

EDUCATION AS PROPERTY

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INTRODUCTION

In 2014, a Latino family living in Philadelphia, Pennsylvania conceded in a plea bargain that they had illegally enrolled their daughter in a suburban Philadelphia school district by faking residency.¹ Risa Vetri Ferman, a suburban-Philadelphia district attorney, had previously concluded that the family “essentially stole from every hard-working taxpayer who resides within the Lower Moreland School District.”² As a result, Ferman pursued charges against the Garcias, seeking that they reimburse the

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¹ Kyle Spencer, *Can You Steal an Education? Wealthy School Districts Are Cracking Down on “Education Thieves,”* The Hechinger Rep. (May 18, 2015), <https://hechingerreport.org/can-you-steal-an-education/> [http://perma.cc/8GZU-EEF8].

² Press Release, Office of the Dist. Attorney, Cty. of Montgomery, *Parents Arrested for Falsifying Residency in Order to Obtain Lower Moreland Education Services* (Aug. 30, 2012), <https://www.montcopa.org/DocumentCenter/View/124/Parents-Arrested-for-Falsifying-Residency-in-Order-to-Obtain-Lower-Moreland-Education-Services?bidId=> [http://perma.cc/F2-9S-GW4U].

district for the cost of educating their daughter³ and serve jail time for their transgression.⁴

Ferman is not alone. School districts and district attorneys across the country have pursued criminal or civil penalties against parents for enrolling their children in a school district in which neither the child nor parent resides. The concept that education can be stolen by outsiders brings together multiple strains of law—criminal, education, local government, and property—to allow private parties to think of public, geographically bound resources as their private property that deserves law enforcement protection. In this Article, I engage not with the fact that parents are illegally enrolling their children in school districts in which they do not reside, but with the notion that accusing a family engaged in this behavior of “stealing” allows the accusers to claim education as private.⁵ The end result is a regime of surveillance, discipline, and punishment that reproduces race and class stratification.

School districts can prosecute the crime of “stealing education” due to their legal ability to restrict access to their schools to only students residing within their boundaries.⁶ This practice has a long race and class pedigree dating back to Jim Crow residential segregation and post-*Brown v. Board of Education* efforts to desegregate public schools. The Supreme Court has played both a direct and an indirect role in legitimizing these residency restrictions. In 1954, *Brown* emphasized the importance of education not only for job preparation, but also for full citizenship.⁷ Allowing students to attend schools across district lines may have been a way to equalize educational opportunity. But twenty years after *Brown*, *Milliken v. Bradley* invalidated an interdistrict desegregation plan in the absence of direct evidence that suburban school districts practiced de jure racial segregation in a way that caused racial segregation in the urban

³ See Spencer, *supra* note 1.

⁴ *Id.*

⁵ Thus, when I refer to “stealing education,” I am referring to the criminalization and punishment of parents for theft when they illegally enroll their children.

⁶ See discussion *infra* Part I.

⁷ See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (noting that education “is the very foundation of good citizenship”); see also Goodwin Liu, Education, Equality, and National Citizenship, 116 *Yale L.J.* 330, 344–45 (2006) (arguing that *Brown* contemplated equal political citizenship by referring to the importance of education in the functioning of democracy, as well as equal social citizenship by referring to education as necessary for cultural socialization).

district.⁸ As a result, local control is now the dominant paradigm in public education.

To understand the Court's indirect role, one has to understand the relationship among residency requirements, school finance, and race. Due to *Milliken*, moving children across school district boundaries to equalize education was no longer a viable option. School finance litigation too encountered a road block with the Supreme Court. Education funding comprises a complicated mix of federal, state, and local sources, with local sources largely coming from property taxes on homes and businesses within a school district's borders.⁹ In *San Antonio Independent School District v. Rodriguez*, the Court denied a poor, predominately Latino community's challenge to Texas's education funding system, which relied, in part, on property tax revenues.¹⁰ The Supreme Court put an end to any such constitutional equal protection requirement for equal funding across districts.¹¹ In short, the Court defeated desegregation efforts on two fronts: first, by allowing local communities to geographically restrict attendance in local schools; and second, by allowing those same communities to sequester educational money locally.

Two critical points require us to pay attention to the crime of "stealing" education and the residency and fiscal restrictions on which that crime is based. First, conceptualizing education as something that can be stolen is inconsistent with the normative impulses that underwrote *Brown*. More precisely, the *Brown* Court emphasized the value of education to every child's life trajectory. Writing for the Court, Chief Justice Warren framed education as the "principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him

⁸ 418 U.S. 717, 752–53 (1974) (holding that the lower court improperly provided an inter-district remedy for racial segregation in Detroit-area public schools because the remedy was "unsupported by record evidence that acts of the outlying districts effected the discrimination found to exist in the schools of Detroit"). Furthermore, in the 1990s, the Court decided that school districts could not be held responsible for school segregation arising from residential segregation due to private individual choices of where to live. *Freeman v. Pitts*, 503 U.S. 467, 495 (1992).

⁹ Penny L. Howell & Barbara B. Miller, Sources of Funding for Schools, 7 *Future Children*, no. 3, 1997, at 42.

¹⁰ See 411 U.S. 1, 4–13 (1973) (upholding a Texas education funding plan based in part on local school district property taxes as consistent with the Equal Protection Clause). State courts have continued to see litigation in this area, especially in states where the state constitution ensures the right to an adequate education. See Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 *Temp. L. Rev.* 1151, 1152 (1995).

¹¹ See *Rodriguez*, 411 U.S. at 4–13.

to adjust normally to his environment.”¹² Punishing parents for “stealing education” functions as a barrier to the realization of those goals. Residency restrictions foreclose certain children from experiencing the full range of opportunities available in different types of schools. Essential resources, such as classroom materials¹³ and more experienced teachers,¹⁴ are directly related to money. The result, in part, is what some call “apartheid schools,”¹⁵ a term coined by Professors Gary Orfield, John Kucsera, and Genevieve Siegel-Hawley to describe schools that are 99% one race, and specifically schools that are less than 1% white and overwhelmingly poor.¹⁶

Second, conceptualizing education as something that can be stolen entrenches race and class inequalities. Schools are institutions that not only teach academic skills but also socialize children into their “place.”¹⁷

¹² *Brown*, 347 U.S. at 493.

¹³ See Jeannie Oakes & Marisa Saunders, *Access to Textbooks, Instructional Materials, Equipment, and Technology: Inadequacy and Inequality in California’s Public Schools 47* (2002), <https://escholarship.org/uc/item/4ht4z71v> (finding, in part, that “teachers in the under-resourced schools . . . spent a considerable amount of their own money to purchase needed material for their classroom. Teachers at every school we visited spent money out of their own pocket on supplies; at six of the schools some teachers spent at least \$1,000 of their own money on items such as pencils, books, paper, glue, crayons, posters, food, copying, filing materials, and art supplies”).

¹⁴ See, e.g., Marta Elliott, *School Finance and Opportunities to Learn: Does Money Well Spent Enhance Students’ Achievement?*, 71 *Soc. Educ.* 223, 239 (1998) (finding “firm support for the position that money does, in fact, affect students’ achievement” in math and science).

¹⁵ See, e.g., Nikole Hannah-Jones, *Segregation Now*, ProPublica (Apr. 16, 2014), <https://www.propublica.org/article/segregation-now-full-text> [<https://perma.cc/N94C-GCKZ>]; Emily Lieb, *How Segregated Schools Built Segregated Cities*, CityLab (Feb. 2, 2017), <https://www.citylab.com/equity/2017/02/how-segregated-schools-built-segregated-cities/51-5373/> [<https://perma.cc/4DZS-XH74>]; Kyle Spencer, *Even After Neighborhoods Integrate, Many Students Attend ‘Apartheid Schools,’* The Atlantic (July 30, 2015), <https://www.theatlantic.com/politics/archive/2015/07/even-after-neighborhoods-integrate-many-students-attend-apartheid-schools/432435/> [<https://perma.cc/74MY-EP7F>].

¹⁶ Gary Orfield et al., *The Civil Rights Project, E Pluribus . . . Separation: Deepening Double Segregation for More Students 9* (2012), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf [<https://perma.cc/U2QW-PYW4>].

¹⁷ By “place,” I am referring to a position in the status hierarchy based upon status beliefs. Status beliefs are “widely shared beliefs about the social categories or ‘types’ of people that are ranked by society as more esteemed and respected compared to others.” Cecilia L. Ridgeway, *Why Status Matters for Inequality*, 79 *Am. Soc. Rev.* 1, 3 (2014) (citations omitted).

