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# **EDUCATION INEQUITY FOR MIXTEC STUDENTS IN CALIFORNIA PUBLIC SCHOOLS: A Human Rights Approach to Educating Indigenous Students Not Recognized By the U.S. Government**

ANGELICA FÉLIX-D'EGIDIO

## **ABSTRACT**

This Comment examines the educational experiences of Indigenous Latine communities within the California public education system, utilizing existing state and federal law in conjunction with human rights framework outlined in the United Nations Declaration of the Rights of Indigenous Peoples (U.N. Declaration). While the Every Student Succeeds Act (ESSA) provides certain protections and programs for Native American students, the narrow statutory definition of “American Indian” excludes Indigenous Mexican students, hindering their access to critical educational benefits. Through a comprehensive analysis spanning historical, political, and legal contexts, this Article elucidates the systemic disparities faced by Indigenous Latine students, particularly focusing on the case study of Mixtec-speaking Indigenous Mexican students in a California school district.

Part I of this Comment outlines the human rights framework established by the U.N. Declaration, juxtaposing the educational rights afforded to Native American students with the challenges encountered by Indigenous Latine populations. Part II delves into the historical and political dynamics shaping Indigenous Latine education, exploring intersections such as immigrant status and English language proficiency. Part III presents a case study examining the educational experiences of Indigenous Mexican students within the California public school system, assessing their rights under both the U.N. Declaration and the ESSA. Finally, Part IV offers policy recommendations aimed at advancing educational equity for Indigenous Latine immigrant students.

This Comment underscores the systemic deficiencies within California’s public education system, which fails to provide culturally responsive, linguistically appropriate, and identity-affirming education to Indigenous Mexican students. By illuminating the disparities resulting from restrictive legal definitions and exclusionary policies, this Comment advocates for a transformative approach to education that recognizes and addresses the rights and needs of all Indigenous peoples, irrespective of arbitrary national borders.

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**INTRODUCTION**

By establishing minimum standards for the survival, dignity, and well-being of all Indigenous peoples, the United Nations Declaration of the Rights of Indigenous Peoples (U.N. Declaration)<sup>1</sup> presents a compelling human rights framework through which to assess and scrutinize the education provided to Indigenous K-12 students in the California public education system. Native American students in California public schools have access to exclusive education programs and protections under the Every Student Succeeds Act (ESSA), which parallel—to a limited extent—the rights of Indigenous peoples promulgated in the U.N. Declaration. However, the statutory definition of American Indian precludes Indigenous communities that lack recognition by the U.S. government from eligibility for Indian Education Programs under the

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<sup>1</sup> G.A. Res. 61/295, annex, U.N. Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007), [https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP\\_E\\_web.pdf](https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf) [<https://perma.cc/HXE5-T4DN>] [hereinafter U.N. Declaration].

ESSA.<sup>2</sup> Consequently, in California public schools, Indigenous children from south of the imposed border are unable to access the educational benefits of programs and services made available to Native American students under the ESSA, thereby disparaging their right of self-determination.<sup>3</sup> However, the availability of educational programs and services designed to support the academic achievement of Native American students does not, by any means, denote that they, too, are not marginalized by the California public education system. Instead, evaluating the educational rights and protections of Native Americans in contrast to Indigenous Latine populations can invoke a greater understanding of the means by which multifaceted mechanisms of discrimination within the education system operate to exclude communities with shared histories of oppression. By illuminating their commonalities, Native American and Indigenous Latine communities can begin to converge around a collective goal founded in the well-being and survival of their communities: ensuring their children receive access to a culturally responsive and linguistically appropriate education.

Ergo, this Comment will evaluate the educational experiences of Indigenous Latine communities in the California public education system through the human rights framework set forth in the U.N. Declaration. Part I describes the human rights framework of the U.N. Declaration and highlights the education rights and protections afforded to Native American students from state and federally-recognized tribes. Part II overviews the historical and political context of Indigenous Latine student education in the California public education system in addition to examining their experiences at various intersections, including immigrant status and English language proficiency. Part III offers a case study of Mixtec-speaking Indigenous Mexican students in a California public school district to assess their educational experiences under the human rights framework of the U.N. Declaration as well as the ESSA. Part IV explores several policy recommendations that can serve to advance educational equity for Indigenous Latine immigrant students.

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<sup>2</sup> See Every Student Succeeds Act, 20 U.S.C. § 7491(3). The ESSA, which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), is codified at 20 U.S.C. §§ 6301–7981.

<sup>3</sup> See U.N. Declaration, *supra* note 1, at 8.

## I. A HUMAN RIGHTS FRAMEWORK TO INDIGENOUS STUDENT EDUCATION AND CORRESPONDING RIGHTS FOR STUDENTS FROM FEDERALLY RECOGNIZED TRIBES IN CALIFORNIA PUBLIC SCHOOLS

### A. *Human Rights Approaches to Indigenous Student Education*

The U.N. Declaration offers a compelling human rights framework from which to examine and evaluate the public education of Indigenous K-12 students in the State of California. In 2007, the United Nations General Assembly approved the U.N. Declaration, thereby establishing a “universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world . . . .”<sup>4</sup> Central to the minimum standards set forth in the U.N. Declaration is the right of Indigenous peoples to be free from discrimination,<sup>5</sup> which requires States to take effective measures, in consultation with Indigenous peoples, to counter prejudice, eradicate discrimination, and promote tolerance and understanding.<sup>6</sup>

While not legally binding, the U.N. Declaration has served a critical role in uplifting the significance of Indigenous peoples’ right to self-determination. In particular, Article 3 asserts the right of Indigenous peoples to self-determination to “freely determine their political status” and pursue “economic, social and cultural development.”<sup>7</sup> Moreover, Article 9 of the U.N. Declaration confers the right to belong to an Indigenous community, in accordance with the respective traditions and customs of each nation, to Indigenous peoples.<sup>8</sup> In addition to acknowledging a right to self-determination, the U.N. Declaration seeks to affirm the preservation and cultivation of Indigenous peoples’ cultural values and ethnic identities. Notably, the U.N. Declaration upholds the rights of Indigenous peoples to not only “maintain, control, protect and develop” their cultural integrity, heritage, and traditional knowledge,<sup>9</sup>

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<sup>4</sup> *United Nations Declaration On The Rights Of Indigenous Peoples*, U.N. DEP’T OF ECON. & SOC. AFFS, <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples> [<https://perma.cc/FA9V-SB79>].

<sup>5</sup> U.N. Declaration, *supra* note 1, at 3.

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.* at 11.

<sup>9</sup> *Id.* at 22.

but to also reject assimilation and integration.<sup>10</sup> Furthermore, essential to ensuring the cultural autonomy of Indigenous peoples is the right to exercise control over the education of children from their communities. To that end, Article 13 of the U.N. Declaration recognizes the right of Indigenous peoples to direct the transmission of cultural knowledge to future generations, including their traditions, languages, and writing systems.<sup>11</sup> Relatedly, Articles 14 and 15 of the U.N. Declaration attempt to instate the right of Indigenous peoples to govern the education of their children, stating:

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.<sup>12</sup>

To enforce the aforementioned rights, the U.N. Declaration mandates that Indigenous peoples be enabled to maintain their own institutions of governance and participate in decision-making processes on matters impacting their communities through representatives of choice.<sup>13</sup>

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<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.* at 12–13.

<sup>12</sup> *Id.* at 13–14 (emphasis added).

<sup>13</sup> *Id.* at 8.

**B. *The Education Rights of Students from State and Federally-Recognized Tribes in California Public Schools***

While the United States (U.S.) has largely failed to support the U.N. Declaration,<sup>14</sup> students from state or federally-recognized tribes are nonetheless entitled to an array of educational rights and programs that are granted on the basis of tribal membership. According to the U.S. Department of Justice, “an Indian is a person who is of some degree Indian blood and is recognized as an Indian by a Tribe and/or the United States,” although eligibility criteria for programs and services vary by government agency.<sup>15</sup> In the context of federal education policy, the Every Student Succeeds Act (ESSA) restricts the definition of American Indian to any student who is: (1) an enrolled member or descendant of a member of a state or federally-recognized tribe; (2) considered to be Indian by the Secretary of the Interior; (3) Alaskan Native; or (4) a member of an organized tribe that received a grant under the Indian Education Act of 1988, effective as of October 19, 1994.<sup>16</sup> Under the ESSA, local educational agencies (LEAs) that serve Native American student populations may receive Title VI (Part A, Subpart 1) Indian Education Formula Grants, and LEAs that meet specified criteria are required to initiate and engage in tribal consultation.<sup>17</sup>

Firstly, Title VI of the ESSA establishes the Indian Education Formula Grants Program, which aims to help American Indian students meet state academic standards by addressing their unique language-related, cultural, and educational needs.<sup>18</sup> Pursuant to Title VI of the

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<sup>14</sup> See Aliza Gail Organick, *Listening to Indigenous Voices: What the UN Declaration on the Rights of Indigenous Peoples Means for U.S. Tribes*, 16 U.C. DAVIS J. INT’L L. & POL’Y 171, 173 (2009).

<sup>15</sup> *Frequently Asked Questions About Native Americans*, U.S. DEP’T OF JUST. (Aug. 24, 2023), <https://www.justice.gov/otj/about-native-americans> [<https://perma.cc/SQJ8-VYEQ>]. I recognize the problematic nature of the history of the term “American Indian” and “Native American” and have used these terms solely to maintain consistency with the language used in federal and state law, as well as to delineate state- or federally-recognized Native Americans from Indigenous peoples who are not recognized by the U.S. government. I will use the term “American Indian” and “Native American” to refer to members of state- or federally-recognized tribes and “Indigenous” to refer to any Indigenous group or individual.

<sup>16</sup> Every Student Succeeds Act, 20 U.S.C. § 7491(3).

<sup>17</sup> Every Student Succeeds Act, 20 U.S.C. §§ 7421–7429.

<sup>18</sup> Every Student Succeeds Act, 20 U.S.C. § 7421; See also U.S. DEP’T OF EDUC., OFF. OF PLAN., EVALUATION & POL’Y DEV., POL’Y AND PROGRAM STUD. SERV., IMPLEMENTATION OF THE TITLE VI INDIAN EDUCATION FORMULA GRANTS PROGRAM, VOLUME 1: FINAL REPORT 1 (2019), <https://www2.ed.gov/rschstat/eval/title-vi/title-vi-report.pdf> [<https://perma.cc/MLY2-LN2P>] [hereinafter Title VI Implementation].



ESSA, LEAs that provide free public education to the threshold number of Native American students—namely, a minimum of ten American Indian students or not less than 25 percent of the total enrollment—can opt to apply for formula grants under the Indian Education Program.<sup>19</sup> In applying for Title VI Indian Education Formula Grants, LEAs must acquire forms, completed by the parents or guardians of each eligible student, that verify the child’s status as a Native American.<sup>20</sup> Upon approval for funding under the Indian Education Program, LEAs are required to expend Title VI funds on permissible activities and services in compliance with the ESSA to bolster the educational outcomes of Native American students.<sup>21</sup> Activities and services that comply with the Title VI Indian Education Program include cultural enrichment such as field trips and special events; student leadership and advocacy; parent involvement; Native language instruction; culturally responsive academic support; mentorship; and culturally inclusive curriculum consistent with state academic standards.<sup>22</sup> Title VI grantees must also deliver authorized activities and services using culturally responsive practices.<sup>23</sup> Accordingly, Title VI-funded teaching and learning services must not only supplement and enrich the regular school program but also employ knowledgeable school staff with expertise in providing culturally appropriate and effective instruction.<sup>24</sup>

Additionally, the Title VI Indian Education Grant Program also allocates funding to LEAs to supplement the regular school program with activities and services that advance academic achievement goals for Native American students that might otherwise be unavailable.<sup>25</sup> Eligibility for Title VI Indian Education grants is only for those students who qualify as “American Indian” under the restricted definition stated in the ESSA.<sup>26</sup> According to the U.S. Department of Education, LEAs are permitted to use Title VI grants to fund the following

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<sup>19</sup> Every Student Succeeds Act, 20 U.S.C. § 7422(b)(1).

<sup>20</sup> See Every Student Succeeds Act, 20 U.S.C. § 7427(a).

<sup>21</sup> Every Student Succeeds Act, 20 U.S.C. § 7425(a).

<sup>22</sup> See Every Student Succeeds Act, 20 U.S.C. § 7425(b); Title VI Implementation, *supra* note 18, at 7–8.

<sup>23</sup> See Every Student Succeeds Act, 20 U.S.C. § 7402; Title VI Implementation, *supra* note 18, at 1.

<sup>24</sup> See 20 U.S.C. § 7402.

<sup>25</sup> See Every Student Succeeds Act, 20 U.S.C. § 7425(a)(3); Title VI Implementation, *supra* note 18, at 8.

<sup>26</sup> Every Student Succeeds Act, 20 U.S.C. § 7491(3).

activities: (1) culturally related activities that support the LEA application for funding; (2) incorporation of curricular content, in compliance with state academic standards, that is specific to Native Americans; (3) multicultural affairs or events; (4) youth leadership; and (5) implementation of culturally responsive teaching and learning strategies into the district educational program.<sup>27</sup> Permissible services under the Title VI Indian Education Grant Program include: (1) Native American studies; (2) Native language instruction; (3) tribal history; (4) storytelling; (5) integrated educational services to support the needs of Native American students and their families; and (6) family literacy services.<sup>28</sup>

Furthermore, the U.S. Office of Indian Education (OIE) established the Native American Language Grant (NAL@ED) to “protect, and promote the rights and freedom of Native Americans . . . to practice, maintain, and revitalize their languages.”<sup>29</sup> Authorized by the ESSA, NAL@ED is a discretionary grant program that offers funding to LEAs that use Native American languages as the primary language of academic instruction.<sup>30</sup> In order to receive NAL@ED grants, applicant LEAs must propose to create, maintain, expand, or improve a school-based Native American language instructional program that: (1) supports Native American language education for students; and (2) provides educators and administrators with professional development to strengthen the linguistic and academic goals of the LEA.<sup>31</sup> The OIE also encourages applicant LEAs to cooperate with tribal communities in the development and implementation of NAL@ED programs.<sup>32</sup>

Additionally, the Elementary and Secondary Education Act (ESEA), as reauthorized by the ESSA, requires “affected” LEAs to participate in tribal consultation.<sup>33</sup> Tribal consultation is a formal pro-

<sup>27</sup> Every Student Succeeds Act, 20 U.S.C. § 7544(a)(3).

<sup>28</sup> Every Student Succeeds Act, 20 U.S.C. §§ 7425(b), 7544(a)(3).

<sup>29</sup> *Native American Language Grant (NAL@ED)*, U.S. DEP’T OF EDUC., OFF. OF ELEMENTARY & SECONDARY EDUC. (Feb. 23, 2024), <https://oese.ed.gov/offices/office-of-indian-education/native-american-language-program> [<https://perma.cc/R3AF-9V22>].

<sup>30</sup> See Every Student Succeeds Act, 20 U.S.C. § 7453; see also *Native American Language Grant (NAL@ED)*, *supra* note 29.

<sup>31</sup> See Every Student Succeeds Act, 20 U.S.C. § 7453(b), (e); *Native American Language Grant (NAL@ED)*, *supra* note 29.

<sup>32</sup> See *Native American Language Grant (NAL@ED)*, *supra* note 29.

<sup>33</sup> Every Student Succeeds Act, 20 U.S.C. § 7918(a); see also CAL. DEP’T OF EDUC., TRIBAL CONSULTATION TOOLKIT 2 (July 2017), [www.cde.ca.gov/sp/ai/tc/documents/tribalconsultationtoolkit.pdf](http://www.cde.ca.gov/sp/ai/tc/documents/tribalconsultationtoolkit.pdf) [<https://perma.cc/99NF-CLHC>] [hereinafter Tribal Consultation Toolkit].

cess between tribal representatives and affected LEAs that serve Native American students.<sup>34</sup> To be designated as “affected” for the purposes of tribal consultation, LEAs must either have a total enrollment of over 50 percent Native American students or receive more than \$40,000 in Title VI Indian Education Grant Program funding.<sup>35</sup> Pursuant to the ESEA and ESSA, affected LEAs must initiate “timely and meaningful consultation [with Indian Tribes] on issues affecting” Native American students prior to the submission of state education plans or Title I-VI applications—which include programs pertaining to the education of migratory children English Learners, low-income students, and Native American students, amongst other areas.<sup>36</sup> Correspondingly, the ESEA and ESSA place the responsibility of organizing and initiating tribal consultation on affected LEAs, which must consult tribal officials chosen to serve as representatives by Native American communities, in addition to supporting the involvement of tribal parents, local parent advisory committees, and other tribal leaders.<sup>37</sup> Furthermore, the process of tribal consultation should be cyclical, encompassing initial consultation, proceeding agreements, progress monitoring, reporting, and continual evaluation.<sup>38</sup> Through tribal consultation, LEAs can effectively foster collaboration with tribal governments to advance the academic progress and achievement of Native American students. Thus, tribal consultation not only recognizes the sovereignty of tribal governments over the education of their children but also aims to appropriately address the

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<sup>34</sup> See Tribal Consultation Toolkit, *supra* note 33, at 1.

