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

Cristóbal Rodríguez
Howard University

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

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

Julie L. Figueroa
Sacramento State

Lucila D. Ek
The University of Texas at San Antonio

Achievement, Politics, and Policy Shifts:
Expert Report on Achievement for *Martínez/Yazzie v. New Mexico*

Cristóbal Rodríguez

Howard University

Abstract

The achievement levels from 2007 to 2016 in the state of New Mexico demonstrate an educational system that is failing its Hispanic, American Indian, and English learner students. During this period of time, close to 30% of Hispanic students were proficient or above in reading, math, and science, and close to 25% of American Indian students were proficient or above. Moreover, a change in politics that informed changes in curriculum and testing policies during this period of time show lowering proficiency rates and grater disparities between groups. Further and more problematically for a state that is historically bilingual, and as bilingual students tend to be Hispanic and American Indian, English learners in most recent years tested at the lowest levels of proficiency and above. These sobering achievement levels highlighted in this article were used as evidence and as testimony in the expert report in the conjoined educational opportunity cases *Martínez v. New Mexico* (2019) and *Yazzie v. New Mexico* (2019), which was a case filed on behalf of underrepresented families and students in New Mexico against the state's Public Education Department. The result was a landmark decision that decided children in New Mexico indeed have a right to an education and mandated the state to respond immediately to these disparities. Herein are the findings and conclusions from the expert report and testimony from the *Martínez v. New Mexico* (2019) and *Yazzie v. New Mexico* (2019) Trial Declaration of Cristobal Rodriguez.

Introduction

There are serious concerns with the achievement of English learners and American Indian students across the state of New Mexico, above the already serious concerns for all other subgroups. The percent of English learners that are proficient and above in the state's accountability test are at the lowest levels across all subgroups. Across the state of New Mexico, with the change to the Common Core State Standards and the Partnership for Assessment of Readiness for College and Careers (PARCC) as the New Mexico Standards Based Assessment (NMSBA), English learners perform at similar levels as students with disabilities in reading and math, and at lower levels in science. This is problematic, especially for a state that considers itself bilingual and multicultural and requires teachers through its constitution to speak both English and Spanish. Almost consistently on all measures across time, White students performed at the highest levels. These achievement disparities and the fact that the two largest diverse populations of Hispanic and American Indian students largely intersect with populations of economically disadvantaged and English learners speak to a greater need for systemic change. This article will highlight a number of concerns with the state of education provided to all children in the K-12 education system in New Mexico, moreover, it will also highlight concerns with the shifts in politics and policies that continue to contribute to a failing system.

This work is essentially a slightly edited version of what was submitted as an export report and defended in expert testimony, *Martínez v. New Mexico* (2019) and *Yazzie v. New Mexico* (2019) Trial Declaration of Cristobal Rodriguez, which was conjoined with *Yazzie v. New Mexico* (2019). For the purposes of brevity, henceforth *Martínez v. New Mexico* (2019) and *Yazzie v. New Mexico* (2019) will be referenced as *Martínez v. New Mexico* (2019) as this was the first case to be filed. While the case was a win for families and communities four years after its filing, the only win for families and communities will be with systemic changes through the political will of those leading and managing the education system at all levels of education. Otherwise, failing to improve a systemic failure, is as much responsible for causing the systemic failure to begin with.

Background

New Mexico represents a wealth of histories, diverse communities, natural resources, and a strong legacy of recognizing such diversity. In the U.S. Census (2018) Quick Facts, New

Mexico has an estimated population of 2,095,428, of which 23.0%, or about 482,000, are under the age of 18 years, 2.6% are African American,[1] 10.9% are American Indian, 1.8% are Asian, 49.1% are Hispanic, 37.1% are White, 9.7% are Foreign Born, 35.0% speak a language other than English at home, and 19.5% live in poverty.[2] In the 2015-2016 academic year, when the expert report was compiled, the PK-12 public school student enrollment in New Mexico was 339,613 students. New Mexico's wealth of diversity delves even deeper when recognizing Tribal communities, with 2013 population estimates of 215,885, spanning across 23 federally recognized Tribal communities/nations,[3] speaking diverse languages from Zuni, Towa, Keres, Tewa, and Tiwa, and various dialects of Apache and Diné (Navajo).[4] New Mexico's Spanish and Mexican history is a critical aspect of the current narrative of the state and its bilingual Spanish and English identity, as noted in the Seal of New Mexico that symbolizes both the American Bald Eagle and the Brown Eagle with a snake on a cactus from the symbol of the flag of Mexico. However, it is in education where this Spanish and English bilingual concept is truly best recognized and rooted through the New Mexico Constitution, which was ratified on becoming the 47th state of the United States in 1912. Article XII: Education, Section 8 of the New Mexico Constitution states:

> The legislature shall provide for the training of teachers in the normal schools or otherwise so that they may become proficient in both the English and Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state, and shall provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and students.[5]

This article, while it does not focus on the Spanish and English abilities of teachers, does provide a current understanding of the achievement and graduation trends of sub-populations across the state of New Mexico, with an additional focus on seven school districts:

---

[1] African American students will be used interchangeably with Black students.
[2] U.S. Census. (2018). Quick Fact: New Mexico. Retrieved from http://www.census.gov/quickfacts/table/PST045215/35.
[3] New Mexico Economic Development Department. (2016). Tribal Profiles. Retrieved from https://gonm.biz/site-selection/tribal-profiles/.
[4] New Mexico Secretary of State. (2016). Native American Language in New Mexico. Retrieved from http://www.sos.state.nm.us/Voter_Information/Native_American_Languages_in_New_Mexico.aspx.
[5] N.M. Const. art. 12, §8.

Albuquerque Public Schools (APS), Española Public Schools (EPS), Gadsden Independent School District (GISD), Las Cruces Public Schools (LCPS), Magdalena Municipal Schools (MMS), Santa Fe Public Schools (SFPS), and Zuni Public Schools (ZPS). This article will first break down achievement by sub-populations across reading, math, and science at proficiency and above rates using the New Mexico Standards Based Assessment (NMSBA). Second, it will highlight 4-year cohort graduation rates by sub-group populations across the state and the seven focus school districts. Data for all achievement and graduation rates were accessed from the NMPED website. Moreover, this article highlights the realities that current educators and researchers must acknowledge as a systemic failure that our children experience in our schools, and not just the case of a failing type of student, or family, or school, or district. It is criminal negligence for us in the education sector to keep turning a blind eye or shift the blame to students and families when such systemic failure occurs across a state.

Data Limitations

Several data limitations must be highlighted up front. The accessibility and quality of data provided by the state for this study threatened the completion of this article, and demonstrates that there might be serious negligence, intentional or not, that inform both decisions and policy by all stakeholders. The quality and accessibility of data by all stakeholders ensures essential concepts of a transparent and accountable government, especially considering that education accountability reporting is a requirement by both state and federal education policy, by both the current and previous reauthorizations of the Elementary and Secondary Education Act of 1965, the No Child Left Behind Act of 2001, and Every Student Succeeds Act passed into law in December of 2015. For example, the state only provided raw total numbers of not-proficient students by grade, then by school, then by district, which was a challenge given that no percent from total tested students could be then calculated from the same table. However, in a separate table/file, the state did provide total numbers of students tested, by grade, then school, then district, but since they are provided on separate files, there is no assurance that the years and numbers correspond to specific reading scores, math scores, or science scores, since this varies across grades and years as well.

