



# The Center for Civil Rights Remedies

at The Civil Rights Project | *Proyecto Derechos Civiles*

## **Researchers Responses to Critiques of Our Study, “Charter Schools, Civil Rights and School Discipline: A Comprehensive Report”<sup>1</sup>**

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The Center for Civil Rights Remedies’ March 2016 report, titled *Charter Schools, Civil Rights and School Discipline: A Comprehensive Report*, is a descriptive study covering discipline rates for every charter school in the nation. It also is our first coverage of discipline in charter schools, despite our having reported on disparities in public school discipline for more than 16 years.<sup>2</sup> As with our prior reports on discipline in non-charter schools and districts, Part I of this recent report describes excessive and disparate discipline rates and challenges them as unjustifiable. We have found, for example, that nationwide, in 2011-12, 270 charter schools suspended at least one in four Black students. We also found 235 charter schools where 50% or more of the enrolled students with disabilities have been suspended.<sup>3</sup> When we drilled down into these disparities, we found that more than five hundred charter schools suspended Black students at a rate at least ten percentage points higher than for White students. When we compared students with disabilities to their non-disabled peers, this same difference—of at least ten more suspensions per one hundred students with disabilities enrolled—was found in more than one thousand charter schools. The unconscionably large disparities in terms of race and disability that we describe also raise civil rights concerns. Of course, there also are many lower-suspending charter schools, as we have found in the non-charter sector.

After the report’s release in March, a number of bloggers came to the defense of charters by criticizing our work. One went so far as to suggest that funders of the education press should discourage journalists from covering descriptive reports like ours. Several took issue with the report’s comparative national analysis methods used in Part II, including the finding that charters schools in the aggregate suspended students at a rate 16% higher than non-charters, which is based on our comparison of nearly every charter school with nearly every non-charter school in the country. Tellingly, however, not one critique of either our report or the related press release disputed the facts about the number of high-suspending charters or the large disparities within the sector.

We stand by the accuracy of our calculations and of our analysis; the fairness and integrity of our methods; all of our findings, including the comparative findings, which were recently confirmed by the U.S. secretary of education; and every one of the report’s conclusions and recommendations. However, we do acknowledge two problems with our press release. First, the headline of the press release lacks balance, which brought more attention to our negative findings than the positive ones. Second, the headline uses the

word “feeding,” which could be read as suggesting incorrectly that our purely descriptive report contained a new causal analysis.

The press release headline reads as follows:

STUDY FINDS MANY CHARTER SCHOOLS FEEDING “SCHOOL-TO-PRISON PIPELINE”: *First-Ever Analysis of Discipline Data from Every Charter School Shows “Shocking” Suspension Rates and Disparities, But Also Indicators of Promise*

This headline was prompted by the high suspension rates experienced by students with disabilities and Black students, along with the charter sector’s well-documented promotion of “broken windows” and “no-excuses” discipline.<sup>4</sup> As noted above, however, we regret that the release headline did not represent the full scope of our report’s findings. In retrospect, we should have pointed to elements of our report that describe some of the important nuance in the charter school sector. For example, we could have contrasted the high number of high-suspending charters, with the fact that we also found more lower-suspending elementary schools than high-suspending ones. We also could have done more to highlight the comprehensive nature of our report and the fact that we provided the suspension analysis for every charter school in the nation.

As mentioned, for some readers the phrase “study finds many charter schools feeding” implies that our study establishes causation, rather than drawing an inference based on other research. However, nothing in the headline or in the report argues that being a charter makes a school more likely to feed the school-to-prison pipeline. The point of this phrase is, rather, to highlight that the many charters with high suspension rates are increasing the likelihood that more children will be pushed toward involvement with the justice system.

In 2014 we published *Closing the School Discipline Gap*, a peer-reviewed book of research from independent scholars that includes several chapters showing a connection between school suspension and poor academic outcomes. The research included regression analyses that controlled for many variables and showed that being suspended predicts a heightened risk for future involvement with the juvenile justice system. The inference, although supported by research, should have been placed in the introduction and discussion sections of the March 2016 report, rather than in the headline of our press release.

However, our headline has been criticized primarily for a different reason: for making what some claim is an unsubstantiated comparison to non-charters. Specifically, Robin Lake, director of the Center for Reinventing Public Education (CRPE), writes that “the problem was, the report (on pretty close reading) didn’t actually provide any evidence that high suspension rates are more common in charter schools than in district-run schools—the headline’s implication.” [emphasis added]. In truth, a “pretty close reading” reveals that Lake’s claims about both the substance and the headline are false.

