challenge for the reformed New Orleans public schools and needed to be removed from the school community to assure that his troublesome behaviors and academic challenges did not show up in the school’s test scores. See id. at 5, 36–38; MIROK ET AL., supra note 139, at 3, 26.

See Supplemental Complaint at 2, 5, Q.B. v. Jefferson Parish Publ. Sch. Sys., No. 06121151 (U.S. Dept of Educ., May 7, 2015). Students are considered to be snatched out of school when the police remove the student from campus. See id.; KIM ET AL., supra note 9, 9. The first time I heard this phrase was in a conversation with a classmate, charter school context, the focus on school improvement in Louisiana, in combination with Supplemental Complaint at 5, 8 Q.B. (No. 06121151). In Jefferson Parish, the largest and perhaps most diverse school system in Louisiana, over seven hundred students were arrested on campus, and the district referred almost one thousand students to the juvenile court system for minor rule violations. Id. at 5, 8.

MIROK ET AL., supra note 139, at 3, 26; HOLSZK, supra note 9, at 9; ID. at 5, 8; ID. at 2; HOLSZK, supra note 13, at 29; KIM ET AL., supra note 9, at 9;

150. See Nelson, supra note 134, at 239–40. Id. at 242; O’Neill & Thakral, supra note 1, at 319–20. O’Neill & Thakral, supra note 1, at 320–21. Id. at 154. See id. at 319–20. HOLSZK, supra note 13, at 2, 7. This should not be construed to besmirch the reputation of a largely hardworking, predominately black teaching force in New Orleans’ public schools prior to Hurricane Katrina. See Leigh Dingerson, Dismantling a Community Timeline, HIGH SCH. J., Dec. 2006–Jan. 2007, at 9, 8-9. Those teachers faced rates of the City of New Orleans gave developing countries reason to pity the city once known as the crown jewel of the American South. The low literacy rates could be directly tied to the nonfeasance, misfeasance, and malfeasance that plagued the finances and management of school districts. Stakeholders wanted and demanded change. This change came in the form of a state takeover followed by the proliferation of charter schools. It is important to note that parents wanted educational change, but the only change that the Louisiana Board of Elementary and Secondary Education afforded stakeholders in New Orleans was the change that occurred after Hurricane Katrina’s landfall. Thus, the concept of school choice as implemented in New Orleans during the city’s recovery after Hurricane Katrina was a forced choice, at best, and no choice at all, in the worst case; moreover, schools—until recently—had expansive power in choosing what students attended their schools as opposed to students and families choosing which schools they, themselves, would attend. To this day, the most popular and sought after schools in New Orleans are managed by the Orleans Parish School Board, the popularly elected and predominately black governing body constitutionally tasked under Louisiana’s state constitution with managing the city’s schools. Poor and black parents and students in New Orleans’ public schools had little choice in choosing the school reform many of the problems that some school reform advocates are willing to use as an excuse or mitigating factor in the poor performance of school reform in New Orleans when such poor performance is acknowledged. See id.


157. NELSON, supra note 111, at 10.


159. See Beaubot, Stakeholder Organizations, supra note 158, at 43–46; Dingerson, supra note 155, at 8, 12–13; Nelson, supra note 134, at 245. See Mirón, supra note 158, at 240–41; Nelson, supra note 134, at 244–46.

160. See Nelson, supra note 134, at 240–44. See Nelson, supra note 134, at 240, 244.

strategies that would most affect them. To some extent, this limitation didn’t matter. Not much, if anything, could be worse than the pre-Katrina schools in New Orleans, and even if the charter school movement became or becomes a catastrophe, the City of New Orleans’ schools would not be in much worse of a position than they were immediately before Katrina’s landfall.

B. The Mirage of a “Better” Day Emerges in New Orleans’ Public Schools

Filled with desperate hope and blind optimism, the charter school movement quickly overwhelmed New Orleans’ educational market. The City of New Orleans emerged as the epicenter of the school reform movement—where school turnaround miracles consistently occurred—and the charter school movement in general. New Orleans has for many years maintained the highest proportion of its students enrolled in charter schools, at one point actually, doubling the charter school enrollment market share of the next closest city. According to some reputable sources, the charter school movement in New Orleans has resulted in significant academic gains for students, especially poor and black students. Student academic gains should be met with tempered enthusiasm, however, since most evaluations rely on school performance score formulas that are state-created and have changed multiple times since the beginning of the charter school movement in New Orleans. Likewise, these formulas rely more heavily on student performance on state assessments, especially at the elementary and middle school level. John White, the state superintendent of education in Louisiana, proposed delaying accountability consequences on state test assessments to prevent too many schools from failing to meet academic expectations as a mechanism for gaming the accountability system. The lower and almost nonexistent percentage of New Orleans’ public school students attending failing schools has been used to credit the charter school movement as being academically effective, but a large number of schools do not receive letter grades and are, therefore, not included in this calculation. In essence, the state only counts some schools—mostly academically acceptable schools—in the calculation of failing and non-failing schools. Moreover, nationally scaled tests have brought into question the newfound achievements of New Orleans’ public schools. Reliance on academic comparisons of pre and post-Katrina schools using state test scores is misleading at the least.

164. See id.
165. See Frazier-Anderson, supra note 3, at 412–13; Miron, supra note 158, at 241.
166. See Frazier-Anderson, supra note 3, at 414.
170. See Dreiling, Schools Excel Before Tests Get Tougher, supra note 169.
173. See Dreiling, Schools Excel Before Tests Get Tougher, supra note 169; Kingsland, supra note 5, at 59; Academic Outcomes, supra note 172.
174. See Dreiling, Schools Excel Before Tests Get Tougher, supra note 169; Kingsland, supra note 5, at 59; Academic Outcomes, supra note 172.
175. See Mercedes Schneider, 2013 Louisiana School Letter Grades: Recovery School District Gains Nothing, HUFFINGTON POST, (Oct. 31, 2013, 2:15 PM), http://www.huffingtonpost.com/mercedes-schneider/2013-louisiana-school-letter-b4179768.html (noting that twelve schools in New Orleans that would have received failing letter grades—or close to 15% of schools in New Orleans—were excluded from calculation of failing schools as well as increased letter grades did not correlate to increased performance).
176. Academic Outcomes, supra note 172; Schneider, supra note 175.
177. See Littice Bacon-Blood, La. Students Score Near Bottom on National Test, TIMES-PICAYUNE, Nov. 8, 2013, at A4. Despite soaring state test proficiency rates, Louisiana student proficiency rates lag national proficiency rates. Id.; see also Dreiling, Schools Excel Before Tests Get Tougher, supra note 169.
178. See Dreiling, Schools Excel Before Tests Get Tougher, supra note 169; Kingsland, supra note 5, at 59; Nelson, supra note 134, at 262 n.1.
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Assuming arguendo that student academic performance—as defined by test scores alone—in New Orleans has increased in response to the expansion of charter schools in the city, there remain other important analyses of improvement for New Orleans’ public school students.\textsuperscript{179} Issues of student civil rights are ripe for discussion in New Orleans’ charter schools.\textsuperscript{180} The gravamen of these civil rights issues are student enrollment and matriculation,\textsuperscript{181} student discipline,\textsuperscript{182} and student racial segregation.\textsuperscript{183} Scholars are also beginning to question the impact of the charter school movement on the ability of poor and black stakeholders to influence educational policy and politics in New Orleans.\textsuperscript{184} Very little scholarship focuses on the role of the charter school movement on the school-to-prison pipeline in New Orleans.\textsuperscript{185}

C. You Can’t Sit Here: Few Black Governance Positions in New Orleans’ Charter Schools and the Retrenchment of the Voting Rights for Poor and Black Citizens in New Orleans