Further, two other problems were created even by assuming that the total tested from another file applied to the not-proficient file in reading and math. The first problem is that student outcomes are categorized into one of four groups: (1) beginning step or (2) nearing

proficiency (which is not-proficient), or (3) proficient or (4) advanced (which is proficient and above). Comparing proficient and above percentages is a better comparison of achievement across groups than comparing not-proficient percentages, especially considering concerns for deficit/equity traps. The second problem, was that the assumed calculation using the state's two separate files to calculate a percent of non-proficient students based on total tested, did not correspond to the not-proficient rates reported on the data set retrieved from the New Mexico Public Education Department (NMPED) website.[6] For example, Table 1 compares not-proficient rates in the state provided-data versus the NMPED website data for Albuquerque Public Schools (APS) in Academic Year 2010-2011 for the following subgroups (see Table 1).

Table 1

APS 2011 Not-Proficient State-Provided Data versus NMPED Website Data

Subgroup	State Data	NMPED Website Data
White[7]	1%	7.5% beginning step and 21.6% nearing proficiency (combined 29.1% not-proficient)
Hispanic	13%	19.6% beginning step and 36.0% nearing proficiency (combined 55.6% not-proficient)
Economically Disadvantage	13%	22.0% beginning step and 38.1% nearing proficiency (combined 60.1% not-proficient)
English Learners	38%	34.8% beginning step and 42.3% nearing proficiency (combined 77.1% not-proficient)

Note. Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodríguez.

Because the NMPED website has the data in the format that reports a percentage based on total tested, or participants, much of that data used for this report/study comes from that publicly accessible data from the NMPED website, especially recent enrollment data by subgroups and districts.[8]

Achievement from 2007-2016

New Mexico

Curriculum and assessment shifted in 2013 with the state's adoption of the Common Core State Standards to inform the curriculum across the state, and again shifted with the

---

[6] (http://ped.state.nm.us/AssessmentAccountability/AcademicGrowth/NMSBA.html)
[7] White students will be interchangeably used with Caucasian students.
[8] As a side note, the NMPED website data, which is required by state and federal law to be reported, is not easily accessible from the NMPED website, and must be searched for in the A-Z Index.

adoption of Partnership for Assessment of Readiness for College and Careers (PARCC) in 2014-2015 to inform the NMSBA. These changes reflect across trends on all achievement data.

A snapshot of statewide student demographics is reflected in the composition of students that recently took the NMSBA, as presented in Table 2.

Table 2
2015-2016 New Mexico Sub-Group Population of Test Takers

New Mexico NMSBA Test Takers by Sub-Group	Total	% of Total
Caucasian	70,013	25%
African American	6,342	2%
Hispanic	173,896	61%
Asian	4,215	1%
American Indian	30,524	11%
Economically Disadvantaged	206,901	73%
Students w Disabilities	38,228	13%
English Language Learners	40,859	14%
All Students	285,161	

Note. Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.

As reflected in Table 2 and Figure 1, of the 285,161 students tested in 2015-16 across grades K-12, 25% of test takers were White, 2% were African American, 61% were Hispanic, 1% were Asian, and 11% were American Indian. In total, 75% of the students tested were students of color. Of all students, 73% of the students tested were economically disadvantaged, based on Free or Reduced Lunch qualifications. While, students from an economically disadvantaged background are not necessarily students of color, students of color are more likely to be from an economically disadvantaged background. In 2015, out of 141,000 children in poverty in New Mexico, 16% were American Indian, 69% were Hispanic, and 12% were White.[9]

---

[9] Kids Count. (2016). Kids Count Data Center. Retrieved from http://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-and-ethnicity#detailed/2/2-52/false/573,869,36,868,867/10,11,9,12,1,185,13/324,323.
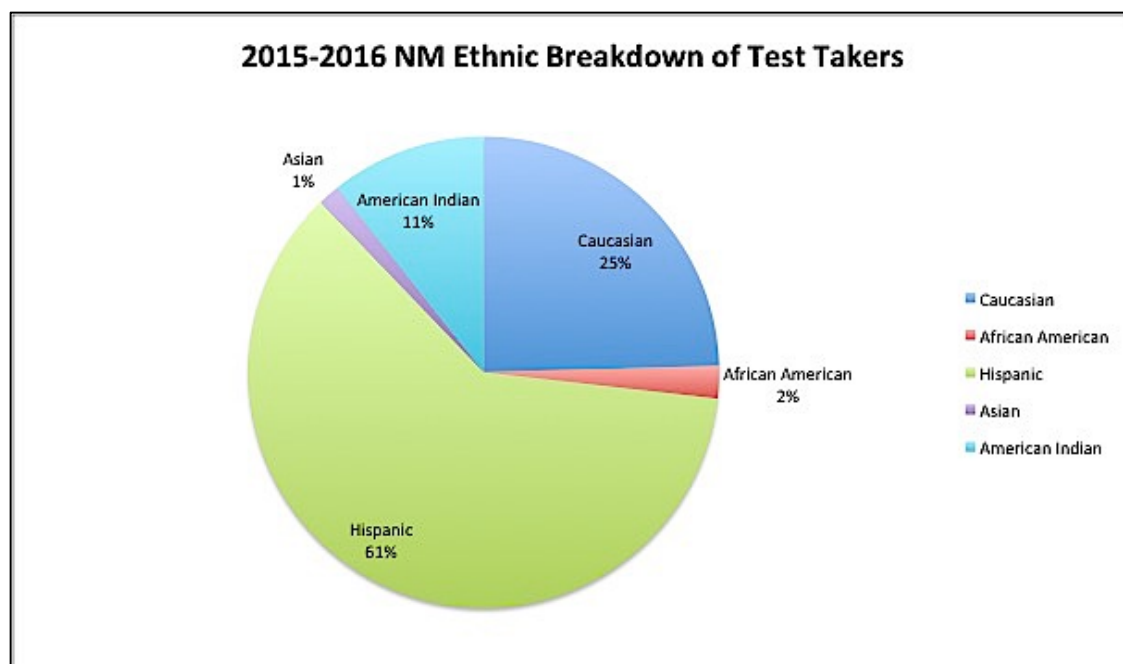
Figure 1. 2015-2016 New Mexico ethnicity of test takers. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

In order to achieve a greater understanding to the state's demographic context and history, it is best to understand the state's language development, especially based on the state's reporting of English learners. When this report was compiled, the state's English Learner student population made up 14% of the overall student population (Table 2). English learners in New Mexico, in the 2014-2015 academic year were 79% Hispanic, and 16% American Indian/Alaskan Native. The home languages by English learners were 71% Spanish, 12% Navajo/Diné, 11% English, and 3% Pueblo languages. The 11% of students with a home language of English may be English learners due to traditional communities speaking pigeon/creole combinations often referred to Spanglish.

