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

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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

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

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I. INTRODUCTION

Residents and officials of many cities may fantasize about the possibilities of rebuilding their cities from scratch. It is rarely the case that these wonderers have the opportunity to conduct such rebuilding. This is not the case in New Orleans.¹ Through the pain, trauma, and catastrophic damage of Hurricane Katrina, the City of New Orleans had the opportunity to reconstruct a major American city.² The city had the opportunity to address many social ills, including inequitable access to quality education and the disproportionate incarceration of the city's young black citizens.³ Federal, state, and local government actors dreamt of a charter school reform to revive and reform the faltering public schools of New Orleans.⁴ In establishing a system of schools to replace their school system, the government officials effectively ridded the citizens of New Orleans of their power over educational governance, policy, and politics in exchange for the hope of *better* schools.⁵ Last year, 2015, marked the tenth anniversary of Hurricane Katrina's landfall.⁶ It is more than appropriate, and perhaps

1. See Paul T. O'Neill & Renita K. Thukral, *The Unique System of Charter Schools in New Orleans After Hurricane Katrina: Distinctive Structure, Familiar Challenges*, 11 LOY. J. PUB. INT. L. 319, 319–21 (2010); *infra* Part IV.

2. See O'Neill & Thukral, *supra* note 1, at 319–21; *infra* Part IV.

3. See Pamela N. Frazier-Anderson, *Public Schooling in Post-Hurricane Katrina New Orleans: Are Charter Schools the Solution or Part of the Problem?*, 93 J. AFR. AM. HIST. 410, 412 (2008); O'Neill & Thukral, *supra* note 1, at 319–20; Ellen Tuzzolo & Damon T. Hewitt, *Rebuilding Inequity: The Re-emergence of the School-to-Prison Pipeline in New Orleans*, HIGH SCH. J., Dec. 2006–Jan. 2007, at 59, 59–61; *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.

5. See Neerav Kingsland, *How Many Charter Schools Is Just Right? The New Orleans Case for All-Charter School Districts*, EDUC. NEXT, Summer 2015, at 57, 59, 61.

6. Jarvis DeBerry, *Asking Price for Vacant Lots Skyrockets in Neighborhood*, TIMES-PICAYUNE, Aug. 30, 2015, at E1.

imperative, to assess whether New Orleans' tradeoff is working.⁷ 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?⁸ 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.⁹ 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.¹⁰ The perniciousness of the school-to-prison pipeline is troubling for all students, but the harmful effects do not, in

7. See Kingsland, *supra* note 5, at 59, 61–62.

8. Compare Kingsland, *supra* note 5, at 59, with Chauncey D. Smith, *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Cases Through a Structural Racism Framework*, 36 FORDHAM URB. L.J. 1009, 1018–19 (2009) [hereinafter Smith, *Deconstructing the Pipeline*], and Lydia Smith, *Hurricane Katrina 10 Years on: New Orleans Charter Schools Improved Education From 'F to C'*, INT'L BUS. TIMES (Aug. 22, 2015, 6:00 BST), <http://www.ibtimes.co.uk/hurricane-katrina-10-years-new-orleans-charter-schools-improved-education-f-c-1516347> [hereinafter Smith, *Hurricane Katrina 10 Years on*].

9. CATHERINE Y. KIM ET AL., *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* 9 (2010); Smith, *Deconstructing the Pipeline*, *supra* note 8, at 1018–19.

10. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 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 PHI DELTA KAPPAN, Oct. 2011; Smith, *Deconstructing the Pipeline*, *supra* note 8, at 1018–19.

fact, affect all students equally.¹¹ Poor and minority students, particularly black males, are more likely to suffer the direct consequences of the school-to-prison pipeline.¹² The Schott Foundation's annual report identified that just over half of black male students are graduating from high school on a national level.¹³ In Louisiana, the black male graduation rate is under 50%.¹⁴ Many institutional factors contribute to black male students' struggles for educational equality.¹⁵ These factors include the inequitable access to quality instruction and curriculum¹⁶ and the harsh and uneven implementation of disciplinary policies.¹⁷ 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.¹⁸ Furthermore, some researchers have identified the school-to-prison pipeline as part and parcel to the black male crisis.¹⁹

The outcomes for black males finishing high school are stark.²⁰ The outcomes for black males who do not finish high school are, however, much more alarming.²¹ Over half of all black males who do not complete high

11. See Smith, *Deconstructing the Pipeline*, *supra* note 8, at 1010–12.

12. *Id.* at 1012.

13. MICHAEL H. HOLZMAN, THE URGENCY OF NOW: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 2012 7 (John Jackson et al. eds., 2012), <http://www.blackboysreport.org/bbreport2012.pdf>.

14. *Id.* at 8 tbl.1.

15. Anne Gregory & Pharmicia M. Mosely, *The Discipline Gap: Teachers' Views on the Over-Representation of African American Students in the Discipline System*, 37 EQUITY & EXCELLENCE EDUC. 18, 18–19 (2004); see also Jerlando F.L. Jackson & James L. Moore III, *African American Males in Education: Endangered or Ignored?*, 108 TCHRS. C. REC. 201, 201 (2006).

16. See HOLZMAN, *supra* note 13, at 45; Deryl F. Bailey, *Preparing African-American Males for Postsecondary Options*, 12 J. MEN'S STUD. 15, 20–21 (2003); David J. Connor & Beth A. Ferri, *Integration and Inclusion — A Troubling Nexus: Race, Disability, and Special Education*, 90 J. AFR. AM. HIST. 107, 109 (2005).

17. Gregory & Mosely, *supra* note 15, at 21; Anne Gregory et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 59, 62–63 (2010); see also IVORY A. TOLDSON, BREAKING BARRIERS 2: PLOTTING THE PATH AWAY FROM JUVENILE DETENTION AND TOWARD ACADEMIC SUCCESS FOR SCHOOL-AGE AFRICAN AMERICAN MALES, 10 (2011), <http://www.cbefinc.org/UploadedFiles/BreakingBarriers2.pdf> [hereinafter BREAKING BARRIERS 2].

18. HOLZMAN, *supra* note 13, at 2.

19. See Jackson & Moore III, *supra* note 15, at 201; Pedro Noguera, *Reconsidering the "Crisis" of the Black Male in America*, SOC. JUST., Summer 1997, at 147, 149–50; David Pluvoise, *Remedying the Black Male "Crisis"*, DIVERSE ISSUES HIGHER EDUC., May 1, 2008, at 5.

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

school are incarcerated by the age of thirty.²² Young black males' arrest and incarceration numbers are dubiously chart topping.²³ Two of every five black men in their twenties and thirties without a high school diploma are more likely to be incarcerated.²⁴ Overall, black men are six times more likely to be incarcerated than their white counterparts.²⁵ 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.²⁶ 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.²⁷ Michelle Alexander argues that “[t]he 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.”²⁸ 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.²⁹ 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.³⁰ 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.³¹

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

As early as the 1980s and 1990s, and perhaps earlier, a national increase in juvenile crime led to educational polices that sought to police

18, 2014), <http://www.pewresearch.org/fact-tank/2014/07/18/chart-of-the-week-the-black-white-gap-in-incarceration-rates>.

22. See Courtney Connelly, *Study: Black Male High-School Dropouts Have High Prison Risk*, BLACK ENTERPRISE (May 10, 2014), <http://www.blackenterprise.com/education/black-men-who-drop-out-of-high-school-prison>; Gao, *supra* note 21.

