

Essays

FAMILY | HOME | SCHOOL

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ABSTRACT—The state grants residents who live within a school district’s border an ownership interest in that district’s schools. This interest includes the power to exclude nonresidents. To attend school in a school district, a child must prove that she lives at an in-district address and is a bona fide resident. But in highly-sought-after districts and schools, establishing a child’s bona fide residence may be highly contested.

In this Essay, I show that education law, policies, and practices fail to recognize a child’s residence when the child’s family and living situation do not comport with a particular ideal of family life. This ideal is rooted in the archetype of the White, middle-class nuclear family headed and controlled by two parents and living in a single dwelling around which all family life revolves—a “home.” While this idea may be normatively familiar, it is elusive for many families. For many families, especially the race–class–gender subordinated, “family” looks and functions differently from the archetype. Parents are rarely the only or primary caregivers for children in these families, and home-making is likely to occur across multiple sites, not just one “home.” By valorizing the nuclear family and its accouterments—and refusing to consider other family forms as sufficient to establish residency—residency requirements not only impede access to educational resources for those who are most in need, but also entrench a race–class–gender-specific ideal of the family and ignore the reality of how many families actually function.

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INTRODUCTION

Kelley Williams-Bolar, a Black, single mother living in Ohio, was charged, convicted, and incarcerated for the crime of “stealing education.”¹ Many states make it illegal for a parent to enroll their child in school districts where the child does not reside.² The public reaction to Ms. Williams-Bolar’s conviction and jail time was intense: a commentator and scholar declared her “the Rosa Parks of the modern day parent empowerment movement” for bravely resisting the education system’s hegemonic residency requirements for school attendance.³

But this oft-told story about Ms. Williams-Bolar’s case is only partially correct. At the time, Ms. Williams-Bolar did not challenge the residency laws themselves.⁴ Instead, she argued that her children met their requirements.

¹ LaToya Baldwin Clark, *Education as Property*, 105 VA. L. REV. 397, 403 (2018) [hereinafter Baldwin Clark, *Education as Property*]; Ohio v. Williams-Bolar *Case Docket*, SUMMIT CNTY. CLERK OF CTS., <https://clerkweb.summitoh.net/RecordsSearch/Dockets.asp?CaseID=645205&CT=&Suffix=> [https://perma.cc/CM69-FEQZ].

² See LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 592–97 (2021) [hereinafter Baldwin Clark, *Stealing Education*].

³ See *id.* at 573 n.23 (quoting Gloria Romero, *From Topeka, to Adelanto, and Montgomery County: Brown v. School Board of Education Continues*, 13 WHITTIER J. CHILD. & FAM. ADVOC. 20, 27 (2014)).

⁴ Today, Ms. Williams-Bolar is an advocate for educational equality. See *Kelley Williams-Bolar: The Pursuit of Education as the Great Equalizer*, FOREST OF THE RAIN PRODS., <https://www.forestoftherain.net/kelley-williams-bolar-8203the-pursuit-of-education-as-the-great-equalizer.html> [https://perma.cc/3V2Y-S6UA]. She often speaks about why she wanted her children in a better school district and sometimes seems to allege that she was challenging the residential laws themselves. However, this was not her original argument. See *Mother Jailed for School Fraud, Flares Controversy*, NPR (Jan. 28, 2011, 12:00 PM ET), <https://www.npr.org/2011/01/28/133306180/Mother-Jailed-For-School-Fraud-Flares-Controversy> [https://perma.cc/977S-WMR5] (“Williams-Bolar decided four years ago to send her daughters to a highly ranked school in neighboring Copley-Fairlawn School District. But it wasn’t her Akron district of residence, so her children were ineligible to attend school there, even though her father lived within the district’s boundaries.”).

Ms. Williams-Bolar and her two children lived together in a neighborhood she deemed unsafe.⁵ Given her concerns about her children’s well-being, she placed them with their grandfather at his home, located in a safer community.⁶ Because her children were residing in this new community, she enrolled them in the neighborhood school which, in her view, the children were entitled to attend because they lived with their grandfather.⁷ Ms. Williams-Bolar asserted that her father’s home was the “family home.”⁸ Not only did her children reside there, but she also stayed at the home periodically.⁹ When discussing the issue of whether she did live at her grandfather’s, Ms. Williams-Bolar described a living arrangement in which her children repeatedly moved between multiple homes: “[T]hey would stay here and they would stay at the other address. . . . [T]hey would stay with their dad. They would stay with the other grandparents. [M]y kids have more than one residency.”¹⁰

When the school district learned of the children’s living arrangement, it accused Ms. Williams-Bolar of willfully “stealing” education.¹¹ She resisted, arguing that her children resided with their grandfather and thus were eligible to attend the school.¹² Her case went to trial.¹³ A jury rejected her argument about residency, found her guilty, and sentenced her to ten days in jail.¹⁴ Ms. Williams-Bolar served nine days, plus two years of probation.¹⁵

The court’s decision that Ms. Williams-Bolar “stole” education meant the court believed she knowingly violated the “bona fide residence”

⁵ See Baldwin Clark, *Education as Property*, *supra* note 1, at 403.

⁶ *See id.*

⁷ *Ohio Mom Defends Sending Kids to Better School District*, NPR (Feb. 10, 2011, 12:00 PM) [hereinafter *Ohio Mom Defends*], <https://www.npr.org/2011/02/10/133654397/Ohio-Mom-Defends-Sending-Kids-To-Better-School-District> [<https://perma.cc/89UW-SSHW>]. Ms. Williams-Bolar alleges that she obtained a “grandparent power of attorney,” which she believed to be sufficient to attest to the children’s residence with their grandfather. *Id.*

⁸ *Id.* (“First of all, my dad’s home is - that’s my family home. And my dad always told me that his home, you know, is my home. And that’s how, you know, that’s - I’ve always, it’s my daddy’s house. I’ve always, always been like that.”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Baldwin Clark, *Education as Property*, *supra* note 1, at 401. Ms. Williams-Bolar’s father was also charged with grand theft, a fourth-degree felony. *Id.* at 407 n.53.

¹² *Id.* at 403.

¹³ *See id.* at 407.

¹⁴ Ms. Williams-Bolar’s alleged illegal conduct occurred between 2006 and 2008. She was indicted in 2009 and was convicted in 2011. At the time of indictment, her children no longer attended the school. *Ohio Mom Defends*, *supra* note 7.