As we state on page 8 of the report’s introduction, “The national-level comparisons appear in Part II because they are not the most important findings.” Our press release headline and text align with our primary message—that too many charter schools have high suspension rates. In fact, our press release intentionally does not mention the comparison findings until page 2, where it reads as follows:

The report describes in great detail the wide variations in suspension rates among charter schools as well as between charters and non-charters. *Although most of the differences with non-charters are not large, especially disconcerting is that charter schools at every grade configuration suspend students with disabilities at higher rates even though they enroll a lower percentage of such students. [emphasis added].*

On the other hand, we wrote Part II of the report because our comparison findings addressed an issue of national importance and were well substantiated. Since the release of our report, the U.S. Department of Education’s own analysis has reached the same comparative conclusions. Specifically, in a speech before the National Association of Charter Schools on June 28, 2016, Secretary of Education John King stated that, “as a whole, it is true that charter schools suspend a higher percentage of their students than do district schools. And students of color are more likely to be suspended in charter schools than in district schools.”<sup>5</sup>

Lake’s critique implies that our March report’s comparison methods failed to follow research principles. A closer read reveals that Lake does not actually assert that we violated *standard* principles of descriptive research; in fact, at one point she acknowledges that we did set forth the limits of making comparisons with the dataset. Her real issue with our report is that her organization has developed and published a set of principles for comparing charter schools to non-charter schools, and our report “failed to follow most of them.” In fact, her references reveal that the source of her principles is a document called “Understanding Student Discipline Practices in Charter Schools: A Research Agenda.” Of the three authors, lead author Denice and second author Gross both work for Lake at CRPE.<sup>6</sup> The CRPE principles are not wrong, but they are most accurately framed as CRPE’s preferred way to study school discipline for the purpose of comparing the two sectors. They include looking at longitudinal data on individual students, conducting regression analyses, and considering other data that are not part of the U.S. Department of Education’s Office of Civil Rights (OCR) survey (also known as the Civil Rights Data Collection (CRDC)).

Lake also claims that our analysis is misleading because our count of students suspended does not reflect the length of suspensions. What Lake knows but fails to acknowledge is that the incidence and duration of discipline data are not part of the CRDC, and that no national dataset is available that would enable such a comparison. In other words, it would be impossible for any researcher using the OCR’s CRDC data to follow the “principles” her organization recommends, nor is there an alternative national data source that would suffice. In fact, Lake fails to mention that our report references her preferred “research agenda”: on page 17 and in footnote 37, our report explains

some of the many reasons why we did not follow CRPE’s preferred principles for making cross-sector discipline comparisons.

Furthermore, Lake’s critique suggests that there are problems with our report that either do not exist or stem from her misreading or misunderstanding of our report or of the dataset we used. For example, Lake states that “the OCR survey data provide . . . no way to ensure the numbers are reported consistently.” The fact is that the OCR survey data (CRDC) are the only consistently collected data source that includes every school in the nation; moreover, they report the data the same way every other year. The issues that do arise with consistency of reporting stem primarily from the fact that some districts fail to report their data or report it inaccurately. It is a violation of federal civil rights regulations not to report the data, and OCR requires that the data be officially certified as accurate as part of the submission process. In any case, our report does document concerns about the quality and consistency of the data.

Lake also suggests that our report lacks comparisons of demographics and grade configurations. In doing so, she overlooks the extensive analysis by race and disability status that we break down further by elementary, K-8, and secondary schools; this is found on pages 17-21. We do not include poverty because, as we explain in the report, the CRDC does not provide that, and there is currently no way to match the suspension and enrollment counts of individual students with their poverty status. The text of our report does describe the limitations in terms of poverty and many other challenges that making the comparison entails; these limitations are fully discussed on pages 17-18. We believe neutral readers will find that our report goes to great lengths to put the comparison findings (beginning on page 19) in the proper context.

Finally, Lake states, “the UCLA report is peppered with claims about civil rights violations—and suggestions that charter schools are doing worse than district schools—that are wholly unsupported by fact.”<sup>7</sup> If Lake’s point is that non-charter schools also engage in civil rights violations and that these violations are important to address, then we are in complete agreement, as illustrated by our many publications making that same point. But this in no way excuses the ongoing and unique problems now arising with charter schools. On page 12, our report describes our concerns about possible civil rights violations. We also explain that settlements with the Office for Civil Rights are typically resolved without a formal finding of a violation. In footnotes 19, 20, and 22 we provide links to the sources for information about actual civil rights complaints and settlements, including one violation finding mentioned in the report with a link to the settlement, as reported on the U.S. Department of Education’s website. Our report does not attempt to provide an exhaustive review, as our aim was to substantiate the civil rights concerns with the facts about actual charter schools that have been involved in civil rights complaints and settlements that centered on discipline policies or practices.