Children need access to social¹⁸ and cultural capital,¹⁹ resources not easily monetized but that educational researchers have shown are integral to success in the modern workplace.²⁰ When relatively poorer and Black and Latino students are systematically excluded from accessing those capitals, they mature into adults who also lack access to those capitals. Those adults then have children who are born into a similar social status as their parents and thus lack access to those same capitals. Even though residency requirements and school funding schemes are, on their face, “race neutral,” their race and class effects are obvious.

This Article proceeds in three parts. Part I uses the story of Kelley Williams-Bolar, a black single mother prosecuted in Ohio for “stealing education,” to map the legal terrain of residency requirements and school funding schemes by state. I show how a web of residency, criminal, civil, and education laws governs school district attendance. I highlight how race and class may be implicated in the laws by setting a context in which stealing education may often arise.²¹

Part II highlights findings from a set of news articles and opinion pieces that document the phenomenon of “stealing education.” In doing so, I advance the claim that the stakeholders organized against “stealing education” conceive of education as property that (1) belongs to someone and so can be stolen, (2) is valuable for use and enjoyment, and thus (3) deserves to be vigorously protected by the state against outsiders. Central to my claim is my view that the crime of “stealing education” only makes

¹⁸ Social capital is the “potential resources an individual can access by way of their investment in social relationships.” LaToya Baldwin Clark, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 *Harv. C.R.-C.L. L. Rev.* 381, 417 (2018) (footnote omitted).

¹⁹ See Annette Lareau, *Cultural Knowledge and Social Inequality*, 80 *Am. Soc. Rev.* 1, 2, 4 (2015) (defining cultural capital as “skills individuals inherit that can be translated into different forms of value as people move through different institutions,” including “generalized cultural knowledge about how institutions function” and “knowledge of how to make institutions work to one’s advantage”).

²⁰ See, e.g., *id.* at 13 (finding “working-class and poor youth . . . had difficulty negotiating conflicts at work” because of, in part, “their own limited cultural resources”).

²¹ I do not mean to argue that these battles over residency and money are restricted *only* to areas where there is race and class segregation across boundary lines. Some of the struggles are in areas that are better characterized as same-race middle-class versus upper-middle-class and upper-class communities. For example, Beverly Hills, a California school district, has struggled with out-of-district students from the Los Angeles Unified School District. See Jennifer Steinhauer, *Beverly Hills Blocks Outside Students*, *N.Y. Times* (Jan. 13, 2010), <https://www.nytimes.com/2010/01/14/us/14beverly.html> [<https://perma.cc/8K3R-35YD>]. For the purpose of this Article, I will bracket those struggles due to scope, but I will address them in future work.

sense if stakeholders regard education as a property right bearing the essential functions of property, including the right to exclude. Through exclusion, suburban school district officials allow taxpayers to insulate a “good” education for their communities’ children and those children alone. Taxpayers play the role of the entitled; by virtue of their homeownership and the taxes they pay on that property, taxpayers get more than simply a home. They have the “the right to act as a citizen, to influence the character and direction of a jurisdiction or association through the exercise of the franchise, and to share in public resources”²² to the exclusion of outsiders. To enforce this exclusion, school districts use the coercive machinery of the state—criminal law (and civil penalties)—to punish “outsider” parents who interrupt these connections. Part II elaborates on these arguments.

In Part III, I situate my analysis of education as property in a research agenda concerned with the intergenerational reproduction of stratification and inequality.

A few points before continuing. First, to be clear, by using the term “stealing education,” I am not directly referring to the parental practice of enrolling a child in a school district that violates residency requirements. Instead, I am referring to the practices surrounding how local school districts and law enforcement surveil and punish that behavior.

Second, due to the limited scope of this Article, I am not directly challenging residency requirements for school enrollment. There are hard questions involved in such a direct challenge, including problems of school over-enrollment in the more “desirable” districts that may lower educational quality for all students; issues of busing and transportation; possible flight to private and charter schools to avoid public schooling altogether; and the general benefits of neighborhood schools to community building. Nor am I directly challenging school funding schemes.

Third, I am not condemning individual parents and taxpayers who engage in the system I lay out below. Parents certainly have obligations to their children to provide them with an education, and I understand that parents will do what they can to provide the best education possible to their child. If that involves purchasing or renting a home in an area with successful schools and adequate or above-average school funding due to higher property taxes, then so be it. Instead, I am making a call to

²² See Richard T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *Harv. L. Rev.* 1841, 1847 (1994).

understand this impulse as one that inherently propertizes access to schools in ways that have predictable winners and losers. In other words, I am critiquing the system, not the participants.

I. HOW TO “STEAL” AN EDUCATION: A WEB OF LAW AND POLICY

Kelley Williams-Bolar²³ was a black single mother residing in Akron, Ohio. In 2006, her home was broken into, and she no longer felt safe there.²⁴ She lived part-time with her father, who resided and owned a home in the nearby suburb of Copley-Fairlawn, Ohio.²⁵ She removed her children from their Akron school and enrolled them in the Copley-Fairlawn school district.²⁶ She attested that her father’s home was the children’s residence because she and they lived there part-time.²⁷

The background to this decision matters. According to the U.S. Department of Education’s Civil Rights Data Collection and Ohio Department of Education data, the school district boundary between Akron and Copley-Fairlawn separates the two school districts by race and class. Akron City Public School District’s student body is predominately non-white, with white students comprising 35.8% of students; black and Latino students comprising 48.7% of students; and Native American, Asian, Pacific Islander, and students of two or more races together comprising 15.5% of

²³ Much of the information presented here about Ms. Williams-Bolar’s story is compiled from several major news outlets’ reporting. See, e.g., Andrea Canning & Leezel Tanglao, Ohio Mom Kelley Williams-Bolar Jailed for Sending Kids to Better School District, ABC News (Jan. 26, 2011), <https://abcnews.go.com/US/ohio-mom-jailed-sending-kids-school-district/story?id=12763654> [<http://perma.cc/7SCU-GVDV>]; Julianne Hing, Kelley Williams-Bolar’s Long, Winding Fight to Educate Her Daughters, Colorlines (May 16, 2012), <https://www.colorlines.com/articles/kelley-williams-bolars-long-winding-fight-educate-her-daughters> [<http://perma.cc/HRB4-MWDR>]; Jim Kavanagh, Mom Jailed for Enrolling Kids in Wrong School District, CNN (Jan. 26, 2011), <http://news.blogs.cnn.com/2011/01/26/mom-jailed-for-enrolling-kids-in-wrong-school-district/> [<http://perma.cc/5KG6-X2DY>]; Mother Jailed for School Fraud, Flares Controversy, NPR (Jan. 28, 2011), <https://www.npr.org/2011/01/28/133306180/Mother-Jailed-For-School-Fraud-Flares-Controversy> [<http://perma.cc/29H2-V8V6>] [hereinafter Mother Jailed]; Timothy Williams, Jailed for Switching Her Daughters’ School District, N.Y. Times (Sept. 26, 2011), <https://www.nytimes.com/2011/09/27/us/jailed-for-switching-her-daughters-school-district.html> [<http://perma.cc/WN5Q-NWYZ>].

²⁴ Hing, *supra* note 23.

²⁵ Mother Jailed, *supra* note 23.

²⁶ Hing, *supra* note 23.

²⁷ See Mother Jailed, *supra* note 23.

students.²⁸ 100% of its students are classified as economically disadvantaged.²⁹

Copley-Fairlawn City School District's student body, on the other hand, is predominately white, with white students comprising 75% of students; black and Latino children comprising 15% of students; and Native American, Asian, Pacific Islander, and students of two or more races together comprising 10% of students.³⁰ Only 16.65% of its students are classified as economically disadvantaged.³¹ Thus, when Ms. Williams-Bolar went to enroll her daughters in Copley-Fairlawn's schools, her family was a race and class rarity compared to other families.

When Ms. Williams-Bolar enrolled her daughters in the Copley-Fairlawn school district, she likely needed to provide several pieces of evidence showing that she lived in the district.³² Almost all states, including Ohio, require a child to prove bona fide residence for school entry.³³ Most

²⁸ See U.S. Dep't of Educ., Civil Rights Data Collection, <https://ocrdata.ed.gov/flex/Reports.aspx?type=district> (search "Akron City" and "2015"; then select "Profile").

²⁹ See Ohio Dep't of Educ., Akron City School District FY2018 District Profile Report, http://education.ohio.gov/getattachment/Topics/Finance-and-Funding/School-Payment-Reports/District-Profile-Reports/FY2017-District-Profile-Report-1/DISTRICT_PROFILE_REPORT_FY18.XLSX.aspx?lang=en-US [<http://perma.cc/4P5P-LFKV>] (select "Akron City SD, Summit" in cell F5). A child can be classified as disadvantaged if she receives, is known to meet the criteria for, or resides with another child that receives or is known to meet the criteria for receiving free or reduced lunch; if she or her guardian receives other public assistance; or if her parent or guardian completes a Title I form and meets the income requirements. Ohio Dep't of Educ., FY2018 District Profile Report, <http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/District-Profile-Reports/FY2017-District-Profile-Report-1> [<http://perma.cc/W65C-V2SW>] (last modified Feb. 21, 2019).