As charter schools have expanded in New Orleans, self-selected charter school governing boards have expanded as well.\textsuperscript{186} In traditional public schools, school board representation for black and brown students and parents has proven to be effective in promoting academic achievement for these students.\textsuperscript{187} While this finding is still being examined in the context of charter schools, it is worth investigating the racial composition of self-selected charter school boards of New Orleans.\textsuperscript{188} The installation of predominately white charter school boards might negate or totally erode the political power of black and brown stakeholders to influence educational policy and politics even if there is little or no impact—or even positive impact—on student achievement as measured by testing.\textsuperscript{189} Considering whether black and brown parents have equitable representation on the governance boards of New Orleans’ charter schools is critically important because self-selected charter school boards are accountable to very few entities, predominately themselves; they are not at all accountable to the predominantly black and brown voters of New Orleans.\textsuperscript{189} Of course, dissatisfied parents of students in New Orleans’ charter schools may vote with their feet, but those parents are generally required to attend another charter school since the few schools operated under the popularly elected Orleans Parish School Board are amongst the most sought after in the area and are often filled to capacity.\textsuperscript{190}

Poor and black parents did not initiate the charter school movement in New Orleans.\textsuperscript{191} To the contrary, the State of Louisiana and the federal government offered poor and black parents one option: charter schools.\textsuperscript{192} With no pun intended, the convergence of Hurricane Katrina, federal and state policy, and funding incentives created the perfect storm for a charter school takeover in New Orleans.\textsuperscript{193} The people most affected by the en masse changes to the systems to educate public school students in New Orleans—almost exclusively poor and black citizens—were not invited to the table for input or to be otherwise briefed about the proposed changes or
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the impact of those changes. The poor and black citizens in New Orleans were disproportionately affected by the flooding associated with Hurricane Katrina and were least able to afford a rapid return to the city, which was aided in efforts to shut out poor and black parents from conversations concerning the reestablishment of the city, including the rebalancing of the city’s faltering school district. The State of Louisiana, though slow to act in assisting in the evacuation of endangered citizens during Hurricane Katrina, worked quickly to snatch political power from poor and black citizens in New Orleans after the storm. While most of the city’s poor and black citizens were still evacuated from the city, the state legislature, which had recently bailed New Orleans’ public schools out of financial and operational distress, devised a plan for the state to summarily takeover nearly all of New Orleans’ public schools, including some schools that the state had recently commended for their academic performance.

D. The Louisiana Legislature’s Great Caper: Act 35

In November 2006, the state legislature through Act 35 wrested control of the majority of New Orleans’ public schools in spite of opposition from the entire black portion of New Orleans’ delegation to the state legislature. Act 35 placed control of almost every public school in New Orleans in the Recovery School District, a state-run school district with appointed leadership. By legislative fiat, the Louisiana State Legislature destroyed the ability of poor and black citizens of New Orleans to hold government officials in charge of education politically accountable, and the

state legislature simultaneously opened the door to disproportionate political power for middle-class and white citizens of New Orleans in the realm of education. Although Act 35 had statewide applicability, the law in effect, affected only New Orleans. One way to trigger Act 35’s district takeover power is for a school district to have thirty failing schools. Very few school districts in Louisiana have thirty schools; thus, those school districts could never trigger this statutory provision, even if all of those district’s schools were deemed failing. Of the school districts with more than thirty schools, many triggered Act 35’s district takeover provision, but the state opted with little explanation only to act upon New Orleans’ public schools. The district takeover provisions of Act 35 also empowered the state to alter the definition of failing in takeover districts: The State of Louisiana could deem any school in New Orleans that also fell below the state average failing and commandeer the school. Many stakeholders in New Orleans were left confused as to how a school that would be sufficient for educating students in one district might be failing in a neighboring district. Likewise, stakeholders were chagrined and bewilderred to learn that schools commended for academic achievement immediately before Hurricane Katrina’s landfall, could be deemed failing only weeks later when no new students were instructed and no new data was made available.

In quick order, the Recovery School District proceeded to manage the majority of New Orleans’ public schools; however, the hastiness of the state takeover was beset by a number of management and operational


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In quick order, the Recovery School District proceeded to manage the majority of New Orleans' public schools; however, the harshest of the state takeover was beset by a number of management and operational
problems. These problems led to the chartering of all of the schools for which the Recovery School District had previously assumed control. The initial takeover of New Orleans’ public schools was advertised as temporary; the schools would return to the control of the Orleans Parish School Board after five years. This return never occurred. The state, instead, decided to allow self-selected charter school boards to determine whether the charter schools managed by individual boards would ever return to voter accountability. To this day, exactly two charter schools have returned to the control of the popularly elected and predominately black Orleans Parish School Board.

Research on the racial composition of New Orleans’ self-selected charter school boards supports the argument that charter school boards are disproportionately white. Without question, the State of Louisiana created an additional school board that is separate from the Orleans Parish School Board and politically accountable to the predominately black voters of New Orleans. While the State of Louisiana may have intended to venture into education reform with Act 35, it is abundantly clear that Act 35 was the quintessential violation of section 5 of the Voting Rights Act of 1965, which was still valid at Act 35’s passage in 2005. Act 35 effectively muffled the political power of black citizens in New Orleans by way of creating an appointed school board that replaced the predominately black and elected school board with a predominately white board. Black parents in New Orleans no longer had a right to vote for representation on the school board with the greatest influence on education policy and involvement with the politics of education in New Orleans; black parents had the right to remain silent in education politics. Given that research suggests descriptive representation, or the ability to have a black presence on school boards, impacts substantive representation, the passage and implementation of policies—which in turn impacts student achievement—is important to investigate the impact of board representation types in New Orleans, appointed as opposed to elected, which in the context of New Orleans also indicates racial composition of the board on the measures of student achievement.

E. Charter Schools in New Orleans: Dead Right or Dead Wrong?

The situation is—before Hurricane Katrina and remains after the charter school movement—bleak in New Orleans. The city has led the nation in murder rate rankings in twelve of the last twenty-five years; these numbers include the year of Hurricane Katrina when New Orleans was not ranked. The situation is much more perilous for young black men. The majority of murder victims in the city are young black men. Fifty-five percent of murder victims in New Orleans are black men under the age of thirty, and an astounding near 20% of murder victims are school-aged. Assuming that New Orleans’ state standardized test scores are increasing at miracle-like intervals, as stated by the State of Louisiana and advocates of the charter school movement in New Orleans—which is hard to believe given the State of Louisiana’s poor results on national assessments—it is necessary to investigate the role of school governance and governance accountability in measures other than test scores. Students in New Orleans do not need improved test scores if improved test scores do not directly correlated better educational, social, and occupational opportunities. More specifically, dead students are unable to be tested, so test scores must be secondary to quality of life indicators—or simply life. It is beyond reasonable and supported in the literature to correlate more time in school and the attainment of credentials to better educational, social, and

213. See id.
214. Danielle Dreilinger, Charter School to Leave RSD, TIMES-PICAYUNE, Jan. 3, 2015, at A9 [hereinafter Dreilinger, Charter School to Leave RSD]. Nearly ten years after Hurricane Katrina enabled the charter school takeover of New Orleans’ public schools, only two of thirty-six recovered schools have elected to return to the system that is currently accountable to the parents of New Orleans’ predominately black public school students. See Nelson, supra note 134, at 246; Dreilinger, Charter School to Leave RSD, supra.

220. See Nelson, supra note 134, at 259–60.
223. See Garribaldi, supra note 85, at 4; Nelson, supra note 215.
225. Id.
226. See id.
227. See id.
228. See id.
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occupational opportunities.\(^{229}\) Comparing the discipline rates, the graduation rates, and college matriculation rates may give some guidance on effective accountability models for charter school agendas.\(^{230}\) Part V of this Article will assess how schools—charter or traditional public—accountable to the popularly elected school board in New Orleans compare to schools that are politically unaccountable to voters in New Orleans in these regards.\(^{231}\)

V. COMPARING NEW ORLEANS’ REFORMED SCHOOLS UNDER ELECTED AND SELF-SELECTED LEADERSHIP: WHICH GROUP OF SCHOOLS IS MORE SUCCESSFUL?

