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Charter Schools, Civil Rights and School Discipline: A Comprehensive Review

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Publication Date

2016-03-16

Charter Schools, Civil Rights and School Discipline

A Comprehensive Review

By Daniel J. Losen, Michael A. Keith II, Cheri L. Hodson and Tia E. Martinez



The Center for Civil Rights Remedies

at The Civil Rights Project | *Proyecto Derechos Civiles*

Executive Summary • March 2016

Charter Schools, Civil Rights, and School Discipline: A Comprehensive Review

Executive Summary

In 2011-12, every one of the nation's 95,000 schools was required to report its school discipline data, including charter schools. This report, along with the companion spreadsheet, provides the first comprehensive description of the use of suspensions by charter schools. This report, which covers more than 5,250 charter schools, focuses on out-of-school suspension rates at the elementary and secondary levels. It specifically examines the extent to which charter schools suspend children of color and children with disabilities at excessive and disparate rates.

The report lists the highest-suspending charters in the nation for several racial/ethnic groups, and also describes the discipline gaps by race/ethnicity and by disability status. Here are some examples:

- In the 2011-12 school year, 374 charter schools suspended 25% of their enrolled student body at least once.
- Nearly half of all Black secondary charter school students attended one of the 270 charter schools that was hyper-segregated (80% Black) and where the aggregate Black suspension rate was 25%.
- More than 500 charter schools suspended Black charter students at a rate that was at least 10 percentage points higher than the rate for White charter students.
- Even more disconcerting is that 1,093 charter schools suspended students with disabilities at a rate that was 10 or more percentage points higher than for students without disabilities.
- Perhaps the most alarming finding is that 235 charter schools suspended more than 50% of their enrolled students with disabilities.¹

On the other hand, some readers will also be surprised to learn that lower-suspending charter schools are more numerous than high-suspending charters. One can reasonably infer that, like non-charter schools, there are likely many effective charter schools that reserve suspension as a measure of last resort.² Therefore, while this report suggests that many charter schools with excessive suspension rates are contributing to the school-to-prison pipeline and that some are likely violating

the civil rights of their students, it also suggests that other charter schools likely offer excellent examples of effective non-punitive approaches to school discipline and could help close the pipeline.

Part II of this report explores the question, "How do charter school suspension rates compare with rates for non-charter schools?" In 2011-12, the average suspension rate for all charter schools combined was 7.8%. The average for all non-charter schools was 6.7%. This 1.1 point absolute difference, expressed in purely relative terms, means that, nationally, the charter school suspension rate was 16% higher than the non-charter school suspension rate.

The data raise concerns that are especially relevant in light of the fact that the federal Every Student Succeeds Act (ESSA) has added several provisions relating to school discipline, including a requirement that every state review its schools and districts and reduce the "overuse of suspension."³ By fall 2016, every state must submit a plan for implementing the ESSA requirements for approval by the U.S. Secretary of Education. That plan must include assurances that it will meet this obligation. Unless a state law explicitly exempts charter schools, ESSA makes it clear that charters are expected to comply fully with the requirements of the new law.⁴

The additional core findings listed below inform the recommendations we make for policymakers, which will conclude this report.

- The 20 highest-suspending charter schools in 2011-12 all suspended more than two-thirds of their student body at least once; all but six of these schools had Black enrollment greater than 50%.
- At 484 charter schools, the suspension rate for students with disabilities was 20 percentage points higher than for those without disabilities.
- Racial disparities in Black and White charter students' suspension rates were found to be quite large at both the elementary and secondary school levels; however, the 6.4 percentage point Black-White discipline gap at the elementary level more than doubled to 16.4 points at the secondary level.

- Charter schools consistently suspended students with disabilities at a higher rate than non-charters; the rate was 15.5% for charters, compared with 13.7% for non-charters.
- However, charters were not consistently higher suspending than non-charters for each racial group at each grade configuration.
- Data from the U.S. Office for Civil Rights (OCR) suggest that more than 17% of all secondary-level charter schools suspended no students. For non-charters, just over 8% of secondary schools suspended zero students. This raises questions about whether charter schools may be violating civil rights law by not reporting the data on whom they exclude from school on disciplinary grounds.
- Several civil rights investigations have been conducted into charter schools' disciplinary policies, and some charters have subsequently agreed to change their policies and practices and to use more effective approaches.

Part III addresses concerns that charter school leaders won't respond to growing knowledge about the harm caused by harsh discipline policies or to evidence of the effectiveness of non-punitive alternatives. Therefore, our core recommendation is that, when it comes to efforts to curb the overuse of disciplinary exclusion and to replace unjustifiable policies with more effective alternatives, there should be no exemptions or excuses for charter schools.

Our findings in this report also support the following specific recommendations:

1. States should ensure that the state plans they create to implement ESSA do not exempt charters from their required efforts to improve the conditions of learning, including identifying and curbing the overuse of suspension.
2. Pursuant to the new ESSA requirements, states should select school climate as the required additional indicator for their

- statewide accountability systems, and also include a review of discipline disparities by race, disability, and gender as one of the ways school climate is evaluated.
3. To ensure that parents can make an informed choice of school for their children, charter and non-charter schools should publicly report their disaggregated discipline data annually, in keeping with ESSA's required annual state and district report cards.
 4. Federal civil rights enforcement agencies should monitor charter schools closely for discipline disparities generated by harsh policies and practices.
 5. OCR should hold all schools accountable if they fail to collect or report the required data, and also indicate such non-compliance in public reports.
 6. In the course of monitoring charter schools with high and disparate discipline rates, federal and state civil rights enforcement agents should insist that schools relying on "broken windows" theory or similar zero-tolerance approaches consider less discriminatory alternatives.
 7. Researchers should identify and study charter schools that demonstrate an exemplary school climate, including the infrequent use of disciplinary exclusion.
 8. Legislators should support the replication of charters that have created an exemplary school climate without relying on punishment or exclusion, in particular those that also provide a diverse learning environment and help reduce racial isolation.
 9. Federal and state policymakers should take action to ensure that charter schools enroll a representative population of students with disabilities and English learners.

In this report's companion spreadsheet, readers will see the wide range of suspension rates at elementary and secondary schools and can use the spreadsheet to find the data on a particular charter school or to rank all the charters in a given state by suspension rate, enrollment, grade configuration, or other demographic factors.

Endnotes

¹ To get this count, we started with schools that had at least 50 students enrolled, and we excluded alternative schools, schools identified as part of the juvenile justice system, virtual schools, and schools that enrolled fewer than 10 students with disabilities. Any school where rounding of the data or another error produced a suspension rate of over 100% for a subgroup was also excluded.

² This is a general inference that is not based on an analysis conducted with these data. Other studies have found that, after controlling for poverty and other variables, high-suspending schools predicted lower achievement rates (Skiba, 2006) and lower graduation rates (Fabelo, 2011).

³ The Every Student Succeeds Act of 2015 (ESSA), in Section 1111(g) says that the state plan "shall describe...(C) how the State educational agency will support local educational agencies receiving assistance under this part to improve school conditions for student learning, including through reducing...(ii) the overuse of discipline practices that remove students from the classroom."

⁴ For example, the law makes it clear at Section 1111(c)(5) that the accountability provisions apply to charter schools, and that charter schools will be overseen in accordance with state charter school law.



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Acknowledgements

A special thank you to Atlantic Philanthropies for funding this research and to The California Endowment for their support for CCRR's work in California, including the additional review of the California data referenced herein. We are also extremely fortunate to have had the technical editing assistance of Dody Riggs, who provided extensive edits to each component of the report. A warm thank you to Laurie Russman, the administrative point person at the Civil Rights Project for the numerous ways her work supported these efforts. We also would like to thank The Hatcher Group for designing this report and helping to identify its many newsworthy aspects. Our acknowledgments would not be complete without a deep thank you to the Directors of the Civil Rights Project, Gary Orfield and Patricia Gándara, whose particular feedback inspired several improvements and whose enduring support and wisdom is a constant source of inspiration for the work of the Center for Civil Rights Remedies.

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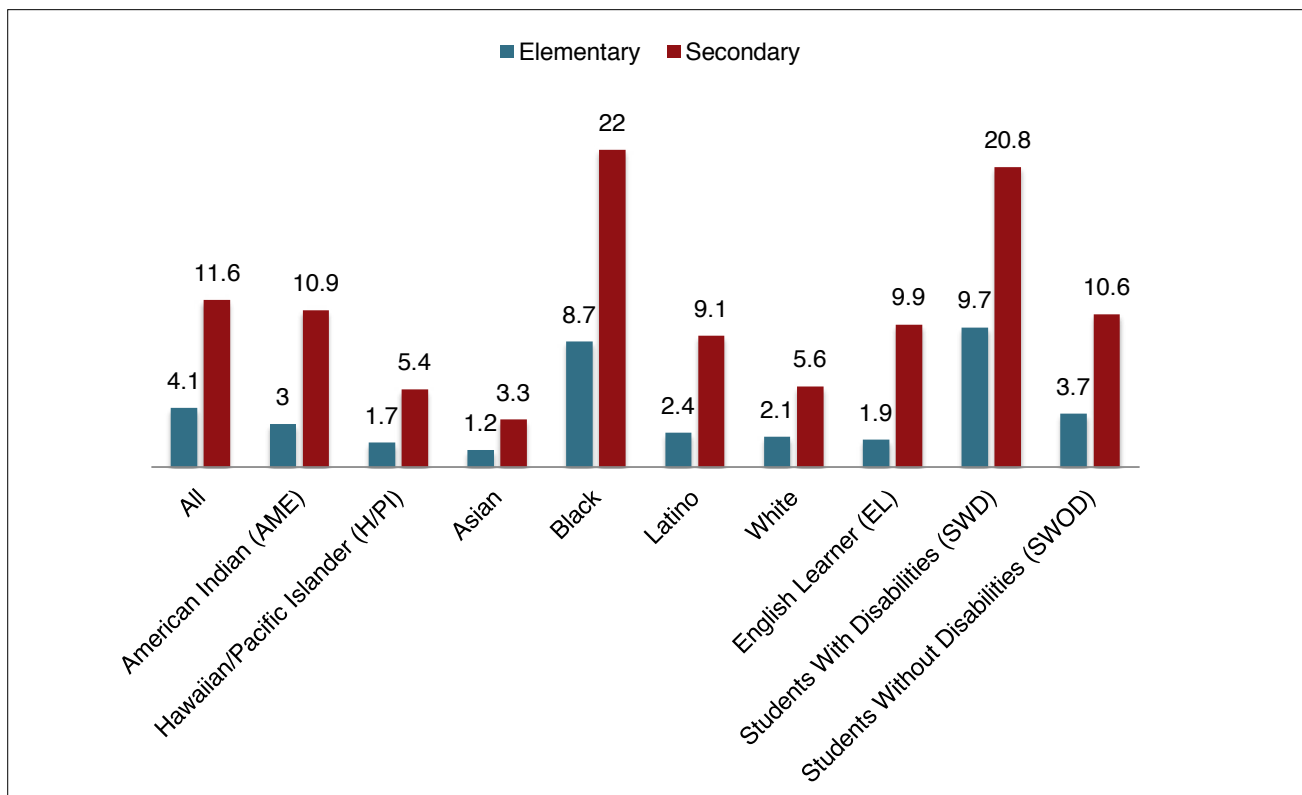
Introduction

This report, along with the companion spreadsheet, provides the first comprehensive description ever compiled of charter school discipline. In 2011-12, every one of the nation's 95,000 public schools was required to report its school discipline data, including charter schools. This analysis, which includes more than 5,250 charter schools, focuses on out-of-school suspension rates at the elementary and secondary levels. The report describes the extent to which suspensions meted out by charter schools for each major racial group and for students with disabilities are excessive or disparate.