³⁰ See U.S. Dep't of Educ., Civil Rights Data Collection, <https://ocrdata.ed.gov/flex/Reports.aspx?type=district> (search "Copley-Fairlawn City" and "2015"; then select "Profile").

³¹ See Ohio Dep't of Educ., Copley-Fairlawn City School District FY2018 District Profile Report, http://education.ohio.gov/getattachment/Topics/Finance-and-Funding/School-Payment-Reports/District-Profile-Reports/FY2017-District-Profile-Report-1/DISTRICT_PROFILE_REPORT_FY18.XLSX.aspx?lang=en-US [<http://perma.cc/4P5P-LFKV>] (select "Copley-Fairlawn City SD, Summit" from cell F5).

³² See Hing, *supra* note 23.

³³ See, e.g., Ohio Rev. Code Ann. § 3313.64(B)(1) (LexisNexis 2018) ("A child shall be admitted to the schools of the school district in which the child's parent resides."). A minority of states either (1) do not require children to attend schools within the school district's boundaries or (2) do not provide for specific penalties for violating the law. These include Delaware (Del. Code Ann. tit. 14, § 401(c) (2015)), Louisiana (La. Stat. Ann. § 17:4035.1 (2018)), New Mexico (N.M. Stat. Ann. § 22-1-4 (West 2011) (permitting enrollment by nonresident students, class-size permitting, while granting first priority to district residents)), North Dakota (N.D. Cent. Code § 15.1-31-01 (2015)), and Wyoming (Wyo. Stat. Ann. § 21-4-502 (2017)). The Supreme Court has held that district residency requirements do not violate the Fourteenth Amendment's Equal Protection Clause because they sufficiently further a substantial

states presume that a child lives with a parent or guardian, and thus the parent's home is the child's residence.³⁴ Copley-Fairlawn requires parents to provide documents to prove residence, including a lease agreement or mortgage document, as well as two additional supporting documents, such as utility bills, recent pay stubs, or a driver's license.³⁵ The school district also likely required that Ms. Williams-Bolar provide a notarized document (a "Residency Affidavit" form)³⁶ where she attested to the veracity of the information and documents she provided.³⁷

The Copley-Fairlawn school district surveilled Ms. Williams-Bolar and her children, using private investigators that filmed the family as they traveled from their apartment in Akron to the Copley-Fairlawn school.³⁸ The district then confronted her with their evidence of her nonresident status.³⁹ (The district considered irrelevant Ms. Williams-Bolar's father's homeowner and resident status.)⁴⁰ The district ultimately demanded Ms. Williams-Bolar remove her children from the district's public schools and pay \$30,000 in back tuition.⁴¹

When Ms. Williams-Bolar enrolled her children, the form she signed and got notarized informed her that "providing false information under oath is a violation of Ohio Revised Code Section 2921.13,"⁴² which provides in part, "No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made,

government interest in "assuring that services provided for [a district's] residents are enjoyed only by residents." *Martinez v. Bynum*, 461 U.S. 321, 328 (1983).

³⁴ See, e.g., Ohio Rev. Code Ann. § 3313.64(B)(1) (LexisNexis 2018).

³⁵ See Copley-Fairlawn City Sch. Dist., Registration Packet 3, <https://www.copley-fairlawn.org/registrationpacket> [<http://perma.cc/5NQW-R3XD>] [hereinafter Copley-Fairlawn Registration Packet].

³⁶ See *id.* at 6.

³⁷ See *id.* While notarization was required here, not all districts require a notarized form. Instead, they may just require the parent to certify the veracity of the residency information they provided under the penalty of perjury. For example, in the school district where my children attend school, the "District Residency Requirements" form requires every parent enrolling their child in school to "swear (or certify) under penalty of perjury that the information provided is true and correct[,] and their signatures must be witnessed by an attendance staff member or school administrator." Culver City Unified Sch. Dist., District Residency Requirements, <https://1.cdn.edl.io/EHppMDbyyhBdr8KZqYlpHztKvGoqaYofAmcKCMg7ci47mG-uj.pdf> [<http://perma.cc/FCB8-SZZV>].

³⁸ Tricia Rose, *Public Tales Wag the Dog: Telling Stories about Structural Racism in the Post-Civil Rights Era*, 10 *Du Bois Rev.* 447, 450 (2013).

³⁹ See *id.*

⁴⁰ Hing, *supra* note 23.

⁴¹ See *id.*; Canning & Tanglao, *supra* note 23.

⁴² Copley-Fairlawn Registration Packet, *supra* note 35, at 6.

when . . . [t]he statement is made with purpose to commit or facilitate the commission of a theft offense.”⁴³ A conviction under this statute can result in a first-degree misdemeanor up to a third-degree felony.⁴⁴ The form also provided that she could also be prosecuted for theft of services under Ohio Revised Code § 2913.02,⁴⁵ which provides, “No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services . . . [b]y deception.”⁴⁶ Violation of this code provision can result in a conviction of petty theft, a first-degree misdemeanor, up to a first-degree felony, depending on the value of the property or service stolen.⁴⁷

Ohio state law determined the restitution owed as a result of Ms. Williams-Bolar’s theft. Ohio requires each district to charge nonresidents, not admitted through a special circumstance like homelessness, nonresident tuition.⁴⁸ The state calculates the tuition by adding the district’s local property tax revenue to the district’s income tax devoted to schools, divided by the district’s average daily membership (“ADM”).⁴⁹ Districts who fail to charge this tuition will receive fewer dollars overall because

⁴³ Ohio Rev. Code Ann. § 2921.13(A)(6), (A)(9) (LexisNexis 2018). The same statute also generally prohibits false statements or affirmations made “before a notary public.” *Id.*

⁴⁴ *Id.* § 2921.13(F). Other states provide similar penalties. See, e.g., 105 Ill. Comp. Stat. 5/10-20.12b(e)–(f) (2016); Mo. Rev. Stat. § 167.020.4 (2016); N.H. Rev. Stat. Ann. § 193:15 (LexisNexis 2018).

⁴⁵ Copley-Fairlawn Registration Packet, *supra* note 35, at 6.

⁴⁶ Ohio Rev. Code Ann. § 2913.02(A)(3) (LexisNexis 2014).

⁴⁷ *Id.* § 2913.02(B)(2). Other states explicitly criminalize theft of education. See, e.g., 105 Ill. Comp. Stat. 5/10-20.12b(e)–(f) (2016) (“[A] person who knowingly enrolls or attempts to enroll in the schools of a school district on a tuition free basis a pupil known by that person to be a nonresident of the district shall be guilty of a Class C misdemeanor.”) A person who knowingly or willfully presents to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall be guilty of a Class C misdemeanor.”); Mo. Rev. Stat. § 167.020.4 (2016) (“Any person who knowingly submits false information to satisfy any requirement of subsection 2 of this section is guilty of a class A misdemeanor.”); N.H. Rev. Stat. Ann. § 193:15 (LexisNexis 2018) (“Any pupil who, after notice, attends or visits a school which the pupil has no right to attend, or interrupts or disturbs such school, shall for the first offense be guilty of a violation, and shall for any subsequent offense be guilty of a misdemeanor.”); see also Mich. Comp. Laws Ann. § 380.1812 (West 1997) (criminalizing giving false parental residence to school officials); *Bd. of Educ. v. Gaffney*, 233 A.D.2d 357, 357 (N.Y. App. Div. 1996) (“A school district may seek payment for tuition from a nonresident student enrolled in its schools under false pretenses, and such an action may be based on Education Law § 3202 [public schools free to resident pupils] or on a cause of action for fraud.”) (citations omitted).

⁴⁸ See Ohio Rev. Code Ann. § 3317.08(A) (LexisNexis 2018); *id.* § 3313.64.

⁴⁹ *Id.* § 3317.08(A); *id.* § 3317.021(A)(3).

unauthorized nonresidents will be subtracted from that district's ADM, and the tuition the district would have received will be transferred to the district in which the child resides.⁵⁰ In other words, the amount of tuition that can be charged, and thus can be lost, is directly tied to the local funding source—property tax revenue. In 2010, Akron's annual tuition rate was \$4,500.⁵¹ Reflecting a larger property tax base, Copley-Fairlawn's annual tuition rate was \$7,385.⁵² For outsiders, it cost more to attend Copley-Fairlawn schools than to attend Akron schools.