A. The Re-Establishment of Potentially Apartheid Schools Systems in New Orleans

The popularly elected Orleans Parish School Board manages a whiter and wealthier student population.\(^{232}\) The Recovery School District is appointed and governs a blacker and poorer student population.\(^{233}\) On its face, this fact alludes to notions that white parents are perfectly capable of participating in, if not controlling, educational policy whereas black parents do not have similar capabilities.\(^{234}\) On racial and economic numbers alone, it appears that the City of New Orleans might be running apartheid schools.\(^{235}\) There are higher achieving schools for wealthier, whiter students and lower performing schools for poorer, blacker students.\(^{236}\) In this case, school reform mirrors the authors’ experiences in Orleans Parish School Prior to Hurricane Katrina’s landfall with one caveat.\(^{237}\) There were always predominately black and predominately white public schools in New Orleans.\(^{238}\) Prior to Hurricane Katrina, there were a number of predominately poor and predominately black high performing schools in the city that were amongst the highest performing public schools in the State of Louisiana.\(^{239}\) The high achieving, predominately black public school option seems to have been a casualty of Hurricane Katrina.\(^{240}\) The high achieving, disproportionately white public school option managed to survive Hurricane Katrina.\(^{241}\)

Any fair comparison of the schools managed by the Orleans Parish School Board and the Recovery School District must note that the Recovery School District was tasked with governing the more challenging schools in the city of New Orleans.\(^{242}\) Even if the definition of a failing school changed to include some previously academically adequate schools, the Recovery School District gained control of only those schools at or below the state average while the Orleans Parish School Board maintained control of the most selective and high achieving schools in the City of New Orleans.\(^{243}\) It is sometimes difficult, however, to gauge the success of the Recovery School District because measures typically rely too heavily on test scores, which do not carry as much weight in predicting the trajectories of most students, specifically black, brown, and poor students.\(^{244}\) Moreover, most reports on education reform aggregate the achievements of the Orleans Parish School Board and the Recovery School District: This distorts, through enhancement, the achievements of the Recovery School District.\(^{245}\) Alone the Orleans Parish School Board’s school district ranks as the second highest performing district in the state in terms of student achievement.\(^{246}\) That ranking slips to the lower end of the middle of all school districts when combined with the Recovery School District—below the state average.\(^{247}\) It

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229. See Garibaldi, supra note 85, at 4, 7–8, 10.
230. See Nelson, supra note 215.
231. See infra Part V.
232. See Landry, supra note 180; Nelson, supra note 215.
234. See Nelson, supra note 215; Garibaldi, supra note 85, at 8.
235. See Landry, supra note 180.
236. See Bebout et al., supra note 198, at 225; Landry, supra note 180.
237. See Nelson, supra note 134, at 244–45; Landry, supra note 180.
238. Nelson, supra note 134, at 244–45.
239. Id. at 237–38, 244–45; see also Landry, supra note 180.
240. See Nelson, supra note 134, at 245.
241. See id. at 244–45.
242. See id.; Landry, supra note 180.
244. See Dreiling, Schools Excel Before Tests Get Tougher, supra note 169; Landry, supra note 180.
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247. Id.
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V. COMPARING NEW ORLEANS’ REFORMED SCHOOLS UNDER ELECTED AND SELF-SELECTED LEADERSHIP: WHICH GROUP OF SCHOOLS IS MORE SUCCESSFUL?

A. The Re-Establishment of Potentially Apartheid Schools Systems in New Orleans

The popularly elected Orleans Parish School Board manages a whiter and wealthier student population. The Recovery School District is appointed and governs a blacker and poorer student population. On its face, this fact alludes to notions that white parents are perfectly capable of participating in, if not controlling, educational policy whereas black parents do not have similar capabilities. On racial and economic numbers alone, it appears that the City of New Orleans might be running apartheid schools. There are higher achieving schools for whiter, whiter students and lower performing schools for poorer, blacker students. In this case, school reform mirrors the authors’ experiences in Orleans Parish School prior to Hurricane Katrina’s landfall with one caveat. There were always predominately black and predominately white public schools in New Orleans. Prior to Hurricane Katrina, there were a number of predominately poor and predominately black high performing schools in the city that were amongst the highest performing public schools in the State of Louisiana. The high achieving, predominately black public school option seems to have been a casualty of Hurricane Katrina. The high achieving, disproportionately white public school option managed to survive Hurricane Katrina.

Any fair comparison of the schools managed by the Orleans Parish School Board and the Recovery School District must note that the Recovery School District was tasked with governing the more challenging schools in the city of New Orleans. Even if the definition of a failing school changed to include some previously academically adequate schools, the Recovery School District gained control of only those schools at or below the state average while the Orleans Parish School Board maintained control of the most selective and high achieving schools in the City of New Orleans. It is sometimes difficult, however, to gauge the success of the Recovery School District because measures typically rely too heavily on test scores, which do not carry as much weight in predicting the trajectories of most students, specifically black, brown, and poor students. Moreover, most reports on education reform aggregate the achievements of the Orleans Parish School Board and the Recovery School District: This distorts, through enhancement, the achievements of the Recovery School District. Along the Orleans Parish School Board’s school district ranks as the second highest performing district in the state in terms of student achievement. That ranking slips to the lower end of the middle of all school districts when combined with the Recovery School District—below the state average. It
appears that the schools run by the popularly elected Orleans Parish School Board carry the day in terms of student achievement and school reform in the City of New Orleans.248 This is ironic because the unreformed schools appear to be bolstering the reputation of the reformed schools.249 Test scores aside, there appears to be disparate treatment and overall achievement of students in the Orleans Parish School Board managed schools and the Recovery School District managed schools.250 The following subsections disclose and elaborate on those differences.251 The following subsections, in effect, discuss whether school board selection procedures—self-selection versus popular election—are related to student outcomes.252 Remember that self-selected charter school boards are disproportionately white while the popularly elected Orleans Parish School Board is almost exactly proportional to the city’s black voting age population.253

B. Extreme Discipline Rates Statistically Less Likely in Politically Accountable Schools

Any measure of the effect of the proliferation of charter schools should compare the discipline rates of students enrolled in Recovery School District charter schools—with boards not politically accountable—to the discipline rates of students in schools that are managed by the politically accountable school board. Research suggests that disparate and excessive discipline contributes to the school-to-prison pipeline.254 A statistical analysis using the Fisher Exact Test of Independence255 to determine whether discipline rates are independent of governance classification—elected as opposed to appointed—reveals the following conclusion:256 There is insufficient evidence to warrant the claim that school governance

248. See id.; Landry, supra note 180; Nelson, supra note 215.

249. See Beaboot, Leadership for Change, supra note 201, at 405; Dellinger, Schools Excel Before Tests Get Tougher, supra note 169, 2014 District Performance Scores/Letter Grades, supra note 246.

250. See 2014 District Performance Scores Letter-Grades, supra note 246; Landry, supra note 180.

251. See infra Sections V.B-D.

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255. NELSON, supra note 111, at 59. The use of the Fisher Exact Test of Independence was necessary because the sample sizes were small, particularly in the case for

256. See: id.; infra Table 1.

classification is associated with a school’s act of suspending a measurable portion of the student body at least once in an academic year.257 Just over 25% of schools governed by the Orleans Parish School Board reported suspending a negligible number of students—less than ten students in one academic year—as compared to just under 15% of schools governed by the Recovery School District.258 Though the schools governed by the Recovery School District reported a negligible suspension rate at almost half the rate of schools governed by the Orleans Parish School Board, the statistical analysis does not support the claim that these proportions are statistically different.259

To the contrary, the same statistical test proves that schools governed by the Orleans Parish School Board are less likely to report higher and measurable suspension rates.260 Nearly 58% of schools governed by the Orleans Parish School Board report suspension rates under 5%, which is the benchmark for disclosing the actual suspension rate in Louisiana.261 Only about 30% of schools under the guidance of the Recovery School District report a suspension rate under 5%.262 This comparison is statistically significant at the .05 alpha level.263 Along the same lines, nearly 85% of schools operating under the Orleans Parish School Board, which can be held politically accountable, reported suspension rates under the state average of 14%.264 Only 57% of schools answering to the politically unaccountable Recovery School District suspend less than 14% of their students in a given school year.265 This comparison is also statistically significant at the .05 alpha level.266 Thus, there is a statistical association with school board governance classification—elected versus self-selected—and the issuance of out-of-school suspensions at measurable rates.267 Self-selected boards suspend more students.268 Although statistical tests are not useful in measuring the number of schools significantly above the state average of 14% suspensions for each governance structure,269 over 10% of schools in

257. See NELSON, supra note 111, at 59-61; infra Table 1.

258. See infra Table 1.

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261. See infra Table 1.

