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LAW, SOCIAL POLICY,
AND THE LATINA/O
EDUCATION PIPELINE

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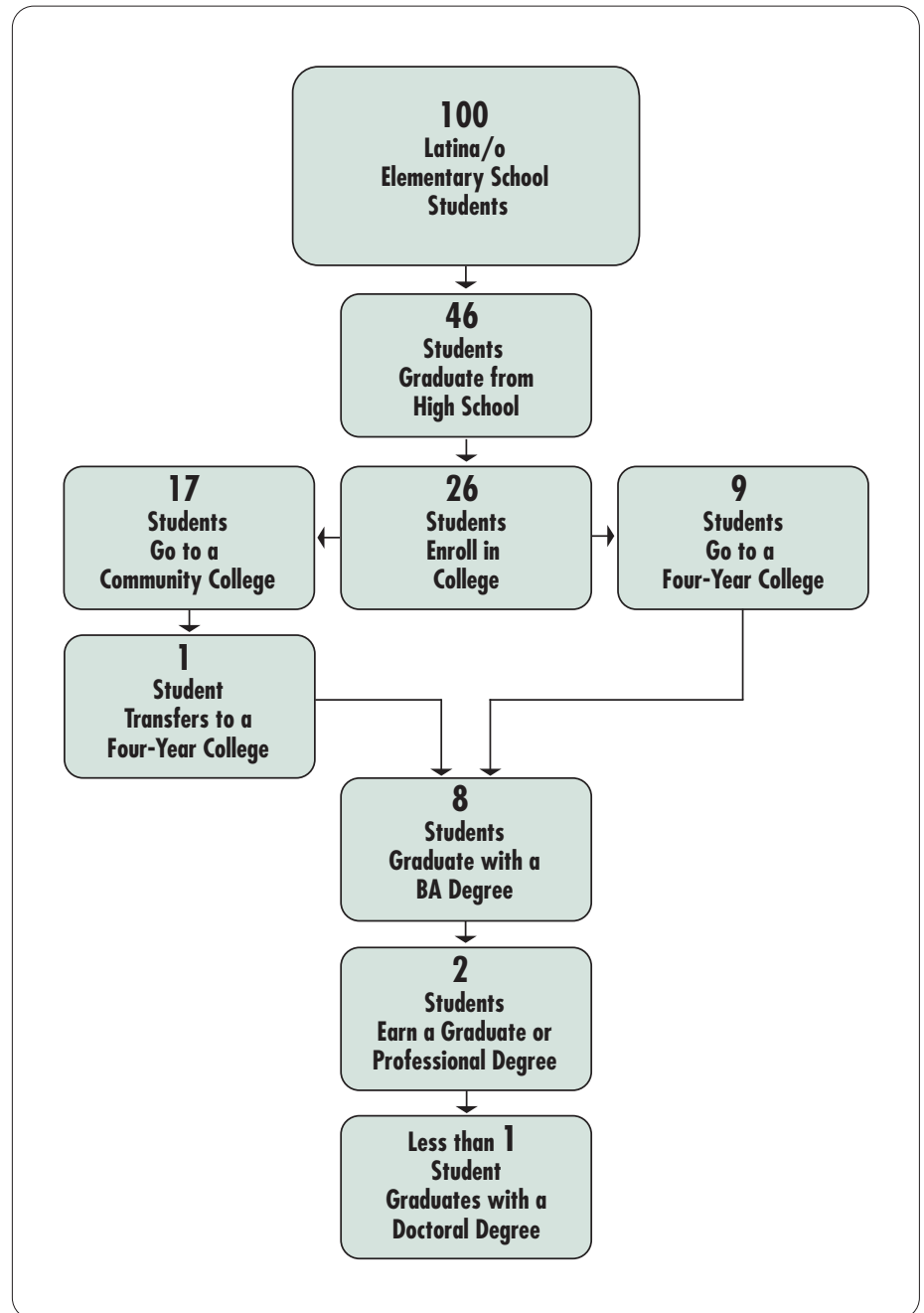
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Mexican Americans have the lowest educational level among major racial and ethnic groups in the United States (Telles and Ortiz 2008). This low level of academic achievement is clearly illustrated by the Chicana/o education pipeline (fig. 1). In their analysis of data from the 2000 census, Tara Yosso and Daniel Solorzano showed that of every hundred Latina/o elementary school students in the United States, forty-six graduate from high school and only eight graduate with a baccalaureate degree. Of these eight college graduates, only two will go on to receive a graduate or professional degree, and less than one will eventually receive a doctorate (Yosso and Solorzano 2006).