Challenges and responses are normal and healthy in the development of research. We concede that there are other ways to classify the schools for the comparative analysis that could produce different conclusions. But we believe that the conclusions in our report, which have since been supported the U.S. education secretary, are accurate, and we

believe our comparisons are reasonable. Although we are not surprised by this pushback, the distortion and misleading comments used by critics is disturbing. The Civil Rights Project has consistently found that criticism of charter schools generates a very strong and emotional attack from this organized movement. Moreover, the broad attack on our March 2016 report, which goes far beyond any issue actually in the report or headline, appears to reflect an unfortunate view within many charter organizations that any criticism of charter schools is inherently suspect or unfair.

For example, one critique claims our report had “essentially given traditional public schools, where 95% of all students attend, a pass” because our focus primarily describes the issue within charter schools.<sup>8</sup> In fact, the Center for Civil Rights Remedies describes identical concerns about traditional public schools in a comprehensive report issued a year before the charter schools report, using data from the same year and source. The report, “Are We Closing the School Discipline Gap?” is not about charter schools; it contains an analysis of every school district in the United States. That report, which won the American Education Research Association’s award for Outstanding Policy Report of 2015, raises concerns (and this will sound familiar) that excessive discipline likely contributes to “the school-to-prison pipeline” and implicates civil rights violations. Our organization has been raising these concerns about excessive and disparate discipline in multiple studies since the year 2000.<sup>9</sup>

The following detailed responses provide more evidence to counter Robin Lake’s wholly unsubstantiated claim that our comparative findings lack any supporting evidence, as Lakes states in a follow-up critique that CRPE posted in August. We also respond to a blogger who highlights Lake’s second critique; to another blogger who implies that, in making our comparisons, we overlooked important limitations and research; and, finally, to a report that asserts that our method of comparison was unfair and offers an alternative comparison study with contrary findings.

**Is there really “no evidence” to support the conclusion that charter schools are higher suspending, or did the critics fail to test this assumption?** Even after the U.S. secretary of education had confirmed our findings in his June 2016 speech, Lake (on August 3, 2016) repeated her claim that “on pretty close reading” our report provided “no evidence” to support the conclusions. We find it intriguing that Robin Lake is the secretary of the board of the National Center for Special Education in Charter Schools (NCSECS). The day after Lake first made her false assertion, Lauren Morando Rhim, executive director of NCSECS, who had conducted a similar analysis using the same OCR dataset and nearly identical methods as the Center for Civil Rights, issued the following statement as part of her own response to our report:

The Center for Civil Rights report puts an important spotlight on an issue that requires attention: the disproportionate suspension of minority students and students with disabilities in public schools. The study confirms what many working in the sector already know to be true. Unfair discipline practice is a public school problem and charter schools are simply no exception. As we found in our November report: “*Key Trends*

*in Special Education in Charter Schools*” (2015) which also examined the Civil Rights Data Collection (2011-2012), disproportionate discipline is inarguably a national crisis. Students with disabilities are expelled and suspended from both traditional and charter schools at exceedingly high rates.

The NCSECS national analysis only compared the suspension rates of students with and without disabilities, but they came up with nearly identical findings to those in our report that compare the same two groups using the same dataset. How is it that Lake could slam our methods and dataset, knowing that they are nearly identical to those used by the NCSECS?

We contacted director Rhim to discuss her report, and she confirmed that the NCSECS analysis used the same methods and data as our report. Our findings were very close, but only our report found that charters consistently suspend students with disabilities at a “slightly” higher rate at every grade configuration, as well as in the aggregate. Over the phone, Rhim confirmed that the one significant difference in our comparison methods involved the treatment of virtual schools. Specifically, NCSECS had included all virtual schools in their comparative analysis of out-of-school suspension rates for students with and without disabilities, and charters to non-charters nationally. Our report excluded all virtual schools, which are numerous and are predominantly charter schools—nearly all of which had zero suspensions. Our reasoning was that, since these students do not attend a brick-and-mortar school, it makes no sense that they can be suspended *out of* a school they could never enter into.

After our report was released and after my conversation confirming that NCSECS included virtual schools in their analysis, I added all the virtual schools back in and recalculated our findings. I found that, had we not excluded virtual schools, our results for students with disabilities would not have shown a consistently higher suspension rate for charter schools for students with disabilities. Readers can decide which approach is more useful, but I doubt that many would find our approach unreasonable.