For example, in 2011-12, of the charter schools educating at least 50 students, 374 suspended at least 25% of all their student body.¹ About one-fifth of these schools (68) had overall suspension rates of 50% or more.² Because the suspension rates in this report are based on an unduplicated count of suspended students rather than on the number of suspensions, this means that more than half of all the enrolled students in 68 charter schools were suspended at least once. Perhaps most shocking is the fact that 235 charter schools suspended more than 50% of their enrolled students with disabilities.³

Deep disparities in discipline practices were also found at many charter schools.⁴ In 1,093 charter schools, for example, students with disabilities were suspended at a rate at least 10 percentage points higher than their non-disabled peers. Taking a more comprehensive view of these disparities, this report reviews all charter schools together and further disaggregates suspension rates by race, disability, and English learner status. Figure 1 compares the average suspension rates of students attending elementary charter schools to those attending charter secondary schools.

Figure 1. National Average Suspension Rates for Charter Schools at the Elementary and Secondary Levels, by Subgroup, 2011-12



As Figure 1 clearly depicts, the average national rate for out-of-school suspensions at charter schools varies dramatically by race and disability status, and by grade level. The rates for subgroups at charter secondary schools are more than double the elementary rates. Notable disparities include that the rates for students with and without disabilities differ by 6 points at the elementary level and more than 10 points at the secondary level. There are even larger disparities between Black and White students at both levels. Specifically, the 6.6-point racial gap at the elementary level more than doubles to 16.4 points at the secondary level. This means that charter secondary schools suspend more than 16 more Black students than White students per every 100 students enrolled. It is also striking that the suspension gap between Latino and White students at the elementary level is just 0.3 percentage points but jumps to 3.5 percentage points at the secondary level—more than 11 times greater. English learners, whose elementary suspension rate is lower than that of White students, have a secondary suspension rate of nearly 10 percent, which is 4.3 points higher than White students' 5.6% suspension rate at the secondary level.

Although not the focus of this descriptive report, there is a wealth of research indicating that the frequent use of suspensions is harmful to all students, as it contributes to chronic absenteeism, is correlated with lower achievement, and predicts lower graduation rates, heightened risk for grade retention, delinquent behavior, and costly involvement in the juvenile justice system (Balfanz, Byrnes, & Fox, 2015; Marchbanks III et al., 2015; Noltemeyer, Ward, & Mcloughlin, 2015; Shollenberger, 2015). The well-documented harm to students associated with suspensions also translates into wasted tax dollars, as there are numerous non-punitive—and less costly—approaches to improving learning environments that do not rely on excluding students from school.

As many independent studies indicate, including those published in the research volume, *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion* (Losen, 2015), there are effective evidence-based alternatives to harsh discipline available that not only decrease overall rates of disciplinary exclusion and reduce racial gaps in school discipline, but also are associated with higher achievement, improved graduation rates, and an increased sense of safety (González, 2015; Skiba et al., 2014; Steinberg, Allensworth, & Johnson, 2015). A recent study that controlled for poverty, disability status, and a host of other variables indicated that racial differences in suspension rates account for as much as 20% of the racial achievement gap (Morris & Perry, 2016).

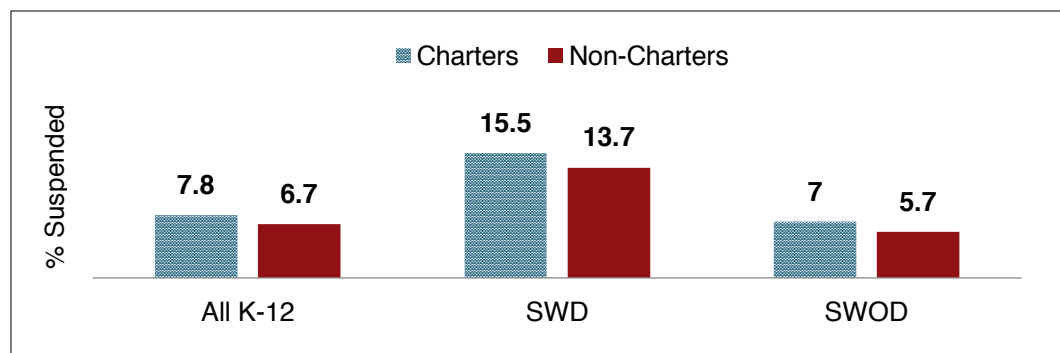
Part I of this report provides additional data on the excessive and disparate use of disciplinary exclusion by individual charter schools, especially those with large discipline gaps, by race and by disability status. Part I also provides a comprehensive overview of the full spectrum of discipline rates found at the nation's charter schools.

The concerns raised by the data are especially relevant in light of the fact that the Every Student Succeeds Act (ESSA), the federal law that replaced No Child Left Behind, has added several provisions that address school discipline, including a requirement that every state review its schools and districts for the “overuse of suspension.”⁵ ESSA makes it clear that, unless a state law explicitly exempts charter schools, they are equally obligated by the requirements of the new law.⁶ By fall 2016, the implementation plan that every state must submit for approval in order to get federal funding must provide assurances that it will meet this obligation. Readers are cautioned not to make generalizations about all charters simply because some have alarmingly high suspension rates. As this report highlights, it is important to remember that, like non-charter schools, most charter schools are not high-suspending. In fact, more elementary charter schools met our definition of a lower-suspending school than a high-suspending school, and at the secondary level higher-suspending charters only slightly outnumbered lower-suspending charters. This is proof that charter schools do not need to have high suspension rates to be successful. From a civil rights perspective, this is also evidence that less discriminatory alternatives are available to charter schools that currently suspend children of color and those with disabilities at high and disparate rates.

We infer that many lower-suspending charter schools likely use effective alternative approaches to out-of-school suspensions and only turn to exclusion from school as a measure of last resort, which the data suggest is also true among non-charter schools.⁷ In other words, while some charter schools are contributing to the school-to-prison pipeline, others may provide excellent examples of non-punitive approaches that could help plug the pipeline.

Part II of this report provides a deeper exploration of the question, how do charter school suspension rates compare with rates for non-charter schools? There are several ways to answer this question, and they should be interpreted carefully. First, in 2011-12, charter schools in the aggregate suspended 7.8% of all students enrolled, which is a slightly higher rate than for non-charter schools, at 6.7%. These numbers are based on a comparison of 4,752 charter schools (excluding alternative schools, those the U.S. Department of Education's Office for Civil Rights [OCR] identified as part of the juvenile justice system, and most virtual and online schools) with more than 90,000 non-charter schools (with the same exclusions). In the aggregate, charter school suspension rates for K-12 were about 1.1 percentage points higher (thus 16% greater) for all students and about 1.8 percentage points higher for students with disabilities (SWD). Charter schools were also higher suspending for students without disabilities (SWOD).

Figure 2. Comparison of Charter and Non-Charter Suspension Rates in 2011-12 (K-12)



This pattern of higher aggregated suspension rates for all students and for students with disabilities holds true for elementary, K-8, and secondary charter schools. Part II of this report compares charter and non-charter schools of similar grade configuration, further disaggregated by race and ethnicity. This deeper breakdown reveals that charter schools are not consistently higher-suspending than non-charters for every subgroup, and that, whether higher or lower, the differences between the types of schools are not large.

The national-level comparisons appear in Part II because they are not the most important findings. There are wide variations in discipline policy and practice among charter schools, just as there are among non-charter schools, and charter and non-charter schools do not have identical demographics. Furthermore, evidence suggests that suspension rates have declined in many schools and districts since 2011-12.⁸ This decline seems to coincide with the expansion of the knowledge-base on non-punitive alternatives to disciplinary exclusion, which is discussed briefly in Part III. The next dataset OCR releases will describe suspension rates in 2013-14, and we might find that reductions in disciplinary exclusion by charter schools outpaced reductions by non-charter schools.

On the other hand, more recent suspension data that were collected and publicly reported by two state education departments indicate that many charters still have excessive suspension rates and large racial disparities. For example, Connecticut's 2015 state report showed that, at the preK-5 level, elementary charter schools had much higher suspension and expulsion rates than other types of preK-5 schools, with an average rate of 14% for the charter schools versus 3% for the non-charters.⁹ Moreover, the Connecticut report showed that, between 2011-12 and 2013-2014, Connecticut's charter schools at the high school level showed the largest increase in rates of suspension and expulsion and the highest average high school suspension rate (over 30%) for Black males.¹⁰

In Massachusetts, discipline data from 2014-15 were reported for 1,861 schools, of which 79 (4.2%) are charter schools. An examination of these recent data on school and district suspension rates in

Massachusetts revealed that charter schools made up a disproportionate share (3 of the top 20) of the state's highest-suspending schools, all with rates over 35% for all students.¹¹ Moreover, when we rank-ordered the suspension rates for all schools in the state by racial group, charters were 3 of the 12 highest suspending for Blacks, all with rates over 40%; charters were 4 of the top 14 for Latinos, all with rates over 33%; and for students with disabilities, charters were 3 of the top 12, all with rates over 50%.¹²

With a suspension rate of 40%, Roxbury Preparatory Academy was the twelfth highest-suspending school in the commonwealth, and ninth highest for students with disabilities, at 57.8%. It also had the highest overall suspension rate of all charter schools in the state. According to the state website, these high rates are significantly lower than Roxbury Prep's corresponding rates in 2012-13 (59.8% and 77.2%, respectively). Like many high-suspending charter schools, Roxbury Prep has been praised in recent years for high academic performance. The school is particularly noteworthy because current U.S. Secretary of Education John King is one of its founders (Aspen Global Leadership Network, n. d.). While we make no assumptions about Secretary King's position on charters that favor harsh disciplinary approaches, the school's strong reputation does raise concerns that extraordinarily high suspension rates may be overlooked when charter schools, like Roxbury Prep, are regarded as "high performing" (Schwartz, 2010). Although beyond the scope of this report, the possibility certainly exists that some charter schools are artificially boosting their test scores or graduation rates by using harsh discipline to discourage lower-achieving youth from continuing to attend. If so, this not only would distort the public's understanding of the benefits of some high-suspending charter schools, it also would steal attention away from charter schools that employ non-punitive approaches and still have good, if somewhat less impressive, academic outcomes.

The concern that some charter school leaders embrace a zero-tolerance approach is a salient and pressing issue, one that has taken on an added dimension in Massachusetts, where charter school proponents recently filed a lawsuit claiming that the state's cap on the number of charters schools violates the civil rights of students of color and is unlawful under the state constitution. This legal claim has been formally opposed by several civil rights groups, including the Lawyers Committee for Civil Rights and Economic Justice, and the New England Chapter of the NAACP, which cite discipline disparities as part of their argument that the cap is needed to protect the civil rights of children, not vice versa.¹³

Moreover, Eva Moskowitz, one of the nation's leading charter school proponents, has been an outspoken critic of less punitive disciplinary approaches. Several of her schools were recently in the spotlight for using harsh discipline, including one whose principal maintained a "got to go" list of students whose behavior or performance was deemed unacceptable. Moskowitz's views may not be representative of all charter schools, but if other leaders are even mildly aligned with her approach and philosophy, it would not be surprising if more charter school educators were to resist discipline reforms than embrace them.

Other charters, including Achievement First, KIPP Academy, and perhaps other charter management organizations, have publicly embraced either a "no excuses" or the "broken windows" theory of school discipline. These zero-tolerance punitive approaches, which hold students strictly accountable for every minor infraction of the school code, runs contrary to research on what works (Goodman, 2013). One qualitative study suggests that harsh practices do academic harm that is not reflected in test scores, and that practitioners may be resistant to change (Golann, 2015).¹⁴ The concern that charter leaders won't respond to the growing knowledge about the negative academic impact of suspension or to the evidence on more effective non-punitive alternatives are discussed in Part III.

Part I of this report provides examples of charter schools with some of the highest and most disparate suspension rates, along with the distribution of suspension rates among charters. Part II describes in greater detail the differences in suspension rates between charters and non-charters. However, this report does not attempt to explain the reasons for high suspension rates or for the differences in rates. It aims instead to enhance public reporting of discipline data so that policymakers and parents can make more informed school choices for their children, and to encourage the identification of effective charter schools that can help all public schools reduce the use of disciplinary exclusion and close the school discipline gap.

Part I.