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263. See NELSON, supra note 111, at 59; infra Table 1.

264. See infra Table 1.

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267. See NELSON, supra note 111, at 59, 99; infra Table 1.

268. See infra Table 1.

269. See NELSON, supra note 111, at 59-60. Because the Fisher Exact Test of Independence has less power than other statistical tests, it does not make sense to conduct statistical comparisons of proportions with n-values well under ten for both categories. See id. It is unlikely that the statistical test will find a statistical association based merely on the small
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\item \textsuperscript{253} Nelson, supra note 134, at 243, 260–61.
\item \textsuperscript{254} Fowler, supra note 10.
\item \textsuperscript{255} NELSON, supra note 111, at 59. The use of the Fisher Exact Test of schools under the popularly elected Orleans Parish School Board, n-value is below thirty. Thus, other more powerful inferential statistics were not appropriate. Id. at 59, 80–82 tbl.5-2. Unlike other statistical tests, when the sample size is small, the Fisher Exact Test will produce the exact p-value for a given contingency table. Id. at 59.
\item \textsuperscript{256} See id.; infra Table 1.
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the Recovery School District suspended at least 28% of their students at least once, and almost 6% of schools in the Recovery School District suspend over 42% of their students at least once in a school year. For a comparison to the popularly elected Orleans Parish School Board, only one school has a suspension rate exceeding 28%, and no schools suspend over 35% of their students at least once a year. This is what school reform, and in particular, protecting charter schools from political accountability to the families they serve, has given the city of New Orleans: suspension rates that appear erroneously calculated at first glance. Table 1 provides the statistical data used to compare and contrast the suspension rates of schools in New Orleans.

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270. See infra Table 1. 271. See infra Table 1; 2013–2014 Discipline Rates and Letter Grades (Author’s Independent Data).

272. See Drellinger, Group Files Civil Rights Complaint Over Schools’ Working to Eliminate Suspensions, supra note 180. Drellinger, Strict Collegiate Academies Charters Are.

273. See infra Table 1.

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275. The State of Louisiana does not calculate suspension rates for schools issuing less than ten first-time suspensions. The state’s calculation of suspension rates is flawed in that manner. Some schools, particularly those with few students may suspend nine students and have relatively high suspension rates. For instance, a school with one hundred fifty students and nine first-time suspensions would have a 6% suspension rate.

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Given the link between suspension rates and the school-to-prison-pipeline, it is unsurprising that large swaths of youth in New Orleans end up incarcerated or worse—dead.278 The suspension rates in schools governed by the Recovery School District are disturbingly high, with one entire charter school system with no schools under 42% first-time suspensions.279 Although one school is under the guidance of the Orleans Parish School Board, Eleanor McMain has a first time suspension rate at 35%; that suspension rate almost seems pedestrian given that some schools in the Recovery School District are almost double that rate.280 The data used to conduct these statistical tests were self-reported; it is possible that more students were temporarily removed from class and not included in these numbers. For instance, some students may have been asked to leave campus for the remainder of the school day without being counted as having been suspended, an all too routine practice in some schools. These statistical tests rely on comparisons between all schools in each system, although all schools in the Recovery School District are open admission,281 and the majority of schools under the management of the Orleans Parish School Board are selective admission.282

278. Dreiling, Strict Collegiate Academies Charters Are Working to Eliminate Suspensions, supra note 180; Nelson, supra note 216. It is not far-fetched to reason that a large portion of New Orleans' murder victims are school-aged once an observer realizes how large numbers of school-aged students are not permitted to attend school and are not accounted for throughout parts of the school day. See Nelson, supra note 134. 279. See Author's Independent Data. Collegiate academies, often promoted by the State of Louisiana for its great academic achievements, has no single charter school in its network that is not at least three times the Louisiana state average for suspensions. See Author's Independent Data. These suspensions are often for minor offenses, and this situation has prompted a civil rights complaint to the U.S. Office of Civil Rights. See Dreiling, Group Files Civil Rights Complaint Over Schools' Discipline Policies, supra note 180. Though the charter network asserts that deep reflection has led to efforts at reducing suspension rates, it is more likely that federal probing—due to the civil rights complaint—is the motive for addressing the network's propensity for student suspension. See id.; Landry, supra note 180. 280. See Author's Independent Data. 281. See Landry, supra note 180. While all charter schools under the supervision of the Recovery School District are open admission, this Article has already discussed the prevalence of schools avoiding the enrollment of the most challenging students or finding ways to remove those same students after they have been enrolled. See id. EnrollNOLA: Annual Report February 2015, supra note 163, at 3; Landry, supra note 180; supra Section V.A. In some ways, the title of open admission is a misnomer in most of New Orleans' charter schools. See Landry, supra note 180. 282. Id. This Article considers schools under the supervision of the Orleans Parish School Board to be selective admission if the schools have opted to not participate in the unified enrollment process called OneApp. See id.; supra Sections V.A–B. OneApp was designed to rid the disjointed and decentralized systems of schools in New Orleans of bias, and the illegality in public school admissions processes. See EnrollNOLA: Annual Report February 2015, supra note 163, at 3; Landry, supra note 180. Failure to participate in

Such a comparison does not appear fair at first blush, but the comparison is appropriate given the fact that schools have great autonomy in terms of removals of students from the student's primary placement.283 And some behaviors require various measures and durations of removal, the allegations and evidence that the majority of student removals are for minor offenses.284 At its core, the excessive removal of students, temporary, may be intensifying the school-to-prison pipeline in New Orleans and is sufficiently within the domain of school-level officials to control.

C. Students in Politically Accountable Schools Statistically More Likely to Matriculate in College, but Not When Comparing Only Open Admissions Schools

Excessive, unevenly applied discipline does not alone account for the school-to-prison pipeline, although it certainly contributes to the male and soon-to-be, if not already so, black female crisis in education.5 Education has been historically viewed as the great equalizer in the United States because collegiate credentials have been—whether justly or unjustly—linked to higher social and occupational mobility.287 In a 2016 debrief, Dickerson argued that educational attainment was a marker of middle class status for black Americans.288 It is, therefore, paramount to assess the impact of charter school board political accountability, as such accountability may enhance or regress the ability of poor and black students to matriculate in collegiate studies.289 On its face, data suggests that political accountability in New Orleans' public schools is statistically correlated to higher numbers of schools with collegiate matriculation rates above the state average for outcomes.

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OneApp is not, in and of itself, a prima facie violation of the law, but raises questions concerning the admissions processes of opt-out schools. See EnrollNOLA: Annual Report February 2015, supra note 162, at 3, 14; Landry, supra note 180. About one of every three schools under the supervision of the Orleans Parish School Board in 2013–2014 were selective admission. See EnrollNOLA: Annual Report February 2015, supra note 162, at 4.

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286. See Fancher, supra note 74, at 275–76; Garibaldi, supra note 85, at 5.
287. See AKERS, supra note 195, at 32–33.
matriculation in New Orleans. In comparing all New Orleans’ public schools in terms of high school graduating classes, schools operated by the Orleans Parish School Board, which is politically accountable, achieved post-secondary education matriculation rates above Louisiana’s state average of 59% in all but one case, or 86% of the time. Comparatively, schools operated by non-politically accountable charter school boards authorized to operate by the State of Louisiana—either the Board of Elementary and Secondary Education or the Recovery School District—accomplished this achievement in just under 17% of cases, or three out of eighteen times. This comparison is statistically significant at the .01 alpha level. It appears at least arguable that political accountability is associated with higher post-secondary education enrollment rates in New Orleans. The data, in aggregate, would support this argument.