¹⁵ *Id.* Her sentence was subsequently commuted by the governor. John R. Kasich, Governor of the State of Ohio, Commutation of the Offenses and Sentences of Kelley Williams-Bolar (Sept. 6, 2011), <https://perma.cc/ACA4-EQL9>.

requirements prescribed by the state.¹⁶ Under such laws, only children who are bona fide residents in a locality have an ownership interest in a jurisdiction's schools, whereby they cannot be excluded from receiving the school district's education.¹⁷ According to the Supreme Court, "[a] bona fide residence requirement . . . furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents."¹⁸

However, as Ms. Williams-Bolar's case illustrates, establishing a child's residence for school district eligibility purposes may be more complicated for some families than the residency requirements allow. In this Essay, I argue that the criteria for determining a child's bona fide residence create a legal reality under which living with family is not living at "home." Those criteria reflect unstated assumptions about family life, whether consciously or unconsciously. They tend to exclude working-class and poor non-White¹⁹ children from well-resourced schools, especially those children with single-mother heads of household.²⁰ This exclusion has enormous consequences. Once a child proves that they are a resident, other benefits follow, most notably that the child cannot be excluded from attending that district's schools.²¹ Suppose a family can establish residence for a child to attend highly-sought-after, richly resourced schools. In that case, that child can access valuable economic, social, and cultural capital²² that can disrupt

¹⁶ Baldwin Clark, *Education as Property*, *supra* note 1, at 404–05.

¹⁷ Baldwin Clark, *Stealing Education*, *supra* note 2, at 590–92; *see* Baldwin Clark, *Education as Property*, *supra* note 1, at 409–10.

¹⁸ *Martinez ex rel. Morales v. Bynum*, 461 U.S. 321, 328 (1983).

¹⁹ I capitalize "White" throughout this essay. The proper noun usage of the word forces an understanding of "White" as a social and political construct and social identity in line with the social and political construct and social identity of "Black." *See* Baldwin Clark, *Education as Property*, *supra* note 1, at 408–09 (discussing Whiteness as a "form of racialized privilege" in accessing social, economic, and political advantages).

²⁰ This is not to say that White children are unaffected by these assumptions, especially poor White children. But the disproportionate impact on non-White families, and especially Black families, warrants special consideration. *See infra* notes 13–24 and accompanying text.

²¹ Baldwin Clark, *Stealing Education*, *supra* note 2, at 570 ("Only residence within a school district's jurisdiction confers on a parent a 'seat license' unavailable to nonresident parents.").

²² *Id.* at 626–27.

the social reproduction²³ of race–class–gender stratification²⁴ and subordination.²⁵ Bona fide residency requirements, as currently written, entail exclusion that precludes access to schools where those capitals are in abundance.

The school residency laws have three components that determine from whom a child can derive residence, where they can demonstrate that residence, and why.²⁶ First, state-level residency statutes explicitly link a child’s residence to their parent’s residence, regardless of whether the child actually resides with their parent. Second, even when a child lives with their parent, residency statutes require that the child’s residence be a “home” for the child to be eligible for school benefits. A “home,” in this context, refers to a singular address around which the entirety of the family’s life revolves. Third, a district can exclude a child if it determines that the parent established a child’s home as their residence only to attend school.

As explained in this Essay, these aspects of school residency laws impact the options for children in families who, whether by choice or circumstance, do not conform to the nuclear-family ideal. By the ideal-type nuclear family, I mean a White, middle-class, married couple who co-reside with their children in a single residence, shared by that nuclear family.

²³ By social reproduction, I mean the tendency of stratification to be intergenerationally stable. LaToya Baldwin Clark, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 HARV. C.R.-C.L. L. REV. 381, 410 (2018) [hereinafter Baldwin Clark, *Beyond Bias*] (“Social reproduction theories attempt to explain how and why the social order at time one relates to the social order at time two. Specifically, social reproduction theories seek to uncover how social institutions contribute to ‘the reproduction of the structure of power relationships and symbolic relationships’ between social groups.” (quoting Pierre Bourdieu, *Cultural Reproduction and Social Reproduction*, in 3 CULTURE: CRITICAL CONCEPTS IN SOCIOLOGY 63 (Chris Jenks ed., 2003))).

²⁴ Stratification refers to the “hierarchical status or rank” among groups. Talcott Parsons, *Equality and Inequality in Modern Society, or Social Stratification Revisited*, 40 SOCIO. INQUIRY 13, 13 (1970).

²⁵ What constitutes “subordination” can be gleaned from what Professor Ruth Colker calls the anti-subordination perspective:

Under the anti-subordination perspective, it is inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole. This approach seeks to eliminate the power disparities between men and women, and between whites and non-whites, through the development of laws and policies that directly redress those disparities. From an anti-subordination perspective, both facially differentiating and facially neutral policies are invidious only if they perpetuate racial or sexual hierarchy.

Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003, 1007–08 (1986).

²⁶ To describe these requirements, I use the term “school” instead of “education.” Residential requirements determine who has the right to enroll in and attend a school district’s schools in general, and specific schools within that district. Accordingly, the laws that exclude nonresidents are excluding them from access to the education that is provided in those schools. But because the relationship I am discussing in here specially involves who can walk into a school building for the purposes of accessing that school’s education, I will use the term “school” rather than “education” in describing the object of exclusion.

Instead, nonideal-type families often rely on a network of adults to care for children and often locate caregiving across multiple sites.²⁷ As a result, they usually fall outside the specific criteria that school districts rely on to establish a child's bona fide residence.

The Essay proceeds as follows. In Part I, I describe the contours of school residency laws, focusing on the who, where, and why aspects of these laws. In Part II, I illustrate how the school residency laws borrow from family law themes about form versus function and status versus contract. Furthermore, I analogize family law's "biology-plus" framework for determining parentage to a "property-plus" framework to establish educational entitlement. Finally, in Part III, I discuss why these assumptions and imports matter for educational stratification by race, class, and gender. In this Essay, the reform I advocate for improves the current system because it allows for residential flexibility, but with significant practical strengths that tend to elude education reform.