When Lake restated her criticism of our report in August, she did so as part of a broader opinion piece that she posted to CRPE’s website, which encourages media funders to pressure journalists not to cover bad reports, using our study as the prime example of one that was covered by poorly informed journalists. Lake’s repeated attacks are clearly meant to discredit our report, and perhaps to intimidate journalists and diminish the chances that our next report will get press coverage. The “no evidence” claim, so central to Lake’s critique, is itself lacking in evidence. Lake’s harsh, repeated, and blatantly unjustified attack on our report is ironic, given that she bemoans the rise of vitriol in the education reform debate.

Unfortunately, Lake claim has been repeated by others. A notable mention of the more recent critique Lake posted on her website was made by well-known education blogger Alexander Russo, who covered Lake’s August barbs in a blog he called “How EdMedia Funders (& a Bit of Public Shaming) Could Improve Research Reporting.” Mislabeling

Lake's CRPE website posting as an "op-ed," Russo's blog credits Lake for shaming "shoddy research and lazy reporting," and then repeats her critique of our report verbatim.<sup>10</sup> In another ironic twist, Russo's blog highlights words from Lake's piece—"always test your assumptions"—yet he did no such thing. He assumed that Lake's criticisms are accurate, apparently without reading our report, and he made no attempt to reach our authors for comment. It appears that he also neglected to speak to any of the major media journalists who covered our report, including Motoko Rich of the *New York Times*. Had Russo spoken with Rich, he would have found that she and I reviewed our report's methods and limits extensively, which is one reason why the *Times* published her lengthy and accurate coverage of our report.

However, Russo did interview Lake, asking her which journalists provided fair coverage. Here is how Russo described Lake's reply to his question:

"She answered that the *New York Times* actually "handled the [UCLA charter school discipline] report pretty well—except for the headline. The *Times* piece, 'Charter Schools Suspend Black and Disabled Students More, Study Says,' was "honest about what the report could say and couldn't. They didn't overstate the findings, or get wrapped up in the press release, and talked to people about what they meant."

Oddly, Lake did not suggest that the N.Y. Times had made a mistake in providing extensive coverage of the content of our report, even though her blog suggests that covering research like our report was sloppy journalism. Unfortunately, neither this inconsistency by Lake, nor the strong coverage of our report by the N.Y. Times, prompted Russo to test his assumptions.

I have since noticed an echo chamber of unsubstantiated criticism from a cadre of researchers and bloggers, all of who (like CRPE) receive hundreds of thousands of dollars from charter proponents. These funders include the Walton Family Foundation, which directly funds KIPP Academy and Success Academy.<sup>11</sup> Both of these charter school organizations are seeking to expand their numbers, and both embrace "no-excuses" discipline—the very focus of our report. These same pro-charter foundations also fund an education policy blog called The 74 and the American Enterprise Institute (AEI), both of which have also criticized our report. What might initially have looked like a broad-based outcry turns out to be a multipronged but largely singular attack.

**Did our report's detailed explanation of the comparison methods ignore a critically important limitation?** Matt Barnum, a blogger for The 74, provided a sweeping review of our report that began with the headline, "UCLA Report on Charter School Discipline Makes Important Points—But Has Some Important Limitations." Early in his blog, Barnum states, "the UCLA report is a valuable contribution to the growing school discipline debate, but its limitations should also be addressed and taken seriously."

Although Barnum also credits our report for acknowledging *many* of the limitations early in the text, and although he reviews the extensive comparison evidence in our report that

Lake claims does not exist, a reader of Barnum’s review could easily think that we entirely overlooked at least one of the important issues he raises. Specifically, point number 2 in Barnum’s review of our report reads as follows:

The UCLA report relies on data from the U.S. Department of Education’s Office of Civil Rights. The researchers find that charter schools were especially likely to report zero suspensions, sometimes contradicting state numbers. The authors reasonably conclude that these numbers might not be reliable, and so simply exclude all schools at the secondary level—charter and non-charter—that report no suspensions. Again, *this may be an appropriate methodological choice, but it is important to note that the numbers look somewhat different when zero-suspension schools are not excluded. As can be seen in the chart below, charters come out with lower suspension rates than non-charters in most subgroup comparisons when zero-suspension schools are included.* (emphasis added).

Barnum fails to note in his commentary that his “chart below” in fact was taken from page 21 of our report, and that he had copied it exactly.<sup>12</sup> The truth is that our report did present the analysis both with and without the zero-suspending schools at the secondary level, for two reasons. One is that a zero-suspension rate is not common at the secondary level (although it is at the elementary level), which may reflect a failure to report data rather than representing a true zero-suspension rate. Accordingly, although we present the elementary data with all the zero-suspension schools included, removing the zero-suspension secondary schools may provide a more accurate comparison for that configuration. The data are clearly imperfect, as we noted, therefore either approach is going to either over or under include.