To end Ms. Williams-Bolar's story, a jury convicted her of two felonies, and a judge sentenced her to ten days in jail.⁵³ Ms. Williams-Bolar served nine of those ten days.⁵⁴ On September 7, 2011, then-Governor John Kasich commuted Ms. Williams-Bolar's sentence to two counts of first-degree misdemeanors and suspended her jail time on the condition that she complete two years of probation.⁵⁵

⁵⁰ See *id.* § 3317.03(H).

⁵¹ For the fiscal year 2010, Akron's local property tax revenue was approximately \$121 million for an ADM of 26,855 students. It also received an additional \$148 million from the state, for an additional \$5,500 per student, for a total of approximately \$10,000 per student. Div. of Sch. Fin., Ohio Dep't of Educ., Pupil Tuition and Basic Support Per Pupil for Fiscal Year 2010 (2009), <http://education.ohio.gov/getattachment/Topics/Finance-and-Funding/Finance-Related-Data/Tuition-Letters-and-Rates/F2010-TUITION-RATES.pdf.aspx> [<http://perma.cc/8D6U-X657>].

⁵² Copley-Fairlawn's local property tax revenue was over \$24 million for an ADM of 3,314 students. Copley-Fairlawn received only \$770,000 from the state, for a total of only \$232 per student. *Id.*

⁵³ Journal Entry at 1, *Ohio v. Williams-Bolar*, No. CR-09-10-3223(A) (Summit Cty. Ct. Com. Pl. Jan. 25, 2011). Prosecutors also charged Ms. Williams-Bolar's father with fourth-degree felony grand theft. Khadijah Z. Ali-Coleman, Mom Jailed for Enrolling Kids in School Tells Her Story in New Book, Film, *Ebony* (Mar. 20, 2014), <https://www. Ebony.com/news-views/mom-jailed-for-enrolling-kids-in-school-tells-her-story-in-new-book-film-405> [<http://perma.cc/SQV6-5D89>]. After being imprisoned on an unrelated fraud charge, he lost his home and died in prison in 2012. Phil Trexler, Kelley Williams-Bolar's Father Dies in Prison Hospital, *Akron Beacon J.* (May 12, 2012), <https://www.ohio.com/akron/news/kelley-williams-bolar-s-father-dies-in-prison-hospitale> [<https://perma.cc/LP55-9CBE>].

⁵⁴ Trexler, *supra* note 53.

⁵⁵ Alan Johnson, *Kasich Reduces Sentence for Akron Mom in School-Residency Case*, *Columbus Dispatch* (Sept. 7, 2011), <http://www.dispatch.com/content/stories/local/2011-09/07/akron-mom-williams-bolar.html> [<http://perma.cc/U39B-VVEN>]; see also Alan Johnson, *Pardon from Kasich Is Rare*, *Columbus Dispatch* (May 19, 2012), <https://www.dispatch.com/content/stories/local/2012/05/19/pardon-from-kasich-is-rare.html> [<http://perma.cc/88GB-P8WE>]. For additional scholarly accounts of Ms. Williams-Bolar's case, see Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 *U.C. Irvine L. Rev.* 297, 324–26 (2013); Mae C. Quinn, *The Fallout from Our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward*, 15 *J. Gender, Race, & Just.* 541, 553–54 (2012); Rose, *supra* note 38, at 449.

Ms. Williams-Bolar's story as chronicled above illustrates the web of laws, from education to residency to criminal laws, that map the space of local education and thus set the context for criminalizing or otherwise punishing civilly residency violations and creating the crime of "stealing education."

The next Part of this Article highlights findings from a unique set of information that illuminates how stakeholders in areas like Copley-Fairlawn are likely conceiving education as property that deserves all of the legal property protections, including state protection through criminal and civil law.

II. EDUCATION AS PROPERTY

In this Part, I present the outcome of an analysis of a set of news and opinion articles written between 1992 and 2018 about "stealing education." I examined 110 articles—newspaper reports and opinion pieces, national and local—that specifically discussed "stealing education."⁵⁶

The articles discuss 134 unique school districts in 15 states. Of the 134 school districts, 95 were termed "destination" districts, or districts in which it was alleged that a nonresident parent(s) illegally enrolled a child. "Sending" districts, or districts in which nonresident parents were choosing not to enroll their children, comprised 48. (Some districts were discussed as being both sending and destination districts.) California was home to the greatest number of districts (27), with New Jersey (14), Ohio (11), Pennsylvania (11), and New York (10) rounding out the top 5 states.

An analysis of the news articles suggests that at the heart of "stealing education" is the belief that "education" is *property*. To understand what I mean, it is helpful to describe some of the central features of property. As will become apparent, advocates for criminalizing or punishing residency violations as "stealing education" draw on these features of property.

To develop this property-based theory of "stealing education," I draw on Professor Cheryl Harris's *Whiteness as Property*.⁵⁷ In this seminal article, Professor Harris traces a property interest in whiteness that emerged

⁵⁶ To find these articles, I searched the internet for both news articles and opinion pieces that contained one of the following search terms: "educational theft," "stealing education," "enrollment fraud," "residency cheats," and "boundary hopping."

⁵⁷ Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707, 1731 (1993).

from centuries of racial subordination and oppression.⁵⁸ In its modern form, whiteness as property legitimates “expectations of power and control that enshrine the status quo as a neutral baseline, while masking the maintenance of white privilege and domination.”⁵⁹ Whiteness is a “status, a form of racialized privilege ratified in law.”⁶⁰

To develop her argument, Professor Harris describes the privileges and benefits the law accords property holders and how those same functions work with whiteness.⁶¹ It is these functions of property that I use in this Article to develop the argument of education as property.

First, property owners have the right of possession and disposition.⁶² This right allows a property owner to transfer his or her interest in property to someone else.⁶³

Second, property owners have the right of use and enjoyment.⁶⁴ This right allows a property owner to deploy the property as a resource, “[a]king advantage of the privileges”⁶⁵ that inure to the property. This right gives a property owner power and control over the resource, and allows the property to be deployed to further the owner’s interests “at the social, political, and institutional level.”⁶⁶

Third, property owners hold a reputational interest in that property.⁶⁷ This right allows a property owner to assume the superordinate status as a property holder of property vis-à-vis a subordinate non-property holder. Property ownership is a revered status.

Lastly, and perhaps most importantly, the law grants property owners the absolute right to exclude.⁶⁸ Legally, property ownership allows the property holder to control who may access the property.⁶⁹

School district and law enforcement officials portrayed in the articles suggest these property functions when they discuss public education’s valuable role in their lives. In this Article, I will focus on three of those

⁵⁸ *Id.* at 1714 (arguing that “rights in property are contingent on, intertwined with, and conflated with race”).

⁵⁹ *Id.* at 1715.

⁶⁰ *Id.* at 1745.

⁶¹ See *id.* at 1714–15.

⁶² *Id.* at 1731.

⁶³ Harris, *supra* note 57, at 1731.

⁶⁴ *Id.* at 1734.

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ *Id.* at 1735.

⁶⁸ *Id.* at 1736.

⁶⁹ Harris, *supra* note 57, at 1736 & n.125.

functions. First, officials treat education as *transferrable*, such that a taxpayer, by virtue of his contribution to the school district, assigns his or her interest in public education to the children in the district. Allowing children who do not live in the district to attend the district's schools violates this taxpayer right. Second, officials acknowledge a taxpayer's right to *use and enjoy* education. Homeownership gives taxpayers control over their community's education, such that school district officials and law enforcement officials alike treat taxpayers as fiduciaries to which they owe protection. Lastly, officials treat education as property by allowing taxpayers to *lawfully exclude* others, particularly through the coercive machinery of civil and criminal penalties. Empirically, through the analysis of the articles, my argument here is that we know that officials conceive of education through the lens of property because they are invoking these property functions when justifying criminalizing or otherwise punishing families who violate residency requirements.

Before turning to the analysis of education as property, as a preliminary matter, let me clearly identify the property holder. The articles almost always name the taxpayer as the property holder. Because, the argument goes, taxpayers fund the schools through their tax payment, taxpayers hold the right to treat education as their own. Protecting educational boundaries in the name of taxpayers has a racial history. For example, sociology Professor Camille Walsh analyzed over 400 letters sent to the Supreme Court in the aftermath of *Brown v. Board of Education* and found that over one-third referred to "taxpayers" as a justification for continued racial segregation in schools.⁷⁰ In protecting the suburbs, white municipalities relied on taxpayer status to entrench white privilege in the allocation of resources. In this context, taxpayer became coded as "white," in contrast to a black "untaxed other" who does not pay taxes and therefore has not earned rights.⁷¹ In discussing "stealing education," taxpayers occupy this same rights-bearing group.