It is unfair, to some extent, to measure the post-secondary enrollment rates of the schools in the Recovery School District to those of the primarily selective admissions schools under the watch of the Orleans Parish School Board. Selective admissions schools do not face the bevy of academic challenges of working with students who are sometimes several grade levels behind in core educational competencies. Instead, selective admissions schools receive a large number, if not a majority, of their students at or above grade level in core competencies. Selectively admitted students may be less difficult to instruct, and they may also possess better self-efficacy and motivation to enroll in post-secondary studies. When comparing only schools that do not admit students selectively, there is no statistically significant relationship between board governance structures (p-value=.1278). Politically accountable schools achieve post-secondary enrollment rates over 59% in two of three occasions—or 66%—as opposed to 17% achievement of the same feat for schools run by appointed or self-selected boards operating under the authorization of the Recovery School District or the Louisiana Board of Elementary and Secondary Education. Table 2 discloses the appropriate statistical comparison of post-secondary matriculation rates for schools under the Orleans Parish School Board and the Recovery School District.

Proponents of the charter school takeover in New Orleans have asserted that the majority of students in New Orleans are attending better schools than they would have attended prior to Hurricane Katrina. The proponents may be—but are probably not—correct in this assertion as far as the assertion is directed towards the increased likelihood of post-secondary enrollment upon graduation for the majority of students in New Orleans’ public schools. As compared to non-selective schools in New Orleans run by the politically accountable Orleans Parish School Board, schools in the non-politically accountable Recovery School District have gained in terms of post-secondary education matriculation rates. As compared to selective admissions schools, the appropriate standard of comparison of New Orleans’ public schools prior to Hurricane Katrina, the schools in the Recovery District Students Than Ever Graduating High School on Time, LA. RECOVERY SCH. DISTRICT (Apr. 6, 2015), http://www.rsdsla.net/apps/news/show_news.jsp?REC_ID=350614&id=0. See SIMS & ROSSMEIER, supra note 274, at 22; More Recovery School District Students Than Ever Graduating High School on Time, supra note 305, infra Table 2.

306. See Andre Perry, How One NOLA School Got More Kids into College by Opening Its Doors, SECOND LINE EDUC. BLOG (May 26, 2015), http://www.secondlineblog.org/2015/05/how-one-nola-school-got-more-kids-into-college-by-opening-its-doors; Andrew J. Rotherham, Opinion, The Real Heroes: New Orleans Educators Do Not Get the Credit They Deserve for Rebuilding the Schools After Hurricane Katrina, U.S. NEWS & WORLD REP. (Aug. 28, 2015), http://www.usnews.com/news/the-report/articles/2015/0828/new-orleans-educators-deserve-credit-10-years-after-hurricane-katrina. Prior to Hurricane Katrina, the students at New Orleans’ selective admissions schools were almost guaranteed to enter post-secondary studies. See Perry, supra. Thus, the argument for educational equity in New Orleans should not be based on the performance of open admissions schools after Hurricane Katrina, which are in no way as successful as the previously operated selective admissions schools in New Orleans. See id. The comparison for determining academic gains in New Orleans should be against the selective admissions schools. See id. It is highly doubtful that parents in New Orleans—disappointed by the gap in future educational, social, and occupational mobility—would argue for comparison to similarly situated schools as opposed to comparison to schools with better educational, social, and occupational opportunities for their students. See Nelson, supra note 216; Perry, supra; Smith, Hurricane Katrina 10 Years On, supra note 8; infra Table 2.
matriculation in New Orleans. In comparing all New Orleans' public schools in terms of high school graduating classes, schools operated by the Orleans Parish School Board, which is politically accountable, achieved post-secondary education matriculation rates above Louisiana's state average of 59% in all but one case, or 86% of the time. Comparatively, schools operated by non-politically accountable charter school boards authorized to operate by the State of Louisiana—either the Board of Elementary and Secondary Education or the Recovery School District—accomplished this achievement in just under 17% of cases, or three out of eighteen times. This comparison is statistically significant at the .01 alpha level. It appears at least arguable that political accountability is associated with higher post-secondary education enrollment rates in New Orleans. The data, in aggregate, would support this argument.

It is unfair, to some extent, to measure the post-secondary enrollment rates of the schools in the Recovery School District to those of the primarily selective admissions schools under the watch of the Orleans Parish School Board. Selective admissions schools do not face the bevy of academic challenges of working with students who are sometimes several grade levels behind in core educational competencies. Instead, selective admissions schools receive a large number, if not a majority, of their students at or above grade level in core competencies. Selectively admitted students may be less difficult to instruct, and they may also possess better self-efficacy and motivation to enroll in post-secondary studies. When comparing only schools that do not admit students selectively, there is no statistically significant relationship between board governance structures (p-value=.1278). Politically accountable schools achieve post-secondary enrollment rates over 59% in two of three occasions—or 66%—as opposed to 17% achievement of the same feat for schools run by appointed or self-selected boards operating under the authorization of the Recovery School District or the Louisiana Board of Elementary and Secondary Education. Table 2 discloses the appropriate statistical comparison of post-secondary matriculation rates for schools under the Orleans Parish School Board and the Recovery School District.

Proponents of the charter school takeover in New Orleans have asserted that the majority of students in New Orleans are attending better schools than they would have attended prior to Hurricane Katrina. The proponents may be—but are probably not—correct in this assertion as far as the assertion is directed towards the increased likelihood of post-secondary enrollment upon graduation for the majority of students in New Orleans public schools. As compared to non-selective schools in New Orleans run by the politically accountable Orleans Parish School Board, schools in the non-politically accountable Recovery School District have gained in terms of post-secondary education matriculation rates. As compared to selective admissions schools, the appropriate standard of comparison of New Orleans' public schools prior to Hurricane Katrina, the schools in the Recovery

290. See id; infra Table 2.
291. See infra Table 2.
292. See infra Table 2.
293. See infra Table 2.
294. See Drellinger, More Students in N.O. College Bound, supra note 287; infra Table 2.
295. See infra Table 2.
297. See FRANKENBERG ET AL., supra note 121, at 16; Akers, supra note 195, at 29.
298. See FRANKENBERG ET AL., supra note 121, at 16; Akers, supra note 195, at 29.
299. See Simon, supra note 296; infra Table 2.
300. See infra Table 2.

301. See infra Table 2.
302. See infra Table 2.
303. See Kingsland, supra note 5, at 59; Smith, Hurricane Katrina 10 Years On, supra note 8.
305. See SIMS & ROSSMEIER, supra note 274, at 22; More Recovery School District Students Than Ever Graduating High School on Time, supra note 305; infra Table 2.
306. See Andre Perry, How One NOLA School Got More Kids into College by Opening Its Doors, SECOND LINE EDUC. BLOG (May 26, 2015), http://www.secondlineblog.org/2015/05/how-one-nola-school-got-more-kids-into-college-by-opening-its-doors; Andrew J. Rotherham, Opinion, The Real Heroes: New Orleans Educators Do Not Get the Credit They Deserve for Rebuilding the Schools After Hurricane Katrina, U.S. NEWS & WORLD REP. (Aug. 28, 2015), http://www.usnews.com/news/the-report/articles/2015/08/28/new-orleans-educators-deserve-credit-10-years-after-hurricane-katrina. Prior to Hurricane Katrina, the students at New Orleans' selective admissions schools were almost guaranteed to enter post-secondary studies. See Perry, supra. The argument for educational equity in New Orleans should not be based on the performance of open admissions schools after Hurricane Katrina, which are in no way as successful as the previously operated selective admissions schools in New Orleans. See id. The comparison for determining academic gains in New Orleans should be against the selective admissions schools. See id. It is highly doubtful that parents in New Orleans—disappointed by the gap in future educational, social, and occupational mobility—would argue for comparison to similarly situated schools as opposed to comparison to schools with better educational, social, and occupational opportunities for their students. See Nelson, supra note 216; Perry, supra; Smith, Hurricane Katrina 10 Years On, supra note 8; infra Table 2.
School District are still statistically behind.307 Thus, students in the schools under the watch of the Recovery School District have made ground on mediocre or underperforming schools, but those students have not made ground on post-secondary studies enrollment as measured against schools with students who frequently enroll in post-secondary studies.308 This data, at the least, casts doubt upon broad statements of better schools in New Orleans.309 Statistical evidence supports the claim that schools under the politically accountable Orleans Parish School Board, or the high performing schools prior to Hurricane Katrina, outpace the schools under the non-politically accountable Recovery School District when evaluating post-secondary studies enrollment.310 Moreover, the inability of the Recovery School District to place its poorer and black students into academically competitive schools in the city of New Orleans may be inflaming the school-to-prison pipeline.311