Our comparison on this point also found that 17.4% of secondary charters reported zero suspensions, compared to 8.7% of non-charters. This stark difference raises questions about whether secondary charters are more likely than secondary non-charters to fail to report their discipline data to the public and to federal civil rights authorities. This is an important finding, because when the zeros are removed we find that secondary charters suspend Black students at higher rates than non-charters. Removing zeros is very different, we contend, than removing schools that report only one or two suspensions; the latter may be an underreporting, but it is much less likely to be bad data.

Furthermore, Barnum’s review states in the introduction, “There is also published evidence, not acknowledged in the report, that ‘no excuses’ charter schools generally produce large student achievement gains.” Barnum’s review cites no supporting research, and we do not believe there is any credible research to support the counter narrative that Barnum believes we should have acknowledged. However, there are several robust studies of schools across all sectors that make us skeptical of Barnum’s unsupported claim of a positive relationship between strict “no-excuses” discipline and measured achievement.<sup>13</sup>

Barnum’s third main point is that our “report has other limitations *that it generally acknowledges* but that don’t always make it into media reports” (emphasis added). One must wonder why this generic criticism of the media coverage—and one that would, one assumes, also apply to the coverage of many reports that cast a positive light on charter schools—is a major point in a piece that is ostensibly about limitations particular to our study.

**Should we have used an alternative method, even if it would have required excluding most non-charter schools from the national comparison?** An August 2016 report by the American Enterprise Institute also criticizes our comparison methods. It is worth noting that author and AEI fellow Nat Malkus provided a preview of his analysis in a July post on AEI’s website, where he labels as “bogus” the aforementioned assertion from Secretary of Education King that “it is true that charter schools suspend a higher percentage of their students than do district schools.”<sup>14</sup> Malkus’ full attack on our report is embedded in an AEI article about research that compares charters to non-charters. On page 19 of his discussion, Malkus makes specific reference to Lake’s critique of our report, stating that “appropriate and balanced methodological critiques of the report will only do so much to push back on such generalizations.” Malkus suggests that our report is an attempt to generate myths and that it presents only the most simplistic and generalized comparisons. He presents his own discipline comparison study as a “more careful” analysis, and concludes that his study proves that the “the idea that charter schools suspend students more than traditional public schools is a myth.”

Interestingly, our report, Malkus’ piece, and the NCSECS report all used the same CRDC dataset that Lake criticized as being entirely insufficient for making such comparisons. One interesting area of agreement is that our report’s brief analysis of enrollment differences on page 18 meshes with Malkus’ own findings on page 6 of his report that “charters are less likely to serve students with disabilities as compared to TPSs [traditional public schools].” What Malkus fails to acknowledge when he turns to his discipline comparison is that students with disabilities tend to be suspended at two times or greater the rate experienced by those without disabilities, therefore enrolling fewer such students seems likely to drive suspension rates down.

Most notable is that comparisons by race and disability status are entirely missing from Malkus’ discipline analysis, but not from his enrollment analysis. In other words, the “more careful” discipline analysis in the AEI report excludes a comparison of rates for Black students and excludes a comparison of rates for students with disabilities—the two areas our report highlights as being higher for secondary-level charter schools.

An equally glaring omission is that Malkus looks at nearly every charter school and matches it with a group of neighboring traditional non-charter public schools with similar grade configurations. However, Malkus limits the comparison group of non-charters to five neighboring non-charters, regardless of how many non-charters meet his criteria of a “neighboring school.” Only at the end of footnote 37 on page 30 of his report does Malkus tell the reader that the vast majority of non-charter schools are excluded. The footnote states, “This grouping mechanism results in a ‘neighboring traditional public

school' comparison group of about 12,200 neighboring schools out of more than 93,800 traditional public schools.” Malkus’ preferred discipline analysis specifically compares about 97% of regular charter schools (excluding special education, vocational, virtual, and alternative schools) with a selected subgroup of just 13% of all public non-charters.<sup>15</sup> In other words, Malkus’ preferred method of comparison eliminated more than 81,000 non-charter schools (about 86% of all non-charter schools). He based his selections and exclusions on inadequate proximity and/or jurisdiction and/or grade configuration. But in so doing, he also removed many non-charters with otherwise similar demographics, simply because they were not close enough to a charter school. We are also not told how his analysis chose comparison schools if, for example, two or three charters served the same large urban district and there were 25 or more potential non-charters within his acceptable radius to pick from. What was his rationale for limiting the comparison to five neighborhood non-charters when a larger comparison group would have permitted more non-charters to be considered?