A. Education as Transferable

In 2018, the Washington, D.C. public schools faced an enrollment controversy.⁷² Several high-level district administrators were accused of

⁷⁰ Camille Walsh, *White Backlash, the 'Taxpaying' Public, and Educational Citizenship*, 43 *Critical Soc.* 237, 238–39 (2017).

⁷¹ See *id.* at 239.

⁷² Peter Jamison & Emma Brown, *Stop Enrollment Fraud? D.C. School Officials Are Often the Ones Committing It*, *Wash. Post* (Apr. 16, 2018), <https://www.washingtonpost.com>

sending their children to highly sought-after public schools even though they themselves did not reside in the District.⁷³ As a result, critics accused the administrators of “contributing to a severe shortage of seats at desirable campuses.”⁷⁴ “Legal” children, the argument goes, are those that taxpayers assigned their property right to, namely resident children. Nonresidents admitted into the selective schools are taking spots taxpayers designated for resident children.⁷⁵ As Joe Weedon, D.C. State Board of Education member, explained, “From the fiscal side of things . . . that’s dollars that are going to that student and not District residents.”⁷⁶

Stakeholders argue that pursuing children illegally enrolled in the district needs to happen because residency violations allow outsiders to take what taxpayers have assigned to one student and give it to another, unentitled and undeserving, student. These narratives discuss education as a seat in a classroom that the taxpayers, the rightful holders of those seats, have designated for a resident child.⁷⁷ Thus education, in these stakeholder narratives, is *transferrable*. When a nonresident parent illegally enrolls a nonresident child, it threatens a resident child’s seat in a classroom and violates the taxpayer’s property rights.

Like Washington, D.C., New Jersey’s Fair Lawn Public School District faced overcrowding in its schools. In 2016, the district investigated over 168 students’ residency.⁷⁸ To aid in their investigations, Fair Lawn operates a tip line to address the community’s concerns.⁷⁹ The district’s online

/local/dc-politics/stop-enrollment-fraud-dc-school-officials-are-often-the-ones-committing-it/2018/04/16/03b816c0-3ce7-11e8-8d53-eba0ed2371cc_story.html?utm_term=.8ce285a-5e2be [http://perma.cc/7DKV-S4G5]; see Kate McGee, Possible Residency Fraud at D.C.’s Duke Ellington School of the Arts, Report Finds, WAMU (Feb. 27, 2018), <https://wamu.org/story/18/02/27/possible-residency-fraud-d-c-s-duke-ellington-school-arts-report-finds/> [http://perma.cc/45R9-RSRS].

⁷³ See Jamison & Brown, *supra* note 72; McGee, *supra* note 72.

⁷⁴ Jamison & Brown, *supra* note 72; see McGee, *supra* note 72.

⁷⁵ See McGee, *supra* note 72.

⁷⁶ Jamison & Brown, *supra* note 72.

⁷⁷ See, e.g., Jill Tucker, SF School District Goes after Residency Cheats, SF Gate (Nov. 1, 2010), <https://www.sfgate.com/news/article/SF-school-district-goes-after-residency-cheats-3167934.php> (quoting San Francisco school officials characterizing false residency claims as taking up seats that would otherwise be held by resident children).

⁷⁸ Lianna Albrizio, 32 Students Withdraw from Fair Lawn School District Due to Residency Fraud, TAPinto Plainfield (Nov. 24, 2017), <https://www.tapinto.net/towns/plainfield/articles/32-students-withdraw-from-fair-lawn-school-district-1> [http://perma.cc/JM3Q-LNP6].

⁷⁹ Fair Lawn Sch. Dist., Out of District Investigation Google Form, <https://docs.google.com/forms/d/e/1FAIpQLSFYgGH-lGlwDn7M10fJP8kydQ16QwbxqzWh-G7PUraJ-ISf8Jw/viewform?c=0&w=1> [http://perma.cc/ECJ6-TLA6].

form begins with a preamble that emphasizes the harm to children when nonauthorized nonresidents are allowed to attend Fair Lawn's schools:

We are responsible to the Board of Education and the Fair Lawn taxpayers to ensure only current residents of our district attend our schools. *Non-residents who fraudulently attend Fair Lawn Public Schools reduce the number of resources available to the Fair Lawn children.*⁸⁰

This quote highlights the school district's concern for taxpayers as the rightful owners of the district's public education who have control over which children receive the educational interest. Not only do stakeholders argue that for every undeserving child in the schools, each legitimate child will receive proportionately less, but they also argue that taxpayers, as the rightful holders of the educational dollars, get to choose to whom to transfer those seats. They choose residents.

Thus, school districts feel an obligation to protect students by ensuring the money designated to fund the schools benefits only the children that taxpayers identify, and no others:

It is really important we protect our students, our taxpayers. That's one way the Board of Education serves its own taxpayers. There are other boards that don't get aggressive in residency because it could result in litigation. But that's not the case here. *Fair Lawn schools are for Fair Lawn kids.*⁸¹

The Superintendent implies that Fair Lawn schools are only for Fair Lawn children because the taxpayers want it that way. Another state school board association official argued that school administrators "have an obligation to the taxpayers in their districts to find out" whether a student is a bona fide resident.⁸²

⁸⁰ *Id.* (emphasis added).

⁸¹ Albrizio, *supra* note 78 (quoting Interim Superintendent Ernest Palestis) (emphasis added).

⁸² Jessica Bock, School Districts' Residency Checks Commingle with Debate over Transfer Rights, *St. Louis Post-Dispatch* (Sept. 6, 2011) (quoting Susan Goldammer, a Missouri School Boards Association attorney), https://www.stltoday.com/news/local/education/school-districts-residency-checks-commingle-with-debate-over-transfer-rights/article_6e3db524-3019-57ad-856c-6ba5e85a9c8a.html [<http://perma.cc/B4MY-TSFJ>].

B. Education for Exclusive Enjoyment

The second way school district officials treat education as property is through appeals to the exclusive right to use and receive the benefits of education.

Officials legitimated their crackdown on alleged thieves by arguing that taxpayers, and taxpayers only, should receive the benefit of their taxes:

‘At the end of the day, only people who are . . . supporting the property taxes of Jackson Township should be sending their children to Jackson Township schools,’ [a school spokesperson] said. ‘It’s in the best interest of the taxpayer to ensure that only students who are eligible go here.’⁸³

These examples show how education is thought of as the exclusive right of taxpayers to enjoy, given the “price” of admission. Because they have “paid” for it, they cannot be forced to share it.

Stakeholders imply that education is property when they explicitly identify property ownership, property taxes, and school funding as a reason for the exclusion of nonresidents. As one article put it, “[F]amilies who spent their life savings on a million-dollar townhouse now find that their increasing local tax bill doesn’t assure them an education for their children at a neighborhood school”⁸⁴

As discussed above, school districts receive funding from local, state, and federal sources.⁸⁵ In neighborhoods with the highest property values, local funds tend to predominate. For example, in Akron, where median property values fall below \$70,000, local sources provide 40% of the revenue per student.⁸⁶ In Copley-Fairlawn, where median property values are

⁸³ Amanda Ogelsby, *Stealing Education: Families Fake Residency for School*, *Asbury Park Press* (Sept. 15, 2015), <https://www.app.com/story/news/education/in-our-schools/2015/09-14/stealing-education-families-fake-residency-school/71484808/> [http://perma.cc/R43G-Q9-AS] (quoting Jackson Township School District spokeswoman Allison Erwin).

⁸⁴ Luke Rosiak & Kathryn Watson, *Investigation: MD Residents Ripping Off DC Schools While Admins Refuse to Address It*, *Daily Caller* (July 4, 2016), <https://dailycaller.com/2016/07/04/investigation-md-residents-ripping-off-dc-schools-while-admins-refuse-to-address-it/> [http://perma.cc/R3PR-69GC].

⁸⁵ See Howell & Miller, *supra* note 9, at 40.

⁸⁶ Akron Home Prices & Values, Zillow, <https://www.zillow.com/akron-oh/home-values/> [https://perma.cc/27MU-EKUD] (last updated Jan. 31, 2019); Nat’l. Ctr. for Educ. Statistics, U.S. Dep’t. of Educ., *Common Core of Data: Akron City (FY 2013–14)*, https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=1&InstName=akron&DistrictType=1&DistrictType=2&DistrictType=3&DistrictType=4&DistrictType=5&DistrictType=6&–

approximately \$205,000 (Copley) and \$194,000 (Fairlawn), local sources contribute 78% of the revenue per student.⁸⁷ Thus, property taxpayers in Copley-Fairlawn are footing a larger share of the bill than in Akron.