23. See Connelly, *supra* note 22; Gao, *supra* note 21.

24. CAROLINE WOLF HARLOW, U.S. DEP'T OF JUSTICE, EDUCATION AND CORRECTIONAL POPULATIONS 6 (2003), <http://www.bjs.gov/content/pub/pdf/ecp.pdf>; see also Gao, *supra* note 21.

25. Gao, *supra* note 21.

26. HARLOW, *supra* note 24, at 3.

27. *Id.*

28. ALEXANDER, *supra* note 10, at 16.

29. See *id.*; Noguera, *supra* note 19, at 149.

30. See Noguera, *supra* note 19, at 149–150.

31. See Jackson & Moore III, *supra* note 15, at 201.

children and adolescents.³² 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.³³ 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.³⁴ There was less talk about delinquent adults, neglected communities, conspicuously absent educational, and social or occupational opportunities.³⁵ 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.³⁶ 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 besiege poor black and brown communities at large.³⁷

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.³⁸ 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.³⁹ 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]."⁴⁰ 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.⁴¹ 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

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.

38. *See* Noguera, *supra* note 19, at 149; Russell J. Skiba et al., *Race Is Not*

Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline, 40 SCH. PSYCHOL. REV. 85, 86 (2011).

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* ALEXANDER, *supra* note 10, at 185; KIM ET AL., *supra* note 9, at 128–29; Tuzzolo & Hewitt, *supra* note 3, at 61.

systems; once students enter this track, it is difficult to re-enter the traditional educational system.⁴²

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

There are many socioeconomic factors that influence the educational experiences of black students.⁴³ The criminal justice system is one of those many factors.⁴⁴ Many black students have at least one incarcerated parent.⁴⁵ These parents, because of their incarceration, are unable to effectively be or become involved in their child or children's educational processes.⁴⁶ 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.⁴⁷ 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.⁴⁸ This set of circumstances could lead to a cycle of incarcerations that betrays attempts to stymie the school-to-prison pipeline.⁴⁹ At first glance, intervention in adult incarcerations may be a necessary component of any school-to-prison pipeline interventions.⁵⁰

Another result of the school-to-prison pipeline is that black students are prescribed statuses as second-class citizens.⁵¹ 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.⁵² The

42. See KIM ET AL., *supra* note 9, at 128–29; Pedro Antonio Noguera, *The Trouble with Black Boys: The Role and Influence of Environmental and Cultural Factors on the Academic Performance of African American Males*, IN MOTION MAG. (May 13, 2002), <http://www.inmotionmagazine.com/er/pntroub1.html>.

43. IVORY A. TOLDSON, BREAKING BARRIERS: PLOTTING THE PATH TO ACADEMIC SUCCESS FOR SCHOOL-AGE AFRICAN-AMERICAN MALES 9 (2008), <http://www.indiana.edu/~atlantic/wp-content/uploads/2011/12/Toldson-Breaking-Barrriers.pdf> [hereinafter BREAKING BARRIERS 1].

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.

49. See *id.*; ALEXANDER, *supra* note 10, at 180–81, 199, 210.

50. See ALEXANDER, *supra* note 10, at 181, 185, 210.

51. See *id.* at 94, 181, 199, 210.

52. *Id.* at 20–21, 197.

school-to-prison pipeline assists in the mass incarceration of blacks.⁵³ For black and brown students, criminalization begins early and is often traceable to school settings.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.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.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.⁵⁷

Harsh disciplinary policies, as well as the disparate implementation of those policies, are not the end of the school-to-prison pipeline.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.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.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.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.⁶²

53. See Fowler, *supra* note 10.

54. See Skiba et al., *supra* note 38, at 86–87.

55. KIM ET AL., *supra* note 9, at 35.

56. *Id.* at 128–29.

57. 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).

58. 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.

59. See SOFIA BAHENA ET AL., *DISRUPTING THE SCHOOL-TO-PRISON PIPELINE* 33, 35 (2012); KIM ET AL., *supra* note 9, at 9, 12; Skiba et al., *supra* note 38, at 86, 88.

60. BAHENA ET AL., *supra* note 59, at 33, 35 (one middle schooler described her school as uninviting, dreary, and equipped with security guards and metal bars; students were referred to as *assholes and animals*); KIM ET AL., *supra* note 9, at 112 (schools are places where students are controlled through drug sweeps, metal detectors, locker checks and full time police officers on campus—school resource officers); see also WEISSMAN, *supra* note 58, at 53; Toldson, *supra* note 57, at 304.

61. Toldson, *supra* note 57, at 304; see also *BREAKING BARRIERS 1*, *supra* note 43, at 5.

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.⁶³ 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 Act⁶⁴ and the Individual with Disabilities Education Act,⁶⁵ the students often do not have the opportunity to access equitable educational opportunities due to the misalignment of the curriculum to state standards,⁶⁶ low level instruction as compared to instruction focusing on higher order skills,⁶⁷ lack of accommodations for students who are entitled to services under appropriate special education and disability laws,⁶⁸ and poor planning for the transition back to traditional public schools after the completion of incarceration or removal.⁶⁹ The combination of these factors precipitates the recurrence of incarceration or removal for students who were previously removed from the traditional education setting.⁷⁰ 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 very 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.⁷¹ 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,

63. See LESLIE BROCK & NATALIE KEEGAN, STUDENTS HIGHLY AT RISK OF DROPPING OUT: RETURNING TO SCHOOL AFTER INCARCERATION (2007) (on file with author); Heather M. Baltodano et al., *Transition of Incarcerated Youth with Disabilities Across Systems and Into Adulthood*, 13 EXCEPTIONALITY 103, 104 (2005); Joseph C. Gagnon et al., *Juvenile Correctional Schools: Characteristics and Approaches to Curriculum*, 32 EDUC. & TREATMENT CHILD. 673, 674–75 (2009); Peter E. Leone & Candace A. Cutting, *Appropriate Education, Juvenile Corrections, and No Child Left Behind*, 29 BEHAV. DISORDERS 260, 262–63 (2004); Peter E. Leone et al., *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, 53 J. CORRECTIONAL EDUC. 46, 47 (2002); Daniel P. Mears & Jeremy Travis, *Youth Development and Reentry*, 2 YOUTH VIOLENCE & JUV. JUST. 3, 11 (2004).

64. 20 U.S.C. §§ 6301 *et seq.* (2012).

65. *Id.* § 1400.

66. See Gagnon et al., *supra* note 63, at 674–75.

67. See Leone & Cutting, *supra* note 63, at 262–63.

68. See *id.* at 262; Leone et al., *supra* note 63, at 47.

69. See BROCK & KEEGAN, *supra* note 63; Baltodano et al., *supra* note 63, at 104; Mears & Travis, *supra* note 63, at 11.