In the Essay, I emphasize the impact on poor Black single mothers' children compared to other children for several reasons. In doing so, I do not mean to negate how the dynamics I describe below disadvantage many single mothers in the United States, not just Black single mothers. But the intersection of race, class, and gender suggests poor, Black, and single-mother-headed households have unique experiences.

First, the rate of single motherhood is higher among Black families compared to all other racial groups. Thirty percent of single mothers are Black, more than twice Black people's proportion of the U.S. population, which hovers around 12%.²⁸ In contrast, forty percent of single mothers are White, compared to White people comprising 58% of the U.S. population. Latino single mothers are slightly overrepresented; they comprise 24% of single mothers, compared to Latinos making up 19% of the U.S. population. Asian mothers comprise 3% of single mothers, compared to Asians making up 6% of the U.S. population.

Second, there are significant material differences between low-income Black and other non-White single mothers and low-income White single mothers. Black single mothers and other racially minoritized single mothers

²⁷ LESLIE PAIK, TRAPPED IN A MAZE: HOW SOCIAL CONTROL INSTITUTIONS DRIVE FAMILY POVERTY AND INEQUALITY 70–71 (2021).

²⁸ All the statistics in this paragraph are from Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RSCH. CTR. (Apr. 25, 2018), <https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents/> [https://perma.cc/A3NM-3M83]; and Mabinty Quarshie & Donovan Slack, *Census: US Sees Unprecedented Multiracial Growth, Decline in the White Population for First Time in History*, USA TODAY (Aug. 13, 2021, 5:26 PM), <https://www.usatoday.com/story/news/politics/2021/08/12/how-2020-census-change-how-we-look-america-what-expect/5493043001/> [https://perma.cc/AW8Z-BASG].

are much more likely to live in poverty than are White single mothers.²⁹ White single mothers have higher median wealth than Black or Latino single mothers.³⁰ Wealth is a financial cushion for White single mothers not available to Black and Latino single mothers. Indeed, many sociologists urge more attention to how wealth contributes to racial subordination, especially the role of property.³¹ Race-based historical and contemporary impediments to property ownership³² and wealth accumulation suggest that White single mothers likely have more housing choices than Black single mothers.

Furthermore, even if we focus only on income, the COVID-19 pandemic's economic impacts illustrate the financial precarity of poor Black children of single-mother households compared to those of White single-parent-headed families. Black single-mother-headed households suffered disproportionately due to the jobs Black women tended to hold, which were disproportionately negatively affected during the pandemic.³³ As a result, Black children fell into poverty at a disproportionately high rate during the pandemic.³⁴

²⁹ In 2010, around 50% of Black single mothers and Latino single mothers lived in poverty, compared to 33% of White single mothers. LEGAL MOMENTUM, SINGLE MOTHER POVERTY IN THE UNITED STATES IN 2010, at 1 (2011), <https://www.legalmomentum.org/library/single-mother-poverty-united-states-2010> [<https://perma.cc/57VF-9465>]; see also Sophia Kerby, *Pay Equity and Single Mothers of Color*, CTR. FOR AM. PROGRESS (Apr. 16, 2012), <https://www.americanprogress.org/article/pay-equity-and-single-mothers-of-color/> [<https://perma.cc/LR45-H525>] (“Poverty rates are higher for single mothers of color compared to white single mothers and two parent households.”). Single mothers from all racial groups have poverty rates far higher than 15%, the poverty rate of Americans as a whole. LEGAL MOMENTUM, *supra*, at 1.

³⁰ Kerby, *supra* note 29.

³¹ See, e.g., MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 11–13 (1995) (arguing that race differences in opportunity and outcomes are primarily due to the inability of Black people in the past and present to accumulate wealth through property ownership).

³² These historical impediments to property ownership and wealth generation include public actions like redlining, RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 59–67 (2017); private actions such as racially restrictive covenants, *id.* at 78–91; racial zoning, *id.* at 39–57; and exclusion from the suburban boom of the 1950s, *id.* at 70–75. In addition, contemporary manifestations of these processes, such as ongoing discrimination in home lending, continue to artificially restrict Black homeownership and deflate home prices in Black neighborhoods. See Douglas S. Massey, *Racial Discrimination in Housing: A Moving Target*, 52 SOC. PROBS. 148, 149–50 (2005) (stating that even when formal explicit racial discrimination ended, banks shifted to “‘predatory lending’ whereby poor minorities received less favorable loan terms and are channeled into problematic forms of housing”).

³³ Gracyn Doctor, *For Black Single Mothers, COVID-19 Economic Challenges Can Be Magnified*, WFAE (Jan. 19, 2021, 6:55 AM), <https://www.wfae.org/health/2021-01-19/for-black-single-mothers-covid-19-economic-challenges-can-be-magnified> [<https://perma.cc/85XE-9PT6>].

³⁴ Zachary Parolin & Christopher Wimer, *Forecasting Estimates of Poverty During the COVID-19 Crisis*, 4 POVERTY & SOC. POL’Y BRIEF, Apr. 16, 2020, at 8.

Third, of course, many racialized groups exhibit some of the themes I identify. For example, single parenthood has risen for all racial groups over the last several decades.³⁵ But low-income single motherhood is often racialized, encapsulated in constructs such as the stereotypical “welfare queen.”

[T]he welfare queen archetype is typically represented as a woman whose irresponsible choice to have children out of wedlock has caused her to turn to the state for financial support. Fiscally and sexually irresponsible, she is a threat to social order precisely because she rejects the importance of the nuclear family as a bedrock social institution. The welfare queen is also represented as indolent, as she finds ways to indefinitely extend her right to demand support from the state and to maximize the dollars the state confers. She is an immediate threat because she imposes a financial burden on the state to support her children.³⁶

She is not just a woman or a mother, but a Black mother. A content analysis of media depictions of welfare shows that, concerning attitudes about welfare, “[g]ender combines with race, and media depictions tie dependency to racist conceptions of recipients along with traditional conceptions about women’s roles and sexuality.”³⁷ Dependence is racialized, as welfare recipients “are represented as black, unmarried mothers out to cheat the state.”³⁸

³⁵ Livingston, *supra* note 28 (“In 1968, only 1% of all parents were solo fathers; that figure has risen to 3%. At the same time, the share of all parents who are solo mothers has doubled, from 7% up to 13%.”).