On a state level, recent data reveal similarly disappointing trends. In 2009, 63 percent of Latina/o students in California graduated from high school (Education Week 2012).¹ Yet, in 2010, only 16 percent of adults aged 25 to 64 held an associate's degree or higher (fig. 2). Latinos had the lowest rate of degree attainment when compared with four other major racial/ethnic groups: whites (51 percent), blacks (32 percent), Asians (59 percent), and Native Americans (27 percent) (Excelencia in Education 2012; Lumina Foundation 2012).²

This report explores some of the cutting-edge legal strategies and social science research aimed at mending the “cracks” in the education pipeline. The goal of these efforts is to boost the academic achievement of Chicano/Latino students throughout the pipeline and to increase the number of Chicano/

Figure 1. The Chicana/o education pipeline, showing national graduation outcomes for Chicana/o elementary-school students (redrawn from Yosso and Solorzano 2006).

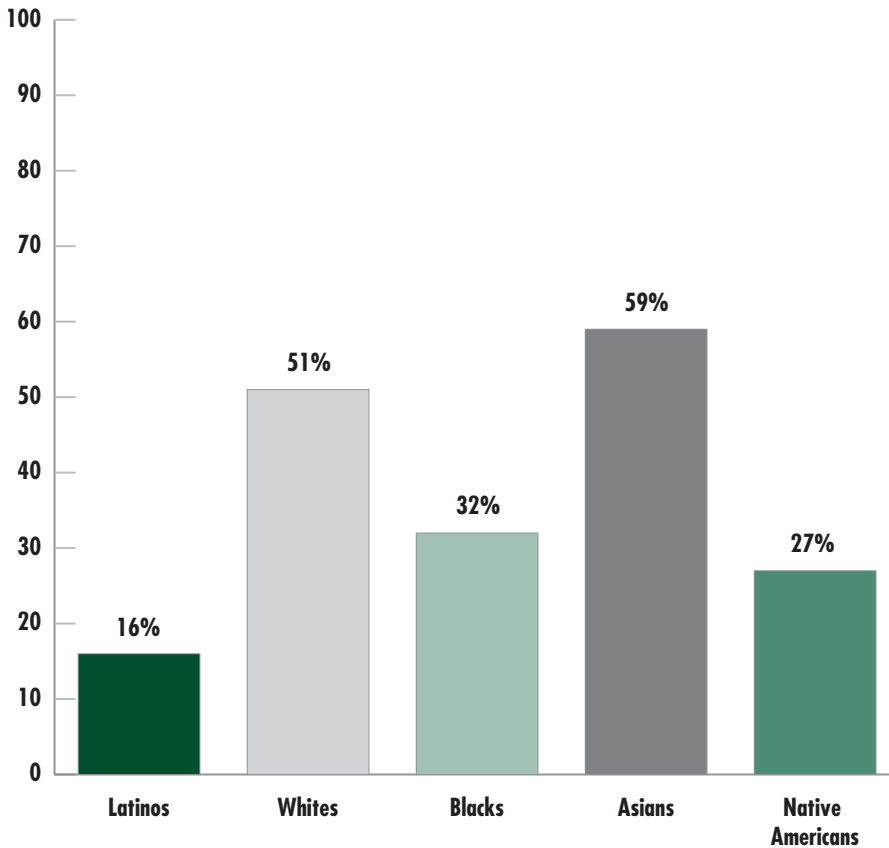


Latino college graduates. Specifically, this report focuses on three topics:

1. The emerging trend of Chicano/Latino “resegregation” in secondary and higher education and recent court battles around school finance and affirmative action.
2. The challenges associated with

providing for the needs of Latino children who are both English language learners and students with disabilities.

3. The interface between immigration law, policy, and education in light of new anti-immigrant legislation enacted at the state level.