70. Leone & Cutting, *supra* note 63, at 262; Leone et al., *supra* note 63, at 46.

71. See MALCOLM GLADWELL, OUTLIERS: THE STORY OF SUCCESS 19–20, 33 (2008); Deborah N. Archer, *Introduction: Challenging the School-to-Prison Pipeline*, 54 N.Y. L. SCH. L. REV. 867, 868–69 (2009–10).

this argument is easily rebutted by the voluminous data proving the contrary.⁷² Some scholars have noted that the roots of the school-to-prison pipeline are much more nefarious.⁷³ 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.⁷⁴ Other scholars have not gone as far back as the arrival of enslaved Africans to track the development of the school-to-prison pipeline.⁷⁵ 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.⁷⁶ Thus, it is arguable and has been argued that addressing the school-to-prison pipeline is an extension of efforts towards civil rights.⁷⁷

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.⁷⁸ The disposition of teachers towards black and brown students is a substantial factor in the path that these students will ultimately take.⁷⁹ When a student encounters a teacher with high expectations who exhibits a caring student-teacher relationship, the student is more likely to experience success.⁸⁰ Establishing and maintaining relationships is important to blacks in various settings, including schools.⁸¹ In particular, black males who perceive their teachers to be nurturing people

72. See HOLZMAN, *supra* note 13, at 31–32.

73. See *infra* notes 74–76 and accompanying text.

74. Mark P. Fancher, *Born in Jail: America's Racial History and the Inevitable Emergence of the School-to-Prison Pipeline*, 13 J.L. SOC'Y 267, 268, 273–75 (2011); see also Tracie R. Porter, *The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools*, 68 ARK. L. REV. 55, 63–64 (2015).

75. See Lia Epperson, *Brown's Dream Deferred: Lessons on Democracy and Identity from Cooper v. Aaron to the "School-to-Prison Pipeline"*, 49 WAKE FOREST L. REV. 687, 688, 697–98 (2014).

76. See *id.* at 697–98.

77. Archer, *supra* note 71, at 869.

78. Bailey, *supra* note 16, at 20–22; see also Gilman W. Whiting, *From At Risk to At Promise: Developing Scholar Identities Among Black Males*, 17 J. SECONDARY GIFTED EDUC. 222, 226 (2006).

79. See Bailey, *supra* note 16, at 20; Whiting, *supra* note 78, at 226.

80. Jean A. Baker et al., *The Teacher-Student Relationship As a Developmental Context for Children with Internalizing or Externalizing Behavior Problems*, 23 SCH. PSYCHOL. Q. 3, 4 (2008); Whiting, *supra* note 78, at 226–27.

81. Baker et al., *supra* note 80, at 3–4; Brenda L. Townsend, *The Disproportionate Discipline of African American Learners: Reducing School Suspensions and Expulsions*, 66 EXCEPTIONAL CHILD. 381, 387–88 (2000).

are more academically successful than black males who do not perceive their teachers in a similar manner.⁸² 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.⁸³ 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.⁸⁴

Teacher expectations heavily impact teacher-student interactions.⁸⁵ Black male students have been found to have poor self-efficacy in regard to their academic abilities.⁸⁶ The transition into high school is particularly worrisome for black students, especially black males.⁸⁷ 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.⁸⁸ The same study found that black males were often counseled out of schools after “failure and withdrawal . . . were presented as punishment for their behavior.”⁸⁹ 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.⁹⁰ Likewise, successful students universally felt that at least one of their teachers cared for the

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.

87. Melissa Roderick, *What’s Happening to the Boys?: Early High School Experiences and School Outcomes Among African American Male Adolescents in Chicago*, 38 URB. EDUC. 538, 540, 552 (2003).

88. *Id.* at 538.

89. *Id.* at 579.

90. Christopher M. Hampton, *A Study of Perceptions of Achievement Factors for At-Risk Students in Comparison to Honor Students at a Northeast Tennessee High School 112–13* (Aug. 2007) (unpublished Ph.D. dissertation, East Tennessee State University) (on file with East Tennessee State University).

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.⁹¹ Struggling students often report that they are isolated and targeted in school environments by teachers and peers alike.⁹² Teacher expectations and teacher-student relationships are important because they impact student access to challenging curriculum, quality instruction, and social self-efficacy.⁹³ 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 deaths.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

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; *see also* Baker et al., *supra* note 80, at 4; Townsend, *supra* note 81, at 382, 387–88.

96. *See* Garibaldi, *supra* note 85, at 5.

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* DEVELOPMENTAL THEORIES THROUGH THE LIFE CYCLE 285, 292 (Sonia G. Austrian ed., 2d ed. 2008).

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-bearer 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;

103. Noguera, *supra* note 42.

104. Terrell Strayhorn, *Teacher Expectations and Urban Black Males' Success in School: Implications for Academic Leaders*, 6 ACAD. LEADERSHIP J., no. 2, 2008.

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, 1141 (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. *Id.*

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).

111. See STEVEN L. NELSON, *BALANCING SCHOOL CHOICE AND POLITICAL VOICE: AN ANALYSIS OF THE LEGALITY OF PUBLIC CHARTER SCHOOLS IN NEW ORLEANS, LOUISIANA UNDER SECTION 2 OF THE VOTING RIGHTS ACT 7–8* (2014).

112. Nat'l All. for Pub. Charter Schs., *Total Number of Students*, PUBLICCHARTERS.ORG, <http://www.dashboard.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).

113. Nat'l All. for Pub. Charter Schs., *Total Number of Schools*, PUBLICCHARTERS.ORG, <http://www.dashboard.publiccharters.org/dashboard/schools/page/>

nevertheless, charter schools receive a disproportionate share of scholarly attention¹¹⁴ and federal funding for education.¹¹⁵ Charter schools are, however, experiencing exponential increases in student enrollment and total schools operating in the United States.¹¹⁶ Charter schools did not exist in the United States only a quarter of a century ago;¹¹⁷ now, charter school authorizing legislation can be found almost universally across the country.¹¹⁸ 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.¹¹⁹ Though many scholars worried that charter schools would become white-flight schools, recent research should assuage those concerns.¹²⁰ 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.¹²¹

That black and brown stakeholders prefer charter schools is unsurprising.¹²² Those advocating for the school choice movement have, in

overview/year/2014 (last visited Mar. 10, 2016) [hereinafter *Total Number of Schools*] (stating that there are 6440 public charter schools and that there are 89,775 non-charter schools).

114. See GENEVIEVE SIEGEL-HAWLEY & ERICA FRANKENBERG, THE CIVIL RIGHTS PROJECT, REVIVING MAGNET SCHOOLS: STRENGTHENING A SUCCESSFUL CHOICE OPTION 4 (2012), <http://files.eric.ed.gov/fulltext/ED529163.pdf>.

115. See *id.* at 5.

116. See *Total Number of Students*, *supra* note 112.

117. See INST. ON RACE & POVERTY, FAILED PROMISES: ASSESSING CHARTER SCHOOLS IN THE TWIN CITIES 1 (2008), http://www.amsd.org/pdfs/2_Charter_Report_Final.pdf (stating that Minnesota was the first state to authorize and create charter schools).

118. See Preston C. Green III et al., *Charter Schools, Students of Color and the State Action Doctrine: Are the Rights of Students of Color Sufficiently Protected?*, 18 WASH. & LEE J.C.R. SOC. JUST. 253, 254 (2012) (explaining that forty-two states, the District of Columbia, and Puerto Rico had charter school authorizing legislation as of 2010); *The Last Eight States Without Charter Laws*, CTR. FOR EDUC. REFORM (2013), <http://www.edreform.com/wp-content/uploads/2013/01/CharterLaws2013-Last-8-States.pdf> (discussing that Washington state approved charter school legislation in 2012).

119. See NELSON, *supra* note 111, at 28 (stating that black Americans support charters schools almost 4.5 times more than white Americans, and latino Americans support charter schools at a rate almost double that of white Americans); WILLIAM G. HOWELL ET AL., MEETING OF THE MINDS 23–24, 31 (2011), http://www.educationnext.org/files/ednext_2010_Survey_Article.pdf.