As schools with more money gain a reputation for being “better,” parents will want to move into those districts, driving demand for housing, and, with it, home values, higher. This “feedback loop” emerges out of explicit anti-competitive behavior by middle- and upper-class whites. Legal scholar Professor Daria Roithmayr argues that during slavery and afterwards, whites engaged in cartel behavior that “anti-competitively exclude[d] certain communities of color.”⁸⁸ As a result, whites in good neighborhoods with good schools generated a “‘monopoly surplus’ in opportunities and resources.”⁸⁹ Building upon that foundation, even with *Brown*’s ending of de jure racial segregation in schools and the end of both court enforcement of racial covenants in housing⁹⁰ and federal housing mortgage discrimination through redlining,⁹¹ school districts remain segregated by race and class.⁹²

DistrictType=7&DistrictType=8&NumOfStudentsRange=more&NumOfSchoolsRange=more&ID2=3904348&details=4 [http://perma.cc/2A4V-ZZ9Q] (last visited Jan. 28, 2019).

⁸⁷ Copley Home Prices & Values, Zillow, <https://www.zillow.com/copley-oh/home-values/> [https://perma.cc/7YW2-WTXD] (last updated Jan. 31, 2019); Fairlawn Home Prices & Values, Zillow, <https://www.zillow.com/fairlawn-oh/home-values/> [https://perma.cc/X5JG-A6M5] (last updated Jan. 31, 2019); Nat’l Ctr. for Educ. Statistics, U.S. Dep’t. of Educ., Common Core of Data: Copley-Fairlawn City (FY 2013–14), https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=1&InstName=414opley-fairlawn&State=39&DistrictType=1&DistrictType=2&DistrictType=3&DistrictType=4&DistrictType=5&DistrictType=6&DistrictType=7&DistrictType=8&NumOfStudentsRange=more&NumOfSchoolsRange=more&ID2=3904998&details=4 [http://perma.cc/HLS5-H26E] (last visited Jan. 28, 2019).

⁸⁸ Daria Roithmayr, *Them That Has, Gets*, 27 *Miss. C. L. Rev.* 373, 380 (2008) [hereinafter Roithmayr, *Them That Has*]; see generally Daria Roithmayr, *Racial Cartels*, 16 *Mich. J. Race & L.* 45 (2010) (describing racial exclusion as historically functioning like anti-competitive racial cartels).

⁸⁹ Roithmayr, *Them That Has*, *supra* note 88, at 380.

⁹⁰ See *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

⁹¹ See, e.g., Community Reinvestment Act of 1977 §§ 802–806, 12 U.S.C. §§ 2901–2905 (2012) (empowering, in part, federal financial oversight agencies to “assess [a mortgage and credit] institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution”).

⁹² See Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 *U. Chi. L. Rev.* 1329, 1343–48, 1393–96 (2016) (showing that even though there has been a steady decline in residential racial segregation since the height of Jim Crow, the rate of racial integration in schools has plateaued since the late 1980s); see also Sean F. Reardon & Ann Owens, 60 *Years After Brown: Trends and Consequences of School Segregation*, 40 *Ann. Rev. Soc.* 199, 204–05 (2014) (showing that while racial segregation in schools has likely decreased, students appear to be more class segregated today than in the 1990s).

Given this connection, parents who move into these districts and purchase homes see themselves as “purchasing” their child’s education. Consider a report on New Jersey’s Millburn School District:

The statistics of Millburn High School would make the heart of any parent flutter: There is one teacher per 13 kids, 98 percent of students graduate, and 70 percent of juniors and seniors pass at least one Advanced Placement test. Millburn High consistently ranks as one of the top-performing schools in the country.

This is a public school, *but the price of admission is steep*. The average house in the tony township of Millburn, N.J., sells for \$1.3 million, and the real estate taxes run about \$20,000 a year.⁹³

Given the “price,” homeowner and taxpayer parents complain about others who live in less expensive areas and lie to get their children into school districts in higher-home-value areas. As one parent put it, “It really burns me how easy [the district] makes it for families that live outside of the city to use up resources and then enjoy their less expensive properties and ride in their fancy SUVs.”⁹⁴ In other words, as a property owner and taxpayer, only they should be allowed to use and enjoy the education for which they believed they have paid.

In one of the most expensive areas in the country, San Francisco Unified School District cited the high housing prices and their connection to the most desirable schools in the city as a reason for criminalizing and punishing families who break the residency requirements: “San Francisco residents are completely frustrated with paying the high rent and the high home costs and not being able to get into the school they want to.”⁹⁵ The implication is that being a homeowner and taxpayer comes with the property right to a particular education. School district officials and law enforcement officials thus have a responsibility to protect taxpayers’ investments in their children’s educations.

⁹³ Soledad O’Brien, *How Stealing a Better Education for Your Kids Can Land You in Jail*, Al Jazeera Am. (Jan. 20, 2014) (emphasis added) (citations omitted), <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2014/1/20/stealing-educationsoledadobrien.html> [<https://perma.cc/JC26-RECT>].

⁹⁴ Rosiak & Watson, *supra* note 84.

⁹⁵ Tucker, *supra* note 77 (quoting Archie Fokin, Director of the District’s Educational Placement Center).

C. Education and the Right to Exclude

Criminalizing residency violations allows taxpayers to use the state to protect this perceived property right through the aggressive exclusion of others. The right to exclude on racial lines has a long educational history. Education scholars Professors Gloria Ladson-Billings and William Tate argue that “[i]n schooling, the absolute right to exclude was demonstrated initially by denying blacks access to schooling altogether.”⁹⁶ School districts approach stopping families from “stealing education” as a form of law enforcement. While schools use many tactics to find and punish educational thieves, I will focus here on one: surveillance. The key point I am making here is that these various regimes of exclusion and surveillance are predicated on the right to exclude.

Surveillance begins in the school district office. Recall how Ms. Williams-Bolar was required to sign a form acknowledging she understood that providing false information could lead to criminal charges.⁹⁷ Other examples, while not as extreme, exist in other districts. For example, in 2015, California’s Orinda Union School District faced scrutiny over its residency verification actions, including conducting activity checks and spying on children at their alleged homes to see if their activities indicated bona fide residence.⁹⁸ A search of its registration materials turns up the following: “The district reserves the right to request any additional proofs of residency as necessary. In addition, *unannounced home visitations* by a district residency verification officer may be conducted on an on-going basis during the student’s attendance in OUSD schools.”⁹⁹ While districts may not threaten jail time, they may instead inform the parent that they must accept constant surveillance as a prerequisite to enrollment.¹⁰⁰

Before illustrating how this works within the context of “stealing education,” first note that the practice of requiring unannounced visits as a

⁹⁶ Gloria Ladson-Billings & William F. Tate IV, *Toward a Critical Race Theory of Education*, 97 *Tchrs. C. Rec.* 47, 60 (1995).

⁹⁷ See Copley-Fairlawn Registration Packet, *supra* note 35, at 6.

⁹⁸ See Matthias Gafni, *Orinda School District Hired Private Investigators for Seven Residency Issues*, *Mercury News* (Jan. 9, 2015), <https://www.mercurynews.com/2015/01-09/orinda-school-district-hired-private-investigators-for-seven-residency-issues/> [<https://perma.cc/AKT6-XHTX>] (“Such activity often include[d] photographing children coming and going from homes, according to industry experts.”).

⁹⁹ Orinda Union Sch. Dist., *Registration Instructions* (Jan. 2018) (emphasis added) <http://orindaca.schoolloop.com/file/1346926987700/1356610163662/3984188363508779549.pdf> [<https://perma.cc/6SMS-TS9U>].

¹⁰⁰ See *id.*

condition of entitlement receipt parallels other areas of public law. For example, Professor Priscilla Ocen describes a California case where a welfare program required recipients to consent to suspicionless home visits in order to receive benefits:

In *Sanchez v. County of San Diego*, for example, a number of women who relied on public assistance challenged Project 100%, a program developed by the San Diego County district attorney. Under the program, San Diego County applicants to the California Work Opportunity and Responsibility to Kids program (CalWORKs) were required to submit to a home visit by a public assistance fraud investigator from the district attorney's office. During one home visit, the fraud investigator inspected an applicant's home, peering into closets and even examining the trash. Following the walk-through, "eligibility information [was] then turned over to eligibility technicians who compare[d] that information with information supplied by the applicant." Applicants who declined to allow fraud investigators access to their homes were summarily denied assistance.¹⁰¹

In the context of "stealing education," private investigators "often visit[] the houses and apartments of suspect students early in the morning or late at night in order to confirm that they are really living at the addresses their parents have listed for them."¹⁰²

To aid in this surveillance, schools provide investigators with photos of the suspected child, and investigators stake out children's suspected homes, sometimes sitting for hours while they wait for the child to appear.¹⁰³ For example, consider a journalist's account of one investigator as she waits for a boy suspected of nonresident status to return home to the out-of-district house:

¹⁰¹ Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 *UCLA L. Rev.* 1540, 1566–67 (2012) (alterations in original) (footnotes omitted) (describing the program upheld in *Sanchez v. County of San Diego*, 464 F.3d 916, 918 (9th Cir. 2006)).