Reading proficiency is often used as a significant indicator to measure academic progress, especially for diverse populations. Figure 2 demonstrates little change in reading at the proficiency and above rates, across all subgroups from 2007-2014 except for American Indian students and English learners, who show a drop in proficiency levels. The major trend from 2015 for all groups is a drop-in proficiency and above rates, which reflects the change in the NMSBA that began with the adoption of PARCC. A major statewide trend is the overall drop in reading at proficiency and above rates by English learners across the 10 years. Asian students after 2011 show the highest rates, but also reflect 1% of the student population, as

such outcomes does not control for economic status within such high achieving groups which is a demographic dynamic with such trends (Table 2). The smaller the group the less dependable a trend line, which becomes evident in other group outcomes when there are erratic trend lines. The other take away from Figure 2 is that of White students, continuously rate around 15% to 20% higher than all students, African American, Hispanic, and American Indian students.
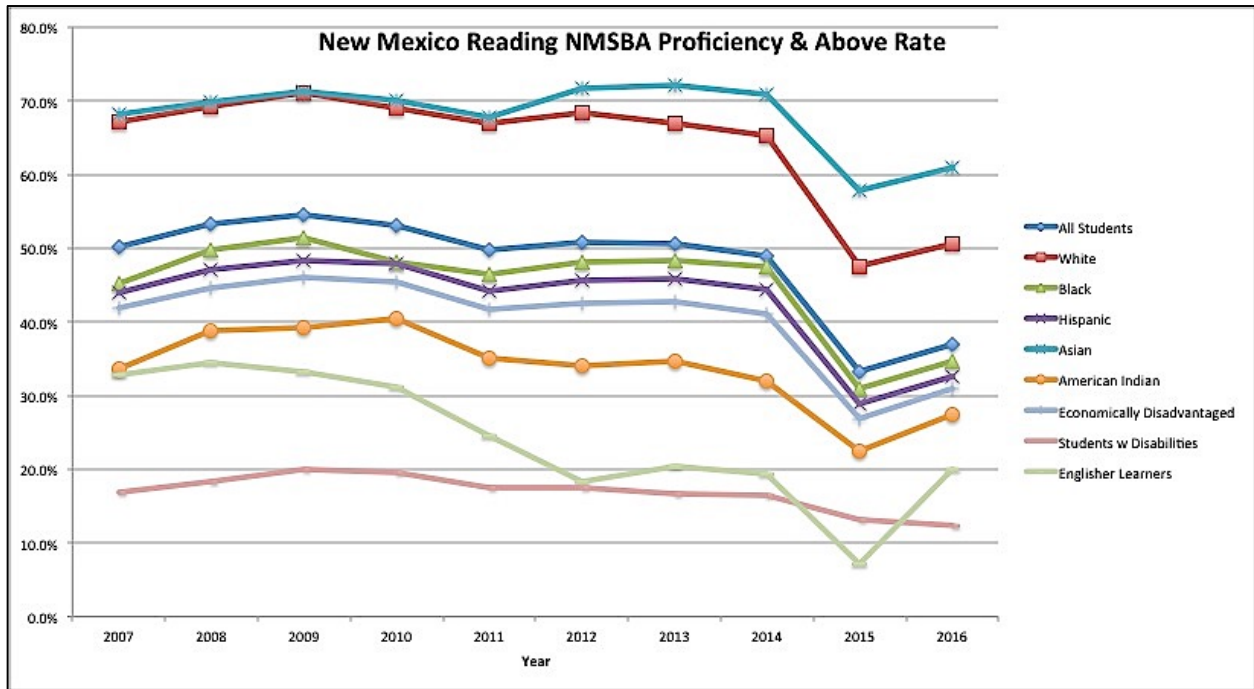

Figure 2. New Mexico reading achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

As reflected in Figure 3 (see below), English learners in math also show a more negative trend than all other groups, recently scoring at the same level as students with disabilities. Last, for Science achievement for the state of New Mexico, although there is missing data for the 2011-2012 academic year, disparities in rates between groups show a widening science achievement gap. Moreover, English learners not only show a consistent drop in science at the proficiency and above rates, but also score the lowest since 2013. This is alarming as English learners in the last four years have scored below students with disabilities.

The greatest concerns in observing statewide trends in scores at the proficiency and above rates across reading, math, and science, are the lower rates of all groups besides White and Asian students. Particularly alarming are the low proficiency and above rates for American Indian students and English learners across the state of New Mexico. Lastly, the takeaway from
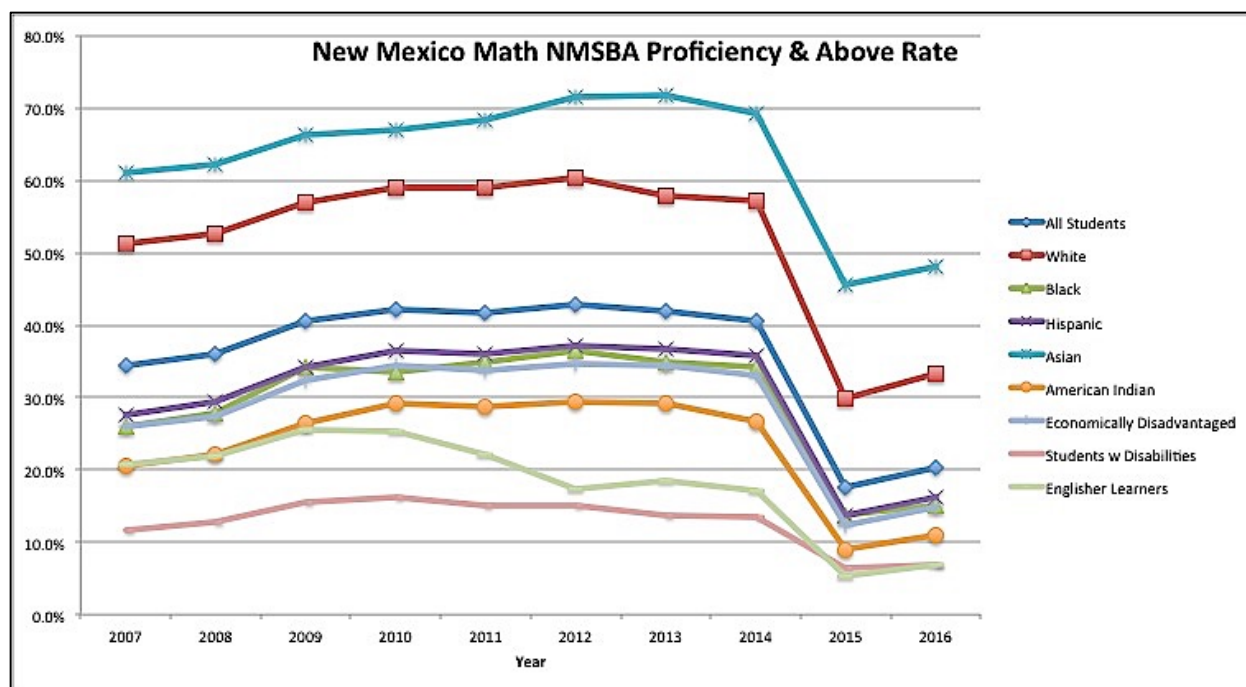
Figure 3. New Mexico math achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

Figures 2, 3, and 4, like most such data analysis, is to begin to ask questions about such trends. Why are English learners since 2007 performing at a decline and essentially at the same levels as students with disabilities, when speaking multiple languages or learning English is not like a learning disability, in fact quite the opposite? Why in some instances are there greater disparities in achievement levels between groups across the state in more recent years? Do all school districts involved in this case demonstrate the same outcomes, especially given the varying demographics in a Borderland state with large Hispanic and American Indian demographics with rich linguistic diversity? This case highlights districts with Borderland demographics, with suburban or more urban demographics, and with Tribal communities or districts that border Tribal communities, so how does achievement vary across the state?