120. Preston C. Green, III, *Preventing School Desegregation Decreases from Becoming Barriers to Charter School Innovation*, 144 EDUC. L. REP. 15, 16 (2000).

121. *Id.*; see also ERICA FRANKENBERG ET AL., CHOICE WITHOUT EQUITY: CHARTER SCHOOL SEGREGATION AND THE NEED FOR CIVIL RIGHTS STANDARDS 7 (2010), <http://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenber-choices-without-equity-2010.pdf>.

122. Janelle Scott, *School Choice as a Civil Right: The Political Construction of a Claim and Its Implications for School Desegregation*, in INTEGRATING SCHOOLS IN A CHANGING SOCIETY: NEW POLICIES AND LEGAL OPTIONS FOR A MULTIRACIAL GENERATION 32, 35 (Erica Frankenberg & Elizabeth Debray eds., 2011).

general, been able to effectively frame debates about the charter school movement in terms of school choice as a civil right.¹²³ 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.¹²⁴ 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.¹²⁵ Equal or perhaps equitable access to quality schools—as defined almost exclusively by test scores—became a mandate of the school choice movement.¹²⁶ 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.¹²⁷ School choice was, and is indeed, a civil right under this framing of the movement's purposes and objectives.¹²⁸

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.¹²⁹ Many scholars envisioned that charter schools would be a civil rights boon for poor and minority parents¹³⁰ 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*.¹³¹ 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 districts¹³² or—at a minimum—equal educational opportunity in lieu of integrated schools for poor and minority students.¹³³

123. *Id.* at 33.

124. NAT'L COMM'N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* 7, 33–35 (1983).

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.

130. PRESTON C. GREEN, III & JULIE MEAD, *CHARTER SCHOOLS AND THE LAW: ESTABLISHING NEW LEGAL RELATIONSHIPS* 2 (2003); Robin D. Barnes, *Black America and School Choice: Charting a New Course*, 106 *YALE L.J.* 2375, 2380, 2388 (1997); *see also* Green III et al., *supra* note 118, at 254–55.

131. 418 U.S. 717, 744–45, 753 (1974).

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 role of 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.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

134. See GARY ORFIELD & ERIKA FRANKENBERG, EDUCATIONAL DELUSIONS? WHY CHOICE CAN DEEPEN INEQUALITY AND HOW TO MAKE SCHOOLS FAIR 3 (2013); Scott, *supra* note 122, at 32; Green III et al., *supra* note 118, at 255; Steven L. Nelson, *Gaining “Choice” and Losing Voice: Is the New Orleans Charter School Takeover a Case of the Emperor’s New Clothes?*, 63 EDUC. FUTURES 237, 239–40 (2015).

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.

136. See NELSON, *supra* note 111, at 24–25, 95–96.

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

138. See ORFIELD & FRANKENBERG, *supra* note 134, at 3; Scott, *supra* note 122, at 32; FRANKENBERG ET AL., *supra* note 121, at 7.

139. See FRANKENBERG ET AL., *supra* note 121, at 16–17; GARY MIRON ET AL., COLL. OF EDUC. & HUMAN DEV. W. MICH. UNIV., WHAT MAKES KIPP WORK? A STUDY OF STUDENT CHARACTERISTICS, ATTRITION, AND SCHOOL FINANCE 10–13 (2011), <http://www.edweek.org/media/kippstudy.pdf> (reporting that all subgroups of KIPP students exhibited dropout rates multiple times the national average at the national level).

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.

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

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 numbers. 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 Law Ctr., in New Orleans, La. (Apr. 14, 2015).

147. See HOLZMAN, *supra* note 13, at 29, 32; KIM ET AL., *supra* note 9, at 9; *P.B., et al. v. Pastorek, 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 more serious—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. v. Pastorek*, 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* note 13, at 29; KIM ET AL., *supra* note 9, at 9. This paper, therefore, defines *push out* as all actions—whether legitimate or illegitimate—that remove the student 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. There

students, or snatching out¹⁴⁸ 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 purported 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. Dep't 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 classmate, Eric Ian Farmer. It seems appropriate to use the term in this context. Though not in the charter school context, the focus on school improvement in Louisiana, in combination with other factors, has led to unconscionable student arrest rates in the New Orleans suburbs. 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 justice system for minor rule violations. *Id.* at 5, 8.

149. *Id.* at 2; HOLZMAN, *supra* note 13, at 29; KIM ET AL., *supra* note 9, at 9; MIRON ET AL., *supra* note 139, at iii, 12–14, 26; *P.B. et al. v. Pastorek*, *supra* note 146.

150. *See* Nelson, *supra* note 134, at 239–40.

151. *Id.* at 242; O'Neill & Thukral, *supra* note 1, at 319–20.

152. *See* O'Neill & Thukral, *supra* note 1, at 320–21.

153. *Id.*

154. *See id.* at 319–20.

155. *See* HOLZMAN, *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 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.*

156. See John Moreno Gonzales, *Hurricane Recovery Confronts Low Literacy Rate*, S. ILLINOISAN, Aug. 27, 2008, at 1; Jonathan Chait, *How New Orleans Proved Urban-Education Reform Can Work*, N.Y. MAG. (Aug. 24, 2015, 9:45 AM) <http://www.nymag.com/daily/intelligencer/2015/08/how-new-orleans-proved-education-reform-can-work.html> (proclaiming progress in literacy when the City of New Orleans' illiteracy rate reached 40%, or about twice the national average).

157. NELSON, *supra* note 111, at 10.

158. See *id.*; Brian Beabout, *Stakeholder Organizations: Hurricane Katrina and the New Orleans Public Schools*, MULTICULTURAL EDUC., Winter 2007, at 43, 43–44 [hereinafter Beabout, *Stakeholder Organizations*]; Luis Mirón, *The Urban School Crisis in New Orleans: Pre- and Post-Katrina Perspectives*, 13 J. EDUC. FOR STUDENTS PLACED RISK 238, 240–41 (2008).

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 Mirón, *supra* note 158, at 240–41; Nelson, *supra* note 134, at 244–46.

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

162. See ENROLL NOLA, RECOVERY SCHOOL DISTRICT AND ORLEANS PARISH SCHOOL BOARD: ONEAPP YEAR 4 MAIN ROUND: SUMMARY (2015), <http://www.oneappnola.files.wordpress.com/2015/02/2015-0428-mr-summary1.pdf>; ENROLLNOLA: *Annual Report February 2015*, ENROLLNOLA 3–4 (Feb. 2015), <http://www.oneappnola.files.wordpress.com/2015/02/2015-0210-annual-report-for-public-release.pdf>; Nelson *supra* note 134, at 245; O'Neill & Thukral, *supra* note 1, at 322.

strategies that would most affect them.¹⁶³ To some extent, this limitation did not matter.¹⁶⁴ Not much, if anything, could be worse than the pre-Katrina schools in New Orleans, and even if the charter school reform 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.¹⁶⁵

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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰ Likewise, these formulas rely most heavily on student performance on state assessments, especially at the elementary and middle

163. See Nelson, *supra* note 134, at 243–45.

164. See *id.*

165. See Frazier-Anderson, *supra* note 3, at 412–13; Mirón, *supra* note 158, at 241.

166. See Frazier-Anderson, *supra* note 3, at 414.

167. NAT'L ALL. FOR PUB. CHARTER SCHS., A GROWING MOVEMENT: AMERICA'S LARGEST CHARTER SCHOOL COMMUNITIES 4 (8th ed. 2013), http://www.publiccharters.org/wp-content/uploads/2014/01/2013-Market-Share-Report-Report_20131210T133315.pdf; see also Frazier-Anderson, *supra* note 3, at 414.

