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## AMAE Invited Special Issue

Education, Law and the Courts: Communities in the Struggle for Equality and Equity in Public Education

### Guest Editors

E. Diane Torres-Velásquez  
*The University of New Mexico*

David G. Hinojosa  
*Lawyers' Committee for Civil Rights Under Law*

Cristóbal Rodríguez  
*Howard University*

Marissa Bono  
*VIA Metropolitan Transit, Formerly with Mexican American Legal Defense and Educational Fund*

### Editors

Patricia Sánchez  
*The University of Texas at San Antonio*

Antonio J. Camacho  
*AMAE, Inc.*

### Associate Editors

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*Sacramento State*

Lucila D. Ek  
*The University of Texas at San Antonio*

**Education, Law and the Courts:  
Communities in the Struggle for Equality and Equity in Public Education**

**E. Diane Torres-Velásquez, Ph.D.**

*The University of New Mexico*

**Cristóbal Rodríguez, Ph.D.**

*Howard University*

**David G. Hinojosa, J.D.**

*Lawyer's Committee for Civil Rights Under Law*

**Marisa M. Bono**

*VIA Metropolitan Transit*

On April 1, 2014, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit on behalf of fifty-one Latina, Latino, and Native American parents and children against the New Mexico Public Education Department (NMPED) complaining of the state's failure to fulfill their obligation of providing a quality education to their children. The lawsuit, *Louise Martínez et al., v. the State of New Mexico* (2014), came at a time when the NMPED, under the leadership of Hanna Skandera and Governor Susana Martínez, was implementing a series of punitive educational reforms and depriving schools of critical resources for students in the classroom.

The lawsuit was the culmination of a series of collaborations spearheaded by the Latino Education Task Force (LETF) and MALDEF over the previous three years with stakeholders, including families, community leaders, nonprofits, teachers, school, and district administrators, among others. Meetings were held across the state, from libraries in Las Cruces to churches and nonprofit immigrant centers in Albuquerque to district administrative offices in Zuni, Magdalena, Albuquerque and Santa Fe to public school and college campuses in Española. Dozens of New Mexicans worked with MALDEF lawyers and staff and the LETF and came

forward to voice their dissatisfaction with their children's education and the challenges mounting from the state's leadership.

At the time, school finance lawsuits had been filed in over forty states across the country. But the resounding message from the LETF and other New Mexicans was that money was not the sole root problem in the state's public education system. Consequently, *Martínez v. the State of New Mexico* (2014) became one of the most, if not the most, comprehensive educational opportunity cases ever filed in the country. The lawsuit argued that the state's school finance system arbitrarily and grossly underfunded education for students from low income families, English learners and students with disabilities and violated children's right to a fundamental and sufficient education. The *Martínez* plaintiffs also argued that the state failed to monitor and enforce many important laws in the state, including the Indian Education Act, the Hispanic Education Act, and the Bilingual Multicultural Education Act. They further argued that the state's punitive teacher evaluation and accountability measures, which relied heavily on state standardized test scores, drove high quality teachers away from high need schools, depriving the plaintiff children of a quality education. Finally, the plaintiffs and advocates supporting the lawsuit were concerned that writing a blank check to school districts was not a proper remedy. Consequently, they argued that part and parcel to a constitutionally sufficient education in New Mexico, the state had a duty to monitor school district expenditures and ensure that at-risk children received the resources and support they needed to achieve their full potential to succeed in school and life.

Although the lawsuit received widespread support from parents, advocates, teachers, school leaders, and even some state legislators, many were skeptical of the lawsuit and fearful of reprisal from the state. Some felt this issue should be left to the state legislature and not the courts. Others, including some school district superintendents, felt that Governor Martínez's administration would punish them for supporting the lawsuit by withholding state discretionary funds. In a presentation by MALDEF held at a state administrator's conference, administrators responded with a lukewarm reception to the claims—despite the obvious benefits the districts would reap if the lawsuit was successful. One superintendent remarked privately to the MALDEF Regional Counsel that there was excitement from her and a few others, but that most were fearful that their public support would come back to haunt them.

The New Mexico Center on Law and Poverty later filed a similar, but narrower, lawsuit on behalf of school districts and New Mexican families, *Wilhelmina Yazzie et al., v. the State of New Mexico* (2014). The state district court hearing the cases consolidated the lawsuits for trial. In the summer of 2017, the court held an eight-week trial where expert and lay witnesses for the plaintiffs presented a powerful case on the shortcomings of the New Mexico public education system. In 2018, the court issued its opinion finding in favor of the plaintiffs and issued its final judgment on February 14, 2019, threatening to enjoin the state's school finance system if the state did not remedy the deficiencies.