Figure 2. Rate of degree attainment for Latino adults, aged 25–64, in California (Lumina Foundation 2012).

EFFORTS TO END RESEGREGATION

The cracks in the education pipeline have origins that are more than a hundred years old. These fissures are the direct consequence of a broad system of Mexican residential and educational apartheid that encompassed the Southwest during the early twentieth century. Between 1900 and 1930 nearly 750,000 Mexicans immigrated to the United States in search of employment and reprieve from the violence and disruption of the Mexican Revolution (Gonzalez 1994; Romero and Fernandez 2012). Mexican immigrants were deliberately segregated from the dominant white community through racially restrictive covenants, and their children were forced to attend segregated, and inferior, “Mexican schools.” These policies led to the formation of at least two hundred segregated Mexican barrios by 1940 and

the creation of underperforming school districts (Gonzalez 1994; Romero and Fernandez 2012). In fact, many present-day de facto segregated Chicano/Latino communities got their start as officially segregated Mexican *colonias* (Gonzalez 1994).

Despite the official abolition of residential and educational segregation as a consequence of the passage of the Fair Housing Act of 1968 and the U.S. Supreme Court ruling in *Brown v. Board of Education* in 1954, U.S. schools are more racially segregated today than in the 1950s. This resegregation has had a pernicious effect on Latino education: in 2006–07, two of every five Latinos in the United States attended an “intensely segregated” school (Orfield 2009, 12). In Southern California, fewer than half of entering freshmen students in intensely segregated schools graduated on time, and only 22 percent

enrolled in a California postsecondary institution in the fall term following graduation (Orfield, Siegel-Hawley, and Kucsera 2011).

Civil rights advocacy groups such as the Mexican American Legal Defense and Educational Fund (MALDEF) have mobilized to end educational resegregation by challenging discriminatory policies and practices in court.

AFFIRMATIVE ACTION

Affirmative action is one area in which litigation may be successful in constraining resegregation. *Fisher v. University of Texas at Austin*, which will be argued before the U.S. Supreme Court in the fall of 2012, has the potential to radically reshape race-based affirmative action programs in the United States.³ At issue is whether race-conscious university admissions policies should be allowed if *race-neutral alternatives* are available that promote racial diversity without explicitly taking race into account. Fisher, who was denied admission to the University of Texas at Austin, claims that the “Top Ten Percent Law” (which grants admission to the University of Texas and other public universities in the state to all Texas high school students graduating in the top 10 percent of their class) is a race-neutral policy that effectively achieves a racially diverse student body, obviating the need for a consideration of race. Although the university’s admission policy was upheld in federal district and circuit courts, the Court agreed in February 2012 to hear Fisher’s appeal.

MALDEF is spearheading creative efforts in support of the university’s defense. MALDEF and other civil rights advocates contend that eliminating race as a consideration in university admissions would result in a further rupturing of the Chicano/Latino education pipeline. Moreover, they assert that such an interpretation would directly contradict the precedent created by the Court in *Grutter v. Bollinger* and *Gratz v. Bollinger* (2003), which

established the constitutionality of narrowly tailored race-based affirmative action programs.⁴ As the Texas solicitor general is famously noted to have remarked, “If the Plaintiffs are right, *Grutter* is wrong” (Parilo 2012, 40).

SCHOOL FINANCE

Civil rights advocates are also seeking to improve educational opportunity for the Chicano/Latino community through school finance litigation. These lawsuits seek to solve the problem of “arcane state school funding schemes that are neither rationally calculated to serve student needs in theory, nor actually serving those needs in reality” (Tang 2011, 1200). They are a major weapon in the arsenal of education reformers, and school finance litigation cases have been brought in forty-five states (National Education Access Network 2011).

Historically, school finance litigation has been founded upon two major legal theories: equity theory, and adequacy theory (Tang 2011). According to the equity theory, state governments violate the equal protection of the law when they distribute school resources in a disparate manner. The adequacy approach claims that deficient state school finance schemes deny children an adequate level of education as guaranteed by the education provisions of state constitutions. Although adequacy challenges have been fairly successful—plaintiffs have won two-thirds of thirty-three cases—school finance litigants have experienced a downward spiraling success rate since 2009 (Tang 2011).