³⁶ Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 S. CAL. INTERDISC. L.J. 257, 260 (2016). For other descriptions of the welfare queen, see Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 308 (2013) (describing the welfare queen as “a non-working, substance-abusing, single mother relying on the state for her benefits and lying to receive more than she deserves”); Ann Cammett, *Welfare Queens Redux: Criminalizing Black Mothers in the Age of Neoliberalism*, 25 S. CAL. INTERDISC. L.J. 363, 385 (2016) (describing the welfare queen as “an irresponsible, lazy mother who is somehow scamming the system”); and Julilly Kohler-Hausmann, *Welfare Crises, Penal Solutions, and the Origins of the “Welfare Queen,”* 41 J. URB. HIST. 756, 757 (2015) (explaining how the welfare queen archetype came to imply “that the ‘average’ [welfare] recipients were lazy, sexually promiscuous (typically African American) women who shirk both domestic and wage labor”).

³⁷ Joya Misra, Stephanie Moller & Marina Karides, *Envisioning Dependency: Changing Media Depictions of Welfare in the 20th Century*, 50 SOC. PROBS. 482, 496 (2003); *see also* Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 244 (2014) (showing the immediate racialization of the “welfare queen” described by then-presidential candidate Ronald Reagan); Julilly Kohler-Hausmann, “*The Crime of Survival*”: *Fraud Prosecutions, Community Surveillance, and the Original “Welfare Queen,”* 41 J. SOC. HIST. 329, 335 (2007) (arguing that the term has “racial connotations . . . [and] implicitly references popular beliefs, associated frequently with the Moynihan Report, which attributed the ‘pathology of the Black family’ to its alleged matriarchal structure”).

³⁸ Misra, *supra* note 37, at 496.

No other low-income race–class–gender family suffers more from that stereotype of laziness, fraudulence, and general poor parenting than Black single mothers. Assumptions about unfit parenting manifest, for example, in the disproportionate numbers of Black children removed from their homes for neglect, the determination of which often results from financial precarity.³⁹

Lastly, in this Essay, I am not directly challenging the validity of the school district boundaries, although my analysis of the residential laws leads in that direction. Here, I am particularly concerned about how the residential requirements reify normative ideals of the family. At the end of the Essay, my prescriptions reflect those concerns while proposing a practical harm-reduction approach. But for now, challenging the boundaries themselves is beyond this Essay’s scope.

I. EDUCATIONAL RESIDENCE

Establishing a child’s residence in a school district is the first step a parent must take to enroll their children in school.⁴⁰ Their residential address must be contained in that specific district’s attendance boundaries.⁴¹ Moreover, schools too have requirements that a child reside within the school’s attendance boundaries.⁴² Thirty-two states’ laws explicitly allow school districts to restrict educational services to only those children who live within a district’s attendance boundaries.⁴³

The question becomes: How does one define residency? Courts often use dictionary definitions to explain otherwise undefined terms. Black’s Law Dictionary is an obvious starting point. That dictionary defines residence as “[t]he act or fact of living in a given place for some time;” it is “[t]he place where one actually lives,” a “house or other fixed abode.”⁴⁴ In turn, “residence” appears in ninety-four other definition entries that span many

³⁹ See DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 6 (2002) (showing how Black families are disproportionately targeted by the child welfare system); DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD (2022) (showing the impact of the child welfare system on Black families and arguing that the system should be abolished due to its harm to Black families).

⁴⁰ Baldwin Clark, *Stealing Education*, *supra* note 2, at 573.

⁴¹ *Id.* at 570.

⁴² *Id.*

⁴³ *Id.* at 590 n.105.

⁴⁴ *Residence*, BLACK’S LAW DICTIONARY (11th ed. 2019). Residence is also “[t]he place where a corporation or other enterprise does business or is registered to do business.” *Id.*

substantive areas of law.⁴⁵ These areas include immigration and citizenship,⁴⁶ private law,⁴⁷ and, of course, property law.⁴⁸

In the following sections, I describe the three components of school residency laws: from *whom* a child’s address derives, *where* a child can call an address a “home,” and inquiries into *why* the caregiving adult established that address.

A. *Whom*

*“A child shall be considered a resident of the school district in which his parents or the guardian of his person resides.”*⁴⁹

As this Pennsylvania statute illustrates, a child’s residence is presumed to be that of their parent or another person fulfilling a formal, state-approved parental role. Such requirements are ubiquitous; seventeen state statutes explicitly presume a child’s residence to be that of their parent.⁵⁰ For example, in California, a student “shall attend the public school . . . of the district in which the residency of either the parent or legal guardian is

⁴⁵ A Westlaw search for “residence” in Black’s Law Dictionary shows that “residence” appears in the definitions of 94 entries in addition to the “residence” entry itself.

⁴⁶ *E.g.*, *Immigrate*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“To come to dwell or settle; to move into a country where one is not a native for the purpose of permanent residence.”).

⁴⁷ *E.g.*, *Contract*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“1. An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>. 2. The writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>.”).

⁴⁸ *E.g.*, *Occupancy*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy, esp. of a dwelling or land.”); *Zoning Ordinance*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A city ordinance that regulates the use to which land within various parts of the city may be put. It allocates uses to the various districts of a municipality, as by allocating residences to certain parts and businesses to other parts. A comprehensive zoning ordinance [usually] regulates the height of buildings and the proportion of the lot area that must be kept free from buildings.”).

⁴⁹ 24 PA. STAT. AND CONS. STAT. ANN. § 13-1302.

⁵⁰ *See, e.g.*, DEL. CODE ANN. tit. 14, § 202; KAN. STAT. ANN. § 72-3118; MASS. GEN. LAWS ANN. ch. 76, § 5; MO. ANN. STAT. § 167.020; N.H. REV. STAT. ANN. § 193:12 (2020); OKLA. STAT. ANN. tit. 70, § 1-113; 16 R.I. GEN. LAWS § 16-64-1; S.C. CODE ANN. § 59-63-30; S.D. CODIFIED LAWS § 13-28-9; VT. STAT. ANN. tit. 16, § 1075. To establish their residence, parents and guardians usually present evidence such as driver’s licenses, utility bills, and lease or mortgage documents. It would be difficult for a child to meet these requirements: children and young teens often do not have driver’s licenses; they do not have utility bills in their name; they may or may not appear as occupants on a lease and almost never are included on mortgage documents. *See* Baldwin Clark, *Stealing Education*, *supra* note 2, at 591–92.

located.”⁵¹ Likewise, in Maine, “[a] person is eligible to attend schools in the school administrative unit where the person’s parent resides.”⁵²

If a parent cannot establish residency in the desired district, the law allows a child to live with a nonparent to establish residence. However, to confer residency benefits on the child, the nonparent must often assume legal responsibility for all aspects of that child’s life, not only their educational needs. Essentially, the requirement allows nonparents to confer the benefit of their resident status only where they function in loco parentis to a child.