<sup>35</sup> See Every Student Succeeds Act, 20 U.S.C. § 7918(c)(1).

<sup>36</sup> 20 U.S.C. § 7918(c)(1); see Tribal Consultation Toolkit, *supra* note 33, at 2–3 (explaining that in addition to requiring LEAs to participate in tribal consultation prior to submitting applications for Title VI Indian Education Grant Program, affected LEAs must also engage in tribal consultation before the submission of applications for any of the following programs: Title I, Part A (Improving Basic Programs Operated by State and Local Education Agencies); Title I, Part C (Education of Migratory Children); Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk); Title II, Part A (Supporting Effective Instruction); Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act); Title IV, Part A (Student Support and Academic Enrichment (SSAE) Grants); Title IV, Part B (21st Century Community Learning Centers [21st CCLC]); and Title V, Part B, Subpart 2 (Rural and Low-Income School Program)).

<sup>37</sup> See Tribal Consultation Toolkit, *supra* note 33, at 3.

<sup>38</sup> See *id.* at 5.

needs of Native American students by uplifting tribal voices in decision-making on education-related matters.<sup>39</sup>

Although the U.S. government has yet to endorse the U.N. Declaration,<sup>40</sup> Native American students in California public schools retain access to unique — albeit inadequate and highly flawed — education programs under the ESSA that parallel the rights of Indigenous peoples set forth in the U.N. Declaration. In particular, Title VI and VII Indian Education Grant Programs may help uphold the right of Native Americans to maintain, control, and transmit traditional knowledge by funding the implementation of culturally inclusive curriculum and tribal storytelling activities at LEAs. Moreover, Title VI and VII grants can furnish funds for culturally appropriate events and field trips that reinforce the right of Native Americans to revitalize and engage with their traditions and customs. Additionally, the Title VI and VII Indian Education Grant Programs may also expand culturally responsive teaching and Native language instruction, which will increase access for Native American public school students to an education in their culture and language, as expounded in the U.N. Declaration. Furthermore, integrated educational services funded through Title VI and VII grants can improve academic outcomes for Native American students by supporting their non-academic needs, such as through multicultural events and youth leadership programs, which may further the right of Native American students to all levels and forms of State education. Additionally, consistent with the U.N. Declaration, tribal consultation requirements under ESSA empower tribal governments to direct the education of their children and participate in decision-making on relevant matters through their selected representatives.

Lamentably, the statutory definition of American Indian excludes Indigenous communities that are not recognized by the U.S. government from eligibility for Indian Education Programs under the ESSA, thereby disregarding the right to self-determination for *all* Indigenous peoples. Consequently, countless Indigenous communities from south of the imposed U.S.-Mexico border cannot access the Title VI and VII Indian Education Grant Programs, tribal consultation requirements, and other benefits offered to Native American students under the ESSA. In turn,

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<sup>39</sup> See *id.* at 2.

<sup>40</sup> See *Indigenous Peoples*, U.S. AGENCY INT’L DEV., <https://www.usaid.gov/indigenous-peoples-0> [<https://perma.cc/4TH2-35XZ>].

Indigenous children from Mexico have suffered both culturally and academically in the American education system. However, the availability of educational programs and services designed to support the academic achievement of Native American students does not, by any means, connote that they are well-served by the education system. Instead, evaluating the rights and protections of Native Americans in contrast to Indigenous Latine populations can foster a greater understanding of the means by which multifaceted mechanisms of discrimination within the education system operate to exclude communities with shared histories of oppression. By elucidating their commonalities, Native American and Indigenous Latino communities can begin to coalesce around a collective intention rooted in the well-being and survival of their communities: ensuring their children receive a culturally responsive and linguistically appropriate education.

## **II. EDUCATIONAL INEQUITIES FACED BY NON-FEDERALLY RECOGNIZED INDIGENOUS STUDENTS ATTENDING CALIFORNIA PUBLIC SCHOOLS**

Due to the restrictive definitions of “American Indian” in federal and state education law, California public school students from Indigenous communities in Mexico are prevented from accessing the numerous benefits available to Native American children under the ESSA. Prior to the imposition of borders in North America through European colonization, Native Americans moved freely through the area formerly known as Turtle Island, now delineated as the U.S., Canada, and Mexico.<sup>41</sup> The U.S. enacted Section 289 of the Immigration and Nationality Act (INA) to protect the rights of certain Native Americans to cross colonial borders.<sup>42</sup> However, INA § 289 infringes on tribal sovereignty and self-determination by solely extending the right of unrestricted migration to Native Americans born in Canada who possess a minimum of 50 percent

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<sup>41</sup> See Rebekah Ross, Comment, *Let Indians Decide: How Restricting Border Passage by Blood Quantum Infringes on Tribal Sovereignty*, 96 WASH. L. REV. 311, 313 (2021).

<sup>42</sup> See Chapter 5 – Other Special Laws, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Apr. 1, 2024), <https://www.uscis.gov/policy-manual/volume-7-part-o-chapter-5> [<https://perma.cc/4ZN2-JRS5>] [hereinafter *Other Special Laws Under INA Section 289*] (“Section 289 of the Immigration and Nationality Act (INA) provides that American Indians who are born in Canada cannot be denied admission into the United States if they possess at least 50 percent American Indian blood.”).

Indian blood.<sup>43</sup> Both Mexican-born Native Americans, and those with less than 50 percent Indian blood, are denied the right to exercise free passage across borders of colonization under INA § 289—thereby perpetuating racist colonial conceptions of “American Indian.”<sup>44</sup>

Statutory separation by blood quantum not only foists U.S. colonizer culture onto Native American constructions of community and belonging, but also exercises colonial authority over the right of sovereign governments to define tribal citizenship.<sup>45</sup> Blood quantum is also utilized to determine eligibility for federal programs and services made available on the basis of tribal citizenship, thereby excluding Indigenous Mexican communities<sup>46</sup> residing in the U.S. who exist outside colonial standards of “American Indian.”<sup>47</sup> Furthermore, no treaties or statutes protect the right of Mexican-born Native Americans to pass, without restraint, through the U.S.-Mexico Border.<sup>48</sup> Yet it was only with the signing of the Treaty of Guadalupe-Hidalgo in 1848 and the Gadsden Purchase Treaty in 1854, in which Mexico ceded territory to the U.S., that the present-day southern U.S. border was established.<sup>49</sup> Prior to the Treaty of Guadalupe-Hidalgo, Mexican Indigenous peoples could move freely throughout the surrendered territories—a right that was abolished through the treaty, which lacked provisions allowing Native Americans to cross the U.S.-Mexico border like those established by the Jay Treaty

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<sup>43</sup> Cf. Immigration and Nationality Act § 289, 8 U.S.C. 1359.

<sup>44</sup> See Ross, *supra* note 41, at 314.

<sup>45</sup> See *id.* at 318; *Other Special Laws Under INA Section 289, supra* note 42 (“If a noncitizen with at least 50 percent American Indian blood lives outside the United States and seeks to enter the United States, he or she must tell the Customs and Border Protection officer that he or she is an American Indian born in Canada and provide documentation to support that claim.”).

<sup>46</sup> For the purposes of this Comment: (1) “Indigenous Mexican” refers to individuals of Mexican/Mexican-American descent who speak Mesoamerican languages, with a primary focus on Mixteco speakers; (2) “Latine” refers to any individual of Hispanic or Latine descent, including Mexican, non-Mexican, Indigenous, and non-Indigenous populations; (3) “Mexican” students refers to any pupil of Mexican/Mexican-American descent, including both Indigenous and non-Indigenous Mexican populations; (4) “Latine and Mexican” refers to both aforementioned categories, in accordance with their respective definitions. While these terms are not used interchangeably in this Comment, the analysis includes the educational experiences of Latine, Mexican, and Indigenous Mexican students, immigrant students from Latin American, and Spanish-speaking and Mixtec-speaking English learners not only because of the lack of research on Indigenous Mexican students and Mixtec-speaking students, but also due to their experiences being inextricably linked and highly reflective of one another.

<sup>47</sup> See Ross, *supra* note 41, at 318–19.

<sup>48</sup> See *id.* at 330.

<sup>49</sup> See *id.*

governing the U.S.-Canada border.<sup>50</sup> As a result, the right of free passage for Indigenous peoples in Mexico was parceled out disparately amongst “citizens of the same tribe who happen to be born on different sides of this ‘imaginary line.’”<sup>51</sup>

**A. *The Historic Anti-Indian Segregation of Latine, Mexican, and Indigenous Mexican Students in California Public Schools***

Effects of the narrow definition of “American Indian” as shaped by the U.S. government—together with the exclusion of Indigenous Mexican communities from protections and programs afforded to state or federally-recognized Native Americans—have had implications for Indigenous Mexican students attending California public schools. In particular, Indigenous Mexican students are amongst the most under-represented and underserved in the California public education system, experiencing severe gaps in academic achievement, barriers to education access, and systemic discrimination.<sup>52</sup> A significant factor contributing to the pervasive marginalization of Indigenous Mexican students is the historic segregation of Mexican populations in California public schools.

Throughout the early 20th century, California school districts began to selectively apply the status of “American Indian” to the growing population of Mexican students to orchestrate their segregation in public schools,<sup>53</sup> which engendered harms paralleling those of Native American children in California schools. By way of illustration, a 1931 survey revealed that 80 percent of California school districts segregated Mexican students, citing intellectual inferiority, training these children for “appropriate” jobs, and language deficiencies.<sup>54</sup> That same year, California Assemblymember George Bliss introduced a bill to authorize the segregation of Mexican students in public schools throughout the state by classifying them all as “Indian children.”<sup>55</sup> In his former

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<sup>50</sup> *See id.*

<sup>51</sup> *Id.* at 331.

<sup>52</sup> *See* Elizabeth Montano, *Mixteco Transnational Student Experience: Self-Efficacy and Academic Aspirations 2–5* (May 11, 2022) (Ph.D. dissertation, California Lutheran University) (ProQuest), [www.proquest.com/openview/94b608e7fb28a1fdef847cce568998db](http://www.proquest.com/openview/94b608e7fb28a1fdef847cce568998db) [<https://perma.cc/E29V-M8PX>].

<sup>53</sup> *See Segregation in California: Separate Schools for Mexicans and Whites*, PBS SoCAL: LEARNING MEDIA (2014), [ca.pbslearningmedia.org/resource/fyr14.socst.us.ca-seg/segregation-in-california-separate-schools-for-mexicans-and-whites](http://ca.pbslearningmedia.org/resource/fyr14.socst.us.ca-seg/segregation-in-california-separate-schools-for-mexicans-and-whites) [<https://perma.cc/V4MP-HN6T>].

<sup>54</sup> *See* Luz E. Herrera & Pilar Margarita Hernández Escontrías, *The Network for Justice: Pursuing A Latinx Civil Rights Agenda*, 21 HARV. LATINX L. REV. 165, 193 (2018).

<sup>55</sup> *See* Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino*

role as a Carpinteria School Board Member, Assemblymember Bliss similarly wielded the classification of “Indian children” to enforce segregation by designating Aliso Elementary School as an “Indian School” and restricting its enrollment to Mexican students.<sup>56</sup> However, given that the California Education Code, as promulgated in 1931, did not permit the segregation of Mexican students, parents successfully litigated against two California school districts that segregated Spanish-speaking Mexican students, all of whom had been categorized as “inferior.”<sup>57</sup> In *Alvarez v. Lemon Grove School District*,<sup>58</sup> the parents of Mexican students halted the construction of an entirely separate and fully segregated school for their children by the local school board.<sup>59</sup> Shortly thereafter, the bill by Assemblymember Bliss failed, but the segregation of Mexican students in California public schools nonetheless persisted.<sup>60</sup>

Over a decade later, parents of Mexican students challenged a local school district that siphoned their children into a “Mexican school,” Hoover Elementary, and separated them from their white peers.<sup>61</sup> The U.S. Ninth Circuit Court of Appeals in *Mendez v. Westminster School District of Orange County* deemed the segregation of Mexican students by the local school district unconstitutional, and ordered the cessation of further discriminatory district practices against Mexican children.<sup>62</sup> Ergo, while the federal government’s conceptions of Native Americans view Mexican populations as diametrically opposed, their communities are inextricably linked by a history of oppression at the hands of the California public education system, which has borne lasting consequences for the educational attainment of these children.

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*Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 48–49 (1995); FRANCISCO E. BALDERRAMA, IN DEFENSE OF LA RAZA: THE LOS ANGELES MEXICAN CONSULATE AND THE MEXICAN COMMUNITY, 1929 TO 1936, at 61–67 (1982); E. Michael Madrid, *The Unheralded History of the Lemon Grove Desegregation Case*, 15 MULTICULTURAL EDUC. 15, 16 (2008).

<sup>56</sup> See BALDERRAMA, *supra* note 55, at 61–62.

<sup>57</sup> See Herrera & Escontrías, *supra* note 54, at 193–94.

<sup>58</sup> No. 66625 (Cal. Sup. Ct. San Diego County filed Apr. 17, 1931).

<sup>59</sup> See Herrera & Escontrías, *supra* note 54, at 193.

<sup>60</sup> See Johnson, *supra* note 55, at 48–49; BALDERRAMA, *supra* note 55, at 61–67; Madrid, *supra* note 55, at 18.

<sup>61</sup> See *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff’d*, 161 F.2d 774 (9th Cir. 1947); Sarah Mosqueda, *Former Students From Westminster Segregated ‘Mexican School’ Remember the Past*, L.A. TIMES: DAILY PILOT (July 27, 2023, 4:15 PM), <https://www.latimes.com/socal/daily-pilot/entertainment/story/2023-07-27/former-students-at-westminsters-segregated-mexican-school-remember-the-past> [<https://perma.cc/LH6P-RY3N>].

<sup>62</sup> *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774, 781 (9th Cir. 1947).



Neither *Alvarez* nor *Mendez* meaningfully resolved the long-standing issue of segregation for Mexican and Latine students in California public schools.<sup>63</sup> As of 2023, fifty-six (56 percent) of pupils enrolled in California public schools are Latine.<sup>64</sup> Yet California public schools are the most segregative of any state for Latine students, with 58 percent attending “intensely segregated schools” and only 15.4 percent of Latine students being exposed to white students in school contexts.<sup>65</sup> While the existing segregation of Latine students largely traces back to California’s Anti-Indian education policies of the early 20th century, both federal and state law nonetheless exclude Indigenous Mexican students from eligibility for educational programs aimed at rectifying past wrongs against Native American pupils in California public schools. Thus, Latine students—especially Indigenous Mexican children—are subjected to the vestiges of anti-Indian racism in California public education while simultaneously receiving none of the already insufficient benefits offered to Native American children to remedy the lasting effects of segregation.

**B. *Historic and Modern Barriers to Language Access for Latine, Mexican, and Indigenous Mexican Students in California Public Schools***

Given the substantial portion of English learners within their community, ensuring access to linguistically appropriate education for Indigenous Mexican students in California public schools is further complicated by barriers to meeting their unique language access needs. In California, an English learner is defined as a student: (1) whose first or primary language is a language other than English, based on a Home Language Survey; and (2) who, based on results of the state-approved K-12 language assessment, demonstrates the need for support in learning the English language skills of listening, comprehension, speaking, reading, and writing necessary to succeed and participate in the school’s regular instructional program.<sup>66</sup>

<sup>63</sup> See Herrera & Escontrías, *supra* note 54, at 193–94.

<sup>64</sup> See *Fingertip Facts on Education in California*, CAL. DEP’T OF EDUC. (Mar. 15, 2023), <https://www.cde.ca.gov/ds/ad/ceffingertipfacts.asp> [<https://perma.cc/2R4Z-5AHP>].

<sup>65</sup> See ERICA FRANKENBERG, JONGYEON EE, JENNIFER B. AYSCUE & GARY ORFIELD, *HARMING OUR COMMON FUTURE: AMERICA’S SEGREGATED SCHOOLS 65 YEARS AFTER Brown 5* (2019), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf> [<https://perma.cc/3USA-UU7F>]; Herrera & Escontrías, *supra* note 54, at 194.

<sup>66</sup> See CAL. DEP’T OF EDUC., *ENGLISH LEARNER, IMMIGRANT, AND MIGRATORY STUDENTS*:

California educates more English learners than any other state in the U.S.<sup>67</sup> Of the 1,127,527 English learners in California in 2021, 924,947 are Spanish-speaking while an additional 4,798 primarily speak Mixteco, an Indigenous Mexican language, which ranked 13 out of the 20 most common languages used by English Learners.<sup>68</sup> However, for the purposes of this Comment, the use of Mesoamerican languages will serve as the signifier of Indigenous Mexican students. Thus, the distinctive racial identity and variable immigration status of Indigenous Mexican students, together with the lack of English proficiency, relegates them to an intersectional position that has proved largely underserved by the California public education system.