Furthermore, Malkus’ analytical methods are rife with opportunities for subjectivity in selection, presentation and overgeneralization from his limited sample of neighborhood non-charters. When it comes to analyzing discipline rates in charters and non-charters (found on page 8, figure 8), Malkus picks some unorthodox ranges for describing suspension rates: 1%-4%, 5%-9%, 10%-19%, and 20% or more. He provides no explanations for these range groupings. The respective ranges are 4 points, 5 points, 10 points, and 81 points. To his credit, Malkus, like our comparison, “excluded the zero suspending schools due to data quality concerns.”

If we reconfigure figure 8 of Malkus’ report and use the more precise data presented in the appendix that give the distribution numbers to one decimal place, and if we combine the lowest two ranges of 1-4 and the 5-9 into one range grouping to represent the lower end, spanning schools with suspension rates of between 1%-9%, we find 72% of charters, and 72.2% of neighborhood non-charters, and about 80% of all non-charters, fit within that range of suspension rates. This means that the distribution of schools that fall into this lower suspending range are roughly equal when charters are compared to the neighborhood non-charters that met Malkus’ criteria, yet when *all* charters are considered they have a higher proportion of schools falling into the lower range of suspension rates.

Once the lowest range is reconfigured, the mid-range remains as Malkus reports it and covers schools with suspension rates from 10%-19%: one finds that 15.3% of all charters are in this mid-range. That compares with 16.6% of the selected neighborhood charter schools. However when *all* non-charter public schools are considered only 13% are in this mid-range. Charters therefore are slightly higher suspending when compared to *all* non-charters, and only lower suspending when compared to the neighborhood charters that meet Malkus’ selection criteria.

The distribution for each sector among the schools suspending 20% or more—Malkus’ highest grouping—includes 6% of *all* non-charters, 12.4% of all charters, and 11.5% of the neighborhood non-charters. For this highest suspending category, a relatively small

percentage of *all* non-charters were in Malkus' highest suspension range. Even the neighborhood non-charters he picked as comparisons had a slightly lower percentage of high-suspending schools than found in the distribution of all the charter schools. Most would consider these findings "mixed" and certainly far from proof that negates our finding that charters are slightly higher suspending.

There are certainly legitimate reasons to try to compare charters to non-charters that serve a similar locale, grade configuration, and jurisdiction, but there are obvious limitations and significant challenges in making such comparisons, especially if the goal is to accurately represent suspension rates in both sectors.

Malkus' report also includes an essentially purely relative analysis, called a distribution of differences analysis, that shows how often charters are the highest ranked, compared to the neighborhood non-charter public schools.<sup>16</sup> In each case he gets what most would describe as "mixed results." For example, his findings on page 12 and depicted in figure 16 lead Malkus to state, "Charter schools are more likely to discipline students substantially more and substantially less than are reference TPSs." These mixed results hardly prove that charter schools are not higher suspending than non-charters.

Ultimately, Malkus prefers a comparison process that he created and that involves a selection process for non-charters that nobody else can see clearly—one that eliminates the vast majority of all non-charters in order to meet his condition for a "fair" and "more careful" comparison.

Beneath the bluster are two differences of opinion: first, about how the comparison should be made and what tradeoffs are acceptable, given the limits of the available data; and second, about the level of scrutiny to which charter schools should be subjected and whether they deserve criticism if they are just as bad as non-charter schools. In his July preview, Malkus' concluding critique of the secretary of education states:

King's statements—on top of the fact that he chose to focus on discipline in his remarks to a charter school conference—unfortunately support the mistaken notion that charter schools have a particular problem with suspensions. In a vacuum, those implications might be innocuous. But in today's highly politicized debates about charters, they add fuel to an already-hot fire. As the secretary of education, King has to get the basics right or risk doing a disservice to the much greater proportion of charters that are already leading the way on school suspensions.

Apparently, "getting the basics right" means abandoning the standard method that NCSECS and our report used, and only using unique "Malkusian" charter-centric methods that just so happen to exclude analysis by race and disability status, the two groups charters tend to suspend at higher rates than non-charters.

Because we are focused on civil rights concerns, no matter the schooling sector, the battle over comparison methods obscures the most important issue raised by our report: whether the charter schools that are high suspending and exhibit large disparities along the lines of race and disability are being adequately scrutinized. We are concerned that education reform measures to curb harsh and disparate discipline will not be applied to these high-suspending charters.