This nonparent is often a legal guardian or holds another legal designation whereby one person (at most two) is responsible for the child.⁵³ Even when states formally recognize relatives as nonparent caregivers, they require the equivalent of an ideal-type parent–child relationship. For example, Maryland explicitly allows kinship care as a basis for school enrollment.⁵⁴ Children may “attend public school in the county where the child is domiciled with the child’s parent, guardian, or relative providing informal kinship care.”⁵⁵

But Maryland defines kinship care as a “living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the

⁵¹ CAL. EDUC. CODE § 48200. California’s residence laws “strongly imply[]—though not directly stat[e]—that the proper school district for enrollment is that ‘in which the [child’s parent’s] residence is located.’” *R.F. v. Delano Union Sch. Dist.*, 16-cv-01796, 2017 WL 633919, at *4 (E.D. Cal. Feb. 15, 2017) (third alteration in original). This derives from the Government Code on state sovereignty: A “residence can be changed only by the union of act and intent,” which, in the case of an unmarried minor child, requires the act and intent of a parent or legal guardian. CAL. GOV’T CODE § 244(f); *Nw. Nat’l Cas. Co. v. Davis*, 90 Cal. App. 3d 782, 785 (1979) (holding that a minor may not acquire a new residence except through the actions of their parents). Furthermore, North Carolina state law provides that a child, unless emancipated, “may not establish a domicile different from his parents, surviving parents, or legal guardian.” *Chapel Hill-Carrboro City Sch. Sys. V. Chavioux*, 446 S.E.2d 612, 614 (N.C. Ct. App. 1994). In California, the rule is:

In determining the place of residence the following rules shall be observed: . . .

(d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.

(e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.

CAL. GOV’T CODE § 244. Likewise, the California Welfare and Institutions Code states that “[t]he residence of the parent with whom the child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian . . . determines the residence of the child.” CAL. WELF. & INSTS. CODE § 17.1(a).

⁵² ME. REV. STAT. ANN. tit. 20-A, § 5202.

⁵³ DEL. CODE ANN. tit. 14, § 202; KAN. STAT. ANN. § 72-3118; MO. ANN. STAT. § 167.020; OKLA. STAT. ANN. tit. 70, § 1-113; VT. STAT. ANN. tit. 16, § 1075.

⁵⁴ MD. CODE ANN., EDUC. § 7-101(b)(1).

⁵⁵ *Id.*; *id.* § 7-101(c)(2)(ii).

child due to a serious family hardship.”⁵⁶ These hardships, which Maryland school districts can require proof of, must be extreme conditions that affect the child’s parent, including parental death, serious illness, drug addiction, incarceration, abandonment, and military duty.⁵⁷ The kinship care alternative is acceptable only if there is “serious family hardship,” suggesting that only a child’s parents are “family.” In imposing this limitation, the law suggests that living without parents is at best a “second-best alternative” to be deviated from only when the parents are unable to be parents.⁵⁸ Thus, Maryland requires that a nonparent can establish a child’s address only if the parent cannot take care of the child.

Other states have similar assumptions about nonparent caregivers and establishing residence away from a child’s parents, albeit slightly different mechanisms. For example, consider Pennsylvania’s statute about nonparent caregivers:

When a resident of any school district keeps in his home a child of school age, *not his own, supporting the child gratis as if it were his own*, such child shall be entitled to all free school privileges accorded to resident school children of the district⁵⁹

⁵⁶ *Id.* § 7-101(c)(1)(ii). The adult providing kinship care must be a relative by blood or marriage. *Id.* § 7-101(c)(1)(iii). Maryland differentiates between formal and informal kinship care in Maryland. *Kinship Care*, MD. DEPT. OF HUM. SERVS., <https://dhs.maryland.gov/foster-care/kinship-care/> [https://perma.cc/6QYN-EDFU].

⁵⁷ MD. CODE ANN., EDUC. § 7-101(c)(1)(iv). North Carolina law too allows kinship care as a basis for school enrollment, but only when parents are unable to care for the child. It allows a child who does not live with their parent in the desired school district to enroll in school only if their parent is unavailable due to death, serious illness, incarceration, abandonment, abuse or neglect, impaired physical or mental condition, relinquishment of custody, “loss or uninhabitability of the student’s home as the result of a natural disaster,” or some consequence of military service. N.C. GEN. STAT. § 115C-366. While the state does not require the relative to become a child’s legal guardian, those with legal responsibility for the child must “complete[] and sign[] separate affidavits that . . . attest that the caregiver has been given and accepts responsibility for educational decisions for the student.” *Id.*

⁵⁸ R.A. Lenhardt & Clare Huntington, *Forward: Moore Kinship*, 85 FORDHAM L. REV. 2551, 2254 (2017).

⁵⁹ 24 PA. STAT. AND CONS. STAT. ANN. § 13-1302 (emphasis added).