At the time, the New Mexico legislature was in session and the new governor, Michelle Lujan-Grisham, promised not to appeal the ruling. She strongly encouraged the legislature to make the needed reforms both on the financial side and the qualitative side. The NMPED also went to work to reform the state's accountability and teacher evaluation systems.

The legislature enacted measures that included additional revenue for increasing teacher and staff pay and increased funding for students in at-risk circumstances. However, it provided no significant additional funding or reforms for English learners and students with disabilities. In his article in this special issue, David Hinojosa, former MALDEF Regional Counsel and the lead attorney for the *Martínez* plaintiffs up to 2016, examines the state measures signed into law in light of an equity guide created for legislators and advocates, *The Essential Building Blocks for State School Finance Systems and Promising State Practices*. Mr. Hinojosa also interviewed the Gallup McKinley Consolidated Schools Superintendent Michael Hyatt to gain insight into what the proposed changes by the New Mexico Legislature may mean to school districts on the ground. Mr. Hinojosa concludes that while the state made some improvements, it has much more work to do if it wants to provide a high quality, equitable education for every child in every school and offers suggestions on how to achieve that goal. Plaintiffs in both lawsuits are expected to challenge the state's alleged failure to remedy the constitutional violations noted in the district court's opinion and final judgment.

### **Mexican American Students and Legal Advocacy Across the Southwestern United States**

Research on public school finance continues to confirm the need for increased school funding, and yet the reality is that there is insufficient funding for public schools (Houston, 2019). "As federal education expenditures rose, some states spent proportionally less from

state and local sources, resulting in smaller overall spending increases in those states” (Houston, 2019, p. 438). At the same time, disparities in funding, lack of quality teachers, and culturally narrow curricula are contributing to further segregate racial groups in our public schools (Fuller et al., 2019). Historically, researchers and policymakers have assumed that Mexican Americans, Chicanos and Latinos do not value education, and have blamed our families and communities for a long history of continued systemic failure and lack of adequate educational opportunities (Valencia, 2008; Valencia, 2010). However, when we examine the demands these same families and students have taken to the courts it is clear that, “the Mexican American community’s historical and contemporary struggle for educational equality has been long-standing and extensive” (Valencia, 2008, p. xv). Mexican Americans resisted widespread segregation in the courts. In fact, it was Chicanos who brought forth *Méndez v. Westminster School District of Orange County*, a school desegregation case that challenged the California Code listing ethnic groups that could be segregated in 1946. Gonzalo and Felicitas Méndez in the state of California filed in federal court against the discrimination and segregation of Mexican American children where it was first found by a federal court that state segregation policies and practices violated the 14th Amendment equal protection clause of children, which predated and played a role in the decision of *Brown v. Board of Education* in 1954 (Aguirre, 2005).

However, and highlighted in the article herein by Moreno, Robledo Montecel, and Montemayor, in the landmark school finance U.S. Supreme Court case *San Antonio I.S.D. v. Rodríguez* (1973) it was decided that a right to an education was not within the definitions of the U.S. Constitution, and therefore the 14th Amendment clause was not applicable, and therefore it relegated the case back to the Supreme Court of Texas, even though the Court agreed that school funding was a serious concern. Fortunately, this failure by the federal courts did have an influence on visionary scholar and leader Dr. José A. Cárdenas to leave his job as the Superintendent of Edgewood in San Antonio and develop the research advocacy organization that would eventually become the Intercultural Development Research Association (IDRA) in order to fight for greater equality in funding. As illustrated by Moreno, Robledo Montecel, and Montemayor from the numerous school finance cases in Texas, to equity efforts as a federally recognized Equity Assistance Center covering the U.S. South, educational research and advocacy are essential in the continuing efforts by IDRA to move towards social justice and towards an equitable education for all children. The long history of school finance cases in

Texas, and the continued legal advocacy to critically inform education policy legislatively, continuously demonstrate the need for independent education research and advocacy that influence the landscape of education regionally and nationally.

Additionally, the need to access reliable data for critically informing analyses and examinations of systemic considerations cannot be understated. The articles in this special issue by Cabrera and Chang; Contreras; and Rodríguez are examples of data collections used by the respective court cases as evidence in the final court opinions. Such critically informed quantitative analysis, as highlighted by Cabrera and Chang, herein for Arizona, demonstrate the important point of using educational research in the arguments against a state system that blames students for the failures of the education system—or at least a system that believes it is not their responsibility for the success of all students. Not only are Cabrera and Chang able to fend off deficit-thinking-based arguments against Mexican American Studies in Arizona, they also demonstrate that access to such culturally responsive and sustaining pedagogies is a direct academic benefit to the success of Mexican American students. As Cabrera and Chang explain, the state of Arizona attempted to convince the court that the decision to end Mexican American Studies was based on the argument that such courses had no influence on the success of Mexican American students. In fact, the *Cabrera Report*, used as an expert report in the case, statistically and significantly demonstrated how Mexican American students indeed graduated high school at higher rates and scored higher in state standardized tests, and that this increased academic achievement correlated with their enrollment in Mexican American Studies. This analysis was essentially used by the judge to decide that implementing a policy banning Mexican American Studies was a direct act of discrimination against Mexican American students, despite the numerous attempts by the state to question and throw out the validity and the quality of the analysis in the *Cabrera Report*, as explained herein by Cabrera and Chang.