What we consider most disconcerting is that charter proponents seek to expand schools like Success Academy that promote “no-excuses” discipline and that base their approach to school climate on theories like “broken windows.” As we point out in our report, there are also non-charter educators who share this philosophy, and we are concerned that the resistance from charter school proponents who seek exemptions from discipline-reform policy will form a bulwark of broad cross-sector support for harsh school discipline, despite its disparate impact on students of color and those with disabilities.

To be clear, *our report is primarily concerned with the subset of the many high-suspending charter schools with extremely disparate patterns of discipline.* Ongoing attempts to expand the number of high-suspending charter schools and the dominance of charter proponents in the defense of harsh discipline are the basis for our concerns about states possibly exempting charter schools from much-needed discipline reforms. The fact that our recommendations would encroach upon charter school autonomy with regard to the “no-excuses” discipline policies and practices likely prompted Robin Lake to state the following in her March 16 response to our report: “Cities can incentivize more charter schools to improve their discipline practices without infringing on charter autonomy.”<sup>17</sup>

At the Center for Civil Rights Remedies, all of our extensive research and policy briefs regarding discipline call for reforms in the interest of justice and in the face of stark inequities for children of color and students with disabilities. Our charter report begins by highlighting the high and low suspension rates found at schools within the charter school sector. As we point out in the report, there are many low-suspending charter schools and we believe there are likely numerous exemplary charters that others can learn from. But that also means there is no good reason for the charter sector to embrace harsh discipline, as some have chosen to do. In our recommendations, we go so far as to encourage the charter sector to take a leadership role in promoting discipline reform. Meanwhile, we take issue with those who would protect charter school autonomy in the face of civil rights concerns. We also caution against exempting the charter sector from state limitations on school discipline.<sup>18</sup> At the end of the day, there should be no excuses in any schooling sector for excessive and highly disparate suspension rates.

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<sup>1</sup> The report is available at [www.schooldisciplinedata.org](http://www.schooldisciplinedata.org) along with a spreadsheet containing the discipline data.  
<sup>2</sup> Our first report, “Opportunities Suspended,” was published in 2000 and jointly authored with the Advancement Project. We issued the peer-reviewed “Deconstructing the School-to-Prison Pipeline” in 2003, based on papers presented at our Harvard and Northeastern University research conference held that same year. Our other early works include the 2007 report, “Suspended Education: Urban Middle Schools in Crisis,” co-authored with Russ Skiba, and the book, *The-School-to-Prison Pipeline: Structuring Legal Reform* (NYU Press, 2010).

<sup>3</sup> Anyone with access to the publicly available data who applies the same limits we describe in our appendix can replicate these findings. They can also examine the individual charter school data we analyzed for our report, as we provide it to all readers. See endnote 1.

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<sup>4</sup> For a fuller review than we provided in our report, see <https://www.jacobinmag.com/2014/10/punitive-schooling/>.

<sup>5</sup> See <https://www.washingtonpost.com/news/education/wp/2016/06/28/education-secretary-calls-on-charters-to-rethink-discipline-reduce-suspensions/>.

<sup>6</sup> See <http://www.crpe.org/sites/default/files/crpe-paper-student-discipline-research-agenda.pdf>.

<sup>7</sup> Lake's review is not a careful methodological re-analysis but an accusation-laden quick response issued a mere two days after our report's release. See <https://t.e2ma.net/webview/k2l7n/96fe3d47c5b9f4caf2159c0b1730182b>.

<sup>8</sup> See Lauren Morando Rhim, "Civil Rights Data Should Catalyze Conversation About School Discipline Practices: Don't give 95% of schools a pass," March 17, 2016. Available at <http://www.ncsecs.org/blog/2016/3/17/qy32wyv5jl0w4lv38q3liz23isl41f>.

<sup>9</sup> See endnote 1. Our most recent descriptive report, "Are We Closing the School Discipline Gap?" can be found at [www.schooldisciplinedata.org](http://www.schooldisciplinedata.org).

<sup>10</sup> See <http://washingtonmonthly.com/2016/08/04/how-edmedia-funders-a-bit-of-public-shaming-could-improve-research-reporting/>; Lake's op-ed can be found on her website, <http://www.crpe.org/thelens/new-research-confirmseverything-we-already-believe>. The principles she references are from CRPE's guide to journalists and can be found at <http://crpe.org/publications/making-sense-charter-school-discipline-studies-reporters-guide>. If one downloads that guide, they will find a reference to three experts, two of whom work for Robin Lake. See <http://www.crpe.org/publications/understanding-student-discipline-practices-charter-schools-research-agenda>.