Since the early 20th century, Limited English Proficient (LEP) Indigenous Mexican students have existed within the California public education system.<sup>69</sup> Starting in the late 1960s, education reform efforts in the U.S. and California spurred the implementation of bilingual education in public schools, which arose from “the need for alternatives to the sink-or-swim policy of the 1940s and 1950s.”<sup>70</sup> Accordingly, the California Legislature passed Senate Bill (SB) 53 in 1967, which ended a century-old state education policy mandating the use of English-only instruction in public schools—thereby permitting bilingual education in California public schools.<sup>71</sup> One year later, Title VII of the Elementary and Secondary Education Act, also known as the Bilingual Education Act of 1968, was passed as the first federal legislation to recognize the needs of English learners, which allocated funding for bilingual education in schools—including staff hiring, training, materials, supplies, and bilingual educator professional development.<sup>72</sup> Paralleling the Bilingual

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2017–18 DEMOGRAPHIC INFORMATION REPORT 6 (2019), [www.cde.ca.gov/sp/el/er/documents/eldemographics1718.pdf](http://www.cde.ca.gov/sp/el/er/documents/eldemographics1718.pdf) [<https://perma.cc/UDJ3-M9W5>] [hereinafter 2017–18 Demographic Report].

<sup>67</sup> See Matthew P. O’Sullivan, Note, *Laboratories for Inequality: State Experimentation and Educational Access for English-Language Learners*, 64 DUKE L.J. 671, 700–01 (2015).

<sup>68</sup> See Title III English Learner Student Demographics, CAL. DEP’T OF EDUC., <https://www.cde.ca.gov/sp/el/t3/eldemographics.asp> [<https://perma.cc/S2RC-2768>] (last updated Dec. 15, 2022) [hereinafter Title III English Learner Student Demographics].

<sup>69</sup> Cf. Herrera & Escontrías, *supra* note 54, at 193.

<sup>70</sup> Augustina H. Reyes, *School Finance, Bilingual Education, and Free Speech*, 2 J. GENDER RACE & JUST. 111, 119 (1998).

<sup>71</sup> See Daria Witt, *Evolution of Important Events in California Bilingual Education Policy*, STANFORD U. (Apr. 1998), <https://web.stanford.edu/~hakuta/www/policy/ELL/timeline.html> [<https://perma.cc/HR3N-B7HB>].

<sup>72</sup> See *id.*; Reyes, *supra* note 70, at 119–120. Under the ESSA, Title VII of the ESEA was

Education Act, the California Legislature enacted Assembly Bill (AB) 2284 in 1972, which furnished school districts with funds to deliver English learner services.<sup>73</sup>

Then came the landmark case *Lau v. Nichols* in which the U.S. Supreme Court ruled that the failure of the San Francisco school system to provide supplemental language instruction to Chinese-speaking students violated Title VI of the Civil Rights Act.<sup>74</sup> A spate of federal actions followed shortly thereafter, most notably the codification of the *Lau* standards in the Equal Educational Opportunities Act of 1974, and the development of bilingual program guidelines by the U.S. Office of Civil Rights.<sup>75</sup> These endeavors by the federal government were also coupled with state initiatives that bolstered the use of bilingual education in public schools. Particularly, the California Legislature's passage of AB 1329 in 1976 not only required school districts to ensure equal educational opportunities for language minority students, but also declared bilingual education as a right of English learners.<sup>76</sup> In 1980, the adoption of AB 507 further reinforced the right of English learners to equal education by mandating that school districts provide bilingual instruction for every Limited English Proficient student in California, in addition to "expanding the use of students' primary languages in classroom instruction."<sup>77</sup>

The effective implementation of bilingual education in California public schools throughout the 1980s yielded demonstrable benefits for Latine and Mexican English learners. In particular, the expansion of bilingual education not only improved educational access for Latine and Mexican English learners, but also generated much-needed resources to "build organizational capacity and commitment in high-Latin[e], high-poverty schools" through designated federal and state funding.<sup>78</sup> Further driven by the influx of federal and state funding, the growing use of bilingual education in California also increased overall supply, demand, and professional development for knowledgeable dual-language<sup>79</sup>

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redesignated as Title VI.

<sup>73</sup> See Witt, *supra* note 71.

<sup>74</sup> See *id.*; *Lau v. Nichols*, 414 U.S. 563, 567–68 (1974).

<sup>75</sup> See Reyes, *supra* note 70, at 119–120.

<sup>76</sup> See Witt, *supra* note 71.

<sup>77</sup> *Id.*

<sup>78</sup> Reyes, *supra* note 70, at 120.

<sup>79</sup> See *Multilingual Education*, CAL. DEP'T OF EDUC. (Oct. 24, 2023), <https://www.cde>.

educators “who provided the leadership and foundation for [the] education of Latin[e] children.”<sup>80</sup> Through the successful administration of bilingual education, California school districts developed “upwardly-mobile” Latine and Mexican English learners and leadership.<sup>81</sup>

Yet the seemingly positive trajectory of school-based bilingual instruction in California in the 1980s represented a fleeting apex in the education of English learners, despite the palpable benefits to Latine and Mexican English learners. Beginning in the early 1990s, the significant progress of bilingual education development in California public schools was quelled by a rise in racist policies targeting LEP Latine and Mexican families.<sup>82</sup> From the 1970s until the late 1980s, bilingual education was largely regarded as a policy issue impacting American citizens of Latine and Mexican descent.<sup>83</sup> However, public perception around school-based bilingual education changed in the 1990s with the burgeoning realization that dual-language services were primarily utilized by immigrant and non-citizen Latine populations.<sup>84</sup> Consequently, California shifted away from bilingual instruction, causing the education of Latine and Mexican English learners to suffer. In addition to the sun-setting of California bilingual education legislation, language access for Latine and Mexican English learners was severely curtailed by bilingual education waivers, inadequate teacher training, and reductions in funding that lowered service quality and overall program capacity.<sup>85</sup>

Moreover, as negative sentiments toward bilingual education proliferated among California citizens, the racist views against Latine communities underlying the opposition manifested through English-only and anti-immigrant policies.<sup>86</sup> For instance, California voters approved a constitutional amendment in 1986 to concomitantly establish English as the official state language and prohibit any law “which diminishes or ignores the role of English as [its] common language.”<sup>87</sup> Most

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ca.gov/sp/el/er/multilingualedu.asp [https://perma.cc/48B5-8MPU] (defining dual-language immersion as “language learning and academic instruction for native speakers of English and native speakers of another language”).

<sup>80</sup> Reyes, *supra* note 70, at 120.

<sup>81</sup> *Id.*

<sup>82</sup> *See id.* at 120–21.

<sup>83</sup> *See id.* at 120.

<sup>84</sup> *See id.* at 120–21.

<sup>85</sup> *See id.* at 121.

<sup>86</sup> *See id.*

<sup>87</sup> CAL. CONST. art. III, § 6.

striking, though, was the adoption of Proposition 227 in 1998, which aimed to eliminate the use of bilingual education in California public schools in favor of English-only instruction.<sup>88</sup> Supporters of Proposition 227 argued that California public schools had wasted financial resources and failed to assimilate Latine and Mexican English learners by “employing a bilingual-education policy that led to ‘high drop-out rates and low English literacy levels of many immigrant children.’”<sup>89</sup> Under Proposition 227, California public schools were required to teach all students English “as rapidly and effectively as possible,” thereby mandating the placement of English learners in separate classrooms for one year of English immersion followed by reintegration into general education.<sup>90</sup> Proposition 227, therefore, effectively ended the system of bilingual education that had operated in California public schools for over thirty years. As recently as 2012, the California Department of Education reported that over 20,000 English learners, comprising of mostly Latine and Mexican students, received no instructional services from school districts across the state.<sup>91</sup> Thus, the harmful effects of Proposition 227 on Latine and Mexican English learners lasted until its repeal in 2016.<sup>92</sup>

In recent years, federal and California law have instituted stronger protections for English learners and their families—a large proportion of whom are Latine, Mexican, and Indigenous. Under federal law, all school districts are required to establish and maintain procedures to ensure the timely and accurate identification of English learners.<sup>93</sup> Although not required by federal law, most school districts disseminate home language surveys or informal primary language assessment forms for completion by students or parents, which initiates the identification process by verifying the primary language of enrolled pupils and their families.<sup>94</sup> In addition to identifying English learners, home language surveys also determine

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<sup>88</sup> See O’Sullivan, *supra* note 67, at 701.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See *Facts about English Learners in California*, CAL. DEP’T OF EDUC. (Mar. 8, 2012), <https://web.archive.org/web/20121031141601/http://www.cde.ca.gov/ds/sd/cb/cefelfacts.asp> [<https://perma.cc/6J4K-YG4L>].

<sup>92</sup> See Corey Mitchell, *California Voters Repeal Ban on Bilingual Education*, EDUC.WEEK (Nov. 8, 2016), <https://www.edweek.org/teaching-learning/california-voters-repeal-ban-on-bilingual-education/2016/11> [<https://perma.cc/S2Q3-E3RB>].

<sup>93</sup> See 34 C.F.R. §§ 200.2(b)(2)(i), 200.6(f) (2023).

<sup>94</sup> See Erin Archerd, *An IDEA for Improving English Language Learners’ Access to Education*, 41 FORDHAM URB. L.J. 351, 356–57 (2013).

parents' eligibility for translation services. Namely, school districts with 15 percent or more enrolled pupils who speak a single primary language other than English must provide translations of all notices, reports, statements, and records for their families at no cost.<sup>95</sup> Parents with children attending schools that meet the 15 percent threshold are also permitted to respond to all communications in either English or their primary language.<sup>96</sup> Based on the results of home language surveys or informal primary language forms, school districts will evaluate program placement options for students, which may necessitate conducting English Language Proficiency Assessments on potential English learners.<sup>97</sup> Upon initial identification, California law mandates that school districts issue notifications to parents whose children are classified as English learners within thirty days of the beginning of the school year.<sup>98</sup>

In California, English learners are entitled to participate in school-based support services and programs that provide instruction on state-adopted academic content standards for their grade level and concurrently facilitate English language acquisition as rapidly and effectively as possible.<sup>99</sup> California voters repealed Proposition 227 in 2016 with the enactment of Proposition 58, which grants school districts greater discretion to offer dual-language immersion programs that incorporate the native languages of students into instruction.<sup>100</sup> Although wide

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<sup>95</sup> See CAL. EDUC. CODE §§ 33126(d), 48980, 48985, 51101.1(a) (2023) (summarizing how notices, reports, statements, and records include documents containing information relating to: school and school program registration and enrollment; report cards; performance results on standardized tests, including English language development tests, language assistance programs; participation in school and district advisory bodies; student discipline policies, procedures, and reports; special education and related services; statewide and local academic standards, testing programs, accountability measures, and school improvement efforts; student-parent handbooks; grievance procedures; nondiscrimination notices; gifted and talented student programs; magnet and charter schools; parent permission requests for student participation in school activities; student rights and responsibilities; availability of individualized instruction, nutrition programs, and state funds for advance placement examination fees; schedule of minimum days and staff development days; academic credit for assignments missed due to excused absences; written policies for sexual harassment as it relates to students; pesticide products expected to be applied on school grounds; usage of any fingerprinting programs by the school district; and higher education information and college admission requirements for 9th through 12th grade students).

<sup>96</sup> See CAL. EDUC. CODE § 48985(a) (2023).

<sup>97</sup> See Archerd, *supra* note 94, at 357 n.14.

<sup>98</sup> See CAL. CODE REGS. tit. 5, § 11518.5(e) (2023).

<sup>99</sup> See CAL. EDUC. CODE §§ 305, 306(c) (2023); *see also* CAL. CODE REGS. tit. 5, § 11309 (2023).

<sup>100</sup> See Ashley Hopkinson, *A New Ara for Bilingual Education: Explaining California's*

discretion is granted to school districts in the selection of instructional programs, parents of English learners are permitted to choose a language acquisition program in accordance with the needs of their children.<sup>101</sup> Hence, schools must annually notify the parents of English learners of opportunities to request alternative language acquisition programs, and information regarding the placement, academic progress, and English language proficiency of their child.<sup>102</sup>

Regardless of the program type selected, school districts must allocate sufficient resources to ensure that language acquisition programs enable English learners to: (1) overcome language barriers in a timely manner to attain parity with their native English-speaking peers; and (2) learn all school curriculum, without the use of simplified materials, to meet promotion and graduation requirements.<sup>103</sup> Accordingly, school districts are legally obligated to equip English language acquisition programs with qualified teachers, adequate support staff, and appropriate educational materials. Furthermore, while language acquisition programs may require separate instruction for a limited period of time, school districts must nonetheless educate English learners in the least segregative and discriminatory manner available to achieve the educational goals of the program.<sup>104</sup> Similarly, English learners have the right to meaningfully access all school programs, thus prohibiting their exclusion from extracurriculars, Advanced Placement, and A-G college readiness courses.<sup>105</sup>

Moreover, California school districts bear a responsibility to assess both the academic achievement of English learners and the effectiveness of language acquisition programs.<sup>106</sup> In particular, school districts

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*Proposition 58*, ED SOURCE (Jan. 6, 2017), <https://edsources.org/2017/a-new-era-for-bilingual-education-explaining-californias-proposition-58/574852> [<https://perma.cc/X7TZ-G7ZA>].

<sup>101</sup> See CAL. EDUC. CODE § 310(a) (2023).

<sup>102</sup> See CAL. EDUC. CODE §§ 310(b)(2), 51101, 51101.1 (2023); see also CAL. CODE REGS. tit. 5, § 11310 (2023).

<sup>103</sup> See Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f); 34 C.F.R. § 200.6(j) (2023).

<sup>104</sup> See Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f); CAL. EDUC. CODE § 60811.8(a) (2023).

<sup>105</sup> See U.S. DEP'T OF JUST. C.R. DIV. & U.S. DEP'T OF EDUC. OFF. FOR C.R., ENSURING ENGLISH LEARNER STUDENTS CAN PARTICIPATE MEANINGFULLY AND EQUALLY IN EDUCATIONAL PROGRAMS 2 (2015), [www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf) [<https://perma.cc/5ASU-FSQD>].

<sup>106</sup> See Every Student Succeeds Act, 20 U.S.C. § 6841(a)(4)–(5); CAL. CODE REGS. tit. 5, § 11304 (2023); CAL. EDUC. CODE § 60810(a)(1) (2023).

across the state are required to monitor the academic progress of current English learners by annually administering assessments that measure their English language proficiency relative to state standards, in addition to tracking the proportion of reclassified pupils that are meeting the challenging State academic standards.<sup>107</sup> By surveilling the academic achievement of English learners, school districts can also fulfill the ongoing duty imposed by federal and California law to evaluate the efficacy of language acquisition programs in improving the educational outcomes of English learners and implement modifications as necessary.<sup>108</sup>

However, the expansion of rights and protections for English learners over the past decade has proven insufficient to overcome the historical legacy of racism in the California public education system, as elucidated by the academic digression and persistent achievement gaps among Latine, Mexican, and Indigenous Mexican English learners. The academic disparities and achievement gaps among Latine, Mexican, and Indigenous Mexican English learners reveal a systemic need to address the underlying causes of these disparities, from racially discriminatory practices to inequitable access to resources. Until promising solutions are pursued, both English learners and English-proficient students from these communities will continue to suffer negative educational outcomes in public schools throughout the state.

***C. The Lasting Effects of Anti-Indian Segregation and Historically Racist Language Access Policies on Latine, Mexican, and Indigenous Mexican Students in California Public Schools***

The disparate educational outcomes of Latine, Mexican, and Indigenous Mexican students in California public schools demonstrate the lasting negative impacts of Anti-Indian segregation and historically racist language access policies. As of 2018, Latine students have the lowest educational attainment of any group in California, with racialized disparities beginning at the earliest stages of education and persisting through high school.<sup>109</sup> In particular, less than half of Latine children in California are enrolled in early childhood education, which places them at a disadvantage compared to their white peers who acquire substantial benefits from participating in such programs.<sup>110</sup> Furthermore, recent

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<sup>107</sup> See CAL. EDUC. CODE § 60810(e)–(f) (2023).

<sup>108</sup> See *id.*

<sup>109</sup> See Herrera & Escontrías, *supra* note 54, at 194.

<sup>110</sup> See *id.* at 194–95.



California Assessment of Student Performance and Progress (CAASPP) scores show that an average of 61 percent of Latine students between grades three and eleven lacked proficiency in English Language Arts and 75 percent fell below statewide Mathematics standards.<sup>111</sup> Additionally, during the 2019–2020 school year, about 18 percent of all Latine students in California failed to earn their high school diploma on time while an additional 10 percent dropped out of high school, accounting for nearly 60 percent of dropouts across all student groups statewide.<sup>112</sup> As such, the disproportionately poor educational outcomes of Latine students demonstrate a systemic failure of the California public education system to provide Latine students with adequate support to ensure their academic achievement.

Moreover, Latine immigrant students face unique challenges posed by the California public education system,<sup>113</sup> which further worsen education access and contribute to wider academic achievement gaps. In 2021, California public schools enrolled approximately 68,657 Latine immigrant students—31,869 of whom emigrated from Mexico.<sup>114</sup> With a growing population of migrant workers in California primarily coming from the Indigenous rural communities of southern Mexico, it is estimated that as many as 47,150 Indigenous Mexican school-aged children currently reside in the state.<sup>115</sup> Accordingly, Indigenous Mexican children constitute a substantial portion of the Latine immigrant student population. Amongst the obstacles encountered by these students in California public schools are barriers to enrollment, language access issues, bullying and discrimination, cultural isolation, persistent academic achievement gaps, difficulties navigating the K-12 system, over-policing, and excessive discipline.<sup>116</sup> As the least educated population in California, migrant

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<sup>111</sup> See MANUEL BUENROSTRO, CAL. SCH. BDS. ASS'N, FACT SHEET: LATINO STUDENTS IN CALIFORNIA'S K-12 PUBLIC SCHOOLS 3–4 (2016), <https://www.csba.org/~media/A451224C1BAE4C659884268EFD2B3089.ashx> [<https://perma.cc/75SY-ZF5S>].