The *Robles-Wong v. California* case proffers a new legal theory—the “broken system” cause of action—that holds great promise for school finance litigation. *Robles-Wong* was set into motion in May 2010, when a group comprising the Robles-Wong family, other students and parents, nine school districts, and three nonprofit organizations brought suit in Alameda County

against the state of California, claiming that the state’s school finance system violated the students’ fundamental right to an education.⁵ According to legal scholar Aaron Tang (2011), the broken system theory offers courts a firm basis for determining that a state has a duty to provide a system of public schools that are “rationally and actually designed to service a common purpose” (1234). State finance programs that are not “intentionally, rationally, and demonstrably aligned” with the curricular goals outlined in the state’s academic content standards are thus in violation of constitutional obligations (1234). Tang argues that this new approach represents a significant evolution in the development of public school finance law and provides courts with a realistic framework for measuring state school compliance with the substantive educational guarantees of state constitutions.

EFFORTS TO HELP ENGLISH LANGUAGE LEARNERS WITH DISABILITIES

Beyond legal efforts surrounding affirmative action and school finance, social scientists are doing their part to promote Latino education reform through the development of creative policies related to English language learners who are also students with disabilities. Latinos comprise the vast majority of these students, and they are disproportionately represented in special education programs at a national level. Although more than 400 languages were spoken by English language learners in the United States in 1999–2000, Spanish speakers made up 77 percent of this student population (Artiles and Ortiz 2002). Moreover, 9,804,643 Latino students were enrolled in special education programs in 2003, comprising nearly 15 percent of the national total (Klingner et al. 2005).

Unfortunately, one unaddressed problem is the failure of educators to provide adequately for the needs of Latino English language learners who also have disabilities. As a prototypical example of the problem, the learning disabilities of English language learners are frequently downplayed, or even ignored, if their original placement is within a bilingual or English development program. The opposite scenario also often plays out—the English language learning needs of students can be overlooked if they are originally placed within a special education program.

Social scientists argue that English language learners with special needs require a comprehensive system of educational services that takes into account their distinct linguistic and cultural backgrounds. According to these scholars, services should span assessment and identification as well as instruction. A culturally responsive pedagogy incorporates the use of ethnically relevant curricula, accommodates diversity of interpersonal interaction styles, and chooses approaches that are most compatible with learner preferences and experience (Artiles and Ortiz 2002).

EFFORTS TO END ANTI-IMMIGRANT LAWS

Anti-immigrant laws have played a significant role in the fracturing of the Latino education pipeline in recent years. For example, Alabama House Bill (HB) 56, signed into law in 2011, mandates that school officials submit an annual tally of suspected undocumented K-12 students to the state department of education. Although the law does not explicitly deny undocumented K-12 students the right to attend public schools—this would be a violation of the U.S. Supreme Court’s 1982 ruling in *Plyler v. Doe*—it has had a chilling effect on public school attendance by undocumented students who fear deportation.⁶

In recognition of the damaging effects that HB 56 has had on educational opportunity for Latino students in Alabama, Assistant Attorney General Thomas Perez, head of the U.S. Justice Department's civil rights division, wrote to Alabama's state school superintendent, Thomas R. Bice, stating that HB 56 has "diminished access to and quality of education for many of Alabama's Hispanic children, resulted in missed school days, chilled or prevented the participation of parents in their children's education, and transformed the climates of some schools into less safe and welcoming spaces for Hispanic children" (Muskal 2012).

HB 56 also bans undocumented students from attending public colleges and universities. South Carolina was the first state to bar undocumented students from college attendance in 2009, and Alabama and Georgia followed suit (E4FC 2012).

Although undocumented students are allowed to attend public colleges and universities in most states, most of them find it to be tremendously challenging to pursue their education because they are forced to pay exorbitant international student fees, are barred from receiving state financial aid, and/or are denied access to federal financial aid (E4FC 2012).