Charter Schools—Part of the Problem, Part of the Solution

As mentioned in the Introduction, in 2011-12, there were 374 charter schools in the United States where more than 25% of all the students enrolled were suspended at least once. In this section, we examine the prevalence of such high rates, further disaggregated by selected subgroups, and find that very high rates are far more common for some groups than for others. The central purpose of this report is to raise awareness about high-suspending charter schools, especially how they impact historically disadvantaged youth. To that end, Table 1 includes a list of three of the highest-suspending charter schools for each major subgroup—Blacks, Whites, Latinos, and American Indians (AME).¹⁵ The named schools reported these data to OCR and certified them as accurate. Readers should keep in mind that some of these schools may have reduced their suspension rates since these data were reported, and, if so, more recent data will illustrate such progress. Many charter schools serving disadvantaged youth also met our definition of lower-suspending schools. Readers can use the spreadsheet that accompanies this report to sort the charter schools, nationally or in their state, from highest to lowest for any subgroup.

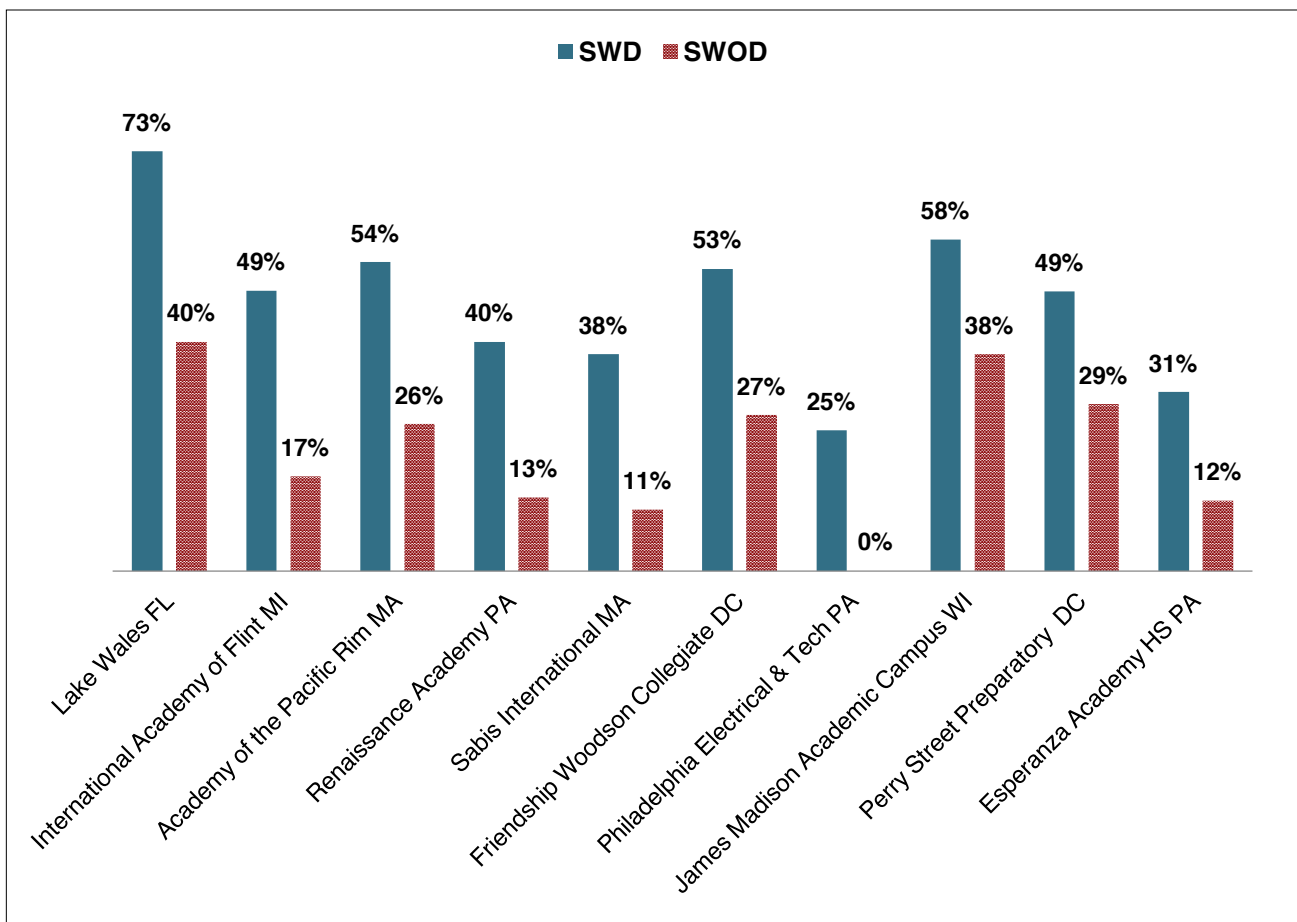
Table 1. The Highest Suspending Charter Schools in the Nation

	State	District	School	OSS Rate	Subgroup Enrollment	Total Enrollment
Black	OH	Horizon Science Academy-Cleveland Middle School	Horizon Science Academy-Cleveland Middle School	78%	121	142
	NC	Crossroads Charter High	Crossroads Charter High	74%	217	235
	OK	Oklahoma City	Kipp Reach College Preparatory	71%	220	267
Latino	FL	Orange	Northstar High Charter	76%	100	175
	NY	Leadership Village Academy Charter School	Leadership Village Academy Charter School	60%	118	376
	TX	Dallas Can Academy Charter	Dallas Can Academy Charter	49%	283	594
White	IN	SE Neighborhood School of Excellence	SE Neighborhood School of Excellence	40%	187	303
	GA	Barrow County	College and Career Preparatory Academy	37%	106	179
	AR	Cabot School District	Academic Center for Excellence	32%	172	191
American Indians	AZ	Ira H. Hayes Memorial Applied Learning Center Inc.	Ira H. Hayes High School	34%	67	67
	AZ	Salt River Pima-Maricopa Community Schools	Salt River High School	33%	250	260
	WY	Fremont County School District #21	Ft. Washakie Charter High School	33%	52	54

Note: Blacks, Whites, Latinos (*Subgroup: >100; OSS Rate <100%*); American Indians (*Subgroup: >50; OSS Rate <100%*)

- CHARTER SCHOOL DISPARITIES:** These lists may provide a sense of the extremes, but they do not capture the prevalence of the problem. For example, more than 500 charter schools had a Black-White suspension gap of more than 10 points. That same gap was found between students with disabilities and their non-disabled peers in 1,093 charter schools.¹⁶ In 484 of these schools, the suspension rate for students with disabilities was 20 points higher than for those without disabilities. Any school that suspends students with disabilities at such a substantially higher rate raises concern that it may be failing to meet these students' educational needs. Moreover, it appears that, instead of providing needed behavioral supports, the school is suspending these students because of behavior that is a manifestation of their disability. Whenever and wherever students with disabilities are denied educational opportunities because of their disability, it is a blatant violation of anti-discrimination law. Below is a list of the 10 charter schools that had at least 100 students with disabilities enrolled and had the largest disability discipline gaps in 2011-12.¹⁷

Figure 3. Charter Schools with Largest Disability Discipline Gaps, 2011-12



See appendix for table with full names and state.

It is not surprising that most of the charter schools with the largest disability discipline gaps were also among the highest-suspending for students with disabilities. One advantage of looking at schools with the largest disparities using a measure of the actual differences rather than a relative rate, such as a ratio, is that where the discipline gap is very high, the suspension rate also typically tends to be high.¹⁸

- **OCR INVESTIGATIONS OF CHARTER SCHOOLS FOR DISCIPLINE DISPARITIES:** Charter schools' high suspension rates and large disparities by race and disability raise concerns about possible civil rights violations. More than one charter school has entered into an agreement with OCR after discipline issues prompted an investigation.¹⁹ One such school is the Achievement First Middle School in Hartford, Connecticut. This charter school entered into a resolution agreement because the charter providers recognized that OCR's civil rights concerns would be reduced if the school reduced its use of disciplinary exclusion. When OCR enters into an agreement with a school or district, the investigation typically ends without reaching a formal finding regarding whether civil rights law was violated. The entity involved and OCR instead agree to resolve the concerns, and OCR then monitors their implementation until the agency is satisfied that the agreement has been complied with fully.

In preparing this report, the Center for Civil Rights Remedies authors met with the co-directors of Achievement First about the efforts they were making as a charter management organization across all their schools. They shared information about Achievement First's efforts and clearly expressed a commitment to bring suspension rates down. Based on a preliminary review of data soon to be released by OCR, we believe that, between 2011-12 and 2013-14, several of the Achievement First charter schools that had the highest suspension rates will show a decline in the use of suspension, while others will remain high and some will show an increase.

Based on our discussions with the co-directors, we had planned to highlight in detail the positive reform efforts made by Achievement First. However, in November 2015, a new lawsuit was filed against Achievement First in Crown Heights, Brooklyn, alleging that the charter had punished students with disabilities for behavior arising from their disability.²⁰ We also observed that the Achievement First network publicly embraces James Q. Wilson's highly controversial "broken windows" theory of law enforcement as the basis for its approach to school climate and culture: as of February 16, 2016, their website cites this hyper-policing approach—despite the fact that reliance on zero tolerance to create a positive school climate has been discredited by education researchers and most practitioners.²¹

At least two recent lawsuits have been filed against the zero-tolerance-embracing Success Academy charter schools run by Eva Moskowitz (e.g. Olgundiran et al. versus Success Academy Fort Greene et al., 2015); the New York state authorizer, the SUNY Charter Schools Institute, has reportedly initiated its own review (Fertig, 2016). Many individual complaints against other charter schools have been filed based on assertions of discriminatory discipline, such as the complaint against the Noah Webster Basic charter school in Arizona. The complaint was resolved after OCR found that the school had violated anti-discrimination law when it expelled a student with a disability for repeatedly failing to complete and hand in his homework.²²

- **CONCERNS ABOUT DISCIPLINE IN CHARTER SCHOOLS WITH HIGHLY CONCENTRATED BLACK ENROLLMENT:** The 20 highest-suspending charter schools in 2011-12 all suspended more than two-thirds of their student body at least once that school year, and all but six had greater than 52% Black enrollment. This report briefly explores some additional differences in suspension rates for Black students, based on charter school enrollment patterns. Prior reports that have examined Black suspension rates across all the nation's school districts have raised concern that schools with a higher percentage of Black students may be more likely to adopt harsh disciplinary policies and practices.²³ While a full-scale study of the relationship between enrollment levels and suspension rates was beyond the scope of this analysis, this report raises similar concerns about charter schools.

In 2011-12, approximately 165,334 Black students attended charter secondary schools that were not juvenile justice, virtual, or alternative schools. Of this total, 81,889 attended a charter secondary school

where Black students made up 80% or more of the total enrollment. In these 270 hyper-segregated charter schools, the aggregate Black suspension rate was 25%; in other words, roughly half of all Black charter secondary students attended a school where they had a 25% likelihood of being suspended at least once each year.

In contrast, we found that 11,507 Black secondary students attended a charter school where White enrollment was 55% or more of the total student body. In those majority White charter schools, Black students were suspended at a rate of 13%. Along these same lines, the suspension rate for students with disabilities was 25% in charter schools where White enrollment was 30% or less, and 13.7% where White enrollment was 55% or more. Similarly, Black students had a suspension rate of over 23% in schools where White enrollment was 30% or less. In other words, Black students and students with disabilities attending highly segregated schools with low White enrollment experienced suspension rates almost twice as high as those attending majority White charter schools. This brief analysis raises serious questions about whether charter secondary schools that enroll a high percentage of non-White students tend to adopt harsher policies and practices or provide fewer behavioral supports and services than those with low non-White enrollment.