<sup>112</sup> See *California Department of Education Releases 2019–20 High School Graduation and Dropout Rates*, CAL. DEP'T. OF EDUC. (Dec. 11, 2020), [www.cde.ca.gov/nr/ne/yr20/yr20rel101.asp](http://www.cde.ca.gov/nr/ne/yr20/yr20rel101.asp) [<https://perma.cc/L583-GNKH>].

<sup>113</sup> See KEVIN CORCORAN & ALBERT R. ROBERTS, SOCIAL WORKERS' DESK REFERENCE 1089 (3rd ed. 2015).

<sup>114</sup> See *Title III Immigrant Student Demographics*, CAL. DEP'T. OF EDUC. (Dec. 29, 2023), [www.cde.ca.gov/sp/el/t3/imdemographics.asp](http://www.cde.ca.gov/sp/el/t3/imdemographics.asp) [<https://perma.cc/94J7-TU2A>].

<sup>115</sup> See Montano, *supra* note 52, at abstract.

<sup>116</sup> See *id.* at 5; Dalia Castillo-Granados, Rachel Leya Davidson, Laila L. Hlass & Rebecca Scholtz, *The Racial Justice Imperative to Reimagine Immigrant Children's Rights: Special Immigrant Juveniles as a Case Study*, 71 AM. U. L. REV. 1779, 1786–87 (2022); Dale S. Freeman,

children—most of whom are Indigenous Mexicans—receive a mere one to three years of formal education on average.<sup>117</sup> Similarly, when compared to all students in California, the Latine and largely Indigenous Mexican children of migrant workers have made the fewest academic gains, with 19 percent never even completing high school, in contrast to only 13 percent of white students.<sup>118</sup> Significant racial disparities in educational outcomes therefore substantiate the achievement gaps experienced by Latine, Indigenous Mexican, and migrant students relative to their white peers.

Worse yet, undocumented Indigenous Mexican students are concurrently subjected to the harms of California public education and harsh enforcement of the U.S. immigration system.<sup>119</sup> Given their race, trauma, immigration status, and adolescent age, undocumented Indigenous Mexican students experience increased precarity to detention and deportation that functions at the nexus of punitive immigration, education, and policing systems.<sup>120</sup> Through the racialized operations of the school-to-deportation pipeline, undocumented Indigenous Mexican students are forced out of school and, siphoned into immigration and criminal justice systems that ultimately lead to their detention and deportation. Although U.S. Immigration and Customs Enforcement (ICE) must obtain supervisory approval to conduct enforcement activities near or around schools,<sup>121</sup> local law enforcement agencies that contract with California school districts may also maintain working arrangements with ICE.<sup>122</sup> When the line between school disciplinary action and law enforcement is obfuscated, undocumented Indigenous Mexican students can suffer severe immigration consequences at the hands of their schools.<sup>123</sup> Consequently, upon receiving supervisory approval, ICE

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Comment, *Sólo Quiero la Misma Oportunidad: Developing a Model of Appropriate Education for Middle School Immigrants*, 10 LA RAZA L.J. 691, 702 (1998).

<sup>117</sup> See Montano, *supra* note 52, at 12–13.

<sup>118</sup> See *id.* at 13.

<sup>119</sup> See Castillo-Granados, Davidson, Hlass & Scholtz, *supra* note 116, at 1787.

<sup>120</sup> See *id.* at 1831.

<sup>121</sup> See U.S. COMM'N ON C.R., UNDERSTANDING THE IMPACT OF IMMIGRATION ENFORCEMENT ON CALIFORNIA CHILDREN IN K-12 SCHOOLS 3 (2021), <https://www.usccr.gov/files/2021/2021-01-25-CA-SAC-Immigration-Enforcement-Report.pdf> [<https://perma.cc/8SWX-DA7F>] [hereinafter Understanding the Impact of Immigration Enforcement].

<sup>122</sup> See Lance Tran, *A School-to-Deportation Pipeline?*, AM. CIV. LIBERTIES UNION, N. CAL. (Sept. 20, 2018), [www.aclunc.org/blog/school-deportation-pipeline](http://www.aclunc.org/blog/school-deportation-pipeline) [<https://perma.cc/8682-KKFZ>].

<sup>123</sup> See *id.*

agents can pursue undocumented Indigenous Mexican students near or around schools, initiate their removal proceedings, and even detain them, thereby resulting in school pushout and deportation.<sup>124</sup> Moreover, the school-to-deportation pipeline need not proceed linearly, as minor incidents such as truancy can trigger contact with the criminal legal system that results in the referral of undocumented Indigenous Mexican students to immigration removal authorities.<sup>125</sup>

Resultant of the school-to-deportation pipeline, undocumented Indigenous Mexican families live in fear and anxiety of deportation—not only for themselves but also for their children in California public schools.<sup>126</sup> Moreover, the lives of undocumented Indigenous Mexican students are plagued by instability emanating from the school-to-deportation pipeline, forcing them to “liv[e] without protections, social services and assistance available to most people in this country.”<sup>127</sup> This pervasive insecurity wreaks havoc on the educational outcomes of undocumented Indigenous Mexican students, who experience disproportionately high rates of school non-enrollment, dropout, and significant interference with school work.<sup>128</sup> Thus, “the government’s lack of protection and care for immigrant children” serves as “an extension of the over-policing by law enforcement and immigration officials that animates the broader school to deportation pipeline.”<sup>129</sup> In consequence, undocumented Indigenous Mexican students are excluded “from obtaining permanent stability and immigration relief in the United States,” thereby limiting their access to education and “the fulfilment of their dreams.”<sup>130</sup>

Furthermore, significant gaps exist in the academic achievement of Latine immigrant English learners in the California public education system—a population that is largely comprised of Indigenous Mexican students.<sup>131</sup> Firstly, lack of English proficiency considerably diminishes education access for Latine immigrant students in California public schools. Due to their limited English proficiency, Latine immigrant

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<sup>124</sup> See Castillo-Granados, Davidson, Hlass & Scholtz, *supra* note 116, at 1787; Understanding the Impact of Immigration Enforcement, *supra* note 121, at 3.

<sup>125</sup> See Tran, *supra* note 122.

<sup>126</sup> See Understanding the Impact of Immigration Enforcement, *supra* note 121, at 4.

<sup>127</sup> Freeman, *supra* note 116, at 698.

<sup>128</sup> See *id.*; Montano, *supra* note 52, at 1–2.

<sup>129</sup> Castillo-Granados, Davidson, Hlass & Scholtz, *supra* note 116, at 1826.

<sup>130</sup> *Id.* at 1825–26.

<sup>131</sup> See *supra* pp. 147–48 (discussing Latine immigrant demographics).

students often experience erroneous academic placement, in which pupils with vastly different educational backgrounds are placed into the same classrooms on the basis of their inability to speak English.<sup>132</sup> Differences in the educational levels of Latine immigrant students are more pronounced for older pupils, as many emigrated to escape “economic desperation, war, or revolution” that severely disrupted their education in their home country to varying degrees.<sup>133</sup> As a result, Latine immigrant English learners may display lower academic performance attributable to ineffective language accommodations, inappropriate curriculum, and deficiencies in meeting their diverse needs—including mislabeling them as students with disabilities, failing to integrate their culture into lesson plans, and disregarding bilingual learning strategies.<sup>134</sup>

Secondly, the widespread divestment and disuse of bilingual education in California public schools have deprived Latine immigrant English learners of equal education, as indicated by the disproportionately high dropout rates and borderline illiteracies that hinder their academic achievement.<sup>135</sup> Moreover, bilingual education programs, when offered, are plagued by inadequate resources and underqualified teachers, with “[t]eachers certified in math, reading, and science [being] less likely to teach linguistically-different and high-poverty students.”<sup>136</sup> Thirdly, Latine immigrant English learners have alarmingly low average levels of academic attainment, especially in comparison to their white counterparts. Data from multiple academic years shows Spanish-speaking students performed worse than all other English learners on the California High School Exit Exam (CAHSEE), a former state-wide standardized test for determining graduation eligibility.<sup>137</sup> In the

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<sup>132</sup> See Freeman, *supra* note 116, at 702.

<sup>133</sup> *Id.*

<sup>134</sup> See Belinda Lee Bator, *What Skills Do General Education Teachers Require In Order To Effectively Teach English Language Learners: A Qualitative Case Study 2*, 18 (June 2020) (Ph.D. dissertation, Northcentral University) (ProQuest), [www.proquest.com/openview/5a9e94b17de083f0e32a9fd16a73efdc](http://www.proquest.com/openview/5a9e94b17de083f0e32a9fd16a73efdc) [<https://perma.cc/RZ4D-S9CP>] [hereinafter *Skills to Teach English Learners*].

<sup>135</sup> See BUENOSTRO, *supra* note 111, at 3–4; 2019–20 *High School Graduation and Dropout Rates*, *supra* note 112.

<sup>136</sup> Reyes, *supra* note 70, at 121.

<sup>137</sup> See LAURESS L. WISE, D.E. BECKER, FELICIA L. BUTLER, LORI B. SCHANTZ, HAN BAO, SHAOBANG SUN & HILARY L. CAMPBELL, HUM. RES. RSCH. ORG., INDEPENDENT EVALUATION OF THE CALIFORNIA HIGH SCHOOL EXIT EXAMINATION (CAHSEE): 2006 EVALUATION REPORT: VOLUME 1 75 (2006), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=80f0eba99307f11d88ae959b8c066c2c33cf6d13>

2006-2007 academic year, for instance, the first-time passage rate for Spanish-speaking English learners in mathematics was 41 percent and even lower for English Language Arts at 33 percent, thereby creating between a 5 and 54 percent difference from other English learner groups.<sup>138</sup> In comparison, the CAHSEE passage rate for all students on average was roughly 95 percent for both English Language Arts and Mathematics from 2006 to 2007.<sup>139</sup> Consequent to the CAHSEE requirement, more than half of Spanish-speaking English learners were deemed ineligible to graduate, resulting in delays in attaining their high school diplomas and even dropouts.<sup>140</sup>

Additionally, the California public education system fails to distinguish Indigenous Mexican students from the broader Latine population, thereby disregarding unique academic needs arising from the intersection of their indigeneity and minority status. This is further compounded for immigrant children and English learners with primary Mesoamerican languages. Per federal requirements for race and ethnicity reporting, the California Department of Education (CDE) must collect both the ethnicity and race of all public school students in the state.<sup>141</sup> Ethnic categories include: (1) Hispanic or Latino, and (2) not Hispanic or Latino.<sup>142</sup> Racial categories consist of Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, and American Indian or Alaskan Native, which is defined as a “person having origins in any of the original

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[<https://perma.cc/A6NP-P95U>]; D.E. BECKER & CHRISTA WATTERS, HUM. RES. RSCH. ORG., INDEPENDENT EVALUATION OF THE CALIFORNIA HIGH SCHOOL EXIT EXAMINATION (CAHSEE): FOURTH BIENNIAL REPORT 89 (2008), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=926de2c44d985c05169859bb15771375ce0f244d> [<https://perma.cc/U2NE-4QLC>] [hereinafter CAHSEE Fourth Biennial Report].

<sup>138</sup> See EDSource, ENGLISH LEARNERS IN CALIFORNIA: WHAT THE NUMBERS SAY 14 (2008), [edsources.org/wp-content/publications/ELStats0308.pdf](https://edsources.org/wp-content/publications/ELStats0308.pdf) [<https://perma.cc/XE65-PEE7>] [hereinafter English Learners in California: What the Numbers Say] (comparing the California High School Exit Exam passing rates for English learners according to primary language, including Korean, Vietnamese, Chinese, Filipino, Hmong, Spanish, and other/unknown languages).

<sup>139</sup> See CAHSEE Fourth Biennial Report, *supra* note 137, at 40–41.

<sup>140</sup> See English Learners in California: What the Numbers Say, *supra* note 138, at 13–15 (comparing the California High School Exit Exam passing rates for English learners according to primary language, including Korean, Vietnamese, Chinese, Filipino, Hmong, Spanish, and other/unknown languages).

<sup>141</sup> See *FAQs – Race and Ethnicity Collection and Reporting*, CAL. DEP’T OF EDUC. (Jan. 19, 2024), [cde.ca.gov/ds/sp/cl/refaq.asp](https://cde.ca.gov/ds/sp/cl/refaq.asp) [<https://perma.cc/V52K-ZF5R>].

<sup>142</sup> See *id.*

peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment.”<sup>143</sup>

The CDE retains information regarding the race of Hispanic and Latino respondents for three years, after which the data can only be accessed locally, if necessary.<sup>144</sup> Given that there is no long-term centralized data for respondents who identify as ethnically Latine *and* racially American Indian, the default for Indigenous Mexican students becomes “Hispanic or Latino” three years following the collection of data. The CDE also measures metrics of student achievement through various accountability and continuous improvement systems, all of which designate Latine students solely as “Hispanic/Latino,” as opposed to delineating by ethnicity and race.<sup>145</sup> While data on academic achievement is critical for determining improvement areas and enforcing accountability of LEAs,<sup>146</sup> it remains nonexistent for students who are ethnically Latine *and* racially American Indian—many of whom are Indigenous Mexicans. In addition to the lack of fundamental data on academic performance, “there are no studies that explore best practices in educating Mexican Indigenous students.”<sup>147</sup> Although common challenges may be shared by their population as a whole, Latine students are not a monolith, and treating them as such dismisses the distinct struggles of Indigenous Mexican students.

Indigenous Mexican students and their families have experienced negative impacts from the homogenization of Latine students by the CDE and LEAs in California. In a qualitative survey of Indigenous Mexican families, educators, and students, respondents scrutinized the inadequacies of California public schools in meeting the unique needs of students from their community.<sup>148</sup> In particular, respondents recognized the academic hardships faced by Indigenous Mexican students with LEP, viewing English proficiency as an “absolute necessity.”<sup>149</sup> However, both parents and

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<sup>143</sup> *Id.*

<sup>144</sup> *See id.*

<sup>145</sup> *See id.*

<sup>146</sup> *See id.*

<sup>147</sup> Montano, *supra* note 52, at 4.

<sup>148</sup> *See generally* Nadeen T. Ruiz & Manuel Barajas, *Multiple Perspectives on the Schooling of Mexican Indigenous Students in the U.S.: Issues for Future Research*, 35 BILINGUAL RSCH. J. 125 (2012) (examining the schooling circumstances of Mexican Indigenous students through, *inter alia*, interviews with Mexican indigenous families in addition to American and Mexican educators).

<sup>149</sup> *Id.* at 133.

educators alike also expressed the importance of Spanish or dual-language instruction for Indigenous Mexican students,<sup>150</sup> as opposed to receiving the English-only education that is offered by most language acquisition programs. Respondents attributed the need for Spanish instruction to a goal of increasing Indigenous Mexican students' ability to communicate with Spanish-speaking personnel, who far outnumber Mesoamerican language speakers and can assist with integration in the school context.<sup>151</sup>

Additionally, educators responding to the qualitative survey emphasized that Spanish instruction serves as a model for retaining the Mesoamerican languages of students, which complemented the interest of Indigenous Mexican families in ensuring that their children are trilingual in English, Spanish, and their home language.<sup>152</sup> Furthermore, respondents noted the importance of the Binational Migrant Education program operated by the CDE, through which Indigenous teachers from Mexico spend six to eight weeks in a California school district sharing culture and teaching strategies to support Indigenous Mexican students and families.<sup>153</sup> Moreover, Indigenous Mexican parents and their children conveyed an interest in “personally relevant and engaging” instruction and activities, including Mesoamerican language education to maintain their use within the family, community, and school contexts in the U.S.<sup>154</sup> Respondents further shared that Indigenous Mexican students suffered discrimination at the hands of their peers and schools, including harsh prejudices, “negative behaviors and attitudes . . . for [their] racial, cultural, and linguistic differences[,]” bullying and mockery by other pupils, and the silencing of their Mesoamerican languages.<sup>155</sup> Accordingly, respondents called on schools to build pride in Indigenous Mexican students' identity in order to both affirm them and support their resistance to discrimination.<sup>156</sup> Thus, the monolithic representation of Indigenous Mexican students as merely “Latine” by CDE and LEAs in California has harmed their educational outcomes, thereby disparaging their identity, right to self-determination, and distinct academic needs—all of which violate the protections set forth in the U.N. Declaration.

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<sup>150</sup> *See id.*

<sup>151</sup> *See id.* at 138.

<sup>152</sup> *See id.* at 138–39.

<sup>153</sup> *See id.* at 133.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 128, 133–35.

<sup>156</sup> *See id.* at 133.