168. NAT'L ALL. FOR PUB. CHARTER SCHS., *supra* note 167, at 3–4.

169. See CTR. FOR RESEARCH ON EDUC. OUTCOMES, CHARTER SCHOOL PERFORMANCE IN LOUISIANA 7 (2013), https://credo.stanford.edu/documents/la_report_2013_7_26_2013_final.pdf; Danielle Dreilinger, *Schools Excel Before Tests Get Tougher*, TIMES-PICAYUNE, Oct. 25, 2003, at A1 [hereinafter Dreilinger, *Schools Excel Before Tests Get Tougher*].

170. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169.

school level.¹⁷¹ 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.¹⁷² The lower and almost nonexistent percentage of New Orleans' public school students attending *failing* schools¹⁷³ has been used to credit the charter school movement as being academically effective,¹⁷⁴ but a large number of schools do not receive letter grades and are, therefore, not included in this calculation.¹⁷⁵ In essence, the state only counts some schools—mostly academically acceptable schools—in the calculation of failing and non-failing schools.¹⁷⁶ Moreover, nationally scaled tests have brought into question the newfound achievements of New Orleans' public schools.¹⁷⁷ Reliance on academic comparisons of pre and post-Katrina schools using state test scores is misleading at the least.¹⁷⁸

171. See *id.*; *School Performance Score*, LA. DEP'T EDUC., <http://www.louisianabelieves.com/accountability/school-performance-scores> (last visited Mar. 10, 2016).

172. Melinda Deslatte, *John White Keeps One Step Ahead of Anti-Common Core Movement*, INDSIDER MEDIA (Feb. 24, 2015, 9:45 AM), <http://www.theind.com/article-20310-john-white-keeps-one-step-ahead-of-anti-common-core-movement.html>. Of course, this intervention was not necessary as students across Louisiana defied odds and outperformed projections on the harder common core-based tests; in fact, students in Louisiana—on a more difficult version of the state test—had near record performance that resulted in relatively few students lacking proficiency. See *Academic Outcomes*, LA. DEP'T EDUC., <http://www.louisianabelieves.com/docs/default-source/katrina/final-louisiana-believes-v5-academic-outcomes.pdf?sfvrsn=2> (last visited Mar. 10, 2016); Jonathan Chait, *How New Orleans Proved Urban-Education Reform Can Work*, N.Y. MAG. (Aug. 24, 2015, 9:45 AM), <http://www.nymag.com/daily/intelligencer/2015/08/how-new-orleans-proved-education-reform-can-work.html>; Deslatte, *supra*.

173. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169; Kingsland, *supra* note 5, at 59; *Academic Outcomes*, *supra* note 172.

174. See Dreilinger, *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-let_b_4179768.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 Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169.

178. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169; Kingsland, *supra* note 5, at 59; Nelson, *supra* note 134, at 262 n.1.

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.¹⁷⁹ Issues of student civil rights are ripe for discussion in New Orleans' charter schools.¹⁸⁰ The gravamen of these civil rights issues are student enrollment and matriculation,¹⁸¹ student discipline,¹⁸² and student racial segregation.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.¹⁸⁴ Very little scholarship focuses on the role of the charter school movement on the school-to-prison pipeline in New Orleans.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.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.¹⁸⁷ While this finding is still being examined in the context of

179. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169; Hampton, *supra* note 90 (dissertation at 112–14).

180. See FRANKENBERG ET AL., *supra* note 121, at 7; Danielle Dreilinger, *Group Files Civil Rights Complaint Over Schools' Discipline Policies*, *TIMES-PICAYUNE*, Apr. 16, 2014, at B4 [hereinafter Dreilinger, *Group Files Civil Rights Complaint Over Schools' Discipline Policies*]; Danielle Dreilinger, *Strict Collegiate Academies Charters Are Working to Eliminate Suspensions*, *TIMES-PICAYUNE* (Nov. 20, 2014, 12:58 PM), http://www.nola.com/education/index.ssf/2014/10/strict_collegiate_academies_ch.html [hereinafter Dreilinger, *Strict Collegiate Academies Charters Are Working to Eliminate Suspensions*]; Jacob Landry, *Equity, Transparency Undercut by Holdouts Against OneApp School Admissions Process*, *THE LENS* (June 9, 2015, 6:15 AM), <http://www.thelensnola.org/2015/06/09/equity-transparency-undercut-by-holdouts-against-oneapp-school-admissions-process>.

181. See Landry, *supra* note 180.

182. See Dreilinger, *Group Files Civil Rights Complaint Over Schools' Discipline Policies*, *supra* note 180; Dreilinger, *Strict Collegiate Academies Charters Are Working to Eliminate Suspensions*, *supra* note 180 (recounting the extraordinary suspension rates—most over 60%—at Collegiate Academies in New Orleans).

183. See SIEGEL-HAWLEY & FRANKENBERG, *supra* note 114, at 7.

184. See Nelson, *supra* note 134, at 243, 259.

185. *Id.* at 243.

186. *Id.*

187. See MICHAEL B. BERKMAN & ERIC PLUTZER, *TEN THOUSAND DEMOCRACIES: POLITICS AND PUBLIC OPINION IN AMERICA'S SCHOOL DISTRICTS* 104–06

charter schools, it is worth investigating the racial composition of self-selected charter school boards of New Orleans.¹⁸⁸ The installation of predominately white charter school boards might negate or totally eradicate 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.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 predominately black and brown voters of New Orleans.¹⁹⁰ 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.¹⁹¹

Poor and black parents did not initiate the charter school movement in New Orleans.¹⁹² To the contrary, the State of Louisiana and the federal government offered poor and black parents one option: charter schools.¹⁹³ 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.¹⁹⁴ 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

(2005); Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 AM. POL. SCI. REV. 392, 397 (1984); Kenneth J. Meier et al., *Structural Choices and Representational Biases: The Post-Election Color of Representation*, 49 AM. J. POL. SCI. 758, 764 (2005); Ted P. Robinson et al., *Black Resources and Black School Board Representation: Does Political Structure Matter?*, 66 SOC. SCI. Q. 976, 979 (1985); Joseph Stewart, Jr. et al., *Black Representation in Urban School Districts: From School Board to Office to Classroom*, 42 W. POL. Q. 287, 301 (1989).

188. Nelson, *supra* note 134, at 243–44, 260–61.

189. See *id.* at 259–61, 262 n.1.

190. *Id.* at 243, 247.

191. See ENROLL NOLA, *supra* note 162; *Enroll NOLA: Annual Report February 2015*, *supra* note 163, at 4–5; *How to Read School Demand Data*, ENROLL NOLA, <http://www.oneappnola.files.wordpress.com/2015/02/2015-0126-ar-appendix-3.pdf> (last visited Mar. 10, 2016).

192. NELSON, *supra* note 111, at 13; see also Nelson, *supra* note 134, at 244.

193. Nelson, *supra* note 134, at 244; see also NELSON, *supra* note 111, at 11, 13.

194. See NELSON, *supra* note 111, at 11, 13; Frazier-Anderson, *supra* note 3, at 410–11.

the impact of those changes.¹⁹⁵ 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 rebuilding of the city's faltering school district.¹⁹⁶ 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.¹⁹⁷ 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.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ 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

195. NELSON, *supra* note 111, at 9–11; Joshua M. Akers, *Separate and Unequal: The Consumption of Public Education in Post-Katrina New Orleans*, 36 INT'L J. URB. & REGIONAL RES. 29, 29, 44 (2012); Dingerson, *supra* note 155, at 10; Nelson, *supra* note 134, at 244.