Latino secondary students attending charter schools with at least 55% White enrollment had a suspension rate of 7.6%. At charter schools with at least 80% Latino enrollment they experienced a 6.7% suspension rate. However, Latinos attending charter schools with greater than 45% Black enrollment experienced the much higher suspension rate of 20%. From this basic analysis, it appears that charter secondary schools enrolling a high percentage of Black students tend to suspend Black students, Latino students, and students with disabilities at substantially higher rates than those serving a majority White population. Our previous district-level studies raised similar concerns with respect to non-charter schools (Losen, Hodson, Keith, Morrison, & Belway, 2015). However, not all predominantly Black charter schools had high suspension rates; among charter secondary schools with 80% or more Black enrollment, Black suspension rates ranged from 0% to 82%. These observations dovetail with detailed and rigorous studies that controlled for race, poverty, and other demographics, which found that school factors are likely what drive suspension rates up or down (Fabelo et al., 2011).

- **CONCERNS ABOUT CHARTER SCHOOLS' COMPLIANCE WITH THE CIVIL RIGHTS DATA COLLECTION (CRDC):** The zero suspension rates reported by OCR raised additional questions. In several cases, further inquiry made it clear that some of the reported zero suspension rates were false. For example, prompted by the media attention, we looked into Eva Moskowitz's Success Academy Schools in New York City. Whereas the OCR report stated that these charter schools suspended no students in 2011-12, the online discipline data published by the state for the same year showed that Success Academy charter schools had suspended hundreds of students. In fact, rates across their seven elementary schools ranged from 6% to 27% of all students enrolled. We do not know why the OCR data did not match the data we found online for the same schools, but with a competing and official source blatantly contradicting the OCR report, those seven schools were removed from the analysis for this report. Readers should note that failing to report the data requested by the CRDC is a violation of federal anti-discrimination law, which has always applied to charter schools (U.S. Department of Education, 2014).

Unfortunately, OCR reports zeros in the place of missing or non-reported data from the CRDC. When we looked into other charters that reported suspending zero students out of school, many of them turned out to be virtual schools, while others were representing alternative schools serving students at risk for dropping out, involved with the courts, or in prison. Although OCR has a code for alternative schools and schools run by the juvenile justice system, we found many schools that were clearly alternative but not coded as such in the OCR database.

Most important, even after removing the virtual schools and several others that were clearly specialized alternative specialized programs from the OCR data on the country's charter schools, we further explored state reports from California and Wisconsin, which independently collected and reported school discipline data in 2011-12. We found that eight of the charter secondary schools with zero suspensions in the OCR

collection in that same year had not reported any discipline data at all to their state.²⁴ After cleaning the set of secondary-level charters we found that approximately 17% of the charter secondary schools remaining were reported as suspending zero students. This may reflect a very positive and effective environment in some charter schools, but considering that the use of suspension is very common in most schools at the secondary level, we suspect that a high number of secondary charter schools might not have reported their data.

Many states never report any discipline data independently, let alone school-level data, so we could not double check every charter secondary school reporting a zero. Several other charters on which we found information had online or alternative school elements, but they defied clear categorization and were therefore left in the database. Furthermore, 2011-12 was the first year that all charter schools were required to report discipline data to OCR, as it was the first universal data collection conducted in many years. Earlier OCR collections used sampled data and prioritized districts with at least 3,000 students, meaning that most charter schools were not part of prior collections. Although the law makes no exceptions, it is well known that first-time respondents to a CRDC data request sometimes fail to report all or part of the requested data. Therefore, although we made no such adjustments for the rates represented in Figure 1 and Figure 2, our analysis of the distribution of charter school suspension rates only counted charter secondary schools that reported at least one student suspended. We only made the adjustment for secondary schools because having zero suspensions is common for elementary schools and uncommon at the secondary level.

- **CHARTER SCHOOL DISTRIBUTION OF SCHOOLS BY SUSPENSION RATES:** We present the data on the distribution of suspension rates to demonstrate charter schools' wide-ranging use of suspension. In the three tables that follow, we look at the distribution of charters by their suspension rates for Blacks, Latinos, Whites, and students with disabilities (SWD), and for all students combined. We only included schools in which at least 10 students were enrolled for the subgroup covered. The last two columns show the total number of schools that met the baseline criteria for inclusion in the analysis. For example, there were 1,182 charter schools for all students, but for White students we looked at just 792 schools.

Table 2a. Elementary Level: Distribution of Charter School Suspension Rates

	Lower-suspending				Higher-Suspending				Total Schools 100%		
	≤2.5		>2.5 and ≤5		>5 and ≤7.5		>7.5 and ≤10			>10	
	N	%	N	%	N	%	N	%	N	%	N
Black	367	43%	85	10%	78	9%	80	9%	241	28%	851
Latino	579	64%	128	14%	65	7%	38	4%	95	11%	905
White	539	68%	103	13%	47	6%	28	4%	75	10%	792
SWD	394	47%	34	4%	54	6%	54	6%	304	36%	840
All	658	56%	202	17%	97	8%	66	6%	159	14%	1,182

For the elementary school distribution, the highest percentage of schools was found in the lowest range, where charter schools suspended 2.5% or less of a given group's total enrollment. We used the same distribution for K-8 schools (Table 2b) because the OCR database does not permit extracting rates by grade level, and because there are more elementary grades in a K-8 school than there are secondary grades.

Table 2b. K-8 Level: Distribution of Charter School Suspension Rates

	Lower-Suspending						Higher-Suspending				Total Schools 100%
	≤2.5		>2.5 and ≤5		>5 and ≤7.5		>7.5 and ≤10		>10		
	N	%	N	%	N	%	N	%	N	%	N
Black	264	30%	71	8%	61	7%	67	8%	416	47%	879
Latino	485	53%	115	13%	94	10%	69	8%	158	17%	921
White	524	54%	150	16%	76	8%	54	6%	159	17%	963
SWD	356	34%	47	5%	72	7%	86	8%	491	47%	1,052
All	521	42%	203	16%	147	12%	78	6%	298	24%	1,247

Unlike the elementary distribution for Black students and those with disabilities, the K-8 distribution for these two groups was skewed toward the higher suspension levels. However, for all students and for Latino and White students, the K-8 distribution still showed the highest percentage at the low end of the distribution.

Table 2c. Secondary Level: Distribution of Charter School Suspension Rates²⁵

	Lower-Suspending						Higher-Suspending				Total 100%		
	≤10		>10 and ≤15		>15 and ≤20		>20 and ≤25		>25 and ≤50			>50	
	N	%	N	%	N	%	N	%	N	%	N	%	N
Black	199	22%	141	16%	122	13%	93	10%	261	29%	94	10%	910
Latino	423	48%	137	16%	113	13%	57	6%	120	14%	36	4%	886
White	456	59%	95	12%	83	11%	48	6%	78	10%	21	3%	781
SWD	147	16%	111	12%	131	15%	105	12%	260	29%	141	16%	895
All	693	50%	173	13%	151	11%	111	8%	193	14%	54	4%	1,375

Note: All zero-suspending charters removed.

Readers are reminded that all zero-suspending charters were removed, and that the scale was changed for secondary schools so that “lower-suspending” is less than or equal to 10%, and “higher-suspending” is broken into “greater than 25%” and “greater than 50%.” It is striking that, when comparing the distribution for each subgroup, the groups with the highest number and percentage of higher-suspending secondary charter

schools was for Black students (355 schools = 39% of distribution) and students with disabilities (401 schools = 45% of distribution). At the low end of the distribution, lower-suspending charters are the most numerous for Latino (423 schools = 48% of distribution) and White students (456 schools = 59% of distribution). However, it remains clear that low- to moderate-suspending charter schools are abundant for all subgroups.

Even when our analysis is limited to charter secondary schools reporting at least one suspension, we still find a very wide distribution of suspension rates among the schools, which illustrates why generalizing from aggregate charter school rates is problematic. The data at the secondary level show that, while Black students and students with disabilities are more likely to attend a charter school where students in their subgroup are suspended at a very high rate (25% or higher), numerous lower-suspending charter schools can be found for all subgroups. This wide distribution of suspension rates for each subgroup across each grade configuration supports the inference that school policies and practices can make a tremendous difference.²⁶

- **MOST CHARTER SCHOOLS ARE NOT HIGH-SUSPENDING:** To further emphasize the previous point, this report summarizes the extreme ends of the charter school distribution for the elementary and secondary levels. If a school at the secondary level suspended more than 25% of any subgroup that had an enrollment of at least 50 students, the school is deemed high-suspending. To be characterized as a lower-suspending secondary school, every subgroup with at least 10 students enrolled had to have a suspension rate of 10% or less. The same concept was employed for the elementary school analysis, using 10% and 2% as the corresponding high and low benchmarks. K-8 schools were not included.

The numbers were nearly equal at the secondary level, with 332 high-suspending and 327 lower-suspending charter schools. At the elementary level, the 240 high-suspending charter schools were far outnumbered by the 486 lower-suspending schools. Despite concerns that some elementary school reports of having zero suspensions might not be true yet were included in the analysis, these findings clearly suggest that lower-suspending charter schools are abundant.

Part II.

National Comparison of Charters to Non-Charterers

Part I of this report suggests that numerous individual charter schools are contributing to the school-to-prison pipeline, raising serious questions about possible civil rights violations. Part II explores whether charter schools are contributing to these problems more than non-charter schools. This examination does suggest some troubling tendencies, but also cautions against using the conclusions to make assumptions about individual charter schools.

- **COMPARISON CHALLENGES:** This report did not adjust or control for the fact that charters tend to have a smaller percentage of students with disabilities and English learners, both groups that tend to have higher than average suspension rates at the secondary level. On the other hand, in 2011-12, charter schools had a substantially higher percentage of Black students enrolled than non-charter schools, where Black students typically are suspended at substantially higher rates than White students.²⁷ However, many scholars have pointed out that, in making comparisons between charters and non-charters, it is possible that the process for applying to a charter or entering a charter lottery might introduce a selection bias that results in students who have more involved parents, who are higher achieving or better behaved, applying and enrolling in higher numbers. The OCR dataset does not allow controlling for these more nuanced factors.
- **POVERTY:** It is well known that charter schools, in the aggregate, enroll a substantially higher percentage of students living in poverty than non-charters. However, OCR does not collect these data, so we could not control for these differences at either the student or the school level. It is well established that students living in poverty are more likely to have disabilities and more likely to be English learners. Moreover, students with disabilities often have behavioral issues that are manifestations of their disability. The fact that these two subgroups tend to be over-represented among the poor raises questions regarding the disproportionate under-enrollment of these subgroups at charter schools serving a high percentage of students from low-income households.

Readers should also know that different demographics are not a valid reason to expect higher suspension rates, as research indicates that excluding a high percentage of students from school for minor rule violations does more harm than good. For example, disciplinary exclusion should not be used frequently for students living in poverty because, as the American Academy of Pediatrics has warned, the stress an out-of-school suspension causes a family may be especially harmful and have serious negative repercussions (Pediatrics, 2003). These experts, along with many other experts, have pointed to the research literature to argue that exclusion and other punitive approaches to problematic behavior are often counterproductive and should be measures of last resort (American Psychological Association Zero Tolerance Task Force, 2008; Council on School Health, 2013).

Moreover, several studies have demonstrated that Black students do not misbehave more often than other students (e.g., Skiba et al., 2015). One recent Stanford University study on teachers' implicit bias found that when teachers reviewing a description of an unknown student's misbehavior were told the behavior was the second occurrence, they were likely to recommend harsher discipline if the repeated offense was associated with the name of a Black student than when it was associated with the name of a White student, despite the fact that the written descriptions were identical except for the name of the student (Okonofua & Eberhardt, 2015). This raises the distinct possibility that implicit racial bias is a contributing factor in discipline disparities, including in charter schools, where Black suspension rates are high and/or disproportionate.

Policymakers should never assume that the frequent use of suspension is more justified in schools that serve a higher percentage of Black children, or those living in poverty, or those with disabilities. Even if some schools serve a higher percentage of children with behavioral needs, including students

with behavioral disabilities, frequent disciplinary exclusion is still an unsound approach. Moreover, if challenging behavior is a manifestation of a student’s disability, it is unlawful to exclude them because of their disability—this applies to both charter and non-charter schools. In some cases, an individual evaluation may demonstrate that the student needs to receive special education or other services in a more restrictive setting, but exclusion from school is not the same as finding a student an appropriate placement based on an individualized determination. Therefore, there is no justification for frequent and dramatically disparate suspension rates in any type of school for any subgroup. Disciplinary exclusion should be a measure of last resort for all students.