### III. A CASE STUDY OF INDIGENOUS MEXICAN STUDENTS IN SANTA MARIA-BONITA SCHOOL DISTRICT

#### A. *Indigenous Mexican Mixtec-Speaking Students and Families in Santa Maria-Bonita School District*

Despite remaining largely invisible in data reporting and academic programming by the CDE, the thirteenth most spoken language amongst English learners in California public schools is Mixteco, which can provide insight into the educational experiences of Indigenous Mexican students compared to Native American pupils.<sup>157</sup> Mixteco is a Mesoamerican language native to the Indigenous Oto-Manguan peoples of Oaxaca, Mexico, and thus should not be conflated with Spanish dialects.<sup>158</sup> Given that the Mixtec writing system is classified as logographic, in which characters and pictures are used to represent complete words and ideas rather than syllables or sounds, Mixteco is often characterized as not having a written language.<sup>159</sup> From 1895 to 2010, the population of Mixtec speakers in North America increased by 31 percent, totaling approximately 476,000, with approximately 180,000 Mixtec speakers residing in the U.S.<sup>160</sup> Resultantly, Mixtec speakers have established transnational language communities, in which the population is primarily fluent in Mixteco with limited Spanish proficiency.<sup>161</sup>

At present, Mixteco is the only Indigenous Mexican language that is spoken by a number of students sufficient to exceed the 15 percent threshold to receive translation services under California Education Code § 48985.<sup>162</sup> Based on data from the CDE, Mixtec-speaking Indigenous

<sup>157</sup> See Title III English Learner Student Demographics, *supra* note 68.

<sup>158</sup> See Daniel J. Procaccini, Note, *What We Have Here Is A Failure to Communicate: An Approach for Evaluating Credibility in America's Multilingual Courtrooms*, 31 B.C. THIRD WORLD L.J. 163, 164 (2011); *Language*, MIXTEC.ORG, <https://mixtec.sdsu.edu/language.html> [<https://perma.cc/UN34-CTHE>].

<sup>159</sup> See SANTA MARIA-BONITA SCH. DIST., LOCAL CONTROL AND ACCOUNTABILITY PLAN 2022–23, at 30 (2022), <https://www.smbd.org/fs/resource-manager/view/99dbc9f8-086d-48ec-b0a8-65e863845cee> [<https://perma.cc/48GB-QAZN>] [hereinafter 2022–23 SMBSD Local Control and Accountability Plan]; see generally ELIZABETH BOONE & WALTER D. MIGNOTO, *WRITING WITHOUT WORDS* (Duke University Press, 1994) (examining Pre-Columbian and early colonial Mesoamerican systems of writing that convey meaning through hieroglyphic, pictorial, and coded systems).

<sup>160</sup> See BLAKE GENTRY, AMA CONSULTANTS, *EXCLUSION OF INDIGENOUS LANGUAGE SPEAKING IMMIGRANTS IN THE US IMMIGRATION SYSTEM, A TECHNICAL REVIEW* 18 (2015).

<sup>161</sup> See *id.*

<sup>162</sup> See CAL. EDUC. CODE § 48985 (2023); CAL. DEP'T OF EDUC., EDUC. DEMOGRAPHICS UNIT, *State of California Language Group Data – Statewide for 2020–21: Mixteco*, [dq.cde.ca.gov/](https://dq.cde.ca.gov/)



Mexican (“Mixtec” or “Mixtec-speaking”) students constitute over 15 percent of the total enrollment for seven schools within the Santa Maria-Bonita School District (SMBSD).<sup>163</sup>

**FIGURE 1.** 2020–2021 State of California Language Group Data – Mixtec-Speaking Students in Santa Maria-Bonita School District Schools with at least 15% Total Enrollment<sup>164</sup>

<i>School</i>	<i>Number of English Learner (“EL”) and Fluent English Proficient (“FEP”) Students</i>	<i>Total Student Enrollment</i>	<i>Percent of Total Enrollment that is EL and FEP</i>
Adam William Laird Elementary	243	893	27.21%
Alvin Elementary	194	920	21.09 %
Bonita Elementary	94	549	17.12%
Bruce (Robert) Elementary	146	940	15.53%
El Camino Junior High	140	799	17.52%
Fairlawn Elementary	182	748	24.33%
Sanchez (David J.) Elementary	105	687	15.28%

SMBSD, which serves over 2,000 Mixtec-speaking families and students, is also the *singular* school district in California that meets the 15 percent criterion for *any* Indigenous Mexican language.<sup>165</sup> For the

ataquest/lc/SchLang15.aspx?cYear=2020–21&LC=49&Language=Mixteco [https://perma.cc/ES4T-TNHN]; CAL. DEP’T OF EDUC., EDUC. DEMOGRAPHICS UNIT, *State of California Language Group Data – Statewide for 2020–21: Zapoteca*, https://dq.cde.ca.gov/dataquest/lc/SchLang15.aspx?cYear=2021-22&LC=71&Language=Zapoteco [https://perma.cc/8E54-KYXL]; CAL. DEP’T OF EDUC., EDUC. DEMOGRAPHICS UNIT, *State of California Language Group Data – Statewide for 2020–21: Mayan Languages*, https://dq.cde.ca.gov/dataquest/lc/SchLang15.aspx?cYear=2021-22&LC=A7&Language=Mayan%20Languages [https://perma.cc/6DFG-EN3D].

<sup>163</sup> *State of California Language Group Data – Statewide for 2020–21: Mixteco*, *supra* note 162.

<sup>164</sup> *Id.*

<sup>165</sup> *See id.*; Tony Almanza, *Two School Districts in Santa Maria are Working Together to Help Mixteco Speakers*, KEYT (Nov. 15, 2022, 10:03 PM), www.keyt.com/news/santa-maria-north-county/2022/11/15/two-school-districts-in-santa-maria-are-working-together-to-help-mixteco-speakers [https://perma.cc/5LGN-QEVH].

2022–2023 school year, SMBSD reported that approximately 15.39 percent of students—or 2,650 out of 17,201 pupils—are Mixtec-speaking, with a current district enrollment that is nearly four times higher than that in the prior ten years.<sup>166</sup> Furthermore, many Mixtec pupils have intersectional identities that result in their categorization across multiple student groups in SMBSD, including the 16,463 (95.1 percent) Latine students, 9,712 (58.1 percent) English learners, and 1,435 (8.3 percent) migrant students.<sup>167</sup> While the district does not disaggregate data on academic achievement for Mixtec speakers specifically, school administrators and educators have nonetheless conveyed that Mixtec students face substantial barriers to educational access at SMBSD, which are attributed to the limited supply of qualified interpreters and Mixteco not being a written language.<sup>168</sup>

In order to evaluate the educational experiences of Mixtec students despite the lack of disaggregated data, a comprehensive analysis of numerous SMBSD plans and reports from 2017 to 2023 was performed, which revealed a district-level prioritization of the following Mixteco programs and services: (1) trilingual translation and interpretation services; and (2) targeted outreach, family engagement, and accessible communications.<sup>169</sup> However, while the number of Mixtec-speaking students in SMBSD rose between 2018 and 2023,<sup>170</sup> many programs and services created for these students' academic achievement either remained stagnant or were discontinued altogether during the seven-year review period. Thus, although SMBSD has gradually implemented an array of programs and services to increase access to education for Mixtec-speaking students, Mixtec parents continue to express discontent with the inadequacy of district efforts to improve the educational

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<sup>166</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 30; see also Kasey Bubnash, *Santa Maria-Bonita School District Hosts First Meeting in Mixteco*, SANTA MARIA SUN (June 13, 2018), <https://www.santamariasun.com/news/santa-maria-bonita-school-district-hosts-first-meeting-in-mixteco-14784831> [<https://perma.cc/6X4D-9QBP>].

<sup>167</sup> See *District Summary: Santa Maria-Bonita*, EDUC. DATA P'SHIP, <http://www.ed-data.org/district/Santa-Barbara/Santa-Maria--Bonita> [<https://perma.cc/4ZNM-CNPM>] [hereinafter SMBSD District Summary].

<sup>168</sup> See Bubnash, *supra* note 166.

<sup>169</sup> Note that programs and services may be categorized under more than one of the listed priorities. However, for organizational purposes, the review and analysis will classify each SMBSD program and service for Mixtec-speaking students and families into only one category.

<sup>170</sup> Compare Bubnash, *supra* note 166, with SMBSD District Summary, *supra* note 167.

outcomes of their children.<sup>171</sup> When considered under the human rights framework set forth in the U.N. Declaration, it becomes strikingly clear that criticisms by Mixtec families are wholly warranted, as the resources provided to their children are only marginally better than the minimum requirements that SMBSD must meet to fulfill their obligations under federal and state law.

**B. A Review and Analysis of District-Led Programs and Services for Indigenous Mexican Mixtec-Speaking Students and Families in Santa Maria-Bonita School District**

*1. Trilingual Translation and Interpretation Services*

An exhaustive review of Local Control and Accountability Plans (LCAP) and other district plans from 2017 to 2023 traces the implementation, expansion, and discontinuation of programs and services that measure education access in SMBSD for Mixtec-speaking students.<sup>172</sup> Beginning in 2017, SMBSD established an LCAP goal to increase translation services by retaining two trilingual interpreters<sup>173</sup> fluent in Spanish, Mixteco, and English.<sup>174</sup> Yet given that trilingual interpreters are solely stationed at the district office,<sup>175</sup> upwards of 2,000 Mixtec families across seven schools lack access to consistent on-site translation

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<sup>171</sup> See Jacob Dizon, *Rise In Mixteco Families In Santa Maria Prompts More School Translation Services*, KSBY (Nov. 11, 2022, 5:35 PM), [www.ksby.com/news/local-news/rise-in-mixteco-families-in-santa-maria-prompts-more-school-translation-services](http://www.ksby.com/news/local-news/rise-in-mixteco-families-in-santa-maria-prompts-more-school-translation-services) [<https://perma.cc/Y36Q-V6EH>]; Karen Garcia, *Interpretation Services During School Board Meetings Depend on the District and its Unique Community*, NEW TIMES SAN LUIS OBISPO (Apr. 22, 2021), [www.newtimeslo.com/news/interpretation-services-during-school-board-meetings-depend-on-the-district-and-its-unique-community-10949215](http://www.newtimeslo.com/news/interpretation-services-during-school-board-meetings-depend-on-the-district-and-its-unique-community-10949215) [<https://perma.cc/3LXK-3LPB>]; Paloma Esquivel, *In California, a Million English Learners are at Risk of Intractable Education Loss*, L.A. TIMES (Apr. 4, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-04-04/how-covid-distance-learning-hurt-california-english-learners> [<https://perma.cc/DMC7-UM66>].

<sup>172</sup> Cal. Dep't of Educ., *Local Control and Accountability Plan (LCAP)* (Dec. 28, 2023), [www.cde.ca.gov/re/lc/index.asp](http://www.cde.ca.gov/re/lc/index.asp) [<https://perma.cc/2HY6-E4MS>] (discussing how LCAP, established in 2014, “is a three-year plan that describes the goals, actions, services, and expenditures to support positive student outcomes that address state and local priorities,” which all California LEAs must develop and update annually in collaboration with community stakeholders, including students, parents, and educators).

<sup>173</sup> The use of the general term “trilingual” throughout this Comment is in reference to Spanish, Mixteco, and English.

<sup>174</sup> See SANTA MARIA-BONITA SCH. DIST., LOCAL CONTROL ACCOUNTABILITY PLAN AND ANNUAL UPDATE (LCAP) TEMPLATE 237 (2020), <https://www.goboinfo.com/LCAP-Repository/LCAP-state-SantaMariaBonitaSD-2019-20-text.pdf> [<https://perma.cc/HJR2-HMP5>] [hereinafter 2017-20 SMBSD Local Control and Accountability Plan Update].

<sup>175</sup> See *id.*

services. By 2018, the LCAP proceeded to delineate the role of trilingual Mixtec interpreters in SMBSD, which included providing oral interpretation for parent meetings and events, translating legal documents, and sharing resource documents.<sup>176</sup> Corresponding with the newly assigned duties of trilingual interpreters, 2018–2019 marked the first school year in which SMBSD provided Mixtec translation services for the six LCAP Stakeholder Team meetings held by the district to promote the involvement of Mixtec-speaking families and students in the development of the LCAP.<sup>177</sup> Pursuant to the 2018–2019 LCAP, SMBSD also tasked trilingual Mixtec interpreters with recording informational videos for Mixtec-speaking parents, translating messages sent through the school-to-home digital communication platform ParentSquare, and “work[ing] with all Community Liaisons to establish glossaries of common terms and phrases for the purpose of clarity and consistency.”<sup>178</sup>

During the 2018–2019 school year, trilingual Mixtec interpreters also participated in five monthly meetings with the SMBSD English Learner Coordinator to collaborate on implementing the English Learner Master Plan.<sup>179</sup> Under the English Learner Master Plan, Mixtec-speaking students are assessed with the Woodcock-Muñoz test, which measures Spanish language proficiency.<sup>180</sup> However, the use of the Woodcock-Muñoz test incorrectly presumes that Mixtec-speaking students will have higher proficiency in Spanish than English, despite that their upbringing in transnational language communities may have limited their exposure to both languages. As such, cooperation between English Learner Coordinators and trilingual interpreters is critical, as Mixtec translators can share cultural knowledge to improve the English Learner Master Plan as applied to Mixtec-speaking students. Additionally, while

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<sup>176</sup> *See id.* at 94–95.

<sup>177</sup> *See id.* at 162. Note that LCAP Stakeholder Team meetings have also been referred to as LCAP Educational Partner meetings, LCAP Collaboration Team meetings, and LCAP Collaboration Committee meetings. Only “LCAP Stakeholder Team” will be used in this Comment for consistency. *See generally Plan Alignment & Implementation*, SANTA MARIA-BONITA SCH. DIST. (2023), [www.smbds.org/departments/plan-alignment-implementation \[https://perma.cc/7FS6-YSKF\]](https://perma.cc/7FS6-YSKF) (demonstrating the variation in names used to describe LCAP Stakeholder Meetings between different District published documents).

<sup>178</sup> 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 94–95.

<sup>179</sup> *See id.* at 87–88.

<sup>180</sup> *See* 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 87.

parental notifications regarding English language proficiency assessment results and student placement options are translated into Mixteco by schools that meet the 15 percent criterion, SMBSD has yet to guarantee translation services for all English learner meetings with Mixtec-speaking students and families<sup>181</sup>—which may be ascribed to a lack of availability amongst trilingual district interpreters to attend on-site school meetings. Furthermore, while two trilingual interpreters are already insufficient to meet the translation needs of the over 2,000 Mixtec pupils and families at SMBSD, one of the trilingual interpreter positions became vacant in March 2019.<sup>182</sup> Despite purported ongoing recruitment by the Human Resources Department, SMBSD spent \$68,540 less than projected on trilingual translation services in 2018–2019 as a result of the vacancy, which the district attributed to the “extreme challenge” of filling Mixtec interpreter position.<sup>183</sup>

From 2019 to 2023, the availability of trilingual translation services was highly mercurial, with periods of retraction and expansion induced by SMBSD. For instance, upon hiring a trilingual translator in 2019 to promote communication with Mixtec families, the 2019–2020 LCAP retreated from the goal of expanding trilingual translation services, instead stating that SMBSD would “continue to increase [trilingual] translator . . . services *as needed*.”<sup>184</sup> While trilingual interpreters continued to provide translation services for the six LCAP Stakeholder Team meetings in 2019–2020, presentations and printed materials were not offered in Mixteco,<sup>185</sup> which limited the ability of Mixtec-speaking parents and students to meaningfully participate in the development of the LCAP. In furtherance of “creat[ing] a culture of respect and caring that supports positive relationships among all stakeholders” in the district, SMBSD also augmented trilingual translation services for Mixtec-speaking families, parents, and students by producing informational videos in Mixteco.<sup>186</sup>

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<sup>181</sup> See *id.* at 94–95 (SMBSD employs *only* two Mixtec speakers to assist families in communicating with school sites, where seven different school sites where the rate of Mixtec-speaking students is above 15 percent); see also CAL. EDUC. CODE § 48985 (West 2023); *State of California Language Group Data – Statewide for 2020–21: Mixteco*, *supra* note 162.

<sup>182</sup> See 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 94.

<sup>183</sup> *Id.* at 104, 159.

<sup>184</sup> *Id.* at 308.

<sup>185</sup> See *id.* at 162.

<sup>186</sup> *Id.* at 2, 95.

However, given that SMBSD did not implement a number of key trilingual translation services, the 2019–2020 school year represented a time of rescission for language access to Mixtec-speaking families and students, which persisted through 2022. Under the 2020–2021 Learning Continuity and Attendance Plan (LCP)—which describes district efforts to address the impacts of COVID-19 and maintain a substantially significant continuity of student learning throughout the pandemic—SMBSD expanded access to trilingual interpreters for distance learning truancy interventions.<sup>187</sup> In particular, the LCP directed trilingual translators to accompany Truancy Mentors to conduct home visits for Mixtec students who had disengaged from online learning for three days within any given week to discuss the issue with their families.<sup>188</sup> Beyond trilingual interpretation for truancy interventions and existing translation services for LCAP Stakeholder Team meetings, SMBSD did not institute any further trilingual Mixtec translation services in 2020–2021.