Albuquerque Public Schools

Albuquerque Public Schools (APS) is that largest school district in New Mexico. It is located in the central part of the state and has a 2015-2016 academic year student population of 92,152, spread across 168 authorized school sites, of which 20 are charter schools. Out of the 76,655 test takers in the 2015-2016 academic year, 23% were White, 3% were African American, 67% were Hispanic, 2% were Asian, and 5% were American Indian. Additionally, 70%
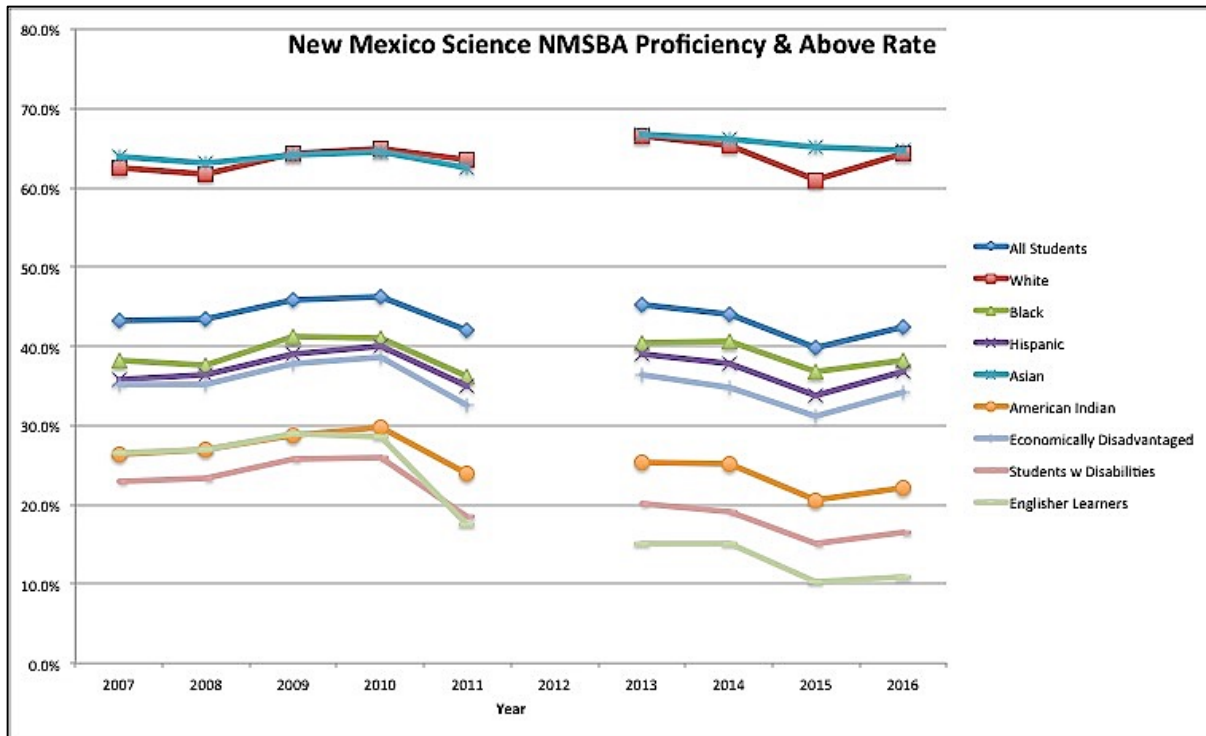
Figure 4. New Mexico science achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

were from an economically disadvantaged background, 14% were students with disabilities, and 17% were English learners. Given the size of APS, reading at the proficiency and above rates trend similarly to statewide data between groups across 10 years, with some noticeable differences in higher rates for Hispanic, African American, American Indian, economically disadvantaged, students with disabilities, and English learners. However, here, too, students with disabilities perform similarly to English learners, and, recently, White and Asian students have performed similarly. APS students are 70% economically disadvantaged, compared to 73% statewide. Both the district and the state follow an overall similar demographic breakdown. In math, unlike reading, proficiency and above rates, both independently and between groups, trend similarly across time, showing similar achievement gaps. As is statewide, APS math proficiency and above rates for English learners show a more noticeable negative delineation than those for all other groups, with English learners recently scoring at the same level as students with disabilities (Figure 3).

APS students test results in science show slightly different trends in rates compared to statewide results, although the results for both show non-White and non-Asian students scoring at half the rate of White and Asian students. However, unlike statewide results

showing English learners in science recently performing below students with disabilities, in APS, these two groups trend similarly (Figure 4). Also, different from statewide results, White students distinctly performed at higher levels in science, than all other student groups; statewide, White students performed at similar levels in science as Asian students.

Española Public Schools

Española Public Schools (EPS), located near Los Alamos National Laboratory, had a 2015-2016 student population of 3,955, spread across 21 authorized school sites, including one charter school. Out of the 3,427 test takers in the 2015-2016 academic year, 6% were White, 0.3% were African American, 88% were Hispanic, 0.6% were Asian, 5% were American Indian. Additionally, 97% were from an economically disadvantaged background, 12% were students with disabilities, and 14% were English learners. Given these demographics, the all student, Hispanic, and economically disadvantaged student categories follow the same levels and trends in reading, math, and science. In reading, there are greater achievement gaps from 2014 and earlier than in 2015 and 2016. In 2015 and 2016, White students, American Indian students, and Hispanic/all students/economically disadvantaged students scored at similar levels, with a slight edge by White and American Indian students. American Indian in reading, and similarly in math, performed above the average all students prior to 2015, after adoption of PARCC. In fact, they also performed at distinctly higher levels than the state levels for American Indian students (Figure 2). The most significant concern in reading trends for EPS is that of English learners, who exhibited a drop in achievement levels over ten years and scored lower in the last two years than students with disabilities.

To a greater degree with math, achievement at the proficiency and above rates dropped in 2015 and 2016 with the adoption of PARCC. Almost all groups, except for the .6% Asian students, performed similarly at around 10% proficiency. English learners recently performed the lowest in reading and math compared to other sub-populations. For science, there is a major downward trend by all groups in 2011, which may be either a reporting error at some level or a systemic issue with science. Aside from the similar achievement gap in science between White students and all other groups, here too are English learners scoring at the same levels as students with disabilities after 2013. Here, American Indian students follow the same Hispanic/all student/economically disadvantaged student trend line across time, unlike in reading and math.

Gadsden Independent School District

Gadsden Independent School District (GISD), located on the Rio Grande River and borders the U.S.-Mexico Border, had a 2015-2016 student population of 13,608, spread across 24 authorized school sites. Out of the 10,880 test takers in the 2015-2016 academic year, 3% were White, 0.4% were African American, 96% were Hispanic, 0.1% were Asian. Additionally, 100% were from an economically disadvantaged background, 12% were students with disabilities, and 30% were English learners. Like Española Public Schools, GISD has a largely homogenous student population, but to a greater degree, with 96% of GISD students Hispanic and 100% of students economically disadvantaged. Unlike all other focus districts and across state, GISD has a 30% English learner population, compared to the state's 14%. This means that, here too, there is an all students/Hispanic/economically disadvantaged students overlapping trend line. Because of the small size of Asian and African American student populations, reading levels and math levels vary to a greater degree, making it more difficult to interpret any trend lines. White students, as few as they are, consistently trend above all other groups, in math and science. Unlike other districts already mentioned, English learners here have performed higher than students with disabilities, but distinctly lower than all students. English learners' achievement at proficiency and above rates has dropped over time. Consistent with statewide results (Figure 2), students with disabilities, largely have scored at the same levels across time, except for a slight bump in 2012.