On the other hand, to answer the question of whether charters are higher-suspending in the aggregate than non-charters, it is helpful to know whether they enroll a higher percentage of the subgroups that non-charters suspend at high rates. If both charters and non-charters were equally excessive and unjust but charters enrolled students with disabilities and Black students at higher rates, we might expect that the aggregate suspension rate for charter schools would be higher than the aggregate suspension rate for non-charter schools. The OCR collection shows that charter schools enrolled a higher percentage of Black students than non-charters but a lower percentage of students with disabilities and English learners.

- **DISABILITY DEMOGRAPHIC DIFFERENCES:** Charters not explicitly designed to be special education placements have long been criticized for discouraging the enrollment of students with disabilities. Thomas Hehir, former director of the U.S. Office of Special Education Programs, has testified before Congress and published articles asserting that charters are serving a far lower proportion of students with disabilities, “particularly those whose disabilities require significant special education services” (Hehir, 2010, p. 18), than their non-charter counterparts. This report documents differences in the enrollment patterns of charters and non-charters, excluding most virtual schools, alternative schools, and those serving the juvenile justice system.

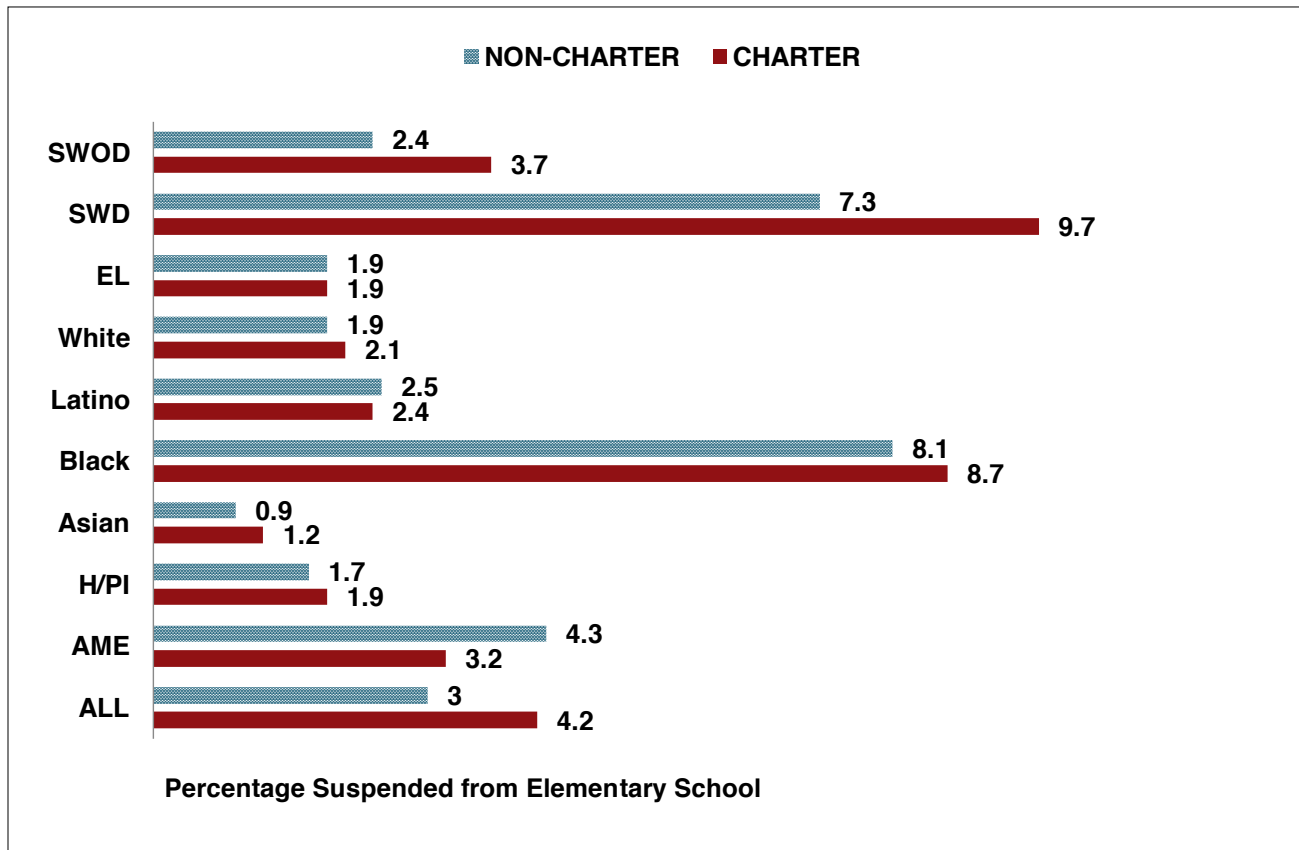
Table 3. Enrollment of Students with Disabilities in Charter and Non-Charter Schools

Enrollment Percentage for Students with Disabilities in 2011-12	All School Levels ²⁸	Elementary	Secondary
Charter	8.9	7.8	9.7
Non-Charter	11.9	11.3	11.7

Even charter schools whose enrollment of students with disabilities is proportionate to that of non-charters might not have a similar proportion of SWD with behavioral problems. The OCR data did not permit further disaggregation by disability category or severity, thus the concern that charter schools are suspending an even higher percentage of students with mild disabilities than non-charter schools remains unexplored.

A related concern is that the higher disciplinary exclusion rates for students with disabilities may be contributing to their overall lower enrollment in charter schools, either by discouraging them from applying or encouraging those that do attend to disenroll. If true, this bias would concentrate students with more severe disabilities and clear behavioral problems in non-charter schools, which could contribute to their higher discipline rates. This report does not adjust for any of these potential differences.

Figure 4. Comparison of Elementary Level Suspension Rates



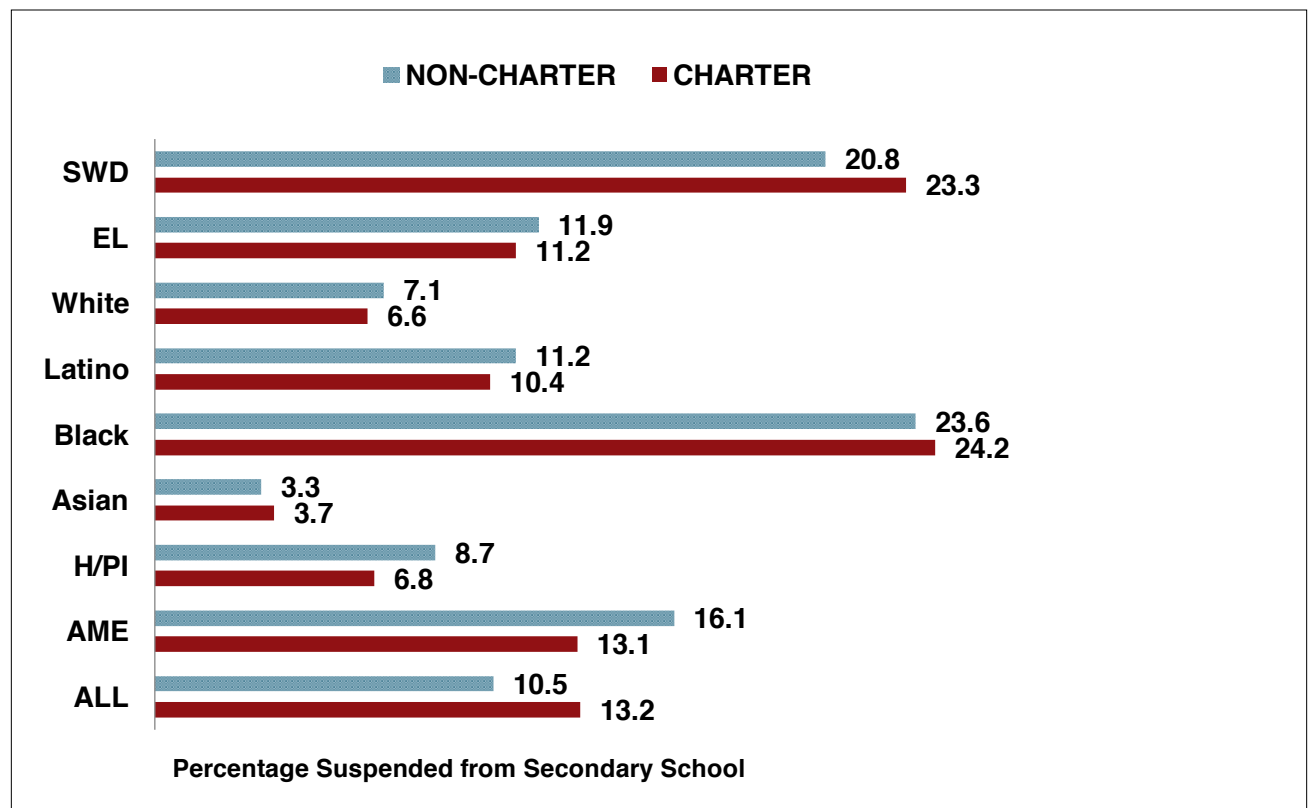
- ELEMENTARY-LEVEL COMPARISON:** This basic adjustment for different demographics and grade configurations produced some interesting findings.²⁸ These comparisons were the aggregate rates for all the schools combined, and not a per-school average.²⁹ As is clear from Figure 4, charter schools were higher-suspending for most but not all subgroups. Most notable is that they were 40% higher than non-charters for “ALL” students and 32% higher for SWD.³⁰

Table 4. Comparison of K-8 Suspension Rates

OSS Rates	ALL	AME	H/PI	Asian	Black	Latino	White	EL	SWD	SWOD	N
Charter	7.4	5.7	2.4	1.8	14.3	4.9	3.3	3.8	15.8	6.6	1,272
Non-Charter	6.6	7.3	4.6	2.1	13.4	5.1	4.1	3.7	13	5.6	5,482

- K-8 COMPARISON:** The K-8 results appear similar to the elementary school rates, in that for “ALL,” for students with disabilities (SWD), and for Black students, K-8 charter schools were again higher-suspending than K-8 non-charter schools. The biggest difference in absolute terms at this level was that charters suspended students with disabilities at a rate that was 2.8 percentage points higher than non-charters. This absolute difference can also be expressed by saying that the charter suspension rate for students with disabilities was 22% higher than the non-charter rate for this subgroup. On the other hand, K-8 non-charters were higher-suspending than charters for Whites, American Indians (AME), Asians and Hawaiian-Pacific Islanders (H/PI).
- SECONDARY COMPARISON:** At the secondary level, more than 17% of all charter secondary schools and about 9% of all non-charter secondary schools reported suspending no students. Because suspension rates of zero are far less common at the secondary level than the elementary level, we provide the distribution analysis at this level both ways; we lead with Figure 5, which only includes schools that reported at least one suspension.

Figure 5. Comparison of Secondary Suspension Rates



- **ANALYSIS OF RATE DIFFERENCES AMONG SECONDARY SCHOOLS THAT REPORTED USING DISCIPLINARY EXCLUSION:** The analysis of secondary rates was consistent with the overarching differences covering all configurations reported in the introduction—namely, that charter secondary schools suspended all students at a rate that was 2.7 points (26%) higher than non-charters, and 2.5 points (12%) higher for students with disabilities.

Table 5a. Secondary Suspension Rates (zero-suspending omitted)

OSS Rates	ALL	AME	H/PI	Asian	Black	Latino	White	EL	SWD	N
Charter	13.2	13.1	6.8	3.7	24.2	10.4	6.6	11.2	23.3	1,425/1,765 82.6%
Non-Charter	10.5	16.1	8.7	3.3	23.6	11.2	7.1	11.9	20.8	28,706/31,434 91.3%

Table 5b. Secondary Suspension Rates, Including All Schools Reporting Zero Suspensions

OSS Rates	ALL	AME	H/PI	Asian	Black	Latino	White	EL	SWD	N
Charter	11.6	10.9	5.4	3.3	22	9.1	5.6	9.9	20.8	1,765
Non-Charter	10.2	15.4	8.5	3.1	22.9	10.8	6.8	11.5	20.1	31,434

,Note: The graphic depiction of charter school rates in Figure 1 uses the data from table above with zeros.