Data politics appears to be a greater issue in legal cases, especially in such educational opportunity cases similar to that of *Martínez v. New Mexico* (2018) and *Yazzie v. New Mexico* (2014). In working to find public information that should have been provided by the state (the defendants in *Martínez v. State of New Mexico*), data politics and political considerations were roadblocks for a number of experts in the case, including both Contreras and Rodríguez, who served as expert witnesses in the trial and used K-12 data for their reports for the case. Both experienced challenges accessing the state's data for analyses in preparation for the trial. The

NMPED eventually provided data that was incomplete, inconsistent, and/or lacked explanation, bolstering the Plaintiffs' claims that the state was not properly monitoring educational opportunities for at risk students. In order to obtain reliable data and provide a reliable analysis, both researchers were forced to find other publicly accessible data sources. In the end, their research and testimony demonstrated continuing disparaging academic outcomes for underserved students in urban, rural and Indigenous communities, for English language learners, and for students receiving special education services, along with anticipated disparities across race and ethnicity.

Contreras, moreover, highlights the disparities facing indigenous and Latinx students across 15 school districts specific to issues of access to curricular resources aligned to college readiness, transition, and completion. Rodríguez, provided with other publicly accessible accountability data, reports proficiency in New Mexico's Standards-Based Assessment, and in the adoption of the Common Core State Standards and its aligned exam, the Partnership for Assessment of Readiness for College and Careers (PARCC). He found similar additional extreme disparities in achievement across both achievement tests. Most concerning in Rodríguez' report covering the seven focus districts and across New Mexico in *Martínez* was that English language learners reported proficiency levels similar to that of students receiving special education services, and Indigenous students across the state performed at the lowest levels compared to other race and ethnic groups. Further, trends in data disparities increased between groups and reported achievement levels dropped after the implementation of Common Core State Standards and the PARCC exam. Contreras and Rodríguez ultimately both draw conclusions that are very concerning in the curricular resources and academic support that students across the state receive that are highly inequitable.

### **The Role of Community in *Martínez v. State of New Mexico***

As the Latino Education Task Force (LETF) engaged with New Mexican populations during the development of this suit, it was clear that there was a long history, from before statehood, of creating policy that reflected the values of *Nuevo Mexicanos*, which included provisions in the state constitution for equality and use of the Spanish language in public education. New Mexico had resisted joining the United States, if it meant giving up the Spanish language (Móntez, 1973). In New Mexico's First District Court, Chief Judge Sarah Singleton presided over the consolidated trial. She did not hesitate to ask questions of witnesses. In his

response to the questions of the Court, it was clear during the testimony of *Martínez* expert witness and sociologist Phillip Gonzales that some of the policies in the State Constitution were ones that *Nuevo Mexicanos* held out for before agreeing to join the union. Once statehood was granted, these policies were met with long periods of neglect due to language and socio-economic prejudice against Latinos and Native Americans (*Martínez v. State of New Mexico*, Gonzales testimony, July 10-11, 2017, pp. 314-322).

There are many Mexican American, Chicana and Chicano, and Latino intellectuals and community leaders who dedicated their careers to advancing progressive ideas in education for children. One of the first such activists, George I. Sánchez was born in New Mexico in 1906. In the late 1930's, as a scholar and advocate for educational equity, Sánchez received a Carnegie grant while assuming a new role as the Director for the Division of Information and Statistics for the New Mexico Department of Education. He conducted a study on school finance and equity in public education. His report, published as *The Forgotten People*, exposed dismal financial and achievement data across areas of well-being for Northern New Mexico residents, including public education, and detailed how New Mexico's Hispanic and Native American populations, especially in rural areas, were largely neglected and ignored (G. I. Sánchez, 1940). He employed data analysis to argue for systemic change by coordinating a policy shift for the state to pass the New Mexico Public School Equalization Fund (Blanton, 2014; Rodríguez, 2014; Torres-Velásquez, 2017). Sánchez had been working to develop the New Mexico Education Association (NMEA) since 1933 and mixed his roles as educational researcher and education advocate (Blanton, 2014). He coordinated his research efforts with his community role as President of the New Mexico Education Association to strategically further advocate for this new policy. Given that it had failed to pass the year before, this marriage of the roles of educational researcher and strategic activist was key in developing systemic transformational change to improve educational policy and practices. Among Sánchez' students was José Cárdenas, who similarly mentored leaders in Texas and across the country. The articles of this special issue highlight the need and demand for educational researchers, legal advocates and community activists to blend these roles as part of their strategic advocacy efforts for systemic transformations.