At the start of the 2021–2022 school year, SMBSD hired one trilingual interpreter, Vangelis Garcia, to secure a total of two Mixtec-speaking translators for the district in accordance with the annual LCAP goal of hiring “more multilingual interpreters especially for the growing Mixteco community.”<sup>189</sup> Yet SMBSD had sought to retain a minimum of two trilingual interpreters since 2017, thus meaning that hiring Garcia merely brought the district into compliance with its long-standing LCAP goals, as opposed to enhancing Mixtec translation service. Additionally, with only two trilingual interpreters serving the 2,000 Mixtec-speaking families and students, the decision to employ Garcia as a trilingual interpreter was highly problematic, as she was not fluent in Mixteco and had just begun learning the language, thereby permitting an unqualified translator to occupy a high-need position<sup>190</sup>

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<sup>187</sup> SANTA MARIA-BONITA SCH. DIST., 2020–21 LEARNING CONTINUITY AND ATTENDANCE PLAN 51 (2020), <https://resources.finalsite.net/images/v1646068826/smbdsorg/lt0cowlctti8gxcohupi/LearningContinuityandAttendancePlan2020-2021.pdf> [<https://perma.cc/F96R-NR9T>] [hereinafter 2020–21 SMBSD Learning Continuity and Attendance Plan].

<sup>188</sup> See *id.* at 51.

<sup>189</sup> SANTA MARIA-BONITA SCH. DIST., 2021–22 LOCAL CONTROL AND ACCOUNTABILITY PLAN 135 (2021), <https://resources.finalsite.net/images/v1642202189/smbdsorg/wprbgehaj7jttkh3uob7/LCAP2021-22.pdf> [<https://perma.cc/2ZF8-G8UZ>] [hereinafter 2021–22 SMBSD Local Control and Accountability Plan]; see ‘*Trilingual District Translator*’ Search Results, TRANSPARENT CAL., <https://transparentcalifornia.com/salaries/search/?q=Trilingual+District+Translator&s=name> [<https://perma.cc/2MHV-6Q9U>].

<sup>190</sup> See Dizon, *supra* note 171 (finding that “there has been a recent increase in families

Furthermore, the 2021–2022 LCAP reduced trilingual translation services for LCAP Stakeholder Team meetings, in which SMBSD shifted from supplying Mixteco interpretation for all six meetings to only furnishing translators on an as-needed basis.<sup>191</sup> Cutbacks to trilingual translation services for LCAP Stakeholder Team meetings also came in spite of the 2021–2022 district goal to “create a culture of respect and caring that supports positive relationships among all stakeholders and implement a parent engagement pathway districtwide.”<sup>192</sup> As a result, Mixtec parents and pupils were excluded from fully and meaningfully participating in the development of the LCAP, which dictates the allocation of funding for critical areas of their education, such as services for migrant students, English learners, and Mixteco translation.

Subsequently, the 2022–2023 school year saw a slight resurgence in the provision of trilingual translation services. In particular, the 2022–2023 LCAP directed SMBSD school sites to augment translation services for Mixtec-speaking students by “increas[ing] support during expanded learning hours” through extra work agreements with qualified trilingual staff members.<sup>193</sup> Moreover, SMBSD committed to researching ways to deliver more trilingual translation services, such as by establishing partnerships with outside agencies, in order to improve communication with Mixtec parents during expanded learning hours.<sup>194</sup> By extending opportunities to participate in expanded learning programs with trilingual interpreters, Mixtec students could gain access to valuable academic assistance aimed at developing their academic, social-emotional, and physical needs and interests through interactive heuristic learning experiences.<sup>195</sup> Yet while SMBSD employs two trilingual district interpreters, seven schools meeting the 15 percent enrollment criterion lack qualified site-based Mixtec translators altogether,<sup>196</sup> thereby curtailing the avail-

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whose primary language is Mixtec, prompting district interpreters like Garcia to learn the language for themselves”).

<sup>191</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 65–66.

<sup>192</sup> 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 135.

<sup>193</sup> 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 214.

<sup>194</sup> See *id.*

<sup>195</sup> See SANTA MARIA-BONITA SCH. DIST., EXPANDED LEARNING OPPORTUNITIES GRANT PLAN 9–10, <https://resources.finalsite.net/images/v1644955880/smbdorg/qq7sgcyebwoth1rjlcpx/ExpandedLearningOpportunitiesGrant.pdf> [<https://perma.cc/989S-8WJE>] [hereinafter SMBSD Expanded Learning Opportunities Grant Plan].

<sup>196</sup> Note that, based on a review of individual school websites within the District, it was discovered that SMBSD schools meeting the 15 percent enrollment criterion lacked site-based

ability of translation services for Mixtec students seeking to partake in expanded learning hours.

Furthermore, the 2022–2023 LCAP recognized the importance of language-appropriate communication with Mixtec-speaking families in creating a welcoming school environment and foundation for academic success.<sup>197</sup> Accordingly, SMBSD established a 2022–2023 LCAP goal to standardize translation practices and promote language access by providing interpreter training for trilingual staff across the district.<sup>198</sup> Moreover, while the 2022–2023 LCAP also urged for the hiring of additional Mixtec-speaking translators and alleged ongoing recruitment, SMBSD continues to employ a scant two trilingual interpreters as of 2023, namely Vangelis Garcia and Benito Flores-Ramirez, to address the language access needs of the growing Mixtec student population in the district.<sup>199</sup> Unlike the provision of bilingual translators and a wholly separate Bilingual Community Liaison to aid communication between Spanish-speaking families and schools, two trilingual district interpreters are forced to assume both roles simultaneously, diminishing their capacity to meet obligations to Mixtec families of visiting school sites, interpreting for meetings, and translating documents.<sup>200</sup> With a current estimate of 2,647 Mixtec-speaking students in the district,<sup>201</sup> SMBSD has not only failed to achieve the goals set forth in the LCAP since 2017, but also has disparaged the importance of language access to the educational outcomes of Mixteco pupils. Thus, despite the recent expansion of trilingual translation services by SMBSD, there are still numerous deficiencies in district programs and services for Mixtec families and their children.

## 2. Targeted Outreach, Family Engagement, and Accessible Communications

Given that the LCAP governs the funding for critical programs that greatly influence educational outcomes for Mixtec students, of

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Mixtec translators and staff.

<sup>197</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 214–15.

<sup>198</sup> See *id.*

<sup>199</sup> See *id.* at 214; *Family and Community Engagement*, SANTA MARIA-BONITA SCH. DIST., [www.smbd.org/departments/family-support-services](https://perma.cc/2TNZ-52FW) [https://perma.cc/2TNZ-52FW]; see also ‘Trilingual District Translator’ Search Results, *supra* note 192.

<sup>200</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 206, 214; see also 2017–20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 286–87.

<sup>201</sup> See *id.* at 30.



considerable value to the analysis of Mixtec student achievement in SMBSD are: (1) the recommendations of community stakeholders and (2) goals encapsulated in each annual LCAP from the seven-year review period. Since 2018, SMBSD has pursued an annual LCAP goal of promoting “linguistically inclusive and culturally responsive outreach to all families,” in part by expanding trilingual translation services at the district.<sup>202</sup> Pursuant to the aforementioned LCAP goal, SMBSD conducted targeted outreach to Mixtec families to encourage their participation in the 2019 Parent and Community Member Survey (PCMS), which assessed parent perceptions of school climate, student achievement, and family engagement in comparison to pupils and staff.<sup>203</sup> Over the six-week survey period, District Community Liaisons were available to assist Mixtec parents with completing the PCMS by orally translating the survey into Mixteco through one-on-one administration upon request.<sup>204</sup> The SMBSD Parent Leadership Team also created a video in Mixteco illustrating the importance of the PCSM for Mixtec-speaking parents and community members.<sup>205</sup> Additionally, SMBSD distributed the PCMS through the district website, weekly notifications on ParentSquare, individual school sites, and community events—many of which are frequented by Mixtec families.<sup>206</sup>

Despite an unwavering goal of cultivating a linguistically inclusive decision-making process for Mixtec families, in recent years, SMBSD outreach efforts inviting Mixtec families to participate in stakeholder surveys largely paralleled the insufficient district measures from 2019. Between 2020 and 2023, SMBSD administered more than twelve surveys that accommodated the language access needs of Mixtec families.<sup>207</sup> In particular, SMBSD issued two parent surveys and one student survey in

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<sup>202</sup> 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 158.

<sup>203</sup> *See id.* at 142–62; *see also California School Parent Survey*, CAL. DEP’T OF EDUC. (June 28, 2023), [www.cde.ca.gov/ls/he/at/csps.asp](http://www.cde.ca.gov/ls/he/at/csps.asp) [<https://perma.cc/V8D6-P6PF>].

<sup>204</sup> *See* 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 162.

<sup>205</sup> *See id.* at 142. The 2019 Parent and Community Member Survey was distributed at events including District Migrant Parent Advisory Council meetings, English as a Second Language classes, Literacy Nights Courses, and Pathways to Success. *Id.*

<sup>206</sup> *See id.*

<sup>207</sup> *See* 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 9; 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 130; SANTA MARIA-BONITA SCH. DIST., 2023–24 LOCAL CONTROL AND ACCOUNTABILITY PLAN 67 (2023), <https://resources.finalsite.net/images/v1696460450/sbceoorg/saa781v4onreryxqzvrz/2023-24ApprovedSMBonitaLCAP09-28-23.pdf> [<https://perma.cc/P6E5-9BWP>].

the 2020–2021 school year to gather input for the LCP, which evaluated experiences with distance learning, educational barriers, academic needs, and communication services for marginalized families in the district—including English learners and the Mixteco community.<sup>208</sup> Then from 2020 to 2022, the district disseminated six school climate surveys and the California Healthy Kids Survey (CHKS), which addressed school safety, campus violence, health risks, pupil behaviors, student wellness, and youth resiliency.<sup>209</sup> SMBSD notified parents and students that all surveys were available in a digital format with English and Spanish versions for six weeks through ParentSquare—together with website posts, text messages, verbal reminders, and printed flyers for the CHKS and school climate surveys.<sup>210</sup> To further increase engagement with the surveys, SMBSD also conducted Mixtec-specific outreach, provided trilingual interpreters to assist parents and students with submitting their responses by phone, and offered alternative means to complete the surveys to mitigate accessibility issues associated with language, technology, or literacy.<sup>211</sup> Lastly, during the 2021–2022 school year, stakeholder engagement for the *ESSER III Safe Return to In-Person Instruction Plan* involved multiple districtwide parent surveys to gauge perceptions about returning to in-person learning amidst the COVID-19 pandemic.<sup>212</sup> The *ESSER III* surveys were delivered solely in written form in English and Spanish, with additional language access for Mixtec-speaking families by phone.<sup>213</sup>

Upon evaluation of the outreach efforts for Mixtec families, SMBSD asserted that the district had empowered parents of the Mixteco community to partake in decision-making processes “in a linguistically inclusive space with the appropriate translated materials.”<sup>214</sup> In multiple respects, however, the district failed to cultivate a linguistically inclusive and culturally responsive space for Mixtec families to

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<sup>208</sup> See 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 9.

<sup>209</sup> See 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 67, 130; *California Healthy Kids Survey*, CAL. DEP’T OF EDUC. (June 28, 2023), [www.cde.ca.gov/lh/he/at/chks.asp](http://www.cde.ca.gov/lh/he/at/chks.asp) [https://perma.cc/3T7W-5W63].

<sup>210</sup> See 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 9; 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 67, 130.

<sup>211</sup> See 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 9; 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 67, 130.

<sup>212</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 6, 10.

<sup>213</sup> See *id.* at 66.

<sup>214</sup> 2017–20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 162.

engage in decision-making as set forth in the LCAPs. Firstly, language access to surveys for Mixtec-speaking families steadily decreased over time—with SMBSD discontinuing the following accommodations: (1) the use of Mixteco survey outreach videos after 2019; (2) the distribution of surveys at community meetings and individual school sites by 2020; (3) weekly survey notifications through ParentSquare as of 2021; and (4) survey advertisements via the district website, text messages, verbal reminders, and printed flyers in 2022. Moreover, SMBSD only offered English and Spanish translations of surveys, thereby requiring over 2,000 Mixtec-speaking families to schedule one-on-one administration with either of the two trilingual interpreters to participate in any survey—an endeavor that would prove logistically impossible for all families to accomplish within the allotted timeframe. Given the significance of the surveys in decision-making related to school programs, services, and funding, parental involvement for underserved Mixtec students is necessary to ensure that SMBSD is apprised not only of their academic challenges but also of culturally appropriate means to meet the unique educational needs of their community. Yet SMBSD constrained avenues for Mixtec-speaking families to complete surveys by exacerbating language barriers. With many voices of Mixtec parents within the district left unheard, survey results may have failed to accurately capture the academic challenges that their children face in SMBSD schools, thus thwarting their academic demands and disparaging their children’s educational aspirations.

Despite the inadequacies of Mixtec outreach efforts by SMBSD and any consequent deficiencies in the survey results, community stakeholders have nonetheless provided invaluable feedback regarding educational access for Mixtec-speaking families and students in the district. Since 2020, parents and community members across various district advisory committees have expressed demands to increase programs and services for Mixtec families and students in SMBSD, with an emphasis on improving educational outcomes, targeted outreach, and accessible communication for the Mixteco community.<sup>215</sup> Among the SMBSD advisory committees are the LCP and LCAP Stakeholder Teams and District English Language Advisory Committee (DELAC)—each of which is

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<sup>215</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 70, 214.

comprised of parents, pupils, community members, local business leaders, non-profit community partners, and school staff.<sup>216</sup>

Beginning with the 2020–2021 school year, the LCP and LCAP Stakeholder Teams urged SMBSD to provide Mixtec families and students with “accurate information resources [and] timely, consistent, clear, accessible and routine communications and engagement in [Mixteco through] multiple modalities.”<sup>217</sup> That same year, members of the DELAC called on SMBSD to continue and expand outreach to Mixteco families and students.<sup>218</sup> Yet SMBSD largely failed to heed to the recommendations of advisory committees, with the district spending \$68,540 less on translation services than the 2020–2021 budget had allocated, rather than diverting unused funds to support alternative language access for Mixtec families and students.<sup>219</sup> With the impact of COVID-19 reverberating through schools, SMBSD *instead* focused on mitigating education loss from the pandemic for *all* pupils during the 2020–2021 school year, impetuously imposing responsive solutions for the general student population on Mixtec families without any consideration of their unique academic needs.

In particular, SMBSD launched a distance learning website in 2020, which featured a resource library for parents containing informational videos in English, Spanish, and Mixteco.<sup>220</sup> Through the resource library, Mixtec families could view trilingual videos on a variety of topics—including tutorials on how to log onto the distance learning website and create learning platform accounts as well as information regarding school instructional models, student expectations, class schedules, extended day programs, and parent helplines.<sup>221</sup> Given that Mixteco is not a written language, Mixtec-speaking parents and students may have struggled to decipher the text on the distance learning website that directs them to trilingual video tutorials in the resource library. Consequently, Mixtec-speaking parents and students unable to locate the resource library were preempted at the outset from accessing trilingual videos that were

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<sup>216</sup> See *id.* at 65–66.

<sup>217</sup> 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 7.

<sup>218</sup> See *id.* at 15.

<sup>219</sup> See 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 106.

<sup>220</sup> See 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 31–32, 51–52.

<sup>221</sup> See *id.*

specifically designed to assist them in navigating the distance learning website. Furthermore, while Mixtec families were provided guidance on using the distance learning website, SMBSD offered no discernable services to ensure that online academic instruction was effective in teaching Mixtec-speaking students.

Together with resources on the distance learning website, SMBSD also established a Mixteco hotline staffed twelve hours per day Monday through Friday and deployed on-site trilingual district interpreters to help Mixtec-speaking parents and students with distance learning issues, in addition to conducting outreach via phone and ParentSquare.<sup>222</sup> The Mixteco hotline primarily aimed to support Mixtec-speaking parents and students in “understanding the importance of distance learning,” foster “connectivity, engagement with schools, and participation in school and district stakeholder trainings,” and offer real-time resources.<sup>223</sup> However, the Mixteco hotline proved ineffective, as Mixtec-speaking parents reported lengthy turnaround times for callbacks to receive assistance with logging onto the distance learning website, thereby preventing their children from education access for as long as three weeks.<sup>224</sup>

The deficits in language access were felt by Mixtec families in SMBSD, as revealed by the 2021–2022 LCAP PSCM results, in which 76 percent of respondent parents and community members requested more outreach to the Mixteco community.<sup>225</sup> Accordingly, SMBSD began to incorporate advisory committee recommendations regarding the unmet language access needs of Mixtec families from the year prior into 2021–2022 district plans. Per the suggestion of the LCP and LCAP Stakeholder Teams, SMBSD introduced providing accessible communications and engagement in Mixteco as a guiding principle for the 2021–2022 LCP.<sup>226</sup> SMBSD also instituted a parallel goal in the 2021–2022 LCAP, under which all schools must “create a culture of respect and caring that supports positive relationships among all stakeholders and implement a parent engagement pathway districtwide.”<sup>227</sup>

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<sup>222</sup> See *id.* at 58; 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 86.