<sup>11</sup> The funding overlap is not hidden. A review of the Walton Family Foundation's publicly available list of grantees for 2015 is available at <http://2015annualreport.waltonfamilyfoundation.org/grant-reports>, along with the 990 form for 2014. It reveals many of the foundation's connections and millions in contributions. See <http://www.waltonfamilyfoundation.org/~media/documents/2014-990pf.pdf?la=en>. Also noteworthy is this statement in *Education Week* about Russo's blog: "Russo says there are two other 'starting funders': the American Federation of Teachers, the nation's second-largest teachers' union, and Education Post, a Chicago-based organization run by former Arne Duncan spokesman Peter Cunningham. (Education Post itself is supported by the Los Angeles-based Eli and Edythe Broad Foundation, the New York City-based Bloomberg Philanthropies, the Bentonville, Arkansas-based Walton Family Foundation, and an anonymous donor.)" Found at [http://blogs.edweek.org/edweek/education\\_and\\_the\\_media/2015/05/alexander\\_russo\\_launches\\_new\\_blog\\_on\\_education\\_journalism.html](http://blogs.edweek.org/edweek/education_and_the_media/2015/05/alexander_russo_launches_new_blog_on_education_journalism.html). Less obvious connections also exist, as the Walton Foundation and wealthy charter school proponents fund Education Reform Now, Inc., and other groups that in turn fund research on charter schools.

<sup>12</sup> Barnum's review, including his confusing use of our table 5b, can be found at <https://www.the74million.org/listicle/an-important-new-report-on-charter-school-discipline-has-some-key-limitations-4-things-to-keep-in-mind>.

<sup>13</sup> One longitudinal study of Indiana's public schools (Skiba et al., 2014)[*American Educational Research Journal*] found the opposite relationship generally, and the most robust and famous longitudinal study, "Breaking Schools Rules," which tracked every middle school student in Texas and controlled for 83 variables, found no achievement benefits in higher-suspending schools (Fabelo, 2011) (Council of State Governments Justice Center and Policy Institute). While there might be some charter research that suggests a positive correlation in some individual charter schools, there is no established research that concludes that harsh "no-excuses" discipline is the cause of, and therefore necessary to produce, higher achievement. Most research suggests that, when controlling for other factors, students who miss school and therefore miss instruction have lower test scores (Ginsburg et. al, 2014)[*Attendance Works*].

<sup>14</sup> Malkus' July summary of the discipline data from the full report and comments about Secretary King can be found at <https://www.aei.org/publication/for-starters-get-the-basics-on-charter-discipline-right/>.

<sup>15</sup> Table A2 on page 25 lists the number of charter schools used for comparison. Some enrollment comparisons used 4,280 charters. Malkus likely excluded zero-suspension schools, but it is worth noting that 21.7% of charters reported zero suspensions, compared with 10.9% of non-charters in the neighborhood. This difference is not discussed in his report, so it is unclear if his distribution of differences analysis added back the zero-suspending schools that he excludes "due to data-quality concerns."

<sup>16</sup> What Malkus provides in his "distribution of differences," from pages 8 to 17, is purely a relative analysis. All six schools (one charter and five neighborhood non-charters) could be very closely clustered at the low- or very high-suspending range, or the six could have suspension rates that are vastly spread out. In one grouping, a charter school that suspended more than 20% of its students could be ranked the highest among its group, but in a different group, a charter with suspension rate equally high could be ranked the lowest, if its selected neighbors were even higher. To use a sports analogy, this analysis only tells us how well a team performs relative to the teams in its division, but nothing about nothing about the overall winning percentages one would use to compare performance among all teams in the league. He also compares his core differences of distribution analysis to one where he randomly selected

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about 17,700 non-charters and found neighborhood non-charters to compare them with. Most would again describe these results as “mixed.” Figure 24 has similar findings, as suggested by figure 16. Another problem with all the distribution of differences is that they lack transparency. The author excluded 86% of all non-charters but the details about both the matching and exclusion process for non-charters are not presented. Even with all the play in the joints that comes from purely relative comparisons in figure 24 on page 17, Malkus shows that charters were more likely to be ranked the highest for suspensions compared to neighborhood non-charters; this higher distribution tendency remains even when he makes a further comparison to how “randomly” selected non-charters compare with their own neighboring non-charters.

<sup>17</sup> Her full critique can be found at <http://www.crpe.org/news/crpe-flags-serious-flaws-ucla-report>.

<sup>18</sup> Also see the Annenberg Institute recommendations for charter school public accountability and oversight, at <http://annenberginstitute.org/sites/default/files/CharterAccountabilityStds.pdf>.