## Poverty

New Mexico had entered the union as one of the last territories to obtain statehood. At the time, and for generations after, the state was described as a region of “diverse interests, cultures and great language difficulties with generations of illiteracy that had to be combated” (Wiley, 1965, p. 19). Most of the wealth was in the hands of a limited number of wealthy individuals and corporations who had no intention of paying taxes to educate the poor. Wiley (1965) indicated the common perception of poverty during this time period and even into the early 1960s was that, “The poor, in turn, had no great vision, knowing very little about education” (p. 19). Only once during the eight-week *Martínez* trial did the Court disrupt the testimony of a witness. This stern disruption came when the issue of poverty was being questioned by the state (defendants) who claimed there were no educational strategies supported by research that could help children in poverty do better in school. Judge Singleton demanded to know if there was nothing the state could do for children in poverty. Perhaps this was one reason Judge Singleton stated she would not accept any excuses for not funding public education adequately. In her Decision, the Court required that legislators create the remedies and find the money to provide all of New Mexico’s students with a sufficient education. While all witnesses testified that they believed all students could learn, that it was the state’s responsibility to provide a sufficient education and that schools needed more funding, the legislature’s apparent lack of interest and lack of action has caused *Martínez* plaintiffs to file a motion asking the Court for a hearing and for an investigation.

## The Well-Being of our Students

Trujillo-Ellis, Trujillo, and Davis, three New Mexican critical-practitioners, explore the question, “What is it about the space our youth inhabit that causes them to be unwell?” as a means of resisting retrenchment, or loss of opportunity for positive change in response to the July 2018 First District Court’s Decision and Order on *Martínez v. State of New Mexico* (2018). New Mexican youth space is contextualized in terms of demographics, outcomes related to well-being, the fiscal landscape of the state, and the policies that govern public education. Analysis framed by critical race theory (Delgado & Stefancic, 2012) supports a clearer understanding of relationships framed by power and their effect on youth opportunity and outcomes in the state. Due to hegemonic action and inaction related to maintenance of status quo, remedies may not reach the students for whom they are designed. As such, understanding

the space minoritized youth occupy in the New Mexican political consciousness requires a healthy skepticism that values and practices ongoing reflectivity (Rendón, 2014), as well as leveraging frameworks and models that explicitly support the development and efficacy of critical strategies (Freire, 1970/1993).

### **Multicultural Education**

The LETF worked with families and community organizations to identify the needs of students in our public schools. Full implementation of the Bilingual Multicultural Education Act, the Indian Education Act, and the Hispanic Education Acts were high priorities in this suit for *Martínez* plaintiffs. Torres-Velásquez, Sleeter, and Romero discuss a tactic often used to deter progress in these fields: Divide and Conquer. This tactic stalls the full implementation of the very thing that has been accomplished. As part of the trial in 2017, Sleeter served as the expert witness on multicultural education. She wrote a 95-page report on her findings encompassing the current status of multicultural education in New Mexico. Torres-Velásquez, Sleeter and Romero describe findings that make it difficult, if not impossible, to follow the Bilingual Multicultural Act as it currently exists. Having served as the Director of Mexican American Studies in Tucson, Romero details benefits for use of a Critically Compassionate Intellectual Curriculum, such as the one developed over many years of teacher research and collaboration in Tucson Unified School District.

New Mexico's Indigenous and *Nuevo Mexicano* populations have a strong tradition of honoring land and water as sacred. In discussions around the state with specialists in ethnic studies and multicultural education, we have all agreed that an authentic curriculum representing the values of the people of the state would need to include the love we hold for land and water. Necochea outlines three models of culturally-rich curriculum based on these sustaining traditions and beliefs. She provides the background for the development of her award-winning community organization, Center for Social Sustainable Systems (CESOSS), whose mission is "to protect and preserve precious water resources in our community" (CESOSS, 2019). She and her team have developed a mission that focuses on the intersections of land, water, and policy. Each year the organization selects interns who research these issues, learn policy at the city, county and state levels, including the legislature, and advocate in their community. The organization has as a strong goal to build capacity with youth leaders, helping them shape the policies affecting their communities and protecting the community's beautiful

traditions and natural resources. Dr. Necochea and CESOSS have received numerous awards for their community engagement.

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