<sup>223</sup> 2020–21 SMBSD Learning Continuity and Attendance Plan, *supra* note 187, at 58; 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 86.

<sup>224</sup> See Esquivel, *supra* note 171.

<sup>225</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 214.

<sup>226</sup> See *id.* at 22.

<sup>227</sup> 2021–22 SMBSD Local Control and Accountability Plan, *supra* note 189, at 126.

Moreover, the LCAP Stakeholder Team delivered additional feedback regarding the education of Mixtec students to SMBSD in 2021, characterized by an overarching theme to cultivate a welcoming and inclusive school environment for the Mixtec community.<sup>228</sup> Namely, the LCAP Stakeholder Team urged SMBSD to increase the number of trilingual district interpreters, require Mixteco translation services for all meetings, expand cultural responsiveness training, improve school-to-home communications with Mixtec-speaking families, and implement Mixtec parent education programs.<sup>229</sup> Furthermore, SMBSD gathered input from school leaders on the participation of Mixtec students in summer learning programs through the Expanded Learning Opportunities (ELO) Grant Plan, which offers supplemental instruction to pupils identified as needing academic, social-emotional, or other support.<sup>230</sup> As conveyed by school leaders, summer learning program teachers requested that SMBSD hire a cluster Mixteco community liaison to “support the level of engagement needed by” Mixtec families and students—which requires developing necessary relations with, and in-depth knowledge of, individual school sites.<sup>231</sup>

In accordance with recommendations and feedback from advisory committees and school leadership, SMBSD has worked to implement programs and services aimed at improving communications and engagement with Mixtec families. As of the 2021–2022 school year, SMBSD has committed to translating all ParentSquare messages into Mixteco,<sup>232</sup> which strengthens communication with Mixtec parents by ensuring that important information regarding the education of their children is accessible to all families in the district, regardless of their primary language. Additionally, SMBSD has expanded targeted outreach to provide Mixtec-speaking families with information regarding the ELO Grant Plan.<sup>233</sup> Yet rather than recruiting a Mixtec community liaison, as requested by summer program teachers, SMBSD instead ordered school site teams and Parent Engagement Department to (1) air Mixteco radio announcements about the ELO Grant Plan; (2) collaborate with community partners to promote ELO offerings through

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<sup>228</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 70.

<sup>229</sup> See *id.* at 70–71.

<sup>230</sup> See SMBSD Expanded Learning Opportunities Grant Plan, *supra* note 195, at 1–3.

<sup>231</sup> *Id.* at 2.

<sup>232</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 10.

<sup>233</sup> See SMBSD Expanded Learning Opportunities Grant Plan, *supra* note 195, at 3.

their social media; and (3) place phone calls with trilingual interpreters to notify Mixtec parents that their child has been selected for the ELO program and assist them with registration.<sup>234</sup>

Moreover, SMBSD has maintained a Mixteco Parent Advisory Committee since 2021, which meets four times a year to focus on “building the capacity of [Mixtec] families to effectively engage with schools and advocate for their students.”<sup>235</sup> The Mixteco Parent Advisory Committee was formed with the objective of better meeting the needs of Mixtec-speaking families, who have experienced incessant challenges in communicating with SMBSD.<sup>236</sup> From addressing bullying against Mixtec students to advocating for more resources for Mixtec families, members of the Mixteco Parent Advisory Committee are also involved in a number of significant decision-making processes at the district level, which can be relayed back to their communities in an accessible manner.<sup>237</sup> Lastly, while trilingual translation services are made available at other district meetings, the Mixteco Parent Advisory Committee is the singular governing body of SMBSD that holds meetings exclusively in Mixteco,<sup>238</sup> which serves to uplift the leadership and authority of Mixtec families in directing the education of their children.

However, the overwhelmingly marginal efforts of SMBSD nonetheless remain insufficient to address the pressing need for accessible communications and engagement with Mixtec families, as elucidated by 76 percent of surveyed parents and community members demanding more outreach to the Mixteco community.<sup>239</sup> Thus, by failing to foster meaningful involvement of Mixtec families in district decision-making, SMBSD has not only alienated Mixtec parents from their right to exercise

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<sup>234</sup> See *id.* at 3–4.

<sup>235</sup> SANTA MARIA-BONITA SCH. DIST., TÍTULO I, PARTE A LEA POLÍTICA DE PARTICIPACIÓN DE LOS PADRES Y LA FAMILIA 5 (2021), <https://resources.finalsite.net/images/v1648503947/smbdsorg/mca0lxplv0axbjwdnk3p/2021%E2%80%939322SMBSDfamilyandParentEngagementPolicyUpdate.pdf> [<https://perma.cc/CQ7S-4X7P>] [hereinafter Title I, Part A LEA Parent and Family Engagement Policy].

<sup>236</sup> See Dizon, *supra* note 171. See also SANTA MARIA JOINT UNION HIGH SCH. DIST., 2022–2023 ANNOUNCEMENT: DELAC, ELAC, MPAC, MIXTECO PAC MEETING DATES (2023), <https://content.myconnectsuite.com/api/documents/8f162b87b107452f9a201f2909fa63d7.pdf> [<https://perma.cc/A8MD-KNHN>]; SANTA MARIA JOINT UNION HIGH SCH. DIST. & SANTA MARIA BONITA SCH. DIST., MIXTECO PARENT ADVISORY COMMITTEE (2023), <https://content.myconnectsuite.com/api/documents/ec47128a388045c8835ab3a5e0958445.pdf> [<https://perma.cc/98TR-MJDJ>].

<sup>237</sup> See Almanza, *supra* note 165; MIXTECO PARENT ADVISORY COMMITTEE, *supra* note 236.

<sup>238</sup> See Almanza, *supra* note 165.

<sup>239</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 214.

control over the education of their children but has also deprived Mixtec children of access to equal education.

3. *Evaluating the Educational Experiences of Mixtec-Speaking Indigenous Mexican Students in Santa Maria-Bonita School District as Contrasted with Native American Students Through the Human Rights Framework of the U.N. Declaration*

Despite their indigeneity, Mixtec students are not entitled to the rights and protections afforded to Native American students under the ESSA. With SMBSD serving as a microcosm of the state public education system, the educational experiences of Mixtec students in the district reflect the widespread failure of school districts throughout California to ensure Indigenous Mexican students receive a culturally responsive, linguistically appropriate, and identity-affirming education. Although SMBSD has implemented a number of programs and services designed to promote the academic achievement of Mixtec students,<sup>240</sup> efforts have fallen far short of the rights enumerated in the U.N. Declaration and, to a lesser extent, the ESSA.

Under the U.N. Declaration, states are required to take effective measures to ensure Indigenous children have access to an education in their own language and culture.<sup>241</sup> Correspondingly, the Title VI Indian Education Grant Programs as well as NAL@ED permit the allocation of funding for native language instruction.<sup>242</sup> Alarming, however, SMBSD has indefensibly retained a mere two trilingual interpreters to serve the over 2,500 Mixtec students and families across the district.<sup>243</sup> A staunch rejection of the rights set forth in the U.N. Declaration, SMBSD has not only severely curtailed education access for Mixtec-speaking students by failing to provide adequate translation services, but SMBSD has also disparaged the substantial importance that Mixtec parents have placed on maintaining the trilingualism of their children—and, in turn, their Indigenous heritage.<sup>244</sup>

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<sup>240</sup> Note that certain shortcomings of the SMBSD have been addressed in preceding paragraphs and, thus, will be used to illustrate the arguments of the analysis, as opposed to identifying the issues in detail.

<sup>241</sup> U.N. Declaration, *supra* note 1, at 13.

<sup>242</sup> See Every Student Succeeds Act, 20 U.S.C. § 7402; *Native American Language Grant (NAL@ED)*, *supra* note 29.

<sup>243</sup> See 2022–23 SMBSD Local Control and Accountability Plan, *supra* note 159, at 30, 214.

<sup>244</sup> See Ruiz & Barajas, *supra* note 148, at 139.



Additionally, Title VI Indian Education Grant funds are conditioned on the requirements that LEAs employ knowledgeable school staff with expertise in providing culturally appropriate and effective instruction.<sup>245</sup> In contrast to the U.N. Declaration and Title VI, SMBSD has knowingly employed a trilingual interpreter who lacks Mixteco proficiency and ancestry since 2021,<sup>246</sup> further diminishing the quality of translation services for Mixtec-speaking families in the district. With a sizable Mixtec population at their disposal, hiring a non-Mixtec-speaker with negligible cultural knowledge as the trilingual translator for the thousands of underserved Mixtec-speaking students in SMBSD was an unjustifiable denial of their right as Indigenous peoples to access linguistically appropriate education from culturally competent staff. Yet due to the constrictive definition of “American Indian,”<sup>247</sup> Mixtec students are ineligible for Title VI grants, and are thus not entitled to native language instruction nor culturally responsive educators.<sup>248</sup> Ergo, in order to secure funding for linguistically and culturally responsive educational services—as opposed to squandering limited resources on unqualified trilingual interpreters—SMBSD can redirect funding to incorporate Mixteco to supplement the existing Dual Language Immersion Program, which currently develops biliteracy in English and Spanish at the exclusion of Mixteco.<sup>249</sup>

Furthermore, ineffective recruitment further resulted in multiple extended periods whereby SMBSD had one trilingual interpreter to single-handedly render all Mixtec translation services to the district and Mixtec-speaking families, in addition to over \$70,000 in unused funds consequent to trilingual interpreter vacancies.<sup>250</sup> While Mixtec students are ineligible for Title VI grants for native language instruction, SMBSD could have reallocated the unspent budget in the excess of \$110,000 to establish Mixteco language courses or integrate curricula that is specific to the Mixtec community. Instead, the district took no such action,

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<sup>245</sup> See 20 U.S.C. § 7402.

<sup>246</sup> See Dizon, *supra* note 171.

<sup>247</sup> See Every Student Succeeds Act, 20 U.S.C. § 7491.

<sup>248</sup> See Every Student Succeeds Act, 20 U.S.C. § 7422(b)(1).

<sup>249</sup> See SANTA MARIA-BONITA SCH. DIST., DUAL LANGUAGE IMMERSION PROGRAM MASTER PLAN 2 (2014), <https://www.smbd.org/departments/multilingual-services/multilingual-learner-master-plan-clone-clone> [<https://perma.cc/Y37R-MMJD>] (follow “Dual Language Immersion” hyperlink).

<sup>250</sup> See 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 94, 159.

thereby allowing funds intended for Mixtec students to re-enter the general fund at the end of the school year, wholly disregarding the unique language preservation needs of Mixtec-speaking students, and failing to provide adequate translation services. Worse yet, district plans from 2017 to 2023 did not include any considerations of implementing Mixteco language instruction or Mixtec-specific curriculum—which, when coupled with the existing deficiencies in educational programming for Mixtec students, reveals that SMBSD is unlikely to advance toward such a goal. The insufficiency of trilingual translation services contravenes the right to reject assimilation in the U.N. Declaration,<sup>251</sup> and forces Mixtec students in SMBSD to assimilate and avoid academic underachievement, only to receive an education that fails to even acknowledge their cultural and linguistic needs.

Additionally, despite ongoing deficiencies in communication and outreach to Mixtec families, SMBSD has not conducted any efforts to expand staffing to include Mixtec community liaisons, school site personnel with fluency in Mixteco, or additional trilingual interpreters. Pursuant to the U.N. Declaration, Indigenous children “have the right to all levels and forms of education” without discrimination.<sup>252</sup> In furtherance of the right to access all levels of education, Title VI grant funds can be utilized to implement culturally responsive teaching and learning strategies into district educational programs for Native American students.<sup>253</sup> At SMBSD, however, Mixtec students are excluded from accessing the minimum resources required to meaningfully engage in their education on the basis of their primary language, thereby subjecting them to discrimination rooted in their Indigenous identity. In particular, due to the scarcity of trilingual staff, a significant number of informational materials are not translated for Mixtec-speaking families, notwithstanding the fact that their district satisfies the 15 percent criterion to receive language access services under state law.<sup>254</sup> For instance,

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<sup>251</sup> U.N. Declaration, *supra* note 1, at 10.

<sup>252</sup> *Id.* at 13–14.

<sup>253</sup> See Every Student Succeeds Act, 20 U.S.C. § 7425(b)(9).

<sup>254</sup> Cf. *Special Education*, SANTA MARIA-BONITA SCH. DIST., [www.smbd.org/departments/special-education](http://www.smbd.org/departments/special-education) [<https://perma.cc/T67W-4D5Y>]; *Migrant*, SANTA MARIA-BONITA SCH. DIST., [www.smbd.org/departments/teaching-and-learning/migrant](http://www.smbd.org/departments/teaching-and-learning/migrant) [<https://perma.cc/Y8KH-63T6>]; *Multilingual Learners*, SANTA MARIA-BONITA SCH. DIST., [www.smbd.org/departments/teaching-and-learning/multilingual-learners](http://www.smbd.org/departments/teaching-and-learning/multilingual-learners) [<https://perma.cc/2RMW-R5AB>] (demonstrating that SMBSD has not provided Mixteco translations for district web pages containing critical information for parents, including information regarding special education, migrant students,

before the 2021–2022 school year, SMBSD did not provide Mixteco translations of ParentSquare messages, which serves as the main digital platform for school-to-home communications within the district. Additionally, SMBSD has not created a Mixteco version of the district website for the 2,500 Mixtec students and families in the district, which excludes them from accessing information that directly impacts the Mixtec children’s education, such as special education, migrant services, multilingual learners programs, and, most notably, the home language survey, which is the foremost avenue for Mixtec-speaking families to be identified as Limited English proficient (LEP).<sup>255</sup> With no means to access untranslated information from the district, Mixtec parents and students are not fully apprised of the educational opportunities and resources available, culminating in barriers to accessing all levels of education as demanded by the U.N. Declaration.

Moreover, the U.N. Declaration mandates that Indigenous peoples be enabled to participate in decision-making processes on matters impacting their communities through their representatives of choice.<sup>256</sup> Relatedly, LEAs are permitted to utilize Title VI grants to promote student and parent leadership, advocacy, and involvement.<sup>257</sup> However, SMBSD has curtailed the right of Mixtec parents to direct the education of their children by inhibiting their involvement in the development of the LCAP, which governs the allocation of funding to essential programs for Mixtec students—such as trilingual translation, English learner language acquisition, and migrant pupil support services. In particular, the failure of SMBSD to ensure consistent trilingual translation services for district meetings and surveys has prevented Mixtec-speaking parents and students from contributing to the decision-making processes that shape their educational outcomes. Consequently, SMBSD has not only violated the state-mandated requirement to collaborate with community stakeholders in the development of the LCAP,<sup>258</sup> but has also infringed on the rights set forth by the U.N. Declaration. Yet due to the

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and the multilingual language program itself).

<sup>255</sup> See 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 155–56; *Special Education*, *supra* note 254; *Migrant*, *supra* note 254; *Multilingual Learners*, *supra* note 254.

<sup>256</sup> U.N. Declaration, *supra* note 1, at 15–16.

<sup>257</sup> See Every Student Succeeds Act, 20 U.S.C. § 7425(b); Title VI Implementation, *supra* note 18, at 13.

<sup>258</sup> See CAL. EDUC. CODE § 52062 (2023).

restrictive definition of “American Indian” as prescribed by federal law, Mixtec-speaking Indigenous students are ineligible to attain the benefits of Title VI funding, which would greatly augment their authority in SMBSD, if made available to them.

Furthermore, LEAs with either a total enrollment of over 50 percent Native American students or more than \$40,000 in Title VI Indian Education Grant Program funding are obligated under federal law to initiate “timely and meaningful consultation [with Indian Tribes] on issues affecting” Native American students.<sup>259</sup> In addition, affected LEAs must consult tribal officials who are chosen to serve as representatives by Native American communities and support the involvement of tribal parents, local parent advisory committees, and other tribal leaders.<sup>260</sup> In contrast to tribal consultation, the availability of trilingual translation services for Mixtec families to participate in LCAP hearings, parent-student surveys, and school meetings has declined over time despite the growing population of Mixtec-speaking students in the district.

The process by which SMBSD administers surveys to Mixtec families is also highly untenable, as two trilingual interpreters cannot meet the language access needs of 2,500 parents and students within the time-frame allotted to complete the surveys. As a result, the voices of Mixtec families, pupils, and community members remain unheard by the district, thus validating SMBSD’s blatant disregard of the unique academic needs of its most underserved student population. Moreover, although SMBSD formed the Mixteco Parent Advisory Committee, members only convene four times per year, thereby limiting the singular accessible platform Mixteco families may use to advocate for their community. Paradoxically, as the number of Mixtec families in the district continues to rise, their access to the decision-making processes of the district increasingly wanes. However, Mixtec parents and students have taken notice of their exclusion from the decision-making processes of the district. In response, Mixteco students and parents have mobilized to increase their representation on the SMBSD School Board in 2022, urging board members to redraw district lines in a manner that most accurately reflects the demographics of their community and distinguishes their Indigenous

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<sup>259</sup> Every Student Succeeds Act, 20 U.S.C. § 7918; *see also* Tribal Consultation Toolkit, *supra* note 33, at 3.