196. See Akers, *supra* note 195, at 38; Dingerson, *supra* note 155, at 9–10; Nelson, *supra* note 134, at 244.

197. See NELSON, *supra* note 111, at 9, 11; Nelson, *supra* note 134, at 245.

198. See Brian Beabout et al., *The Perceptions of New Orleans Educators on the Process of Rebuilding the New Orleans School System After Katrina*, 13 J. EDUC. FOR STUDENTS PLACED RISK 212, 214 (2008).

199. See 2005 La. Acts 2538–39 (codified as amended at LA. STAT. ANN. § 17:10.7 (2015)); NELSON, *supra* note 111, at 11; Mirón, *supra* note 158, at 239, 247 (explaining that acquisition of public schools was too quick and was conducted while residents were away. The paper also surmises that residents were likely preoccupied with survival). Other papers juxtapose the State's swift takeover of the New Orleans public schools and political power with the state government's glacial pace to restore the neighborhoods of poor and black citizens. See Akers, *supra* note 195, at 33, 36; Dingerson, *supra* note 155, at 9–10.

200. See 2005 La. Acts 2540; Dingerson, *supra* note 155, at 11.

state legislature simultaneously opened the door to disproportionate political power for middle-class and white citizens of New Orleans in the realm of education.²⁰¹ Although Act 35 had statewide applicability, the law in effect, affected only New Orleans.²⁰² One way to trigger Act 35's district takeover power is for a school district to have thirty failing schools.²⁰³ 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.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ Likewise, stakeholders were chagrined and bewildered 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.²⁰⁸

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

201. See 2005 La. Acts 2538–40; Brian R. Beabout, *Leadership for Change in the Educational Wild West of Post-Katrina New Orleans*, 11 J. EDUC. CHANGE 403, 414, 418 (2010) [hereinafter Beabout, *Leadership for Change*]; Dirk Tillotson, *What's Next for New Orleans?*, HIGH SCH. J., Dec. 2006 - Jan. 2007, at 69, 69–70, 72.

202. See 2005 La. Acts 2538–39, 2543; UNITED TEACHERS OF NEW ORLEANS ET AL., 'NATIONAL MODEL' OR FLAWED APPROACH? THE POST-KATRINA NEW ORLEANS PUBLIC SCHOOLS 4 (2006), <http://www.naomiklein.org/files/resources/pdfs/aft-nov-2006.pdf>; Nelson, *supra* note 134, at 245.

203. LA. STAT. ANN. §§ 17:10.6(B)(1)–(2)(a), 10.7(A)(1) (2015); see also 2005 La. Acts 2538–39; UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 13–14.

204. UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 14; see also LA. STAT. ANN. §§ 17:10.6(B)(1)–(2)(a), 10.7(A)(1).

205. UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 14; see also LA. STAT. ANN. §§ 17:10.6(B)(1)–(2)(a), 10.7(A)(1); 2005 La. Acts 2539.

206. 2005 La. Acts 2539; see also UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 11, 13.

207. UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 6, 11, 13–14; see also LA. STAT. ANN. §§ 17:10.6(B)(1)–(2)(a), 10.7(A)(1).

208. UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 6, 10–11; see also LA. STAT. ANN. §§ 17:10.6(B)(1)–(2)(a), 10.7(A)(1); Nelson, *supra* note 134, at 242, 245–46.

problems.²⁰⁹ These problems led to the chartering of all of the schools for which the Recovery School District had previously assumed control.²¹⁰ 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.²¹¹ This return never occurred.²¹² 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.²¹³ To this day, exactly two charter schools have returned to the control of the popularly elected and predominately black Orleans Parish School Board.²¹⁴

Research on the racial composition of New Orleans' self-selected charter school boards supports the argument that charter school boards are *disproportionately white*.²¹⁵ Without question, the State of Louisiana created an additional school board that is separate from the Orleans Parish School Board and politically unaccountable to the predominately black voters of New Orleans.²¹⁶ 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 2005.²¹⁷ Act 35 effectively muted 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.²¹⁸ 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

209. Frazier-Anderson, *supra* note 3, at 414–17.

210. *Id.* at 414; Nelson, *supra* note 134, at 237–38, 242.

211. 2005 La. Acts 2541; Nelson, *supra* note 134, at 242–43, 246.

212. Nelson, *supra* note 134, at 246.

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 electorally 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*.

215. Nelson, *supra* note 134, at 260; Steven Nelson, *The Charter School Paradox in New Orleans: Too Big to Fail*, BLOGSPOT: EDUC. POL'Y BLOG (Dec. 11, 2014), <http://www.educationpolicyblog.blogspot.com/2014/12/the-charter-school-paradox-in-new.html>.

216. *See* 2005 La. Acts 2542, 2546–47; Nelson, *supra* note 134 at 245–46.

217. 2005 La. Acts 2542, 2546–47; *see also* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439 (1965); Nelson, *supra* note 134, at 246–47.

218. Nelson, *supra* note 134, at 245–46; *see also* 2005 La. Acts 2542, 2546–47.

silent in education politics.²¹⁹ 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.²²⁰

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.²²¹ 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.²²² The situation is much more perilous for young black men in New Orleans.²²³ The majority of murder victims in the city are young black men.²²⁴ 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.²²⁵ 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 structures on measures other than test scores.²²⁶ Students in New Orleans do not need improved tests scores if improved test scores do not directly correlated better educational, social, and occupational opportunities.²²⁷ More specifically, dead students are unable to be tested, so test scores must be secondary to quality of life indicators—or simply life.²²⁸ 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

219. See 2005 La. Acts 2546–47; Nelson, *supra* note 134, at 245–46.

220. See Nelson, *supra* note 134, at 259–60.

221. Nelson, *supra* note 215.

222. See Ken Daley, *New Orleans Murders Down in First Half of 2014, but Summer's Death Toll Climbing*, TIMES-PICAYUNE (Aug. 21, 2014, 8:30 AM), http://www.nola.com/crime/index.ssf/2014/08/murders_down_in_first_half_of.html.

223. See Garibaldi, *supra* note 85, at 4; Nelson, *supra* note 215.

224. Nelson, *supra* note 215.

225. *Id.*

226. *See id.*

227. *See id.*

228. *See id.*

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

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.

233. See Landry, *supra* note 180; Nelson, *supra* note 134, at 237–38.

234. See Nelson, *supra* note 215; Garibaldi, *supra* note 85, at 8.

235. See Landry, *supra* note 180.

236. See Beabout 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. For instance, Edna Karr Magnet School and Eleanor McMains Magnet Secondary School were among the best schools in the city of New Orleans—ranked second and third—and both were amongst

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

the best public schools in the State of Louisiana. Danielle Dreilinger, *Top New Orleans Public School Choices in OneApp Are Edna Karr, Baby Ben*, TIMES-PICAYUNE (Apr. 23, 2014, 7:46 PM), http://www.nola.com/education/index.ssf/2014/04/top_new_orleans_public_school.html [hereinafter Dreilinger, *Top New Orleans Public School Choices in OneApp Are Edna Karr, Baby Ben*]. Both schools were also predominately black. Danielle Dreilinger, *Has Gentrification Begun in New Orleans Public Schools?*, TIMES-PICAYUNE (Sept. 3, 2015, 10:43 AM), http://www.nola.com/futureofneworleans/2015/09/bricolage_morris_jeff_interest.html [hereinafter Dreilinger, *Has Gentrification Begun*]; see also Nelson, *supra* note 134, at 244–45.