Math achievement by GISD students has a more positive overall outlook. Both the White and the all students/Hispanic/economically disadvantaged students trend line increase, until the 2015 adoption of PARCC. Further, English Leaners also maintained a constant level in achievement until 2015, unlike the rest of the state, which showed an overall decrease (Figure 3). There are two major observations in GISD relating to the science proficiency and above rates. First, White students distinctly performed at twice the levels as the all students/ Hispanic/ economically disadvantaged students trend line. Second, English learners for the last four years, as in other districts mentioned here, performed at the same rate as students with disabilities, which is different than the state's performance where English Leaners are performing lower than students with disabilities. Here, as it is statewide, science levels overall are similar across years, with little change after the adoption of PARCC.

Las Cruces Public Schools

Las Cruces Public Schools (LCPS), a half-hour north of El Paso, Texas, had a 2015-2016 student population of 24,965, spread across 46 authorized school sites. Out of the 20,365 test takers in the 2015-2016 academic year, 20% were White, 3% were African American, 75% were Hispanic, 1.3% were Asian, and 1% were American Indian. Additionally, 66% were from an economically disadvantaged background, 13% were students with disabilities, and 10% were English learners. LCPS is the second largest school district after Albuquerque Public Schools. In reading, White and Asian students scored at the highest proficiency and above rates over the past ten years. The proficiency and above rate for the 1% American Indian students shows a distinct bump in 2012, which may also be small group variance. Nonetheless, unlike in other districts, American Indian students performed at the same levels as all students. The major concern here is the consistent drop in levels overall, with English learners achieving at the same levels as students with disabilities. LCPS show a similar trend in math, as in reading, but Asian students performed at the highest rates consistently, followed by White students. American Indians results show a similar bump in 2012, as in reading, and again in 2013. Here too, English learners display an overall drop in levels across time, performing at the same levels at students with disabilities. For science, LCPS also show a widening achievement gap between groups, as in other districts mentioned above. American Indian students, have better sustained relatively higher scores in science, compared to reading and math after 2013. Again, English learners, after 2012, performed at the lowest levels, even below students with disabilities.

Magdalena Municipal Schools

Magdalena Municipal Schools (MMS), located in the central part of the state and has one of the world's premier astronomical radio observatory called the Very Large Array in its back yard, and had a 2015-2016 student population at 381, across one elementary, middle, and high school on one site. Out of the 309 test takers in the 2015-2016 academic year, 19% were White, 30% were Hispanic, and 48% were American Indian. Additionally, 100% were from an economically disadvantaged background, 14% were students with disabilities, and 16% were English learners. MMS neighbors the Alamo Navajo Tribal Community, which, based on the researcher's previous service in Magdalena, explains the size of the Alamo Navajo/American Indian student population, as well as the large English learner population. Due to these area demographics, proficiency and above rates for American Indian students closely overlap with

English learners' rates. These rates also overlap with rates for students with disabilities. Here it is disheartening to observe that these three student groups perform distinctly lower than all other groups, and that White students, as in other districts mentioned above, performed at twice the levels as all other groups and all students. Hispanic students here performed above all students, whose results were depressed by the large population and poor results of Alamo Navajo/American Indian students. Interestingly, it is only with White students that results drop immediately after the adoption of PARCC. English learners across reading, math, and science are performing near zero percent proficient and above.

In math, MMS displays similar concerning trends and levels as in reading. Alamo Navajo/American Indian students have performed similarly to that of English learners and students with disabilities. Here, White students also have performed at twice the levels as Hispanic students, except for 2014; however, White students recovered to a greater degree from a drop immediately following the introduction of PARCC drop, whereas all other students did not. In science, MMS shows a widening gap between results for White and Hispanic students starting in 2014. Again, the common trend line along similar performance levels applies to Alamo Navajo/American Indian, students with disabilities, and English learners.

Santa Fe Public Schools

Santa Fe Public Schools (SFPS), located in northern-central New Mexico, had a 2015-2016 student population of 13,489, spread across 38 authorized school sites, including one charter school. Out of the 11,247 test takers in the 2015-2016 academic year, 18% were White, 1% were African American, 77% were Hispanic, 1.7% were Asian, and 2.1% were American Indian. Additionally, 75% were from an economically disadvantaged background, 15.6% were students with disabilities, and 20.5% were English learners. The sub-population groups show distinct trends, with all students, Hispanic, American Indian, and economically disadvantaged students following similar trends given the demographics above. Unique to SFPS, American Indian students, as 2.1% of the student population, performed above Hispanic students and economically disadvantaged students almost consistently across 10 years in reading proficiency, math, and science. Hispanic students across all three assessments, performed similarly to economically disadvantaged students. Given the similar sizes of these groups, these common results may reflect the fact that most Hispanic students are economically disadvantaged. In reading, similarly to other districts, English learners' proficiency

and above rates have consistently dropped over time, especially from 2011. English learners from 2011 to 2016 have performed at the same levels as students with disabilities. Even though African American students only make up 1% of the student population, they are performing nearer to White and Asian students than Hispanic students.

For math, Asian and White students in SFPS performed at the highest levels across time and twice as high as all students. Similarly, as above, African American students perform above all students. Proficiency and above rates for English learners have consistently dropped, reaching similar levels to students with disabilities from 2011. In science, SFPS results after 2013 show widening gaps between groups. English learners performed at the lowest levels after 2014. White students have consistently performed at around 70% reaching proficiency and above across the ten years, more than twice as high as Hispanic and economically disadvantaged students.

Zuni Public School

Zuni Public Schools (ZPS), located in the western central region of New Mexico, had a 2015-2016 student population of 1,322, spread across 8 authorized school sites. Out of the 1,170 test takers in the 2015-2016 academic year, 98% were Zuni/American Indian. Additionally, 100% were from an economically disadvantaged background, 12% were students with disabilities, and 41% were English learners. Zuni Public Schools, like Gadsden I.S.D. and somewhat like Española Public Schools, has a very mono-cultural student demographic, which is Zuni/American Indian and all from an economically disadvantaged background. Additionally, there is a very high level of English learners that speak Zuni as their home language. Because of these dimensions, Zuni/American Indian, all students, and economically disadvantaged students follow the same trend line in reading, math, and science. The comparisons here are largely between English learners, students with disabilities, and the Zuni/American Indian trend lines. English learners' proficiency and above rates in reading have dropped overall, but, in most years, are higher than levels for students with disabilities. Overall, Zuni/American Indian students have trended negatively across time. In math, all students and English learners have trended negatively across the ten years. Here, there is only a slightly lower level of achievement for English learners. All groups have converged at proficiency and above rates 7% in 2016. For science, ZPS shows a similar trend line as in math, but English learners and students with disabilities converge from 2013 onward, at a rate 10 percentage points lower than all students.

New Mexico Cross-District Comparisons on Achievement

Given the difference between focus districts in size, urban dimensions, and population characteristics, a cross-district analysis of reading (Figure 5), math (Figure 6), and science (Figure 7), is essential to enrich this analysis. Naturally, given the size of Albuquerque Public Schools, and Las Cruces Public Schools, these districts follow the same trend lines as the entire state does across all three assessments. The greatest concerns in achievement levels across all three measures are with Zuni and Magdalena, which serve large American Indian populations. However, when considering districts with large Hispanic and especially English Language Learner demographics, the concerns that are raised across districts and across the state are just as concerning. However, the case of Gadsden I.S.D. in Math as shown in Figure 6 is noteworthy, especially given what we know about its demographics with 96% Hispanic, 100% economically disadvantaged, and 30% English learners, this district for several years outperformed all districts in this case for most of 2013 thru 2016. It is the first-hand knowledge of the author that Gadsden I.S.D. during this time was in a math and bilingual professional development grant collaboration with the author's research university at the time, which reflects a level of systemic interventions of additional resources in math directed in a culturally-responsive manner. This case provides exceptional hope for other districts and the state with such strategic resources.