This statute explicitly recognizes nonparent caregivers. However, for school enrollment purposes, this person must take on a parent-like role, caring for the child “as if it were his own.”⁶⁰ New Jersey law is similar.⁶¹

In Indiana, a child’s “legal settlement” for enrolling in a district’s attendance area is “where the student’s parents reside.”⁶² While the presumption is that a child resides with their parent to enroll in school, Indiana allows other adults to step into the role of parent. If the child’s parents cannot care for the child, another adult can establish residence if they care for the child in the parent’s absence. However, this person must establish themselves as a legal caregiver standing in the parent’s place. In addition, a district can insist on proving the “appointment of that individual as legal guardian or custodian.”⁶³ Similarly, in Delaware, while the law presumes a child shares a residence with her parents, when the child does not, the child’s primary caregiver needs a “signed order from a court granting

⁶⁰ In *Velazquez ex rel. Speaks-Velazquez v. East Stroudsburg Area School District*, 949 A.2d 354, 358 (Pa. Commw. Ct. 2008), the court held that being a parent is not simply an issue of financial commitment, but of day-to-day routine child caregiving. A Pennsylvania school district alleged that a grandmother who was caring for her grandchild was being compensated by receiving child support payments from the child’s parent, and thus was ineligible to enroll her grandchild in the district that corresponded with the grandparent’s address:

Adopting the plain meaning of gratis, . . . the trial court mischaracterized the child support payments received by [the grandmother] as compensation to reach its erroneous conclusion that she did not support Jose gratis as if he were her own child. Parents are liable for support of their children who are unemancipated and 18 years of age or younger, and parents must provide for reasonable expenses of raising their children. The order imposed against Jose’s mother was for payment of child support to fulfill her obligation to provide childcare expenses for Jose, not to compensate [the grandmother] for her services.

Id. at 359 (citations omitted). In interpreting the “gratis” support prong, the court held that receiving child support from the child’s parent was not a payment for keeping the child, but rather for fulfilling the parents’ support obligations. This suggests that the parental role is more about daily decisions and close caregiving, not only financial support.

⁶¹ N.J. STAT. ANN. § 18A:38-1(b)(1) states that

[a]ny person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person’s own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term.

While this statute allows for a nonparent to enroll a child without a formal declaration of guardianship, the nonparent must nevertheless care for the child “as if [the child] were the [nonparent’s] own child.” *Id.* This parent-like relationship requires the nonparent to “assume all personal obligations” without pay. *Id.* Thus, even when a state does not require a nonparent to secure legal control over the child, a nonparent adult seeking to enroll a child in school must establish a parent–child relationship.

⁶² IND. CODE ANN. § 20-26-11-2.

⁶³ *Id.*

custody to or appointing as the child’s guardian the resident with whom that child is residing.”⁶⁴

Each of the statutes I have described above allows only those adult–child relationships that conform to a norm of a nuclear family in which the parent is the sole caregiver. Children who have care relationships with people who are not their parents or formal legal guardians are prohibited—via *per se* rules—from deriving residency from those people. Furthermore, while some states’ statutes allow nonparent adult caregivers to bestow residential entitlements, this is only available by meeting a high standard of parental hardship. Without the ideal-type parent–child relationship, parents’ residential circumstances limit their children’s options.

B. *Where*

“‘Residence’ . . . [is] a place where important family activity takes place during significant parts of each day; a place where the family eats, sleeps, works, relaxes, plays. It must be a place, in short, which can be called ‘home.’”

—*Board of Education v. Day*⁶⁵

In addition to the requirements that only a parent can establish a residence for a child, that person must prove that the address is “home.” According to Black’s Law Dictionary, home is a “dwelling place.”⁶⁶ This definition is not that useful, but Black’s also points to another term: domicile. According to Black’s, domicile is “[t]he place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.”⁶⁷ Under this definition, home has several characteristics that suggest singularity: permanence, exclusivity, and “truth.”

What must parents do to prove permanence, exclusivity, and “truth”? Arkansas’s statute prescribes a straightforward formula: a child must “abode for an average of no less than four (4) calendar days and nights per week.”⁶⁸ In Massachusetts, the standard is less of a bright line. While “[e]very person shall have a right to attend the public schools of the town where he actually resides,”⁶⁹ that town must be the place where the child “dwells permanently, not temporarily, and . . . the place that is the center of his or her domestic,

⁶⁴ DEL. CODE ANN. tit. 14, § 202.

⁶⁵ 506 N.E.2d 1239, 1242 (Ohio Ct. Com. Pl. 1986).

⁶⁶ *Home*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁶⁷ *Domicile*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁶⁸ ARK. CODE ANN. § 6-18-202.

⁶⁹ MASS. GEN. LAWS ch. 76, § 5.

social, and civic life.”⁷⁰ Ms. Williams-Bolar’s case in Ohio, referenced above, requires the same: a child must perform many of life’s essential tasks in one place with their family, narrowly assumed to be that child’s parent.⁷¹

Connecticut case law says that “home” “should be viewed in the context of the community with which the family is associated.”⁷² A 1994 case involved a child whose parents’ property straddled two jurisdictions, New Canaan and Norwalk. The New Canaan district denied her access to a New Canaan school because “a majority of the [parent’s] property taxes” were not paid in New Canaan but in Norwalk. The appeals board overturned the district’s decision, finding that

[the child’s] family members’ social and community activities [are] “overwhelmingly focused” on New Canaan organizations. The board further found that their daily lives are focused in the New Canaan community. A New Canaan address is listed on their auto registration and driver’s licenses; also, they pay personal property taxes on automobiles to New Canaan, and are registered to vote, and have repeatedly done so, in New Canaan. They have residents’ library cards from the New Canaan Public Library and participate in library activities. The . . . children play predominantly with New Canaan residents.⁷³

The court reasoned that schools must look at a “whole constellation of interests including both geography and the community orientation.”⁷⁴ Those interests include “the various recreational ‘affiliations’ that a student may have, such as membership in scouts.”⁷⁵ In following the “whole child concept” the court sought to

recognize[] that extracurricular participation in social, religious and even commercial activities is important in a child’s development as a beneficial supplement to the child’s academic involvement. . . . If a child attends school in his natural community it enhances not only his educational opportunity but encourages his participation in social and other extracurricular activities.⁷⁶

⁷⁰ *Doe ex rel. Doe v. Perille*, No. 18-11875, 2018 WL 5817024, at *1 (D. Mass. Nov. 6, 2018) (discussing a Boston school policy that relies on ARK. CODE ANN. § 6-18-202).

⁷¹ *Supra* notes 1–10.

⁷² *Baerst v. State Bd. of Educ.*, 642 A.2d 76, 80–81 (Conn. App. Ct. 1994).

⁷³ *Id.* at 77.

⁷⁴ *Id.* at 80.

⁷⁵ *Id.*

⁷⁶ *Id.* at 81. In an older case from Nebraska, evidence of voting was “persuasive of the fact that a person considered such place his legal residence.” *State ex rel. Rittenhouse v. Newman*, 204 N.W.2d 372, 375 (Neb. 1973) (interpreting NEB. REV. STAT. ANN. § 79-215: “[A] student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge. A school board shall admit a student upon request without charge if at least one of the student’s parents resides in the school district.”).