In the interest of transparency, we present Table 5b, which includes the zero-suspending charter secondary schools. Perhaps the most interesting finding in Table 5a is that Black students attending charter schools were suspended at slightly higher rates than those attending non-charters. However, in Table 5b, when schools reporting zero secondary student suspensions were included in the analysis, Black suspension rates were slightly higher for non-charter schools. The difference in Black suspension rates between charter and non-charter schools was less than one percentage point in both tables. Arguably, some schools of both types were accurate in reporting zero suspensions, but if all the data were taken at face value, it would mean that the number of charter secondary schools suspending zero students was 2 times greater than non-charter schools.³¹

Part III: Discussion and Conclusion

As a matter of law, the ESSA requirement that states monitor their schools for the overuse of suspension may prove critically important, as some charter schools, like some non-charter schools, appear excessive in their use of suspension and are likely violating the civil rights of the children they are meant to serve. Given the observed high rates and large disparities, we encourage the U.S. Department of Education Office of Civil Rights to increase its monitoring and enforcement efforts with regard to charter schools. The likelihood that some charter schools overuse suspension reinforces the need for state monitoring of these schools as well. Therefore, charter schools should not be exempt from any reporting or oversight requirements.

Although this report does not provide an in-depth analysis of any particular lower-suspending charter schools, the data suggest that there likely are lower-suspending charter schools that have exemplary discipline policies and practices and are also succeeding academically. The data therefore could be used to identify these successful charters and enable all schools to benefit from a closer analysis of what they are doing right. Such an endeavor could be helped by the new annual ESSA requirement that each state and district report their disaggregated discipline rates in accord with the Civil Rights Data Collection.³² These reports go beyond the out-of-school suspension rates covered by this report, as they include in-school suspension, expulsion, referral to law enforcement, school-based arrests, and use of restraint and seclusion. ESSA's incorporation of the CRDC with the annual state and district reports also means that these rates must be reported by race, disability, English learner status, and, ideally, other subgroups as well.

Moreover, these findings should help counter any argument that charter schools deserve to be shielded from state-initiated efforts to address these problems. We raise this concern because, in 2014, the California organization for charter schools got wind of these general national findings and misrepresented them in a letter to state legislators, claiming that our unreleased preliminary findings supported their attempt to seek shelter from state-level efforts to halt the excessive use of suspensions.³³ The fact that charter schools share the problem of excessive suspensions, especially for Black students and students with disabilities, is a strong reason they should not be excluded from these statewide efforts.

Those who believe that charter schools are wise to adopt zero-tolerance policies and practices to address misbehavior would be ignoring the fact that there are many effective approaches, as well as ways to engage students, that help prevent these problems from arising in the first place. The choice is not between punitive policies that instill order on the one hand and conditions of chaos on the other. The data suggest that lower-suspending effective alternatives are abundant, as more schools, charter and non-charter, fall on the lower end of the suspension rate distribution.

As many independent studies demonstrate, including those published in the research volume titled *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion*, effective evidence-based alternatives to harsh discipline are available that not only reduce racial gaps in school discipline but also are associated with higher achievement and improved graduation rates (Losen, 2015).

In 2014, national representatives of the police, judges, education researchers, school administrators, teachers unions, parents, and community advocates recently rejected the “broken windows” zero-tolerance approach to school discipline in issuing the School Discipline Consensus Report. The Consensus Report on School Discipline suggests a variety of alternatives, including specific examples of successful implementation in school districts across the country.³⁴ Other groups, including the American Psychological Association, the American Academy of Pediatrics, and the National Association of School Psychologists, issued statements calling for the end or severe limitation of zero-tolerance policies in U.S. schools (American Psychological Association Zero Tolerance Task Force, 2008; Council on School Health, 2013; National Association of School

Psychologists, 2001). Therefore, the extent to which high-suspending charter schools successfully reform their policies and practices may depend in part on whether charter leaders reject or protect this fundamentally flawed approach.

Given the rising tide of evidence supporting less punitive and more supportive discipline approaches, it is disconcerting that some prominent charter school leaders are resistant to disciplinary reform and instead expound the virtues of zero-tolerance approaches. Furthermore, we now have evidence that, as a policy for instilling and maintaining community order, the “broken windows” approach is emblematic of oppressive authority. In light of recent hyper-enforcement police practices in Ferguson, Missouri, and elsewhere, many critics have asserted that the application of “broken windows” is racist. There is no evidence to support the “broken windows” theory as an effective criminal justice practice, let alone for schools, and many assert that it has contributed to the profound racial disparities that characterize mass incarceration (Greenberg, 2014; Moser, 2015), which professor Michelle Alexander refers to as “The New Jim Crow.” Perhaps the zero-tolerance hyper-focus on obedience more often found in racially isolated schools, charters as well as non-charters, is a form of complicity with this “new Jim Crow,” and similar to the concern Alexander raises when she writes, “Parents and schoolteachers counsel black children that, if they ever hope to escape this system [of control] and avoid prison time, they must be on their best behavior, raise their arms and spread their legs for police without complaint” (Alexander, 2012, p. 215). In addition, the harm to students with disabilities of the “broken windows” approach was recently described in a report about UP Academy Holland, a Boston area non-charter school that also embraces the philosophy.³⁵ If some charter proponents remain entrenched in their belief that harsh discipline is the only option, many other educators are calling for reform.

Although union leaders in some localities have complained about disciplinary policy changes, at the national level both the American Federation of Teachers and the National Education Association have issued statements calling for reducing the number of suspensions and addressing the disparities in disciplinary exclusion. In *Seeding Change in School Discipline: The Move from Zero Tolerance to Support*, the American Federation of Teachers dedicated its quarterly journal to articles discussing the problem of excessive discipline and the viable remedies (2015-2016). Often where teachers have complained about policy changes coming too swiftly, their complaints have revolved around the lack of support and training they received while adopting new approaches, such as restorative justice, and not around the effort to shift away from frequent disciplinary exclusion (Moser, 2015).

The many charter and non-charter schools that still embrace a counterproductive zero-tolerance approach to school discipline are failing to meet the needs of their students. Whether or not charter schools serve more students who have behavioral issues, they should provide more and better behavioral supports, not inflict more punishment.

This is a matter of civil rights law as well as best practices. The Department of Justice-OCR joint guidance on school discipline, and subsequent guidance on charter schools specifically, should remove all doubt that federal anti-discrimination protections apply to all subgroups of children, including all who attend charter schools.³⁶ The federal guidance makes it clear that, when any group is subjected to the harmful disparate impact of a policy or practice, even if there may be some educational justification, a district is obligated to seek less discriminatory alternatives.

Many large districts, including Denver, Los Angeles, Oakland, San Francisco, Chicago, Boston, Nashville, Baltimore, Cleveland, and Broward County Florida, have rejected zero tolerance for every minor infraction. Some have been prompted to do so by OCR investigations, while others were urged by community groups and educators to explore more effective approaches. California and Connecticut have prohibited the use of suspensions for minor infractions for their youngest students (State of California, n.d.; State of Connecticut, n.d.)³⁷, while Maryland and Massachusetts are working to reduce excessive and disparate disciplinary exclusion (Maryland State Department of Education, 2014; Massachusetts Advocates for Children, 2014). Charter schools in other states may also be taking the initiative to explore innovative and more effective ways for their students to succeed academically and behaviorally while keeping even problematic students in school.

There is no reason why charter schools cannot help to establish best practices that could, in turn, inform all public schools. One advantage charter schools may have over non-charters is that they will encounter less internal resistance to change and innovation and have fewer political obstacles to hurdle. Charter schools arguably are well-suited to aligning such changes with professional development to ensure that new approaches are implemented comprehensively and with integrity. Whether or not charters become leaders in this area, applying federal law to charter schools will mean that, if a more effective approach than zero tolerance can be found, charter schools, like non-charters, are obligated to adopt the change. When a charter school's renewal or expansion is under review, no excuses should be made for the persistent use of harmful discipline policies and practices.

Recommendations

Our findings in this report have led to the following recommendations:

1. States should ensure that the state plans they create to implement ESSA do not exempt charters from their required efforts to improve the conditions of learning, including identifying and curbing the overuse of suspension.
2. Pursuant to the new ESSA requirements, states should select school climate as the required additional indicator for their statewide accountability systems, and also include a review of discipline disparities by race, disability, and gender as one of the ways school climate is evaluated.
3. To ensure that parents can make an informed choice of school for their children, charter and non-charter schools should publicly report their disaggregated discipline data annually, in keeping with ESSA's required annual state and district report cards.
4. Federal civil rights enforcement agencies should monitor charter schools closely for discipline disparities generated by harsh policies and practices.
5. OCR should hold all schools accountable if they fail to collect or report the required data, and also indicate such non-compliance in public reports.
6. In the course of monitoring charter schools with high and disparate discipline rates, federal and state civil rights enforcement agents should insist that schools relying on "broken windows" theory or similar zero-tolerance approaches consider less discriminatory alternatives.
7. Researchers should identify and study charter schools that demonstrate an exemplary school climate, including the infrequent use of disciplinary exclusion.
8. Legislators should support the replication of charters that have created an exemplary school climate without relying on punishment or exclusion, in particular those that also provide a diverse learning environment and help reduce racial isolation.
9. Federal and state policymakers should take action to ensure that charter schools enroll a representative population of students with disabilities and English learners.

Appendix A

Table A. Charter Schools with the Largest Disability Discipline Gap

State	District	School	SWD Enrolled	SWOD Enrolled	SWD OSS Rate	SWOD OSS Rate	Gap Dis
FL	Polk	Lake Wales Senior High School	127	1,061	73.2%	40.0%	33.3%
MI	International Academy of Flint	International Academy of Flint (K-12)	133	979	48.9%	16.5%	32.3%
MA	Academy of the Pacific Rim Charter Public (District)	Academy of the Pacific Rim Charter Public School	115	379	53.9%	25.6%	28.3%
PA	Renaissance Academy Cs	Renaissance Academy Cs	115	826	40.0%	12.8%	27.2%
MA	Sabis International Charter (District)	Sabis International Charter School	201	1,369	37.8%	10.7%	27.1%
DC	Friendship Pcs	Friendship Pcs Woodson Collegiate Campus	146	985	52.7%	27.2%	25.5%
PA	Philadelphia Electrical & Tech Chs	Philadelphia Electrical & Tech Chs	102	542	24.5%	0.0%	24.5%
WI	Milwaukee School District	James Madison Academic Campus	277	886	57.8%	37.8%	20.0%
DC	Perry Street Preparatory Pcs (Formerly Hyde Lpcs)	Perry Street Preparatory Pcs (Formerly Hyde Lpcs)	125	808	48.8%	29.1%	19.7%
PA	Esperanza Academy Charter High School	Esperanza Academy Charter High School	109	642	31.2%	12.3%	18.9%

Note: At least 100 SWD enrolled.

Appendix B: Description of Data Source, Cleaning, and Methods

Data Source: The data used in this report, which covers the 2011-12 school year, come from the Civil Rights Data Collection (CRDC), a survey administered by the U.S. Department of Education's Office for Civil Rights (OCR). These data were made available to the public in March 2014. The data and definitions, along with more details about the data collection, can be found online at <http://ocrdata.ed.gov>.