Cohort 4-year Graduation Rates from 2008-2015

New Mexico

Graduation rates across groups between 2008 and 2015 reflect similar trends, which may be largely due to changes in how 4-year graduation rates were being calculated (Figure 8). In fact, in 2006 the U.S. Department of Education intervened and forced the NMPED to use 4-year cohort formulas, instead of a less reliable dropout rate calculated from the end of one academic year to the beginning of the next year when discussing any matriculation perspectives. Because of the change in policy and data availability, 2008 lower levels in rates may be explained from less reliable data. Further, because of the slight drop in graduation rates across groups in 2011, this too might reflect a change in policy or calculation, but to a lesser degree. Across time, Asian students have the highest graduation rates, followed by White students. While there is an expected trend with students with disabilities having the lowest trend in graduation
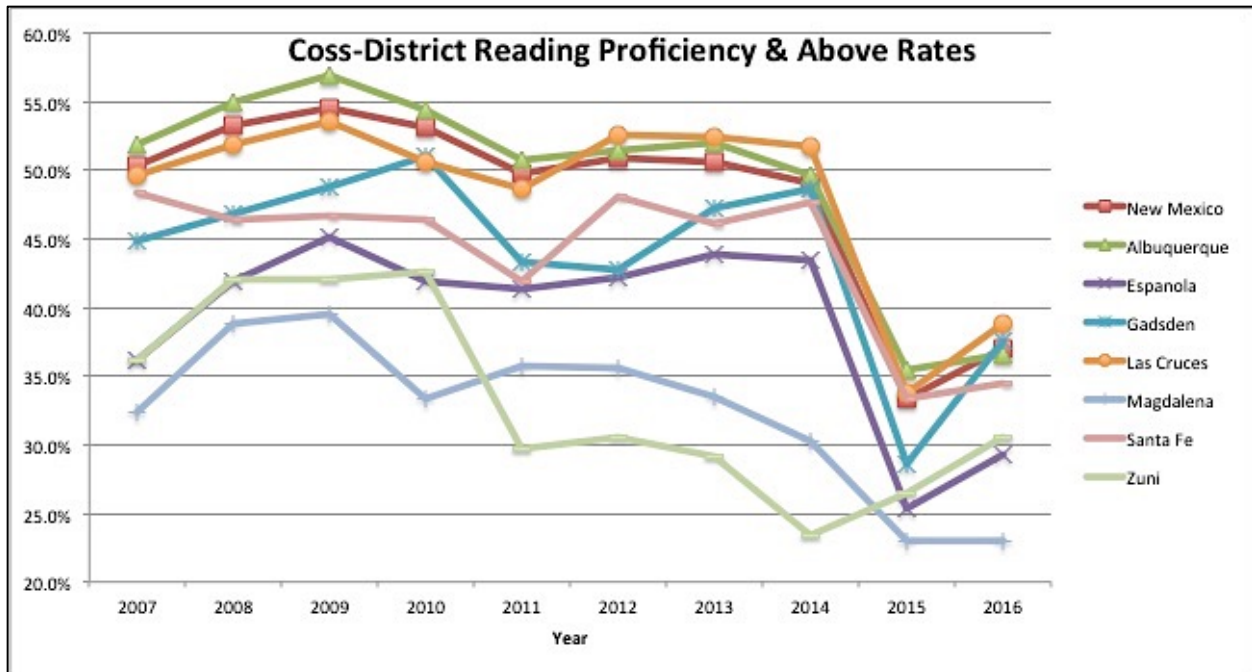
Figure 5. Cross-district reading achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*
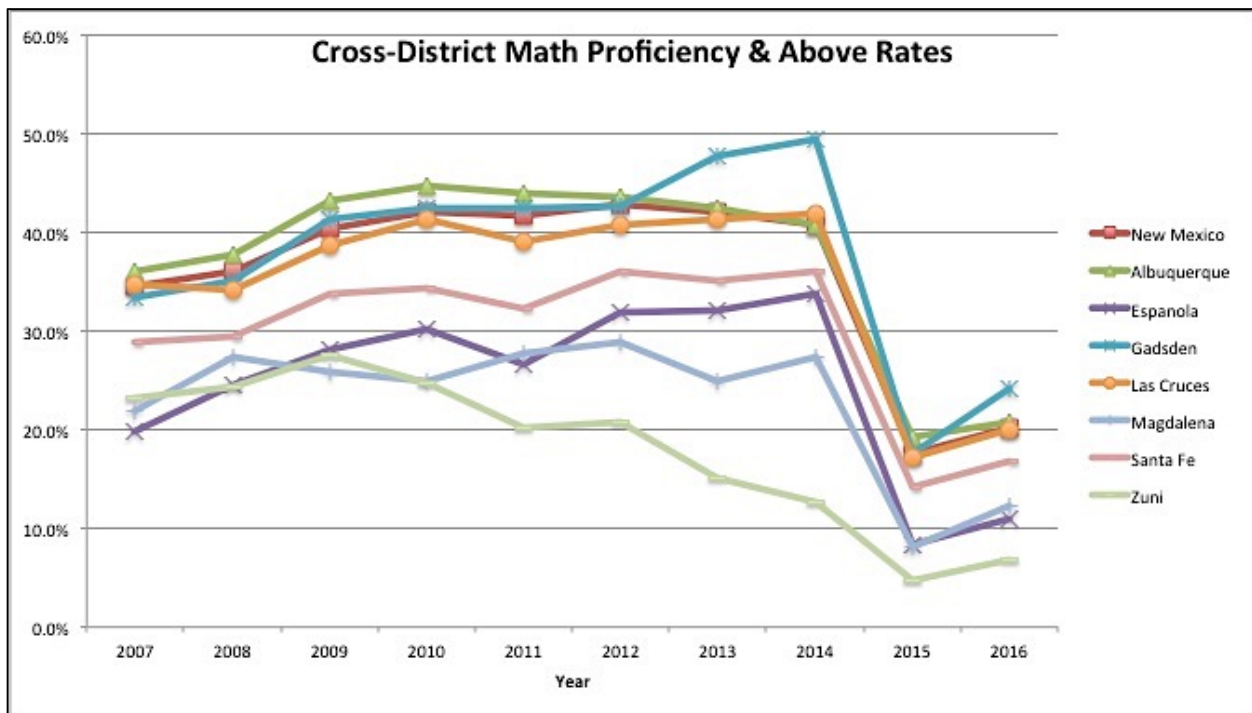