240. See Nelson, *supra* note 134, at 245.

241. See *id.* at 244–45.

242. See *id.*; Landry, *supra* note 180.

243. See Nelson, *supra* note 134, at 245–46; Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169; Landry, *supra* note 180.

244. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169; Landry, *supra* note 180.

245. See Dreilinger, *Schools Excel Before Tests Get Tougher*, *supra* note 169.

246. See *2014 District Performance Scores/Letter Grades*, LA. DEP'T EDUC., <http://www.louisianabelieves.com/docs/default-source/data-management/2014-district-performance-scores.xlsx?sfvrsn=11> (last visited Mar. 10, 2016) (showing that the 2014 district performance score for Orleans Parish trails only the district performance score for the schools comprising the City of Zachary).

247. *Id.*

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 Beabout, *Leadership for Change*, *supra* note 201, at 405; Dreilinger, *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.

252. See *infra* Sections V.B–D.

253. Nelson, *supra* note 134, at 243, 260–61.

254. Fowler, *supra* note 10.

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 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.

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 measureable 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.

259. See *infra* Table 1.

260. See *infra* Table 1.

261. See *infra* Table 1.

262. See *infra* Table 1.

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

264. See *infra* Table 1.

265. See *infra* Table 1.

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

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

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.²⁷⁰ 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.²⁷¹ 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.²⁷² Table 1 provides the statistical data used to compare and contrast the suspension rates of schools in New Orleans.²⁷³

sample sizes presented. *See id.* In this case, it should be noted that the absence of statistical evidence supporting associated is not the disproof of an association. *See id.*

270. *See infra* Table 1.

271. *See infra* Table 1; 2013–2014 *Discipline Rates and Letter Grade* (Author's Independent Data).

272. *See Dreilinger, Group Files Civil Rights Complaint Over Schools' Discipline Polices*, *supra* note 180; *Dreilinger, Strict Collegiate Academies Charters Are Working to Eliminate Suspensions*, *supra* note 180.

273. *See infra* Table 1.

Table 1: Fisher Exact Test of Independence for School Discipline in New Orleans Public Schools (Disaggregated by Political Accountability Status)²⁷⁴

	Not Reporting Suspension Rate ²⁷⁵	Reporting Suspension Rate
Politically Accountable (OPSB)	5	14
Not Politically Accountable (RSD)	10	59
p-value	.2997	
	Suspension Rate Under 5% ²⁷⁶	Suspension Rate Over 5%
Politically Accountable (OPSB)	11	8
Not Politically Accountable (RSD)	21	48
p-value	.0342	
	Suspension Rate Under 14% ²⁷⁷	Suspension Rate Above 14%
Politically Accountable (OPSB)	16	3
Not Politically Accountable (RSD)	39	30
p-value	.0331	

274. Independent Statistical Analysis Conducted by Authors from Louisiana Department of Education Data. See the following reports: 2013–14 STATEWIDE DISCIPLINE RATES; 2013–14 STATEWIDE DISCIPLINE RATES BY SITE; 2013–14 STATEWIDE DISCIPLINE RATES BY LEA (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. PATRICK SIMS & VINCENT ROSSMEIER, THE COWEN INST. FOR PUB. EDUC. INITIATIVES AT TULANE UNIV., THE STATE OF PUBLIC EDUCATION IN NEW ORLEANS: 10 YEARS AFTER HURRICANE KATRINA 2 (2015), <http://www.speno2015.com/images/SPENO.2015.small.single.pdf>. “RSD” is Recovery School District. *Id.*

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.

276. The State of Louisiana does not disclose the actual suspension rate for schools with suspension rates below 5%.

277. Fourteen percent is the average suspension rate for all Louisiana public schools.

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 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. Dreilinger, *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 that 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* Dreilinger, *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 system 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 temporary removals of students from the student's primary placement.²⁸³ Although some behaviors require various measures and durations of removal, there are allegations and evidence that the majority of student removals are for very minor offenses.²⁸⁴ At its core, the excessive removal of students, albeit temporary, may be intensifying the school-to-prison pipeline in New Orleans and is sufficiently within the domain of school-level officials to control.²⁸⁵

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 black male and soon-to-be, if not already so, black female crisis in education.²⁸⁶ 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 fact, Debra 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 enter 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 college

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.

283. See FRANKENBERG ET AL., *supra* note 121, at 3; Dreilinger, *Group Files Civil Rights Complaint Over Schools' Discipline Policies*, *supra* note 180; Landry, *supra* note 181.

284. See Dreilinger, *Group Files Civil Rights Complaint Over Schools' Discipline Policies*, *supra* note 180.

285. See Dreilinger, *Strict Collegiate Academies Charters Are Working to Eliminate Suspensions*, *supra* note 180.

286. See Fancher, *supra* note 74, at 275–76; Garibaldi, *supra* note 85, at 5.

287. See Akers, *supra* note 195, at 32–33.

288. See DEBRA DICKERSON, *THE END OF BLACKNESS: RETURNING THE SOULS OF BLACK FOLK TO THEIR RIGHTFUL OWNERS* 22 (2004).

289. See Danielle Dreilinger, *More Students in N.O. College Bound*, *TIMES-PICAYUNE*, Apr. 8, 2015, at A1 [hereinafter Dreilinger, *More Students in N.O. College Bound*].

matriculation in New Orleans.²⁹⁰ 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.²⁹¹ 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.²⁹² This comparison is statistically significant at the .01 alpha level.²⁹³ It appears at least arguable that political accountability is associated with higher post-secondary education enrollment rates in New Orleans.²⁹⁴ The data, in aggregate, would support this argument.²⁹⁵

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.²⁹⁶ 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.²⁹⁷ Instead, selective admissions schools receive a large number, if not a majority, of their students at or above grade level in core competencies.²⁹⁸ 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.²⁹⁹ When comparing only schools that do not admit students selectively, there is no statistically significant relationship between board governance structures (p -value=.1278).³⁰⁰ Politically accountable schools achieve post-secondary

290. See *id.*; *infra* Table 2.

291. See *infra* Table 2.

292. See *infra* Table 2.

293. See *infra* Table 2.

294. See Dreilinger, *More Students in N.O. College Bound*, *supra* note 289; *infra* Table 2.

295. See *infra* Table 2.

296. See FRANKENBERG ET AL., *supra* note 121, at 16; Akers, *supra* note 195, at 29; Dreilinger, *More Students in N.O. College Bound*, *supra* note 290; Stephanie Simon, *Special Report: Class Struggle — How Charter Schools Get Students They Want*, REUTERS (Feb. 15, 2013, 8:41 PM), <http://www.reuters.com/article/2013/02/16/us-usa-charters-admission-idUSBRE91e0hf20130216>.

297. See FRANKENBERG ET AL., *supra* note 121, at 16; Akers, *supra* note 195, at 29; Simon, *supra* note 296.

298. See FRANKENBERG ET AL., *supra* note 121, at 16; Akers, *supra* note 195, at 29; Simon, *supra* note 296.

299. See Simon, *supra* note 296; *infra* Table 2.

300. See *infra* Table 2.

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.³⁰¹ 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.³⁰²

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.³⁰³ 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.³⁰⁴ 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.³⁰⁵ As compared to selective admissions schools, the appropriate standard of comparison of New Orleans' public schools prior to Hurricane Katrina,³⁰⁶ the schools in the Recovery

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.