Table 2: Fisher Exact Test of Independence for Post-Secondary Studies Matriculation in New Orleans Public Schools—Disaggregated by Political Accountability Status—2013–14 School Year Data312

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<th>Above 59%</th>
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D. Students in Non-Politically Accountable Schools More Likely to Drop Out Regardless of Admissions Processes

Students who fail to complete high school are more likely to later be incarcerated.314 The impact of political accountability, or lack thereof, on the likelihood of non-completion of the high school curriculum is worthy of investigation.315 The state average for student dropout rates per individual schools in Louisiana is 3.42%.316 No schools operating under the regulation of the Orleans Parish School Board exceeded the state average for dropout rates.317 Just less than half of schools operating under the monitor of the

312. Independent Statistical Analysis Conducted by Authors from Louisiana Department of Education Data. See the following reports. COLLEGE ENROLLMENT DATA FOR 2013–2014 HIGH SCHOOL GRADUATES; FALL 2014 COLLEGE ENROLLMENT BY HIGH SCHOOL; COLLEGE FOR 2013–2014 (data on file with the Louisiana Department of Education); see also NELSON, supra note 111, at 59–60. OPSB is New Orleans Parish Public Schools. SIMS & ROSSMEIER, supra note 301, at 2. RSD is Recovery School District. Id.
313. Fifty-nine percent is the Louisiana state average of post-secondary studies matriculation.
314. HARLOW, supra note 24, at 1, 3.
315. See id.; infra Table 3.
317. See infra Table 3.
School District are still statistically behind.\(^{307}\) Thus, students in the schools under the watch of the Recovery School District have made ground on mediocre or underperforming schools, but those students have not made ground on post-secondary studies enrollment as measured against schools with students who frequently enroll in post-secondary studies.\(^{308}\) This data, at the least, casts doubt upon broad statements of better schools in New Orleans.\(^{309}\) Statistical evidence supports the claim that schools under the politically accountable Orleans Parish School Board, or the high performing schools prior to Hurricane Katrina, outpace the schools under the non-politically accountable Recovery School District when evaluating post-secondary studies enrollment.\(^{310}\) Moreover, the inability of the Recovery School District to place its poorer and black students into academically competitive schools in the city of New Orleans may be inflaming the school-to-prison pipeline.\(^{311}\)

| Table 2: Fisher Exact Test of Independence for Post-Secondary Studies Matriculation in New Orleans Public Schools—Disaggregated by Political Accountability Status—2013–14 School Year Data\(^{312}\) |
|-------------------------------------------------|---------------|---------------|
| Politically Accountable (OPSB)                  | Above 59%\(^{313}\) | Below 59%     |
| Not Politically Accountable (RSD)               | 6             | 1             |
| \(p\)-value                                     | .0029         |
| Politically Accountable (OPSB; Non-Selective)   | 2             | 1             |
| Not Politically Accountable (RSD)               | 3             | 15            |
| \(p\)-value                                     | .1278         |

D. Students in Non-Politically Accountable Schools More Likely to Drop Out Regardless of Admissions Processes

Students who fail to complete high school are more likely to later be incarcerated.\(^{314}\) The impact of political accountability, or lack thereof, on the likelihood of non-completion of the high school curriculum is worthy of investigation.\(^{315}\) The state average for student dropout rates per individual schools in Louisiana is 3.42%.\(^{316}\) No schools operating under the regulation of the Orleans Parish School Board exceeded the state average for dropout rates.\(^{317}\) Just less than half of schools operating under the monitor of the

\(^{307}\) See Sims & Rossmeir, supra note 274, at 22; infra Table 2.

\(^{308}\) See Sims & Rossmeir, supra note 274, at 22; infra Table 2.

\(^{309}\) See Perry, supra note 306; infra Table 2.

\(^{310}\) See Sims & Rossmeir, supra note 274, at 22; infra Table 2.

\(^{311}\) See Townsend, supra note 81, at 382; Dreiling, Has Gentrification Begun, supra note 239.

\(^{312}\) Independent Statistical Analysis Conducted by Authors from Louisiana Department of Education Data. See the following reports: COLLEGE ENROLLMENT DATA FOR 2013–2014 HIGH SCHOOL GRADUATES; FALL 2014 COLLEGE ENROLLMENT BY HIGH SCHOOL BY COLLEGE FOR 2013–2014 (data on file with the Louisiana Department of Education); see also Nelson, supra note 111, at 59–60. OPSB is New Orleans Parish Public Schools. Sims & Rossmeir, supra note 301, at 2. RSD is Recovery School District. Id.

\(^{313}\) Fifty-nine percent is the Louisiana state average of post-secondary studies matriculation.

\(^{314}\) Harlow, supra note 24, at 1, 3.

\(^{315}\) See id.; infra Table 3.


\(^{317}\) See infra Table 3.
Recovery School District exceed the state average for dropout rates with the majority of the twenty-four schools classified as exceeding the state average and doing so at rates multiple times over the state average for dropout rates.\textsuperscript{318} The Fisher Exact Test of Independence for political accountability structure and dropout rate in Table 3 suggests that schools under the politically accountable Orleans Parish School Board are less likely than schools in the non-politically accountable Recovery School District to exceed the state average for dropouts, notwithstanding admissions processes—selective or non-selective.\textsuperscript{319} The comparison between all schools under the Orleans Parish School Board (p-value = .0011) as well as the non-selective schools under the Orleans Parish School Board (p-value = .0366) and the schools under the Recovery School District are statistically significant.\textsuperscript{320} It is, therefore, reasonable to conclude that schools in the Recovery School District may be exacerbating the school-to-prison pipeline by way of not preventing student dropouts.\textsuperscript{321}

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VI. CONCLUSIONS AND RECOMMENDATIONS FOR THE NEXT WAVE OF SCHOOL REFORM IN NEW ORLEANS

The state takeover of New Orleans' public schools has been heralded as a model of urban school reform,\textsuperscript{324} but these accounts are based on analyses of test scores, which are not always indicative of academic aptitude for poor and black students.\textsuperscript{325} The analyses of the charter school movement and school reform in New Orleans often neglect necessary and impactful statistical analyses of variables more predictive of student trajectories.\textsuperscript{326} In a city plagued by a slew of social problems, it is not appropriate to evaluate schools on test scores alone, especially if the tests in question are written by, administered by, and evaluated by the entities most invested in creating and

\textsuperscript{318} See generally Annual Student Dropout Rates by State, District and Site 2013–2014, supra note 318; infra Table 3. There are twenty schools with appointed or self-selected boards with dropout rates over twice the Louisiana state average.

\textsuperscript{319} See infra Table 3.

\textsuperscript{320} See infra Table 3.

\textsuperscript{321} See infra Table 3.

\textsuperscript{322} Independent Statistical Analysis Conducted by Authors from Louisiana Department of Education Data. See the following reports. ANNUAL STUDENT DROPOUT RATES BY STATE, DISTRICT AND SITE 2013–2014 (data on file with the Louisiana Department of Education); see also NELSON, supra note 111, at 59–60. “OPSB” is New Orleans Parish Public Schools; SIMS & ROSSMEIER, supra note 274, at 2. “RSD” is Recovery School District. Id.

\textsuperscript{323} Three point four two percent is the state average for student dropouts for all schools in Louisiana that have grades seven or above.