Figure 6. Cross-district math achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*
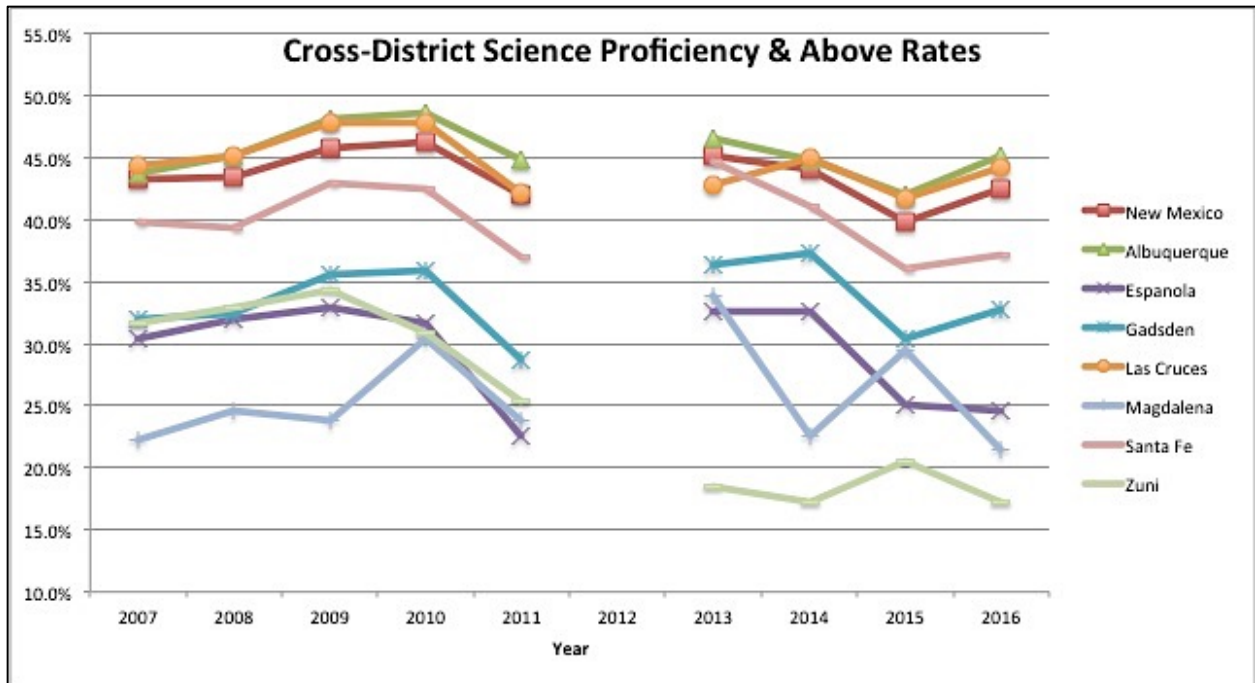
Figure 7. Cross-district science achievement by sub-group from 2007-2016. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*
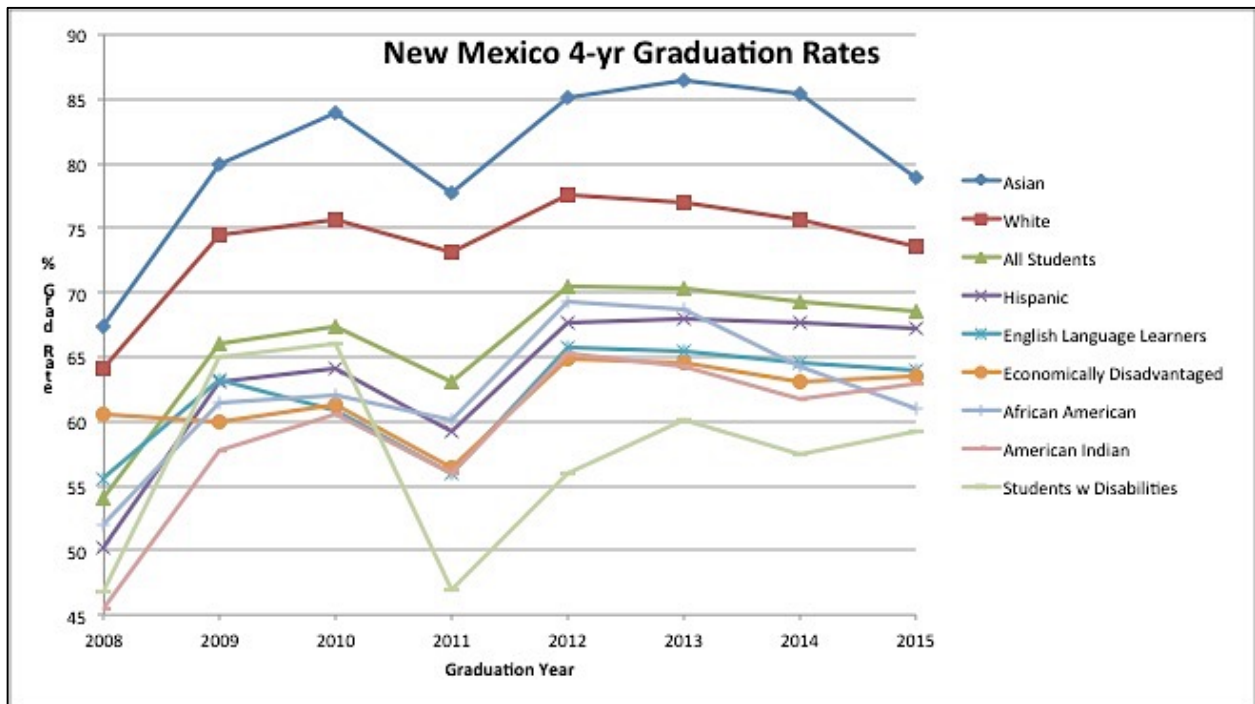

Figure 8. New Mexico 4-yr graduation rates by sub-group from 2008-2015. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

rates, which was not the case prior to the 2011 drop, English learners follow a similar trend in levels as economically disadvantaged students and American Indian students.

Albuquerque Public Schools graduation rates for Asian and White students follow state trends, but unlike the state, economically disadvantaged, American Indian, English learner, African American, and Hispanic students have lower graduation rates than compared to the state, especially for the 2014 and 2015 graduating years. Española Public Schools English learners demonstrate the highest graduation trend line, achieving the statewide level, but EPS shows distinctly lower rates for all other groups when compared to the state. For Gadsden Independent School District, one of the most mono-cultural districts among the focus districts, graduation trend lines do not distinctly vary across time, other than slightly for students with disabilities and White students, which are small sub-groups in the district. Further, while White students and the Hispanic/economically disadvantaged/English learner/all students trend line arrive to similar rates in the last two years, it is important to note that these rates are above that of the state, around 12% points above all students in New Mexico (Figure 8). Unlike the state, Las Cruces Public Schools graduation line does not drop in 2011, but does so in 2013 for almost all groups, except for White students. Asian students, for the most part, have the highest graduation rate, followed by White students. Here, students with disabilities, economically disadvantaged, English learners, American Indian, and Hispanic students graduate below the average of all students. However, African American and American Indian students have a distinct drop in rate in 2015, and African American students follow the state's trend. With Magdalena Municipal Schools, based on the availability of complete data, only three groups were able to be reported across time for graduation rates. All students' graduation trend mirrors economically disadvantaged students because MMS was 100% economically disadvantaged in the 2015-2016 academic year. The concern here is the graduation rates across time for American Indian students, which has fluctuated. Santa Fe Public Schools shows a concerning trends in graduation rates for American Indian students, who represent 2% of the district's demographic. In 2015, the graduation rate for English learners was lower than Student with Disabilities, and slightly below American Indian students. Lastly, Zuni Public Schools because of its mono-cultural demographic profile shows similar graduation rate trend lines over time. The concern here is the overall drop from 2010. English learners are consistently on par with all students.