¹⁰² Sam Dillon, *Schools Seek Laws Deterring Illegal Students*, *N.Y. Times* (Jan. 29, 1993), <https://www.nytimes.com/1993/01/29/nyregion/schools-seek-laws-deterring-illegal-students.html> [<https://perma.cc/W55W-EK33>].

¹⁰³ See, e.g., Avi Wolfman-Arent, "The Money Shot": How School Districts Find and Prove Residency Fraud, *WHYY Keystone Crossroads* (May 2, 2018), <https://whyy.org/segments/the-money-shot-how-school-districts-find-and-prove-residency-fraud/> [<https://perma.cc/66ZY-6NMS>].

On a recent weekday afternoon, Tina Blanchette is doing what a lot of moms do on weekday afternoons: waiting in a suburban parking lot for a kid to arrive.

While idling in her inconspicuous, white SUV, we chat about her interests (“Game of Thrones,” audiobooks) and her three children (precocious, perpetually overscheduled). Midway through a sighing soliloquy about travel soccer, Blanchette spots a Lexus as it scoots past us.

Her voice drops to a whisper.

“That’s our boy . . .”

Here is where Blanchette’s parking-lot loitering takes a turn from the ordinary. She whips out a small camcorder and films a teenage boy as he steps out of the Lexus and into a two-story townhome.

“The closer he comes, the better for me,” Blanchette says aloud.
“Totally our kid.”¹⁰⁴

Some in the field refer to Blanchette’s behavior as “bed checks,”¹⁰⁵ where investigators surveil the child’s home to see if he does the normal things that kids do at home, such as waking, sleeping, and chores. One school district administrator describes a telltale sign of nonresidency: “Sometimes, we will go into the house where a child is supposed to live with a grandmother and if we find no child’s bedroom, that usually is a dead giveaway”¹⁰⁶ Of course, this ignores that, in some situations, children may sleep on pull-out couches or share sleeping arrangements with others in the home.

School districts will also enlist the same taxpayers they are protecting in the quest to find alleged thieves. Legal scholar Devon Carbado refers to this as involving a public-private partnership, by which “[c]ity officials (the public) encourage residents (the private) to report various signs of

¹⁰⁴ *Id.*

¹⁰⁵ Kyle Spencer, *How One California School District Is Dealing with Students Who Don’t Live There: How Welcoming Is Too Welcoming? Some Berkeley Parents Wonder If Their School District Is Too Nice to Outsiders*, *Hechinger Rep.* (June 3, 2015), <https://hechingerreport.org/how-one-california-school-district-is-dealing-with-students-who-dont-live-there/> [<https://perma.cc/2RWE-ESUF>].

¹⁰⁶ Eddy Ramírez, *Schools Crack Down on Boundary Hopping*, *U.S. News* (Mar. 2, 2009) (quoting Valerie Williams, Director of Pupil Services, Fremont Unified School District), <https://www.usnews.com/education/articles/2009/03/02/schools-crack-down-on-boundary-hopping> [<https://perma.cc/ZYC7-8GBR>].

disorder to the police (the public).”¹⁰⁷ As an example, recall the Washington, D.C. School District residency controversy.¹⁰⁸ The District requires schools to “post [a] ‘Student Residency Fraud Prevention Hotline’ Poster in the registrars [sic] office or a visible area towards the schools [sic] entrance.”¹⁰⁹ This poster encourages parents “[i]f [they] have reason to believe a non-district resident is receiving District-funded public education free of charge” to report their suspicions to an anonymous telephone tip line or submit their suspicions on an online form.¹¹⁰

School districts seem to give parents little guidance about how to identify potential suspects. But the news articles, to the extent parents follow them, provide at least a face to the “crime.” The stories of people like Ms. Williams-Bolar in Ohio,¹¹¹ Tanya McDowell in Connecticut,¹¹² and

¹⁰⁷ See Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 *Geo. L.J.* 1479, 1494 (2016).

¹⁰⁸ See Jamison & Brown, *supra* note 72; Ann E. Marimow, *As D.C. Probes School Enrollment Fraud, More Paybacks Could Be Coming*, *Wash. Post* (Mar. 1, 2018), https://www.washingtonpost.com/local/public-safety/as-dc-probes-school-enrollment-fraud-more-paybacks-could-be-coming/2018/03/01/7e6710b4-1cef-11e8-9de1-147dd2df3829_story.html?utm_term=.3912add302d8 [<https://perma.cc/ZU6U-QMU3>]; McGee, *supra* note 72.

¹⁰⁹ D.C. Office of the State Superintendent of Educ., *Student Residency Fraud Prevention Hotline Poster* (Aug. 25, 2014), <https://osse.dc.gov/publication/student-residency-fraud-prevention-hotline-poster> [<https://perma.cc/SN2L-89KQ>].

¹¹⁰ D.C. Office of the State Superintendent of Educ., *Residency Fraud Poster*, https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/ResidencyInvestigation_18x24_posters.pdf [<https://perma.cc/Z47X-Y8CA>]. It asks those giving tips to be “prepared to supply as much of the following as possible,” including: “Student Name and Grade,” “Description of Student,” “School Name,” “Parents [sic] Name,” “Address used to Verify Residency,” “Out of State [sic] Address,” “Parent Vehicle Information,” and “Why do you believe this student is a potential nonresident?” *Id.*

¹¹¹ See generally sources cited *supra* note 23.

¹¹² See, e.g., Michelle Bernard, *Opinion, Why Are We Arresting Mothers for ‘Stealing’ a Public Education?*, *The 74 Million* (Aug. 6, 2015), <https://www.the74million.org/article/stealing-public-education/> [<https://perma.cc/FBJ3-BVVX>]; Megan DeSombre, *Parent Tanya McDowell Arrested For “Stealing An Education” Speaks Out*, *Educ. Conn.* (Mar. 29, 2017), <https://educationct.org/parent-arrested-for-stealing-an-education-speak-out-to-the-hour/> [<https://perma.cc/EVX6-FFP8>]; Kelly Phillips Erb, *Would You Lie About Where You Live To Get Your Child into a Better School?*, *Forbes* (Nov. 6, 2016), <https://www.forbes.com/sites/kellyphillipserb/2016/11/06/would-you-lie-about-where-you-live-to-get-your-child-into-a-better-school/> [<https://perma.cc/8ZNU-56JF>]; Noliwe Rooks, *Charged with “Stealing School”: Here’s One Way the U.S. Enforces Educational Segregation*, *Salon* (Oct. 22, 2017), <https://www.salon.com/2017/10/22/charged-with-stealing-school-heres-one-way-the-u-s-enforces-educational-segregation/> [<https://perma.cc/LY8S-6QNH>]; Kyle Spencer, *For Some Parents, Search for Better Schools Could Lead to Jail*, *McClatchy DC* (May 14, 2015), <https://www.mcclatchydc.com/news/nation-world/national/article24784459.html> [<https://perma.cc/P373-HDAJ>]; *Should Parents Do Jail Time for ‘Stealing’ an Education?*, *The Week*

Hamlet Garcia in Pennsylvania,¹¹³ portray educational thieves as black and brown families living in predominately minority school districts who dare to breach the boundaries of predominately white schools.¹¹⁴ School districts also claim to protect taxpayers' right to exclude by appealing to physical safety, a trope that has a racial history in the desegregation movement. Historical studies show that preventing interracial intimacy¹¹⁵ and a fear of violence¹¹⁶ motivated many whites to oppose school desegregation. In Quincy, Massachusetts, a suburban school district outside of Boston, residency concerns arose after a shooting suspected to be perpetrated by a student who did not live in the district.¹¹⁷ The school district not only established a tip line but also conducted its own public surveillance on the public transportation line.¹¹⁸ School attendance officers scanned the station looking for students they recognized,¹¹⁹ effectively barring them from even entering the community. Wayne Myrick, attendance officer for Quincy Public Schools, remarked, "We have a good track on which kids aren't living here The kids know that we check the platform and if they get caught, they get thrown out."¹²⁰ The implication is that if you need to use public transportation to get to school, you likely do not live in Quincy. And, if you use public transportation, you may bring violence with you.

(Mar. 13, 2012), <http://theweek.com/articles/477362/should-parents-jail-time-stealing-education> [<https://perma.cc/ZA5S-ZZP8>].

¹¹³ See, e.g., Erb, *supra* note 112; Spencer, *supra* note 112.