This case shows that mere presence in a particular jurisdiction is insufficient to claim residence. A resident is more than an owner or possessor of land; he is an engaged community member. One must establish more extensive ties via community–friend networks, employment, vehicle registration, and other living activities.

What unites each of the preceding statutory regimes is the view that for purposes of enrolling children in schools, the act of living with one’s family—including one’s parents—does not necessarily mean that a child’s address is their home. Accordingly, the law does not respect families who share child-rearing obligations across many physical locations for various reasons, including economic precarity. The presence of even a parent-like caregiver within the jurisdiction does not make a “home” for the children for whom they provide care. This legal arrangement privileges the archetype of the nuclear family—parent(s) and child(ren) living together under one roof all the time.

C. *Why*

“[R]esiding in the school district ‘solely for the purpose of attending public school in the district will not be considered residency in the district for school purposes.’”

—*Mina ex rel. Anghel v. Board of Education*⁷⁷

The prior two Sections reveal how determinations about the people from “whom” children can acquire residency and the circumstances under which a school district will consider an address a child’s “home” (“where”) reflect preferred forms of family life. In addition to these requirements, school residency laws demand even more. A parent can only establish a “home” if the purpose of creating that home is not solely school attendance. If a parent established a home for school only, that child will not be considered a bona fide resident and will not be entitled to the schools.

In *Mina ex rel. Anghel v. Board of Education*, an Illinois mother attempted to enroll her children in a district, claiming residence based on owning a home they were renovating for the family’s habitation and permanent use.⁷⁸ The district denied entrance.⁷⁹ The child attended the school for a year with her mother listing the in-district address at registration. But the district noticed that the post office forwarded the family’s mail to the out-of-district address, and a teacher allegedly saw the mother driving the

⁷⁷ 809 N.E.2d 168, 176 (Ill. App. Ct. 2004) (quoting *Connelly v. Gibbs*, 445 N.E.2d 477, 480 (Ill. 1983)).

⁷⁸ *Id.*

⁷⁹ *Id.* at 172–73.

daughter from the out-of-district address to the school.⁸⁰ When the child's mother attempted to enroll her daughter for the following school year, the district investigated and determined the child was a nonresident.⁸¹

The parents argued that the child should remain in the district because they owned a home visibly being renovated for habitation.⁸² The family paid taxes and utilities at the home. The mother testified "that they did not live 'physically in just one place,'" as they spent time in the in-district house as if they lived there.⁸³

The hearing officer rejected the mother's argument.⁸⁴ In upholding this decision, an Illinois court of appeals determined that to establish residence, the child must be provided with a "fixed and regular [nighttime] abode [that] cannot be created solely to allow for [the child] to have access to [the] district[']s educational programs but, rather, must explicitly be established for purposes other than this end."⁸⁵

⁸⁰ *Id.* at 170.

⁸¹ The court recounted the facts:

Mike Flagg, the district's residency investigator, testified that he was called to investigate Andra's residency status by the high school soon after the start of the 2002–03 school year. On several different occasions at different times of the day, he went to the three addresses in question (the Flossmoor apartment, the Chicago Heights home and the University Park home) and recorded his observations in a log which he submitted at the hearing. Flagg testified that he went to the Flossmoor apartment in the morning before school on September 4, 9, and 13, 2002, and Andra never appeared. He rang the doorbell of the apartment on the evening of September 20, 2002, and no one answered. He went to the Chicago Heights home on the mornings of September 23, October 28, and November 13, 2002. He observed that the house was empty, no one answered the door and it looked like it was being "rehabbed." Flagg had taken pictures of the home and submitted them to the hearing officer. He also went to the home on the evening of November 25, 2002, and saw a white car registered to Andra's parents in the driveway; the "rehab" looked finished but no one answered the door when he knocked. Flagg testified that he went to the University Park home on the mornings of September 26, October 1, 7, 11, 22, 30, and November 4, 2002, and the evening of October 18, 2002. Each of these mornings, he saw Andra come out of the home with her mother and followed them as they drove from University Park to the high school. In the evening (as well as on several mornings), he saw two cars parked in the driveway, both of which were registered to Andra's parents. Flagg further testified that he showed Andra's picture to the school bus driver of the route Andra was scheduled to be on, and the bus driver stated he had never seen her before and she had not ridden the bus that school year. Flagg stated that the school administration received a telephone call from a community member who told them no one was living at the Chicago Heights home. Based on his observations and all the information he obtained, it was Flagg's conclusion that Andra was residing at the University Park home.

Id. at 171–72.

⁸² *Id.* at 170.

⁸³ *Id.* at 171.

⁸⁴ *Id.* at 172.

⁸⁵ *Id.* at 175. The court applied a "clearly erroneous" standard where "a decision rendered by the hearing officer or the Board is clearly erroneous only when, based on the entire record, we are left with the 'definite and firm conviction that a mistake has been committed.'" *Id.* at 174–75 (quoting *AFM Messenger Serv., Inc. v. Dep't of Emp. Sec.*, 763 N.E.2d 272, 282 (Ill. 2001)).

It further found that even when a child is living with a parent or legal custodian, “two elements . . . must be met; that is, in order to have one’s residence in a certain place, she must both establish a physical presence there and have the intent to make that location her permanent residence.”⁸⁶ In this case, the mother only established the second prong, the intent to make the location permanent. But because the court found that the child never actually set a physical presence in the renovated house, that house could not be considered her residence for school. Furthermore, the court found, when evaluating the credibility of the family’s assertions, that the “family’s intent in purchasing the [in-district] home was to live in the district until [the child] finished school, thereby indicating that the family contemplated leaving the district once that was accomplished.”⁸⁷ This case illustrates that owning may not be enough to establish a bona fide residence.

In other states, the desire to attend a specific school cannot be the sole purpose for establishing residence in a particular community, but it can be one of many. For example, in the State of New York, a school board denied enrollment to a child who lived away from her parents, with her grandparents, in a different district.⁸⁸ Her parents and grandmother signed affidavits attesting to the grandmother’s responsibility for the child’s “health, welfare, and education.”⁸⁹ The reason given for the child’s situation was that she was “depressed and unhappy with her current living situation with her parents” but also that the child “want[ed] to attend school” in her grandmother’s district.⁹⁰ The court found this arrangement to be sufficient to establish the child’s residence to attend school; “family conflict” is adequate to confirm that the child was not a resident for the sole purpose of attending school, even though attending school was an essential factor.