Figure 9 compares graduation rates across districts. In most recent years Zuni P.S. had a distinct drop in rates and is below the state for the last two years. Española P.S. and Santa Fe have an overall concerning graduation rate over time, with Albuquerque showing similar concerns in rates in the last two years. Comparing Cross-District Graduation Rates (Figure 9) to Cross District Proficiency and Above levels, the two may not correlate, and each explains different concepts of success. Nonetheless, graduation rates speak to a pivotal point in the state's constitution to sufficiently educate all students. Given the wealth of diversity of the state, the state needs to improve graduation rates beyond 70%, especially for its diverse demographics (Figure 8).
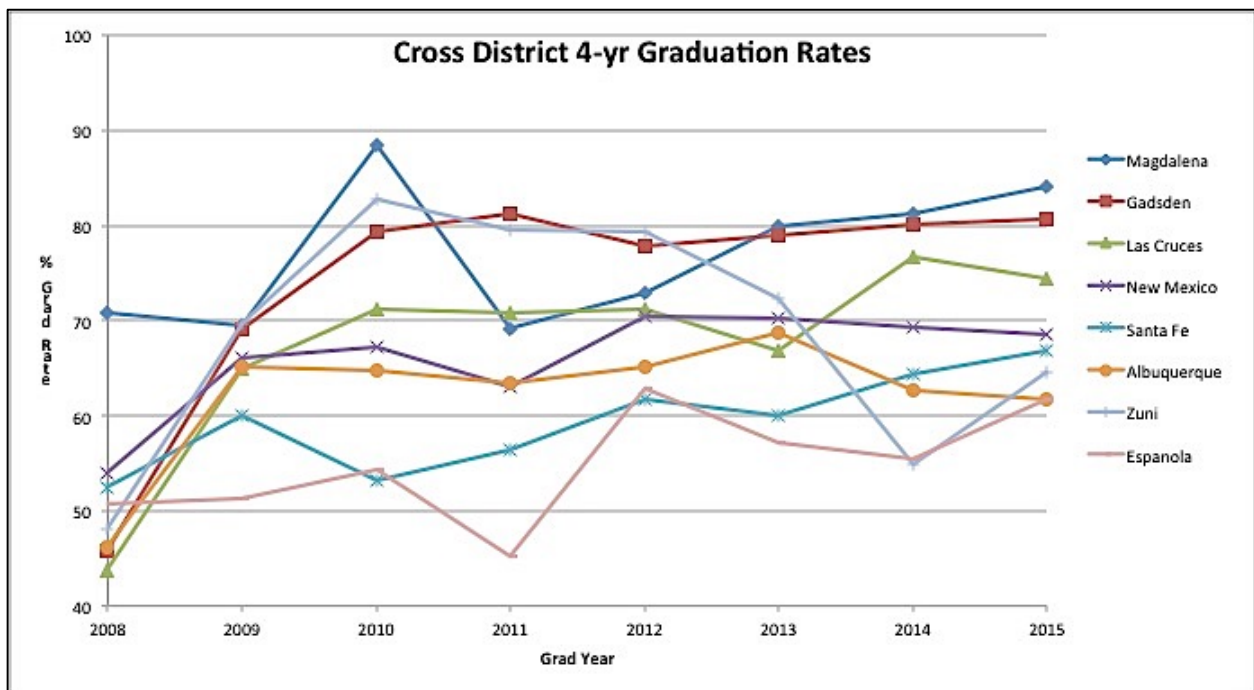

Figure 9. NM cross-district 4-yr graduation rates by sub-group from 2008-2015. *Martínez v. New Mexico (2019) Trial Declaration of Cristobal Rodriguez.*

Summary of Expert Opinions from Trial Declaration

1. In my expert opinion, and upon the analyses I conducted for this litigation, I have concluded that there are very serious concerns with the achievement of ELL and American Indian students across districts in the state of New Mexico, along with the overall concerns with achievement for economically disadvantaged,[10] special

---

[10] "Economically disadvantaged" as used in this report refers to students who qualified for free or reduced lunch as categorized by NMPED under the National School Lunch Act.

education, Hispanic, and Black students. State-wide data shows that ELLs scored proficient at the lowest rates across all subgroups of students across time.

2. With the change to the Common Core State Standards ("Common Core" or "CCSS") and the PARCC from the NMSBA, ELL students across the state perform at similar levels as students with disabilities in reading and math, and at even lower levels in science. This is problematic, especially for a state that considers itself bilingual and multicultural, and requires teachers, through its constitution, to speak both English and Spanish. These outcomes infer that there is a cultural and linguistic disconnect in the new curriculum and assessment.

3. Similarly, my analysis revealed that achievement gaps negatively affecting ELL and American Indian students have persisted over time in New Mexico. Almost consistently on all measures across time, White[11] and Asian students have performed at the highest levels. These achievement gaps and the fact that Hispanic and American Indian student populations—the two largest minority student groups in New Mexico—largely intersect with economically disadvantaged and ELL student populations speak to a greater need for systemic change.

4. Proficiency levels and achievement gaps in MMS and ZPS, both which serve large American Indian and ELL student populations, are of particular concern in all three studied assessments. In these two districts, a dismal 10% or lower of students identified as ELL or American Indian scored at proficiency or above rates across time, from 2007 through 2016, in all three assessments.

5. In addition, graduation statistics show that New Mexico fails to graduate a large percentage of underserved student groups, particularly American Indians and students with disabilities. Equally concerning, comparing graduation statistics statewide and across focus districts with low proficiency scores, particularly in 2015 and 2016 on the PARCC exam, which is based on college readiness standards, further reveals that for the students who do manage to graduate from high school, the state of New Mexico is failing to successfully graduate students who are college and career ready.

---

[11] The term "White" refers to students sometimes reported as "Caucasian."

6. In my expert opinion, these outcomes suggest that there are inequities in New Mexico's education system negatively affecting ELL, American Indian, Hispanic, Black, and special education students, as well as, students who are economically disadvantaged. Such performance levels are reflective of the state not sufficiently allocating resources to underserved student groups or not improving policies that connect to providing quality teachers and culturally and linguistically centered curriculum for ELL students in order to achieve higher proficiency rates.

7. Further, changes on achievement levels after adoption and implementation of the PARCC demonstrate that the state has contributed to lower achievement levels and to poorly preparing students to meet national standards and expectations based on Common Core expectations and goals.

8. Lastly, I encountered data limitations in my analysis. The quality and accessibility of data by all stakeholders ensures essential concepts of a transparent and accountable government, especially considering that education accountability reporting is a requirement by both state and federal education policy, through the current and previous reauthorizations of the Elementary and Secondary Education Act of 1965, the No Child Left Behind Act of 2001, and the Every Student Succeeds Act passed into law in December of 2015. Here, the accessibility and quality of data available made my analysis challenging and demonstrates that there might be serious negligence, intentional or not, that informs both decisions and policy by all stakeholders in the state.

In Conclusion

This expert report and testimony *Martínez v. New Mexico* (2019) Trial Declaration of Cristobal Rodriguez that contributed to the court's decision in *Martínez v. New Mexico* (2018), and the conjoined case *Yazzie v. New Mexico* (2018), demonstrates how the state, the New Mexico Public Education Department, failed to uphold fair educational opportunities and financially limit the success of all children, especially amidst policy and political shifts informing new curriculum standards and tests not culturally-responsive to a region rich in cultural and linguistic diversity. While unlike many other educational opportunity cases across the United States, this court uniquely did find that all students indeed have a right to an education, and the state was found liable in violating that right. However, the true power in arriving to this

powerful decision was a few parents, educational researchers, community advocates, and civil rights lawyers organizing and demonstrating the systemic failure and holding the public education system accountable. This is the true spirit of public accountability and transparency for public goods that are owed as a right through the education of our children. Moreover, this report was not one that took a high knowledge of inferential statistical analysis, but basic access to publicly available data that is required by accountability law to be made available; then in which that data was aggregated across groups and districts and state to come up with averages and means of simple descriptive statistics. The hope of this author is that similar collaborations and organizing, along with similar data analyses, takes place to hold public education systems accountable for a fair and equitable education for all children.