\textsuperscript{324} See Kingsland, supra note 5, at 59.


Recovery School District exceed the state average for dropout rates with the majority of the twenty-four schools classified as exceeding the state average and doing so at rates multiple times over the state average for dropout rates. The Fisher Exact Test of Independence for political accountability structure and dropout rate in Table 3 suggests that schools under the politically accountable Orleans Parish School Board are less likely than schools in the non-politically accountable Recovery School District to exceed the state average for dropouts, notwithstanding admissions processes—selective or non-selective. The comparison between all schools under the Orleans Parish School Board (p-value = .0011) as well as the non-selective schools under the Orleans Parish School Board (p-value = .0366) and the schools under the Recovery School District are statistically significant. It is, therefore, reasonable to conclude that schools in the Recovery School District may be exacerbating the school-to-prison pipeline by way of not preventing student dropouts.

Table 3: Fisher Exact Test of Independence for High School Dropouts in New Orleans Public Schools—Disaggregated by Political Accountability Status—2013–14 School Year Data

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| p-value                  | .0366       |

VI. CONCLUSIONS AND RECOMMENDATIONS FOR THE NEXT WAVE OF SCHOOL REFORM IN NEW ORLEANS

The state takeover of New Orleans’ public schools has been heralded as a model of urban school reform, but these accounts are based on analyses of test scores, which are not always indicative of academic aptitude for poor and black students. The analyses of the charter school movement and school reform in New Orleans often neglect necessary and impactful statistical analyses of variables more predictive of student trajectories. In a city plagued by a slew of social problems, it is not appropriate to evaluate schools on test scores alone, especially if the tests in question are written by, administered by, and evaluated by the entities most invested in creating and

318. See generally Annual Student Dropout Rates by State, District and Site 2013–2014, supra note 318; infra Table 3. There are twenty schools with appointed or self-selected boards with dropout rates over twice the Louisiana state average.

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323. Three point four two percent is the state average for student dropouts for all schools in Louisiana that have grades seven or above.

324. See Kingsland, supra note 5, at 59.


maintaining the narrative that school reform has worked in the city of New Orleans. It may, nevertheless, be a mistake to summarily dismiss the noticeable gains of the charter school movement in New Orleans. The city’s literacy rate, while still poor, is improving. This is surely, however, not solely the effect of the charter school movement.

Evaluations of gains based on test scores have prompted one scholar to note that the State of Louisiana happens to be the player, the coach, the referee, and the scorekeeper in the game known as New Orleans’ education reforms; of course, the state is going to win under this accountability structure. The district is also educating a more diverse student body, although district level data supporting narratives of diversity belie the fact that individual schools are hardly more diverse than they were before Hurricane Katrina. The majority of white students who are returning to the city’s public schools are enrolling in a small number of disproportionately white and relatively high performing public charter schools with selective admissions criteria; white students are not returning to New Orleans’ public schools in an even distribution. It might be appropriate to revive the conversation about whether charter schools are white flight schools. In New Orleans, charter schools are disproportionately black in aggregate, but a careful analysis of individual charter schools might indicate the development of white flight or white enclave schools. For instance, white students make up less than 10% of students in New Orleans’ public schools, but several schools have majority white student populations or significantly white student populations—over 33%. Some may frame this fact as gaining diversity. Others may find this to indicate white flight—or white isolation—within the city. Finally, the return of white students to public schools may have been an effect of the economic downturn. The New Orleans metropolitan area has historically led the nation in private school—mostly Catholic—enrollment, per capita. It is entirely possible that parents of white school-aged students can no longer afford private school tuition and predominately white, selective admissions charter schools may be relatively safe havens for these white and middle-class families.

Given the uncertainty around academic gains in New Orleans’ charter schools and the potential of those schools to disproportionately contribute to the school-to-prison pipeline, as compared to the schools that are politically accountable, one might wonder about the costs of the charter school movement in New Orleans. The charter school takeover of New Orleans’ public schools aided in the destruction of the black middle class in New Orleans; the predominately black teaching force in place before Hurricane Katrina was effectively displaced and replaced by a whiter teaching force. The displaced and replaced teachers have filed suit alleging wrongful termination in violation of contract law, which might prove costly for the city’s schools in both liquid assets as well as political

327. See Frazier-Anderson, supra note 3, at 411–12; Gabor, supra note 327.
328. See Kingsland, supra note 5, at 61 fig.2.
329. See Gonzales, supra note 156; Chait, supra note 156.
330. See Gabor, supra note 326; Chait, supra note 156.
332. See Dreiling, Has Gentrification Begun, supra note 239; Student Enrollment & Demographics, supra note 332.
333. See Dreiling, Has Gentrification Begun, supra note 239. Charter schools in New Orleans have increased racial diversity at the district level, but the majority of white students in New Orleans are isolated in selective admissions and high performing schools, such as Ben Franklin High, Lusher Charter, or Audubon Charter. See id. Other charter schools are also disproportionately white as compared to the New Orleans’ public schools enrollment demographics, such as Morris Jeff Community School and Brignac Academy. Id. As school reform advocates advance assertions that New Orleans’ public schools are more diverse, little has changed in the segregation of students in New Orleans’ public schools. See id.; Student Enrollment & Demographics, supra note 332. White students are isolated to a few schools and black students are isolated in most others. See Dreiling, Has Gentrification Begun, supra note 239. Perhaps school reform advocates are not concerned with school-level diversity, but even district-level data, given the total student-age population in New Orleans, is not indicative of a major movement towards diverse public schools in New Orleans. See id.; Student Enrollment & Demographics, supra note 332.
334. See FRANKENBERG ET AL., supra note 121, at 10.
335. See id.
336. See id.; Dreiling, Has Gentrification Begun, supra note 239; Student Enrollment & Demographics, supra note 332.
337. See FRANKENBERG ET AL., supra note 121, at 10; Dreiling, Has Gentrification Begun, supra note 239; Student Enrollment & Demographics, supra note 332.
338. FRANKENBERG ET AL., supra note 121, at 10; see also Student Enrollment & Demographics, supra note 332.
339. See FRANKENBERG ET AL., supra note 121, at 11–12.
340. Id. at 26, 34; Valerie E. Lee & Anthony S. Bryk, Curriculum Tracking as Mediating the Social Distribution of High School Achievement, 61 SOC. EDUC. 78, 79 (1988).
341. FRANKENBERG ET AL., supra note 121, at 26; Landry, supra note 180.
342. See Schneider, supra note 175.
maintaining the narrative that school reform has worked in the city of New Orleans. It may, nevertheless, be a mistake to summarily dismiss the noticeable gains of the charter school movement in New Orleans. The city’s literacy rate, while still poor, is improving. This is surely, however, not solely the effect of the charter school movement.