¹¹⁴ Ironically, it could be the case that black and brown people are also profiling other black and brown families to separate themselves from "thieves." Sociologist Cayce Hughes found that poor black women receiving public benefits surveilled other welfare recipients in order to distance themselves from "other poor people they considered needy or greedy." Cayce C. Hughes, *From the Long Arm of the State to Eyes on the Street: How Poor African American Mothers Navigate Surveillance in the Social Safety Net*, *J. Contemp. Ethnography* 1, 23–24 (2018).

¹¹⁵ Reginald Oh, *Regulating White Desire*, 2007 *Wis. L. Rev.* 463, 478 (2007) (arguing that "segregation in public schools was the primary state-sponsored social arrangement aimed at preventing the formation of interracial marriages").

¹¹⁶ See Lawrence Bobo, *Whites' Opposition to Busing: Symbolic Racism or Realistic Group Conflict?*, 45 *J. Personality & Soc. Psychol.* 1196, 1208–09 (1983) (arguing that white opposition to busing stemmed not only from racial prejudice, but from perceptions of a threat of group conflict, potentially including violence).

¹¹⁷ Jack Encarnacao, *Quincy Schools Crack Down on Out-of-Towners*, *Patriot Ledger* (June 19, 2010), <http://www.patriotledger.com/x792538354/Quincy-schools-crack-down-on-out-of-towners> [<https://perma.cc/26N9-6RTL>].

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

III. PROPERTIZING EDUCATION

Ladson-Billing and Tate argue that “[t]he grand narrative of U.S. history is replete with tensions and struggles over property—in its various forms.”¹²¹ Part of that “grand narrative” is struggles over education. Treating education as property and framing falsifying residency as “stealing education” highlights the ways in which residency restrictions, in the context of funding schemes that rely in large part on local funding, have the potential to entrench and reproduce intergenerational race and class inequality and stratification.

In the accounts I analyze above, school district and law enforcement officials portray education as a scarce resource. Through exclusion, districts afforded some children access to this valuable resource while others are excluded. In the context of race- and class-segregated education, the scarce resource of quality public education has mostly inured to middle- and upper-middle-class whites.

As sociologists Joe Feagin and Sean Elias have argued, this differential access to scarce resources in favor of whites is the result of generations of unfair white racial advantage in economic systems:

Slavery and subsequent Jim Crow segregation provided a great many white families and their ancestors outside the white power elite with many unjustly derived social, economic and political advantages Over centuries, the social actions of exploitation and disenfranchisement have created much income, wealth, [and] power . . . for whites, a socio-economic imbalance among races, which have in turn provided abundant racial capital for later generations of whites to the present.¹²²

Criminalizing and punishing those who violate residency requirements serves to further perpetuate this imbalance, as those who enter the world as children of parents with few resources grow up to be adults of few resources with children of their own. Due to race and class segregation in schools, education plays a large role in this intergenerational process.

Why does schooling matter so much as to induce people to think of it as an entitlement deserving of protection? Quite simply, a “good” education is a thing of value. While I have focused here mostly on dollars schools allocate to students, schools also give children resources that are

¹²¹ Ladson-Billings & Tate, *supra* note 96, at 53.

¹²² Joe Feagin & Sean Elias, *Rethinking Racial Formation Theory: A Systemic Racism Critique*, 36 *Ethnic & Racial Stud.* 931, 952 (2013).

not easily monetized.¹²³ Roithmayr explains why “the right school [is] essential to a child’s future”:

[First,] [w]ell-funded schools do a better job at improving the cognitive skills of students, and employers are more likely to hire a candidate who has better skills

Second, going to school in a middle-class white neighborhood signals that the job candidate has been socialized according to the norms of behavior characteristic of the white middle-class community The right school means marketable skills, the right work ethic, the right social skills[,] and the right connections.¹²⁴

Education, then, is a mix of economic capital (dollars), social capital (connections),¹²⁵ cultural capital (socialization),¹²⁶ and human capital (cognitive skills).¹²⁷ Thus, it makes sense that when the Court explained the importance of education in *Brown v. Board of Education*, it saw

¹²³ Daniel Kiel, *The Enduring Power of Milliken’s Fences*, 45 *Urb. Law.* 137, 145 (2013) (“The concentration of resources within one district is about more than money. Funding inequality within metropolitan areas has diminished, but limiting comparisons solely to per pupil expenditures presents an incomplete view of the resources available within districts. Expanding the definition of ‘resource’ to include not only finances, but also programs, effective teachers, cultures of achievement, peers, parental involvement—the less tangible resources that contribute to the quality of a student’s education—reveals the extent of inequality generated by district lines.”) (footnotes omitted).

¹²⁴ Roithmayr, *Them That Has*, *supra* note 88, at 386–87.

¹²⁵ See Alejandro Portes, *Social Capital: Its Origins and Applications in Modern Sociology*, 24 *Ann. Rev. Soc.* 1, 3 (1998).

¹²⁶ See Pierre Bourdieu, *Cultural Reproduction and Social Reproduction*, in 3 *Culture: Critical Concepts in Sociology* 63, 64 (Chris Jenks ed., 2003). Sociologist Lauren Rivera finds evidence of the value of cultural socialization in getting a job. Looking at elite professional services, she found:

[H]iring is more than just a process of skills sorting; it is also a process of cultural matching between candidates, evaluators, and firms. Employers sought candidates who were not only competent but also culturally similar to themselves. Concerns about shared culture were highly salient to employers and often outweighed concerns about productivity alone.

Lauren A. Rivera, *Hiring as Cultural Matching: The Case of Elite Professional Service Firms*, 77 *Am. Soc. Rev.* 999, 1000 (2012) (emphasis omitted).

¹²⁷ Human capital can be operationalized as skills and capabilities. See James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 *Am. J. Soc.* S95, S100 (1988) (“Just as physical capital is created by changes in materials to form tools that facilitate production, human capital is created by changes in persons that bring about skills and capabilities that make them able to act in new ways.”).

education as a “principal instrument . . . in preparing [a student] for later professional training.”¹²⁸

Part of the perception of treating education as property stems from the fact that property values correlate with “good” school districts.¹²⁹ But what makes a “good” school district is not only objective measures, such as test scores, but also the racial composition of the school district.¹³⁰ Sociology Professors Salvatore Saporito and Annette Lareau found that white families’ school choices are racially motivated, but black families’ choices are not:

[R]acial motivations of families are a clear and powerful force in shaping school selection for whites, but not for blacks. White families avoid “black” schools. They do so even when these “black” schools have substantial numbers of affluent, academically able students. Instead, white families prefer “white” schools, which, in many cases, have poorer children with lower test scores. Black families show no similar sensitivity to race.¹³¹

It is therefore not a stretch to also see propertizing education as a way to entrench racial segregation. Unlike *Brown*’s aspirations, which included an integrated education space where the state was tasked with providing equal educational opportunities to all children, the interplay of residence restrictions and school funding schemes allows groups of private individuals to appropriate educational access as their own property. The current structure of schooling allows education to be a property right,

¹²⁸ 347 U.S. 483, 493 (1954) (emphasis added).

¹²⁹ Michele Lerner, School Quality Has a Mighty Influence on Neighborhood Choice, Home Values, Wash. Post (Sept. 3, 2015), https://www.washingtonpost.com/realestate/school-quality-has-a-mighty-influence-on-neighborhood-choice-home-values/2015/09/03/826c289a-46-ad-11e5-8ab4-c73967a143d3_story.html?utm_term=.8723f0aedcd4 [https://perma.cc/Q69F-36K3] (quoting a real estate professional as stating, “We know there’s a direct correlation between school quality and home values that’s pretty dramatic”).

¹³⁰ See John M. Clapp et al., Which School Attributes Matter? The Influence of School District Performance and Demographic Composition on Property Values, 63 J. Urb. Econ. 451, 453–54 (2008) (finding for their 1994–2000 sample of property values in Connecticut school districts that, although districts’ student test scores had “statistically significant effects,” high percentages of Hispanic residents also had robust “substantial negative effect” on districts’ “property values”).

¹³¹ Salvatore Saporito & Annette Lareau, School Selection as a Process: The Multiple Dimensions of Race in Framing Educational Choice, 46 Soc. Probs. 418, 419 (1999).

ensuring that education is “but one of several institutions which serve to perpetuate th[e] structure of privilege.”¹³²

CONCLUSION

This Article looked at the phenomenon of “stealing education,” the practice of criminalizing or otherwise punishing parents who enroll their children in school districts in which they do not reside. I showed, through analyzing a set of news articles written about “stealing education,” that school district officials and law enforcement officials conceive of education as property, replete with rights to transfer, exclusively use and enjoy, and absolutely exclude. Punishing residence violations involves a web of law, from property to criminal to education and local government, and works to concentrate and reproduce inequality and stratification.

¹³² Samuel Bowles & Herbert Gintis, *Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life* 85 (1976). This privilege is more than having better schools, better neighborhoods, and better jobs.