Sample: The OCR has gathered discipline data from every public school in the nation, including charter schools. Of the more than 5,250 charter schools we used in our analysis for the report, our final sample, after data cleaning, included 4,752 charter schools. Our analysis focused primarily on out-of-school suspension rates at the elementary and secondary levels, with some additional analysis of K-8 schools. At the elementary level, there were 1,237 elementary charter schools with any combination of K-5. Only students enrolled in these schools were included in the school-level estimates of elementary school suspension risks. There were 1,272 K-8 charter schools and 430 K-12 charter schools included in our analysis. At the secondary level, 1,765 secondary charter schools were included to estimate secondary-school suspension risks. Forty-eight schools had other grade-span configurations outside of our school-type categories. For a more detailed breakdown of how we categorized schools by grade-span configuration, see the Procedures section below.

Summary of Data Cleaning: For our analysis, we excluded 372 alternative charter schools flagged by OCR. We also excluded 105 virtual charter schools, 8 juvenile justice facilities operating as charter schools, 32 misidentified charter schools not reported to OCR as alternative charter schools, and 28 charter schools that had errors we flagged as being unfit to be part of our analysis. With 545 charter schools excluded, our final dataset consisted of approximately 4,752 charter schools. Please note, at the last minute we discovered two charter schools that had no discipline data, Valley Arts and Sciences Academy, CA, and KIPP Tulsa Academy, College Prep, OK. Both should have been put in the errors tab of the spread sheet. The rationale for these changes to the dataset are described further below.

Tabs of Omitted Schools: All charter schools that were omitted from our overarching analysis of suspension rates and estimates can be found in one of several tabs on our companion Excel spreadsheet, as follows:

- **Alternative Schools:** Charter schools identified as alternative charter schools by OCR
- **Misidentified Alternative Schools:** Charter schools we identified as alternative schools but were not coded as such in the OCR data base
- **Juvenile Justice Schools:** Charter schools identified as juvenile justice schools by OCR
- **Virtual Schools:** Charter schools we identified as such based on the use of "virtual" in the school name, or on further inquiry
- **Errors:** Charter schools flagged for reporting discrepant data or that suspended more students than they enrolled

Alternative charter schools: We excluded 372 charter schools identified as alternative charter schools in OCR's data file. These schools typically serve students who are at risk for dropping out, involved with the court system, or have had discipline problems, and thus the use of out-of-school suspensions had varied implications. In addition, before we featured any charter school for having high suspension rates or large discipline disparities, we reviewed additional sources to make sure the school listed wasn't targeted toward a special school population. If we discovered that a school was designed primarily to serve a special population

but was not classified as such in the OCR data, we put the school in the “misidentified” tab. We provide further data on the charter schools we determined to be alternative schools, based on a description of the school and its mission from an independent source, such as the school’s website.

Alternative schools we deemed misidentified. We found 29 schools that were clearly alternative but not coded as such in the OCR database. Once we became aware of this potential issue, we reviewed the websites of the 100 highest-suspending charter schools that had 100 or more students enrolled, and the largest secondary charters. We also checked newspaper and headline articles on the schools via Google News searches. We considered a school “misidentified” if its own description said it was “alternative,” or if the website or other reliable source said it was designed to serve “overage” or “at-risk” youth, students who had been “court involved,” or those with disabilities or behavior problems. We also removed three charter schools that were run by a prison or other type of correctional facility, but were not reported by OCR as being part of a state-run juvenile justice facility. These are also found in the misidentified tab of the companion spreadsheet. We suspect that, in many such instances, the school simply did not check the survey box to indicate that it was an alternative school, although we did not confirm this.

Schools serving students in state-run, long-term juvenile justice facilities: We excluded eight charter schools that OCR indicated were part of state-run juvenile justice facilities. These are listed in a separate tab in our companion spreadsheet. We believe that, although this information is valuable, these educational settings are different enough from regular schools that they should be analyzed separately. Most of these schools reported no out-of-school suspensions, which in some cases may mean that the students did not actually attend school while in the facility or that the responding correctional school did not regard disciplinary removal from a classroom as an out-of-school suspension. Furthermore, out-of-school suspension of students attending a correctional facility has different implications, as the students remain under adult supervision. Moreover, all the students in these settings are there for disciplinary reasons, although not necessarily for misbehaving at school. We believe that some of the students in these facilities may have been disciplined in a regular school district at some point during the 2011-12 school year, thus there is a high risk that some were counted twice in the same sample. For these reasons we decided to omit these charter schools from our analysis.

Virtual charter schools: OCR did not have any indicator for a charter school that was a virtual school, but we excluded 105 virtual charter schools that we viewed as primarily serving students who attended school while at home or off campus. Obviously, virtual schools typically do not have students who attend school in person and therefore do not suspend students “out of school.” We started by excluding charter schools if the word “virtual” was part of their name, but we also looked closely at secondary schools with a very large enrollment that reported zero students suspended, or if the name implied it might be a virtual school. For example, if a school name included words like “eschool” or “online” and it had zero suspensions, we checked to see if it was a virtual school. Of the 105 excluded virtual charter schools, 100 had suspended no students. Five of the schools had overall out-of-school suspension rates below 5%. Because it is possible that these five schools had a substantial in-person component to their curriculum, we checked, and confirmed that this was not the case. In some other cases, we found but did not remove quasi-virtual schools where there appeared to be both virtual education and substantial attendance at a brick-and-mortar location. We only removed such schools from the analysis if it was clear they were primarily a virtual school. We suspect, however, that some zero-suspending virtual schools escaped notice and remained in our analysis.

School-level errors and accuracy: When the school districts reported their data to OCR, each district superintendent was required to certify that the data were accurate, and that the certifications were checked before OCR published the data. Most charter schools are their own school district, but those that are part of a larger district had their data certified by the superintendent. Unfortunately, OCR reports zeros in the place of missing or non-reported data from the CRDC, so in addition to the misidentified schools, we discovered obvious collection or reporting errors in several charter schools, which forced us to remove them from our analysis. These schools were designated as “errors.”

Errors: The following details the error types presented in our companion spreadsheet:

- Eight (8) charter schools were removed from the analysis entirely because they reported more students suspended than their total enrollment. Schools are required to report their suspension data to OCR as unduplicated counts of the number of students suspended. By definition, there cannot be more students suspended than students enrolled. However, because the enrollment data are based on one particular day, and the suspension numbers are cumulative, there have been instances where schools with very high suspension rates and highly mobile populations appear to have suspended more students during the course of the year than they enrolled on the given day the count was taken. This issue is more likely to occur for subgroups with low enrollment. For this reason, we only removed schools if the total number of students suspended exceeded the total enrollment.
- Ten (10) charter schools were removed because they reported zero out-of-school suspensions to OCR, despite having reported some suspension numbers on their state or district website. These included seven Success Academy elementary charter schools, because there was a conflict between OCR’s report of two students suspended in one school and zero in all the others, whereas the data reported for the same year on the district’s website showed many more suspensions in each school.
- Six (6) were removed because the state identified them as having failed to report any discipline data to the state that same year.
- Four (4) charter schools were removed because they failed to provide correct baseline enrollment data for students with disabilities.

It is far easier to detect over-reporting suspension errors than to know if a school reported zero suspensions accurately. Unfortunately, in most states we found no alternative source to cross-reference with the OCR report. Moreover, it is worth noting that most of the schools removed in this category were those with large over-reporting errors. In that the over-reporting schools also may have been high-suspending schools, their removal may have lowered the national estimates of charter school suspension rates.

Procedure: The school-level estimates for secondary and elementary charter school students were calculated by selecting the charter schools that conformed to the specific grade-span configurations associated with each level of schooling. The following table summarizes how we categorized the schools into elementary, middle, high, and secondary schools:

Category	Grade-Span Configurations
Elementary School	Any school with any combination of K-5 and without a 7th or 8th grade
Middle School	5-8, 6-8, 7-9, 6 th -grade academies
High School	9-12, 10-12, 9 th -grade academies
Secondary	5-8, 6-8, 7-9, 6-12, 9-12, 10-12, 9 th -grade academies
Other	K-8 and K-12

After we coded and stratified the school-level data by grade configuration, we then calculated the out-of-school suspension risk for each charter school, based on straightforward percentage calculation, by dividing the number of suspended students by the total enrollment. We describe this percentage throughout the report

as the out-of-school suspension rate. These out-of-school suspension data are exclusive of other discipline data collected by OCR, including the number of students expelled and the number receiving in-school suspensions. For this report, we analyzed out-of-school suspension data exclusively.

The OCR data file provides the number of students suspended out-of-school one time and, separately, the number of students suspended out-of-school two or more times. We added these mutually exclusive categories together to report the unduplicated number of students suspended one or more times. The companion spreadsheet published with this report includes three categories of students: all students, students with disabilities, and students without disabilities.

To determine the estimated risk for all students, we combined the number of suspended students with disabilities and without disabilities. OCR reports the suspension numbers for these two groups separately; it also provides the total enrollment and the enrollment of students with disabilities, but not the enrollment of students without disabilities. To find the baseline enrollment of students without disabilities, we subtracted the number of enrolled students with disabilities from the total enrollment. This enabled us to report the risk for suspension for every major racial/ethnic group for all students, and to break it down further by students with disabilities and students without disabilities.

To calculate the national out-of-school suspension rates, we added up all the suspensions in every school sampled for each subgroup and then divided that total by the enrollment number of each subgroup.

Data on students identified as having disabilities under “Section 504 Only”: These students were not covered in this report because the OCR did not report racially disaggregated enrollment data for this subgroup. Their omission did not affect what we have reported for students with disabilities identified under the Individuals with Disabilities Education Act who have Individualized Education Programs. Therefore, students only eligible under Section 504 were included among students without disabilities.

Tables and Figures: In addition to our data cleaning and analysis of schools that only conformed to given grade configurations, at some points we introduced additional “n” size limits to bolster the integrity of the analysis. The text and the endnotes indicate the limits we applied in each case, and these can be reproduced using the filters in the companion spreadsheet. We repeat that information, along with the rationale, as follows:

- **Figure 1. National Average Suspension Rates:** We only covered charter elementary and secondary schools. Therefore, charters with K-8 or K-12 grade configurations were not included in this analysis
- **Figure 2. Comparison of Charter and Non-Charter Suspension Rates:** This analysis included all charter schools of all enrollment sizes and grade configurations. No adjustments were made besides the aforementioned data cleaning.
- **Table 1. The Highest-Suspending Charter Schools in the Nation:** For the Black, White, and Latino student subgroups, we limited our analysis to schools where the featured subgroup’s enrollment was at least 100 students. Moreover, if the suspension rate of the subgroup in question exceeded 100%, we did not list it or report on it in the text. For the American Indian subgroup, we limited our analysis of the subgroup enrollment to at least 50 because so few schools had 100 American Indian students.
- **Figure 3. Charter Schools with Largest Disability Gaps:** We first excluded all charter schools that did not have at least 100 students with disabilities and 100 without disabilities enrolled. Using this large “n” size ensured that the named schools did in fact serve sizeable numbers of both groups being compared. We then sorted these schools by the size of the disability discipline gap.
- **Tables 2a, 2b, and 2c. Distribution of Charter School Suspension Rates:** Across all of the school-level distributions, we limited the analysis to schools with at least 50 total students and at least 10 students from the ranked subgroup. For the secondary-level distribution specifically, we further excluded all zero-suspending charter schools. The scale was changed for secondary schools so that

“lower-suspending” is less than or equal to 10%, and “higher-suspending” is broken into “greater than 25%” and “greater than 50%.”

- **High- and Low-Suspending Charters:** In addition to looking at the distribution for each racial group and for students with disabilities separately, we identified charter schools that were lower-suspending for every subgroup in attendance or high-suspending for any subgroup with at least ten students enrolled. Using this approach, we categorized charter schools as being either high-suspending or lower-suspending, according to the following criteria:
 - **Elementary level**
 - High-suspending secondary schools were those with 10% or greater suspension rates and at least 50 enrollees for any of the following groups: all students, students by race, or students with disabilities.
 - Lower-suspending secondary schools were those with 2% or lower suspension rates. This standard had to be met for each subgroup, as long as the subgroup had least ten enrollees.
 - **Secondary level**
 - High-suspending secondary schools were those with greater than 25% suspension rates and at least 50 enrollees for any of the following groups: all students, students by race, or students with disabilities.
 - Lower-suspending secondary schools were those with suspension rates of 10% or lower. This standard had to be met for each subgroup, as long as the subgroup had at least ten enrollees.
- **Table 3. Demographic Differences:** For each school level represented in the table, we calculated the enrollment for students with disabilities by dividing the number of enrolled students with disabilities by the total enrollment. There were no “n” size limits because these were not per-school averages. The “all school levels” column represents charter schools of all grade configurations.