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Given the uncertainty around academic gains in New Orleans’ charter schools and the potential of those schools to disproportionately contribute to the school-to-prison pipeline, as compared to the schools that are politically accountable, one might wonder about the costs of the charter school movement in New Orleans. The charter school takeover of New Orleans’ public schools aided in the destruction of the black middle class in New Orleans; the predominately black teaching force in place before Hurricane Katrina was effectively displaced and replaced by a whiter teaching force. The displaced and replaced teachers have filed suit alleging wrongful termination in violation of contract law, which might prove costly for the city’s schools in both liquid assets as well as political
capital. Moreover, black stakeholders have seen a reduction in political power since they have little or no power to hold charter school boards politically accountable through the voting process. Because New Orleans was a Voting Rights Act section 5 city prior to the Supreme Court’s disempowerment of section 5 by way of invalidating section 4 of the same statute, questions remain as to how the State of Louisiana created a parallel, and perhaps more powerful, predominately white school board in New Orleans with the effect of displacing and replacing the popularly elected and predominately black Orleans Parish School Board. Assuming for the sake of argument that test scores are rising in New Orleans’ public schools, the extraordinary dropout rates in New Orleans’ charter schools would force any reasonable observer to question whether test scores are higher because students are performing better on standardized tests, or whether test scores are higher because students who might not perform well are not being tested because they are no longer enrolled in the public schools, if they are enrolled in any schools at all. It is much easier to believe that the smaller black middle class—and more jobless blacks—in New Orleans combined with less political power for blacks in New Orleans and higher dropout numbers for non-politically accountable charter schools worsen the school-to-prison pipeline. Furthermore, it is reasonable to believe that these facts enhance the school-to-prison pipeline. What, then, were the costs of the uncertain gains in New Orleans’ public schools? That charter schools governed by boards that are politically unaccountable to its stakeholders might increase access points to the school-to-prison pipeline is troubling, but to a large extent, there is very little room to undo the effects of the New Orleans charter school movement. It is not, however, too late to create interventions aimed at lessening the impact of the effects of the charter school movement in New Orleans. This study suggests that school reform may be more effective if governing bodies are to some extent politically accountable to stakeholders. The extent of that accountability is debatable. The most obvious solution to a lack of political accountability is to begin transitioning recovered schools, or schools no longer labeled as failing, to the supervision of the popularly elected Orleans Parish School Board while continuing to afford the governing boards of charter schools great autonomy in governing the schools those individual schools manage. Another viable solution would be to infuse charter school governing boards with some, if not all, elected seats. There is precedent for this structure of governance. Some states allow for election of charter school board members and Minnesota, the originator of charter school authorizing legislation, requires charter school board elections with stakeholders, teachers, and parents, among others, as required electors. If poor and black stakeholders, those most affected by the proliferation of charter schools in New Orleans, have input into the redevelopment of New Orleans’ public schools, they may experience a sense of urban school renewal or a revival of hope that education can and will advance the social and occupational trajectories of poor and black stakeholders. While current school reform strategies, including charter schools, seek primarily to improve the trajectories of poor and black stakeholders via improved test scores, urban school renewal aims to infuse hope into poor and black communities through the inclusion of those groups in dialogues concerning educational policy and politics. If the State of Louisiana is not amenable to charter school board elections or a return of schools to the popularly elected Orleans Parish School Board, the state may construct an accountability formula that accounts for factors associated with the school-to-prison pipeline. For instance, suspension, expulsion rates, dropout rates, the effects of the charter school movement in New Orleans.

344. See Mitchell, supra note 343.
346. See id. at 258, 260, 263 n.11.
347. See NELSON, supra note 111, at 11–12.
348. See Nelson, supra note 134, at 245, 258–59; Smith, Deconstructing the Pipeline, supra note 8, at 1018–19; supra Table 3.
349. Sanders, supra note 331.
350. See Nelson, supra note 134, at 260–61; supra Table 3.
351. FRANKENBERG ET AL., supra note 121, at 82–84.
352. See FRANKENBERG ET AL., supra note 121, at 82–84; WEISSMAN, supra note 58, at 41; Nelson, supra note 134, at 242, 259–61.
353. Beabout, Stakeholder Organizations, supra note 158, at 43–44; see also supra Sections V-B–D.
354. See Beabout, Stakeholder Organizations, supra note 158, at 43–44, 48.
355. See id. at 44–47.
357. Id.; see also MINN. STAT. § 124E.07 (2015).
359. See MINN. STAT. § 124E.07(3).
361. See UNITED TEACHERS OF NEW ORLEANS ET AL., supra note 202, at 6, 8; Nelson, supra note 134, at 242, 259.
Moreover, black stakeholders have seen a reduction in political power since they have little or no power to hold charter school boards politically accountable through the voting process. Because New Orleans was a Voting Rights Act section 5 city prior to Supreme Court’s disempowerment of section 5 by way of invalidating section 4 of the same statute, questions remain as to how the State of Louisiana created a parallel, perhaps more powerful, predominately white school board in New Orleans with the effect of displacing and replacing the popularly elected and predominately black Orleans Parish School Board. Assuming for the sake of argument that test scores are rising in New Orleans’ public schools, the extraordinary dropout rates in New Orleans’ charter schools would force any reasonable observer to question whether test scores are higher because students are performing better on standardized tests, or whether test scores are higher because students who might not perform well are not being tested because they are no longer enrolled in the public schools, if they are enrolled in any schools at all. It is much easier to believe that the smaller black middle class—more jobless blacks—in New Orleans combined with less political power for blacks in New Orleans and higher dropout numbers for non-politically accountable charter schools worsen the school-to-prison pipeline. Furthermore, it is reasonable to believe that these facts enhance the school-to-prison pipeline. What, then, were the costs of the uncertain gains in New Orleans’ public schools? That charter schools governed by boards that are politically unaccountable to its stakeholders might increase access points to the school-to-prison pipeline is troubling, but to a large extent, there is very little room to undo the effects of the New Orleans charter school movement. It is not, however, too late to create interventions aimed at lessening the impact of the effects of the charter school movement in New Orleans. This study suggests that school reform may be more effective if governing bodies are to some extent politically accountable to stakeholders. The extent of that accountability is debatable. The most obvious solution to a lack of political accountability is to begin transitioning recovered schools, or schools no longer labeled as failing, to the supervision of the popularly elected Orleans Parish School Board while continuing to afford the governing boards of charter schools great autonomy in governing the schools those individual schools manage. Another viable solution would be to infuse charter school governing boards with some, if not all, elected seats. There is precedent for this structure of governance. Some states allow for election of charter school board members and Minnesota, the originator of charter school authorizing legislation, requires charter school board elections with stakeholders, teachers, and parents, among others, as required electors. If poor and black stakeholders, those most affected by the proliferation of charter schools in New Orleans, have input into the redevelopment of New Orleans’ public schools, they may experience a sense of urban school renewal or a revival of hope that education can and will advance the social and occupational trajectories of poor and black stakeholders. While current school reform strategies, including charter schools, seek primarily to improve the trajectories of poor and black stakeholders via improved test scores, urban school renewal aims to infuse hope into poor and black communities through the inclusion of those groups in dialogues concerning educational policy and politics. If the State of Louisiana is not amenable to charter school board elections or a return of schools to the popularly elected Orleans Parish School Board, the state may construct an accountability formula that accounts for factors associated with the school-to-prison pipeline. For instance, suspension, expulsion rates, dropout rates,
and other factors might be used to evaluate the effectiveness of schools, both traditional and charter public, in college and career readiness.

More research is needed to determine the impact of non-politically accountable charter school boards on poor and black stakeholders in New Orleans. Charter school and state officials, because of the potential usefulness of charter schools in addressing social ills, including the school-to-prison pipeline, should openly share pertinent data with all researchers. This has not historically been the case in Louisiana. As such, charter schools have not reached their full potential of addressing and perhaps remedying social ills. Charter schools might be unwittingly intensifying social ills for our nation’s most vulnerable students.

One argument justifying the segregated nature of charter schools is that charter schools aimed to provide educational equity to poor and minority students, who are often marginalized in the public schooling system. Charter schools, therefore, originate from noble intentions. It is hard, however, to congratulate the charter school movement on any measure of achievement when charter school achievement is muddied by the exclusion of the very population of students that charter schools profess to give expanded opportunities. Correlation does not prove causation, but the very fact that the largest supervisor of charter schools in New Orleans is associated with indicators that promote the school-to-prison pipeline is troubling.

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POPULATING THE PIPELINE: SCHOOL POLICING AND THE PERSISTENCE OF THE SCHOOL-TO-PRISON PIPELINE

JANEL GEORGE*

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I. INTRODUCTION

This Article examines the establishment, expansion, and current role of police in schools and how police presence perpetuates the racial profiling, discriminatory disciplining, and incarcerating of children of color. Despite research showing that police presence in schools increases the likelihood of early involvement of youth of color in the juvenile justice system, and in resulting compromised life outcomes, police continue to be a fixture in many low-income districts and districts predominantly populated by students of color. In addition, policing of youth of color in our nation’s public schools often mirrors the discriminatory racial profiling and excessive force employed by police against people of color in our nation’s major cities—most saliently exemplified in police response to protests in Baltimore and

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1. See infra Part III.