Laws in some states do make it easier for undocumented students to pursue higher education. With the big exceptions of Florida and Arizona, most major immigrant receiver states now grant residency to undocumented students who meet certain requirements, which allows them to pay in-state fees for tuition (Olivas 2012). These states are California, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Rhode Island, Texas, Utah, Washington, and Wisconsin (E4FC 2012). California has led the way in this regard. In 2001 the passage of Assembly Bill (AB) 540 made it possible for undocumented

students to pay in-state registration and tuition fees if they fulfill a three-year high school residency requirement, along with several other prerequisites (Olivérez et al. 2006). Tragically, Arizona, Colorado, Georgia, and Indiana have explicitly barred undocumented students from receiving in-state tuition (E4FC 2012).

In addition to allowing students to qualify for in-state tuition, California, Illinois, New Mexico, and Texas are among the few states that give undocumented students access to financial aid. In California, AB 130, also known as part one of the California Dream Act, allows undocumented students to apply for privately funded scholarships that are processed through the university. The legislation was passed in 2011. AB 131, also known as part two of the California Dream Act, takes effect on January 1, 2013, extending this eligibility to Cal Grants and other state aid.

In states outside of California, Illinois, New Mexico, and Texas, undocumented students are denied access to public scholarships and financial aid, and, as a consequence, the enrollment of these students in colleges and universities is extremely depressed on a national level. Although 2.1 undocumented youth would qualify for residency based on current versions of the proposed the Federal Dream Act, and 65,000 undocumented students graduate from high school each year, it is estimated that only between 7,000 and 13,000 undocumented students are currently enrolled in colleges and universities throughout the United States (E4FC 2012).

CONCLUSION

This report has sought to highlight some of the cutting-edge legal efforts and social science research aimed at mending the Chicano/Latino education pipeline. MALDEF and other civil rights organizations are currently championing the educational rights of Chicano/Latino students through litigation in the

areas of affirmative action and school finance. These efforts are aimed at reversing the troubling trend of resegregation that threatens the quality of elementary, secondary, and postsecondary education for Chicanos/Latinos. In a second area of concern, the education of English language learners who have disabilities, social scientists and educational advocates have proposed a wide array of culturally responsive solutions that touch on a full range of educational services. Finally, the educational aspirations of more than 2.1 million undocumented immigrant youth are being supported in states that have determined that these students are eligible for in-state tuition at their public colleges and universities. California and Texas, in particular, have developed immigrant-friendly policies designed to facilitate their educational achievement.

NOTES

1. The national graduation rate for Latinos in 2009 was also 63 percent (Education Week 2012).
2. Anti-immigrant policies have created a hostile environment for immigrant students in various states and have had negative consequences in terms of educational achievement. In Alabama, Arizona, Georgia, and South Carolina, for example—all states that have passed invidious legislation targeting Latino students in recent years—high school graduation rates ranged from a low of 54 percent in South Carolina to a high of 64 percent in Arizona. Degree attainment rates for these same states all fell within a few percentage points, with Alabama having the lowest rate (15 percent) and Georgia the highest (18 percent) (Education Week 2012; Lumina Foundation 2012).
3. *Fisher v. University of Texas at Austin*, 631 F. 3d 213 (2011).
4. *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003). At issue in *Grutter* was whether the University of Michigan Law School's admission policy, which considered race as a factor, violated the Constitution. In a landmark decision the Court upheld the law school's consideration of race in its admissions policy, stating that the policy did not constitute

an unconstitutional quota system because it was narrowly tailored. The Court heard the case in conjunction with *Gratz*. Here the Court determined that the point system used by the University of Michigan to rank undergraduate admissions did constitute a quota system because students from underrepresented ethnic groups were automatically given a twenty-point bonus. The Court ruled that this policy was not narrowly tailored.

5. *Robles-Wong v. California*, Super. Ct. Alameda County, No. RG10-515768 (2011). The Superior Court of Alameda County sustained the state's effort to dismiss the case but gave the plaintiffs the opportunity to file a second amended complaint. Plaintiffs appealed the ruling, and the case is pending. For a recent overview see Ellson (2012).

6. *Plyler v. Doe*, 457 U.S. 202 (1982). The Court struck down a 1975 Texas statute that withheld from school districts any state funds used for educating children who were not legally admitted into the United States. The law also allowed districts to deny enrollment in public schools to these children. The Court ruled that the law violated the Fourteenth Amendment because the defense could not show a legitimate state interest in denying the free public education to undocumented students that it offered to the children of citizens.

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