Charter to Non-Charter Comparisons: Beginning with Figure 4, there were no “n” size limits because these are not per-school averages. The methods for these tables and figures are explained in detail in the text.

Disparity Measures: Why are suspension rates and rate differences used almost exclusively in this report? Looking at suspension rates to see whether they are high or low and measuring racial disparities in absolute terms is the simplest and most straightforward measure. The calculations used in this report capture whether students overall or those from a particular subgroup are suspended at high or low rates. Because absolute values are used, the suspension rate of any subgroup in any school can be compared to any other. The racial composition of a school or district has no impact. The calculations are not influenced by changes in demographics or changes in suspension rates for other groups because, unlike ratios or proportionality indexes, they are not relative values.

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Endnotes

¹ For the purpose of counting schools, we limited the analysis to those with at least 50 students that were not alternative schools and not part of the juvenile justice system. This ensured that the counts were not inflated by atypical schools, or those where each student counted for more than 2% of the population.

² These numbers are based on the number of schools that had at least 50 enrolled students. Charters that were identified as alternative schools or part of the juvenile justice system were excluded from these counts.

³ For this count we started with schools that had at least 50 students enrolled and excluded alternative schools, schools identified as part of the juvenile justice system, virtual schools, and schools that enrolled fewer than 10 students with disabilities. Further excluded was any school where the rounding of the data or another error produced a suspension rate of over 100% for this subgroup.

⁴ This report intentionally does not report disparities as relative rates because we are equally concerned with the excessive use of out-of-school suspensions, and when the absolute difference or “gap” is very large the suspension rates must also be quite high. In contrast, ratios are purely relative measures that can be very large even when the differences are quite small. For example, using ratios, the statement that SWD are twice as likely to be suspended out of school would equally apply when 1% of such students were suspended compared to 0.5% of students with disabilities, as it would if 50% of all students with disabilities were removed as compared to 25% of their non-disabled peers. The disability discipline gap in the latter example is 25 points and therefore 50 times greater than the one-half of one percentage point gap in the first example, yet the risk ratio would be identical at 2.0. We filtered out any schools that had fewer than 10 students enrolled in one of the subgroups used in the comparison.

⁵ Section 1111(g) says that the state plan “shall describe... (C) how the State educational agency will support local educational agencies receiving assistance under this part to improve school conditions for student learning, including through reducing... (ii) the overuse of discipline practices that remove students from the classroom....”

⁶ For example, at Section 1111(c)(5) the law makes clear that the accountability provisions applying to charter schools shall be overseen in accordance with State charter school law.

⁷ This is a general inference and is not based on an analysis using these data. Other studies have found that, after controlling for poverty and other variables, high-suspending schools predicted lower achievement (Skiba, 2006) and lower graduation rates (Fabelo, 2011).

⁸ In our report on California, *Closing the School Discipline Gap in California: Signs of Progress*, we document significant declines; a forthcoming report on suspension rates in Massachusetts will also show that suspension rates are down; a report on Chicago schools by the University of Chicago shows a dramatic reduction since 2011-12 (Stevens, Sartain, Allensworth, & Levenstein, 2015); state reports in Connecticut and Maryland also report declines (Connecticut State Department of Education (CSDE), 2015; Maryland State Department of Education, 2015).

⁹ The March, 2015 report from the Connecticut Department of Education is an online presentation with the coverage of charter schools on slides 20-24 and 27. See http://www.sde.ct.gov/sde/lib/sde/pdf/deps/sctg/suspensions_and_expulsions_2015.pdf.

¹⁰ Slide 27 of Connecticut’s March 2015 report breaks out the average suspension rates by race and gender for several different kinds of high schools in the state. See endnote 9.

¹¹ This means they are 4.2% of all public schools in Massachusetts, but made up 15% of the highest-suspending schools in the state. Available at http://www.sde.ct.gov/sde/lib/sde/pdf/deps/sctg/suspensions_and_expulsions_2015.pdf.

¹² Charter schools rank as follows: for Black students, 3 of the highest suspending 12 are charter schools, all with rates over 40%. They are 2 of the 11 highest-suspending for students with disabilities, with rates over 50%; two of the 5 highest suspending for English learners, with rates over 35%; and 4 of the 19 highest suspending for Latino students, all with rates over 30%. The state’s discipline report by school can be rank ordered by the percentage of students suspended out of school; it is available at http://profiles.doe.mass.edu/state_report/ssdr.aspx.

¹³ See <http://lawyerscom.org/lawyers-committee-moves-to-intervene-in-charter-cap-case-on-behalf-of-students-of-color-students-with-disabilities-and-english-language-learners>. For a televised discussion of the issue, see <http://lawyerscom.org/the-case-against-lifting-charter-cap>.

¹⁴ Achievement First provides this description on their website: “Sweating the small stuff: In many urban schools, teachers and leaders ‘pick their battles,’ only addressing egregious instances of poor behavior. Achievement First, on the other hand, has adopted sociologist James Q. Wilson’s ‘broken windows’ theory that even small details can have a significant effect on overall culture, and we believe that students will rise to the level of expectations placed on them.” See <http://www.achievementfirst.org/our-approach/in-the-schools>.

¹⁵ We excluded from this list schools that did not enroll at least 100 students in the racial/ethnic group. We also did not include any charter that was not still in operation in 2015-16. We also excluded any charter school that reported suspended over 100% of the subgroup in question. Readers should note that such high rates do not always represent an error in reporting, because the enrollment data are based on attendance for a particular day, not cumulative attendance for the year. Therefore, it is possible that schools that have high attrition and take new students during the year can wind up having suspended more students than were in attendance on the day the enrollment count was recorded. In preparing this report we did eliminate from every analysis all schools that suspended over 100% of their total enrollment. For more information, please read the detailed methods section of the appendix.

¹⁶ In running the distribution analysis we filtered out: obvious errors; schools with fewer than 50 students; and those that did not have at least 10 students with disabilities and 10 students without disabilities. When we selected schools to feature in the text of the report we raised the n size as described in endnote 17.

¹⁷ By filtering out schools with fewer than 100 students with disabilities the number of large gap schools declines. We also did not feature a charter school that appeared to have suspended over 100% of the enrolled students with disabilities.

¹⁸ Had we calculated the disparities using ratios, which means dividing the group with the higher rate by that of the lower, in several of these schools, students with disabilities would be less than twice as likely as their non-disabled peers to be suspended; for the PA Electrical and Tech CHS, a ratio cannot be calculated. Future reports will include the results of a more detailed search for lower-suspending charters that are also high performing.

¹⁹ In a response to a 2014 FOIA request to OCR, we obtained the names of school districts with open investigations based on a civil rights school discipline concern, but we do not know the details. At least two charter schools, Brooklyn Scholars Academy in New York and South Arbor Charter Academy in Michigan, were among those where OCR had conducted a review and decided to open a discipline investigation, as of August 2014. Opening an investigation does not mean that the school has violated any law. However, most complaints are resolved without an investigation being opened. In addition, according to one report, parents have filed a federal complaint against Success Academy. See http://www.wnyc.org/story/families-file-federal-complaint-against-success-charters/?utm_source=story/success-academy-founder-and-principals-respond-criticisms&utm_medium=treatment&utm_campaign=morelikethis.

²⁰ Elizabeth A. Harris, "Lawsuit Accuses Brooklyn Charter School of Failing to Provide Special Education Services," *New York Times*, November 10, 2015; http://www.nytimes.com/2015/11/06/nyregion/lawsuit-accuses-brooklyn-charter-school-of-failing-to-provide-special-education-services.html?_r=0.

²¹ Last visited on February 29, 2016; <http://www.achievementfirst.org/our-approach/in-the-schools>.

²² In one case concluded in September 2015, a charter school was found to have violated the civil rights of a student with disabilities when it expelled him for repeatedly failing to complete his homework. See letter to Superintendent Kelly Wade, case number 08-15-1156; <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08151156-a.pdf>.

²³ The Civil Rights Project has issued several reports describing segregation patterns and trends in schools general, including the role of charters schools. The concerns raised here dovetail with concerns raised in those studies, but nothing in this report attempts to examine those patterns or explores the broader question of whether charters contribute to racial and socioeconomic isolation.

²⁴ In the companion spreadsheet, readers can find all the charters we removed from the analysis and the reason for the removal. At least two other California charters did report suspending students to the state, in contrast to the zero reported by OCR. As we began checking these data against independent state sources, several more zero-suspending charter schools from other states turned out to have suspended some students, and others had documentation indicating a failure to report any data to their state.

²⁵ When we looked at the secondary level, which includes middle schools and high schools but not K-8 schools (K-12 schools were not included), we changed the scale because suspension rates at the secondary level are typically much higher than elementary school rates. As mentioned, for the secondary-level analysis, this report in some sections ran the analysis at the secondary level after first eliminating all schools that reported zero suspensions. We believe this is a conservative approach, to the extent that the findings suggest that there are numerous lower-suspending charter schools.

²⁶ This report does not provide a review by charters for each charter management organization because the OCR data base provided no codes. However, using the spreadsheet, readers can filter by names like KIPP or Aspire. Each had well over 50 schools and what appeared to be a wide range of suspension rates. In our next report we will attempt a more detailed review.

²⁷ Comparing schools is done to the best of our capacity, given the data set and limitations. We agree with others that better data would enable more comprehensive comparisons to non-charter schools (Denice, Gross, & Rausch, 2015).

We do not feel that the data limits are sufficient reason not to make basic descriptive comparisons of the excessive and disparate use of discipline, especially given the efforts by California charter organizers to shield charter schools from discipline reform measures, the provision in ESSA that would allow state laws governing charter schools to trump federal requirements, and the litigation against the Massachusetts board of education that seeks to remove the cap on charter schools on civil rights grounds.

²⁸ One concern is that, at the elementary level, about one-third (400 out of 1237) of all charter schools reported no suspensions. For non-charters (10,648 out of 45,135), about one-quarter reported no suspensions. We only excluded seven Success Academy schools where we confirmed that each one actually suspended large numbers of students, despite reporting only a handful of total suspensions.

²⁹ By using the mean for the entire sample and not the per-school average, the high suspension rates that may result from small "n" sizes cannot skew the results. In other words, we report the results as if they came from one giant school of each type.

³⁰ These descriptions of how much higher one rate is compared to another is calculated by taking the difference between the two rates and dividing it by the rate for the lower suspending school type. For example, in the category of ALL students, the absolute difference is $4.2 - 3.0 = 1.2$ percentage points. 40% of 3 points ($3 \times .40$) = 1.2 points. Therefore, a suspension rate of 4.2 % is 40% higher than a suspension rate of 3%. To ensure the magnitude of the difference is kept in perspective, the actual suspension rates are provided as well.

³¹ One factor to consider is that the collection for 2011 was not the first time for most non-charter schools but was the first time for most charter schools.

³² Section 1111(h)(1) and (2).

³³ In 2015, Dr. Julian Vasquez Heilig, described the context in his blog, and published our letter along with his own commentary; <http://cloakinginequity.com/2015/04/06/free-candy-van-i-e-charter-lobbyist-civil-rights-project-response-lottery-admissions-and-credo>.

³⁴ All the participants in this extensive effort reject zero tolerance. See https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf.

³⁵ See <http://learninglab.wbur.org/2016/03/09/what-discipline-looks-like-at-a-boston-school-with-325-suspensions/>

³⁶ See <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>.

³⁷ For CA see http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0401-0450/ab_420_bill_20140822_enrolled.htm; for CT see <https://www.cga.ct.gov/2015/ACT/PA/2015PA-00096-R00SB-01053-PA.htm>.



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