304. See SIMS & ROSSMEIER, *supra* note 274, at 22; *More Recovery School District Students Than Ever Graduating High School on Time*, LA. RECOVERY SCH. DISTRICT (Apr. 6, 2015), http://www.rsdl.net/apps/news/show_news.jsp?REC_ID=350614&id=0.

305. See SIMS & ROSSMEIER, *supra* 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*. 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.

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

307. See SIMS & ROSSMEIER, *supra* note 274, at 22; *infra* Table 2.

308. See SIMS & ROSSMEIER, *supra* note 274, at 22; *infra* Table 2.

309. See Perry, *supra* note 306; *infra* Table 2.

310. See SIMS & ROSSMEIER, *supra* note 274, at 22; *infra* Table 2.

311. See Townsend, *supra* note 81, at 382; Dreilinger, *Has Gentrification Begun*, *supra* note 239.

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

	Above 59% ³¹³	Below 59%
Politically Accountable (OPSB)	6	1
Not Politically Accountable (RSD)	3	15
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

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 & 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.

316. See *Annual Student Dropout Rates by State, District and Site 2013–2014*, LA. DEP'T EDUC., [http://www.louisianabelieves.com/docs/default-source/data-management/2013-student-dropout-counts-and-rates-site-\(district-state---public\).xlsx?sfvrsn=4](http://www.louisianabelieves.com/docs/default-source/data-management/2013-student-dropout-counts-and-rates-site-(district-state---public).xlsx?sfvrsn=4) (last visited Feb. 21, 2016).

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.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.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.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.³²¹

	p-value	(F)
	.1178	

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.

319. See *infra* Table 3.

320. See *infra* Table 3.

321. See *infra* Table 3.

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 Data³²²

	Below 3.42% ³²³	Above 3.42%
Politically Accountable (OPSB)	14	0
Not Politically Accountable (RSD)	28	24
p-value	.0011	
Politically Accountable (OPSB; Non-Selective)	6	0
Not Politically Accountable (RSD)	28	24
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,³²⁴ but these accounts are based on analyses of test scores, which are not always indicative of academic aptitude for poor and black students.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.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

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.*

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.

325. See *id.* at 61 fig. 2; *The Test Score Gap*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/sats/etc/gap.html> (last visited Feb. 22, 2016).

326. See Andrea Gabor, *The Myth of the New Orleans School Makeover*, N.Y. TIMES, Aug. 22, 2015, at SR3.

maintaining the narrative that school reform has worked in the city of New Orleans.³²⁷ It may, nevertheless, be a mistake to summarily dismiss the noticeable gains of the charter school movement in New Orleans.³²⁸ The city's literacy rate, while still poor, is improving.³²⁹ This is surely, however, not solely the effect of the charter school movement.³³⁰

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.³³¹ 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.³³² 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.³³³ It might be appropriate to revive the conversation about whether charter schools are white flight schools.³³⁴ In New Orleans, charter schools are

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.

331. Raynard Sanders, Address at the Education Law Association 60th Annual Conference, The New Orleans Education Reforms: Valuable New Old Lessons for the Nation (Nov. 14, 2014).

332. See Dreilinger, *Has Gentrification Begun*, *supra* note 239; *Student Enrollment & Demographics*, LA. DEP'T EDUC., <https://www.louisianabelieves.com/docs/default-source/katrina/final-louisiana-believes-v5-enrollment-demographics22f9e85b8c9b66d6b292ff0000215f92.pdf?sfvrsn=2> (last visited Mar. 10, 2016).

333. See Dreilinger, *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 Bricolage 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 Dreilinger, *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.

disproportionately black in aggregate, but a careful analysis of individual charter schools might indicate the development of white flight or white enclave schools.³³⁵ 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%.³³⁶ Some may frame this fact as gaining diversity.³³⁷ Others may find this to indicate white flight—or white isolation—within the city.³³⁸ Finally, the return of white students to public schools may have been an effect of the economic downturn.³³⁹ The New Orleans metropolitan area has historically led the nation in private school—mostly Catholic—enrollment, per capita.³⁴⁰ 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.³⁴¹

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.³⁴² 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.³⁴³ 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

335. *See id.*

336. *See id.*; Dreilinger, *Has Gentrification Begun*, *supra* note 239; *Student Enrollment & Demographics*, *supra* note 332.

337. *See* FRANKENBERG ET AL., *supra* note 121, at 10; Dreilinger, *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.

343. *See* Corey Mitchell, 'Death of My Career': What Happened to New Orleans' Veteran Black Teachers?, *EDUC. WK.* (Aug. 19, 2015), <http://neworleans.edweek.org/veteran-black-female-teachers-fired>; Stephen Sawchuk, *New Orleans' Teaching Force Today: Whiter, Less Experienced, Higher Turnover*, *EDUC. WK.: CHR. BEAT* (Aug. 25, 2015, 9:30 AM), http://blogs.edweek.org/edweek/teacherbeat/2015/08/new_orleans_teaching_force_whi.html.

capital.³⁴⁴ 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.³⁴⁵ 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.³⁴⁶ 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.³⁴⁷ 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.³⁴⁸ What, then, were the costs of the uncertain gains in New Orleans' public schools?³⁴⁹

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.³⁵⁰ It is not, however, too late to create interventions³⁵¹ aimed at lessening the impact of

344. See Mitchell, *supra* note 343.

345. Nelson, *supra* note 134, at 258–59.

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. The easiest and most efficient intervention may not be an intervention at all. See *id.* Charter schools that are not politically accountable to stakeholders could stop developing and implementing practices that contribute to the school-to-prison pipeline. Nelson, *supra* note 134, at 259. Of course, this is unlikely to happen given those schools' focus on *no excuses* policies for minor behaviors. Surely, charter schools could and can develop policies that address simple student violations of school norms with methods other than suspension. See WEISSMAN, *supra* note 58, at 41.

the effects of the charter school movement in New Orleans.³⁵² This study suggests that school reform may be more effective if governing bodies are to some extent politically accountable to stakeholders.³⁵³ The extent of that accountability is debatable.³⁵⁴ 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.³⁵⁵ Another viable solution would be to infuse charter school governing boards with some, if not all, elected seats.³⁵⁶ There is precedent for this structure of governance.³⁵⁷ Some states allow for election of charter school board members³⁵⁸ and Minnesota, the originator of charter school authorizing legislation, requires charter school board elections with stakeholders, teachers, and parents, among others, as required electors.³⁵⁹ 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.³⁶⁰ 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.³⁶¹ 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,

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.

356. See *Charter School Boards*, MINN. SCH. BOARDS ASS'N, <http://www.mnmsba.org/CharterSchoolBoards> (last visited Mar. 10, 2016).

357. *Id.*; *see also* MINN. STAT. § 124E.07 (2015).

358. *Charter School Boards*, *supra* note 356.

359. See MINN. STAT. § 124E.07(3).

360. See Tuzzolo & Hewitt, *supra* note 3, at 67.

361. See UNITED TEACHERS OF NEW ORLEANS ET AL., *supra* note 202, at 6, 8; Nelson, *supra* note 134, at 242, 259.

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.