<sup>260</sup> *See* 20 U.S.C. § 7918; *see also* Tribal Consultation Toolkit, *supra* note 33, at 3.

identity from that of “Latino or Hispanic” categories.<sup>261</sup> While there are no Mixtec representatives on the SMBSD School Board in 2023, the political action undertaken by the Mixteco community bears testament to their remarkable tenacity and unwavering commitment towards ensuring that their children can thrive academically, linguistically, and culturally within the district.<sup>262</sup>

#### **IV. RETHINKING THE EDUCATION OF INDIGENOUS LATINE IMMIGRANT STUDENTS IN THE U.S.**

Each year, thousands of Indigenous Latine immigrants cross the southern U.S. border in search of a better life. Yet, their pursuit is stifled by countless factors that perpetuate their exclusion from full participation in American society, which begins as early as childhood with the failure of state and federal governments to provide equitable access to education to Latine students who primarily speak Indigenous languages. When Indigenous Latine immigrant students are not given adequate academic support to overcome their language barriers, these children are less able to meaningfully engage with curriculum that is not in their native language, thereby hindering educational attainment. Worse yet, Indigenous Latine students are also enrolled in instructional programs aimed at facilitating English language acquisition as rapidly and effectively as possible,<sup>263</sup> often at the expense of their Indigenous languages and cultures. Instructional programming centered on the rapid acquisition of English language proficiency is not only reminiscent of the dissolution of bilingual education in California under Proposition 227<sup>264</sup> but also the forcible assimilation to which the federal government subjected Native Americans in the late 1800s.<sup>265</sup>

There are viable alternatives to appropriately educate Indigenous Latine students. Policy reform geared towards improving instruction for Indigenous Latine students should look to existing efforts aimed at meeting the unique cultural, language, and educational needs of

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<sup>261</sup> See Laura Place, *Residents Want Representation for Diverse Communities on Santa Maria Elementary District's Board*, SANTA MARIA TIMES (Apr. 4, 2023) [https://santamariatimes.com/news/local/residents-want-representation-for-diverse-communities-on-santa-maria-elementary-districts-board/article\\_c17f2ade-9bd0-5d3e-bad1-d947e9073325.html](https://santamariatimes.com/news/local/residents-want-representation-for-diverse-communities-on-santa-maria-elementary-districts-board/article_c17f2ade-9bd0-5d3e-bad1-d947e9073325.html) [https://perma.cc/35VH-MSZN].

<sup>262</sup> *Cf. id.*

<sup>263</sup> See CAL. EDUC. CODE §§ 305, 306(c) (2023).

<sup>264</sup> See O'Sullivan, *supra* note 67, at 701.

<sup>265</sup> See Ross, *supra* note 41, at 319.

Native American students and ensuring their ability to satisfy State academic standards. Title VI Indian Education Grants, together with the U.N. Declaration, can provide effective guidance to achieve education equity for Indigenous Latine student populations that remain largely underserved by the public education system. Most importantly, policymakers should prioritize initiatives that ensure Indigenous Latine students acquire English language proficiency and maintain their cultural and linguistic diversity.

**A. *Increasing Federal Intervention into the Education of Indigenous Latine Students***

Greater intervention by the federal government could promote educational equity for Indigenous Latine student populations, as education has become increasingly subsidized and standardized by the federal government.<sup>266</sup> For example, the federal government grants additional funding to states that adopt the Common Core State Standards Initiative, which is a national curriculum aimed at preparing students for college through standardized English and Mathematics instruction.<sup>267</sup> Federal interventions for English learners are not unheard of either: in 1974, Congress passed the Equal Educational Opportunities Act (“EEOA”), which requires public schools to take appropriate action to help English learners overcome language barriers and ensure their ability to participate equally in school.<sup>268</sup> However, the current enforcement mechanism of the EEOA requires English learners who have suffered a violation under the statute to vindicate their rights in federal court.<sup>269</sup> Given that immigrant Latine households have significantly less financial resources than U.S. citizens,<sup>270</sup> Indigenous students from emerging communities may lack meaningful access to the judicial system, which forecloses opportunities for them to vindicate the rights conferred by the EEOA in federal court.<sup>271</sup> Consequently, states may fail to adequately accom-

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<sup>266</sup> See O’Sullivan, *supra* note 67, at 708.

<sup>267</sup> See *id.* at 708–09.

<sup>268</sup> See Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701, 1703.

<sup>269</sup> See Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1706.

<sup>270</sup> See Mohamad Moslimani, *Key Facts About the Wealth of Immigrant Households During the COVID-19 Pandemic*, PEW RSCH. CTR. (Dec. 4, 2023), [www.pewresearch.org/short-reads/2023/12/04/key-facts-about-the-wealth-of-immigrant-households-during-the-covid-19-pandemic](http://www.pewresearch.org/short-reads/2023/12/04/key-facts-about-the-wealth-of-immigrant-households-during-the-covid-19-pandemic) [https://perma.cc/PZ8E-2C5J].

<sup>271</sup> See Herrera & Escontrías, *supra* note 54, at 227 (“[r]egions with emerging Latinx communities who are primarily low-income and immigrant may not have as many community

modate or educate English learners in violation of the EEOA without detection or punishment by the federal government, thereby decreasing accountability.

To better uphold the rights granted to English learners by the EEOA, the U.S. Department of Education should create implementing regulations to establish proactive enforcement measures, rather than placing the onus on Indigenous Latine students to assert their rights as English learners through inaccessible legal action. Among such proactive enforcement mechanisms is increased monitoring of English learner policies, standards, and programs at the state-level. In particular, the U.S. Department of Education should conduct comprehensive audits of educational programs for English learners by state. The agency should scrutinize both policies and reported metrics measuring the outcomes of English learners in that state, including academic achievement, graduation rates, and college attendance.

Alarming findings—including discriminatory policies, inadequate educational standards, and poor academic outcomes among English learner populations—should trigger mandatory federal intervention by the U.S. Department of Education. The U.S. Department of Education would then oblige states to implement corrective measures for improving English learner outcomes within a specified timeframe, in addition to demanding that any remedial action taken be calibrated to ensure English learners attain proficiency in English while promoting the preservation of their native language. Failure of states to rectify poor educational outcomes within the allotted timeframe should be required reappropriation federal funding to English learner programs at LEAs with the largest academic achievement gaps between English-speaking students and non-English speakers, and ongoing inspection by the U.S. Department of Government would assess for compliance and efficacy. The U.S. Department of Education should also exercise oversight before States implement changes to their English learner curriculum to ensure that educational programming is designed to achieve English fluency and encourage native language preservation.

Much like Common Core Standards, the federal government should establish a national curriculum for English learners and incentivize

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organizations, elected officials, or financial support to launch projects that engage different types of constituencies required to build support for their law and policy goals.”).

implementation by state governments through set-aside funds.<sup>272</sup> To counteract the prevailing trend of prioritizing English language acquisition at the expense of Indigenous languages, a standardized federal curriculum for English learners should move beyond basic instruction, particularly as executed for immigrant students with Indigenous identities. Gleaning inspiration from Title VI and VII Indian Education grants, standardized federal curriculum for English learners should incorporate programs that promote the preservation of Indigenous Latine students' cultures and languages, including bilingual instruction and the incorporation of Indigenous languages, traditions, and cultural practices into the broader curriculum.

Furthermore, the development of a standardized English learner curriculum must be a collaborative effort, informed by comprehensive research conducted by experts in tandem with the communities directly affected by the curriculum's implementation. An inclusive approach is not merely procedural but embodies a commitment to acknowledging the unique needs, cultural values, and diverse perspectives of English learners such as Indigenous Latine students. Collaboration can bolster the efficacy of English learner curriculum by incorporating the invaluable insights that impacted communities can contribute. Additionally, the curriculum development process should be inherently respectful of the cultural nuances and linguistic diversity within Indigenous Latine immigrant communities. Engaging experts, parents, and advocates from these communities in curriculum development ensures that the content is culturally relevant, resonates with students' lived experiences, and incorporates Indigenous languages where appropriate. This cultural tailoring is vital for creating a curriculum that not only imparts language skills but also fosters a sense of pride and identity among Indigenous Latine students.

Upon adoption of the standardized English learner curriculum by states, the federal government can provide participating states with grant funding for LEAs that enroll immigrant students who primarily speak Indigenous languages. Similar to Title VI and VII Indian Education Grants, the federal government should order eligible LEAs to use the funding for linguistically and culturally relevant educational programming for Indigenous immigrant students, such as tribal history, Indigenous studies, and bilingual instruction. To truly achieve

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<sup>272</sup> See O'Sullivan, *supra* note 67, at 710.



greater educational equity for Indigenous Latine students, however, the standardization of English learner instruction should strive towards integration, rather than assimilation. Through a nationally standardized English learner instruction, Indigenous Latine students should develop English proficiency to effectively integrate into American society while also maintaining—and even fortifying—their cultural integrity and heritage. Thus, states incentivized to adopt a standardized English learner curriculum to attain set-aside funding must focus on linguistically and culturally relevant education, utilizing Title VI and VII Indian Education Grants as guidance.

***B. Expanding Efforts to Appropriately Educate Indigenous Latine Immigrant Students at the State and Local Level***

Indigenous Latine immigrant students face unique challenges that necessitate a nuanced and culturally responsive approach to inclusive education. Accordingly, state and local policies governing the education of English learners and the corresponding practices implemented by LEAs must explicitly integrate cultural competency. Furthermore, understanding the intersectionality of Indigenous Latine immigrant students is crucial for effective policy implementation, as many must navigate multiple layers of identity in the context of the public education system, including being Indigenous, Latine, and immigrants. State and local policies should thus recognize and address the interconnected challenges faced by Indigenous Latine students to foster an educational environment that values and supports their multifaceted identities and cultures. A culturally responsive and tailored approach is indispensable in ensuring meaningful access to educational curriculum, English language acquisition, and native language preservation.

Acknowledging the diverse linguistic and cultural heritages of Indigenous Latine students, English learner policies and practices should emphasize the importance of culturally responsive pedagogy. English learner curriculum should be expressly inclusive of the cultural values and linguistic diversity within Indigenous Latine communities. Such cultural tailoring is critical for creating a curriculum that not only imparts English language skills but also fosters a sense of pride and identity among Indigenous Latine students. Similar to establishing a standardized English learner curriculum at the federal level, state and local efforts necessitate an explicitly collaborative process that goes beyond traditional educational frameworks. The development of English

learner curriculum for Indigenous Latine students should be characterized by comprehensive research conducted by experts both in close partnership with communities affected by the curriculum's implementation. Elders, language keepers, and cultural experts from the Indigenous Latine communities should also contribute their knowledge to the curriculum. Moreover, collaboration with experts should entail identifying and incorporating Indigenous pedagogies into the instruction of English learners from their communities, as their traditional methods of teaching and learning have long proven effective for education within Indigenous cultures. Engaging experts from impacted communities ensures that the content is culturally relevant, resonates with students' lived experiences, and incorporates Indigenous languages where appropriate.

Community input should also be actively sought at every stage of curricular development for Indigenous Latine English learners, from the initial planning to ongoing revisions. Feedback from Indigenous Latine communities can serve to assess the impact of culturally responsive English learner curriculum on student outcomes, cultural preservation, and community engagement upon implementation. This feedback loop will ensure continuous improvement and responsiveness to the evolving needs of Indigenous Latine students. Moreover, the collaborative curriculum development process should not be a one-time endeavor but an ongoing commitment to capacity-building within Indigenous Latine communities. Accordingly, providing cultural competency training and Indigenous learning resources to educators within these communities can empower them to play an active role in implementing and adapting the curriculum to meet evolving educational needs. A collaborative and inclusive approach to curriculum development not only upholds the principles of educational equity but also recognizes the agency, expertise, and invaluable contributions of Indigenous Latine communities. Through consistent collaboration, states, school districts, and LEAs can demonstrate a commitment to educational equity, fostering an environment where Indigenous Latine students thrive academically while preserving and celebrating their unique cultural identities.

Moreover, culturally inclusive curriculum should be coupled with increased community engagement to promote participation amongst parents and advocates in the education of their children. For instance, the entire San Francisco Unified School District website is made available in Spanish and Chinese, in addition to offering an abridged version of the

California Procedural Safeguards Notice in Cantonese, English, Mandarin, Spanish, Tagalog, and Vietnamese. The New York City Department of Education allows parents to request Individualized Education Programs and evaluations of their children in their preferred language.<sup>273</sup> In contrast, SMBSD has not created a Mixteco version of the district website despite serving over 2,500 Mixtec students, thereby denying parents critical information on district webpages that directly impact the education of their children.<sup>274</sup> Yet SMBSD set aside two percent of Title I-Part A funds for parent and family engagement activities as recently as the 2019–2020 school year.<sup>275</sup> SMBSD and other school districts serving substantial Indigenous Latine student populations should take cues from more inclusive models like the New York City Department of Education and San Francisco Unified School District to better engage these communities. In particular, school districts should ensure the percentage of Title I-Part A funds allocated toward parent engagement is sufficient to reach their Indigenous Latine communities and provide information, resources, and translators in multiple languages, including Indigenous languages and Spanish. State education agencies should follow suit by developing translated websites and resources in any language for which the student population reaches the 15 percent enrollment threshold.

At the local level, outreach efforts should further include hosting community forums, seeking input on educational initiatives, and establishing partnerships that empower Indigenous Latine families to actively participate in shaping their children's education. By fostering collaboration between school districts, families, and communities, educational programs and resources can be improved to meet the unique needs of Indigenous Latine immigrant students in a holistic and culturally responsive manner.

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<sup>273</sup> See Archerd, *supra* note 94, at 385.

<sup>274</sup> See 2017-20 SMBSD Local Control and Accountability Plan Update, *supra* note 174, at 4; See generally SANTA MARIA-BONITA SCH. DIST., <https://www.smbd.org> [<https://perma.cc/8JM7-6QGW>] (demonstrating the lack of Mixtec translations on the District website).

<sup>275</sup> See SANTA MARIA-BONITA SCH. DIST., LOCAL CONTROL AND ACCOUNTABILITY PLAN (LCAP) EVERY STUDENT SUCCEEDS ACT (ESSA) FEDERAL ADDENDUM TEMPLATE 8, [https://resources.finalsite.net/images/v1646068786/smbdorg/nu4pcjbnegepytklmug3/LCAPFederalAddendum\\_1.pdf](https://resources.finalsite.net/images/v1646068786/smbdorg/nu4pcjbnegepytklmug3/LCAPFederalAddendum_1.pdf) [<https://perma.cc/8TMT-DPDH>].

***C. Advocating for the Adoption of the U.N. Declaration by the U.S. to Advance the Right of Indigenous Latine Immigrant Students to a Culturally Responsive Education***

The educational landscape in the U.S. is marked by educational inequities to which both Native American and Indigenous Latine immigrant students have long been subjected. While Native American students receive certain educational benefits under Title VI Indian Education Grants, Indigenous Latine immigrant students often find themselves excluded from such protections and programs, leading to disparities in access to culturally responsive and linguistically appropriate education. While both student populations face unique challenges rooted in historical, political, and cultural contexts, Indigenous Latine students remain particularly vulnerable to educational exclusion because of the failure of federal and state governments to recognize their Native heritages from south of the imposed border. To mitigate the effects of their exclusion, reform centered on the human rights framework articulated by the U.N. Declaration is essential to advance educational equity for Indigenous Latine immigrant students.

Indigenous Latine communities, particularly those with shared histories of oppression, can benefit significantly from the adoption of the U.N. Declaration within the public education system. By extending the principles and protections outlined in the U.N. Declaration to Indigenous Latine immigrant students, the state can actively address the historical and systemic inequities faced by Indigenous Latine students in pursuit of education equity for *all* children residing within its borders. The recognition of the right to self-determination, cultural preservation, and control over education, as emphasized in the U.N. Declaration, proves especially crucial in fostering an environment that respects the diverse linguistic and cultural backgrounds of Indigenous Latine students. Moreover, alignment with the U.N. Declaration can establish the legal standing of Indigenous Latine students to demand rights to culturally responsive education. In reshaping the public education system to acknowledge and accommodate the cultural values of Indigenous Latine communities, the U.N. Declaration further serve as a powerful tool to rectify the limitations currently placed on their access to educational resources and programs.

## **CONCLUSION**

This Comment highlights the systemic failure of California's public education system to provide culturally responsive, linguistically appropriate,

and identity-affirming education to Indigenous Mexican students. Due to constrictive demarcations of “American Indian” under federal and state education law, pupils from Indigenous communities in Mexico, who attend California public schools, are impeded from availing themselves of the benefits made available to Native American children pursuant to the Every Student Succeeds Act (ESSA). The repercussions of the narrow definition of “American Indian” shaped by the U.S. government, in conjunction with the exclusion of Indigenous Mexican students from the safeguards and programs that are extended to state or federally-acknowledged Native Americans, have given rise to far-reaching ramifications. Consequently, Indigenous Mexican students occupy a marginalized position within the California public education system and are afflicted by system discrimination, placing them far from the hopeful aspirations of attaining a culturally responsive, linguistically appropriate, and identity-affirming education.