This restriction on residency for school enrollment finds constitutional acceptance in *Martinez ex rel. Morales v. Bynum*.⁹¹ In that case, the Supreme Court upheld a Texas statute regarding residence for school attendance. A boy, young and an American citizen, mainly lived with his parents in Mexico until he was eight years old. His parents then sent him to live with his older sister in the United States to attend school. His sister did not want to be his legal guardian but assumed responsibility for his schooling. The law allowed a child living apart from a legal guardian to attend school but denied such

⁸⁶ *Id.* at 175.

⁸⁷ *Id.* at 177.

⁸⁸ Appeal of C.L., 40 Educ. Dep’t Rep., Decision No. 14408, 2000 WL 35921621, at *1 (N.Y. State Educ. Dep’t July 21, 2000).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ 461 U.S. 321, 333 (1983).

enrollment if “his presence in the school district is ‘for the primary purpose of attending the public free schools.’”⁹²

In *Martinez*, the Court held in favor of the district seeking to exclude the child, concluding that the child’s “primary purpose” of living with his sister was to establish residence to attend school.⁹³ There was no dispute about him living with his sister; his sister’s home was likely his “home base” since, as far as the case tells us, he was not going back and forth between Mexico and the United States regularly.

The Court held that the intent prong only required a “*present* intention to remain” because of the modern fact that families often move, changing their physical location frequently.⁹⁴ But if a residence were only for school, a parent would be unable to show, in the present, that the family intended to stay at their location beyond the time period of the child’s school attendance.

This requirement of “something more” than a parental relationship and home-making to prove residence is special to school residency law. Again, looking to Black’s Law Dictionary, neither residence nor domicile requires a justification for making a child’s house into a home.⁹⁵ Therefore, these laws suggest that there is something special about schools that requires restrictions not found in other areas of law.

Taken together, the whom, where, and why of school residency laws show that determining a child’s residence for attending school is not as straightforward as it appears. Next, in Parts II and III, I show that school residency laws are not race-, class-, or gender-neutral. I do not argue that legislatures passed the residency requirement laws with malintent or prejudice. Instead, I show how some of the family law themes that concern subordination are also applicable here because the residency laws rely on an ideal-type family. The laws are themselves “family laws” because they work to educationally subordinate certain families who do not conform to the privileged vision of family life.

II. EDUCATION LAW’S FAMILY

The residency requirements seek answers to a specific set of questions: Whose residence status can establish a child’s residence status? Where is a child’s home? Why does a family choose to live where they choose to live? These inquiries contemplate—and indeed, favor—a particular familial ideal to grant access to school entitlements. This ideal is a family with two parents

⁹² *Id.* at 322–23 (quoting TEX. EDUC. CODE ANN. § 21.031(d)).

⁹³ *Id.*

⁹⁴ *Id.* at 332 n.13 (emphasis added).

⁹⁵ *Residence*, *supra* note 44; *Domicile*, *supra* note 67.

responsible for the child's needs who provide for those needs in a single residence established for purposes beyond an interest in accessing the community's educational resources. These ideals reflect an idealized vision of children's relationship with their caregivers and place. These laws implicate the family law themes of form versus function, status versus contract, and an analogy to the biology-plus framework for nonmarital paternity.

A. *Form v. Function*

As discussed above, a child's residence is presumed to be derivative of their parent's address or someone acting in loco parentis. In this regard, residency laws echo common law coverture principles. Under coverture, a wife ceased to have a legal identity, including residence, separate from her husband upon marriage.⁹⁶ Unlike coverture for women, which is no longer law, this remains true for children: a child has no legal residence apart from their parent's residence.⁹⁷ Accordingly, for a nonparent to confer the status of educational benefits of their residency to a child, that nonparent must function in loco parentis.⁹⁸ Such an arrangement reflects a preference for an ideal family *form* that ignores how many families *function*.

The law tasks families to conform to certain family forms and perform a private welfare role for those in the family. Under such a framework, the law places responsibility on family members for caring for each other's material needs. Clearly defined roles—"parent" and "child"—allow the state to identify the adult obligated to protect a child's welfare conclusively. For example, child support laws rest on the belief that a child has a right to financial support from both parents.⁹⁹ When one parent fails in that duty, requiring the state to fill that economic need, the law allows states to criminalize parents who fail to perform their private welfare role.¹⁰⁰ In this

⁹⁶ JILL ELAINE HASDAY, FAMILY LAW REIMAGINED 24 (2014) (explaining how spouses could not sue each other in federal court because diversity of citizenship between them "was ordinarily impossible by definition because coverture principles disabled a married woman from establishing a separate legal residence from her husband, no matter where she actually lived").

⁹⁷ See Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 90–96 (2021).

⁹⁸ South Carolina appears to be the only state that has an option for a child to attend school according to a residence not derivative of an adult. A child can establish residence if "[t]he child owns real estate in the district having an assessed value of three hundred dollars or more." S.C. CODE ANN. § 59-63-30(c).

⁹⁹ Ira Mark Ellman & Tara O'Toole Ellman, *The Theory of Child Support*, 45 HARV. J. ON LEGIS. 107, 125–28 (2008).

¹⁰⁰ For a survey of criminal nonsupport laws, see *Criminal Nonsupport Laws*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 11, 2020), <https://www.ncsl.org/research/human-services/criminal-nonsupport-and-child-support.aspx> [<https://perma.cc/SR2N-XN68>]. Colloquially, we refer to these parents who do not fulfill their support obligations as "deadbeats," attaching a moral valence to the failure to pay.

way, the “parental” form is a prerequisite to performance as a state-obligated caretaker.

The relationship between parent and child continues to be the dominant frame of caregiving. Family law creates an all-or-nothing situation—either you are a parent or you are not.¹⁰¹ Professor Melissa Murray argues that the law is “decidedly less comfortable recognizing nonparents when they are not functioning *as* parents, but rather, *with* parents in providing care.”¹⁰²

Many families rely on a network of adults to care for children, disaggregating that care across multiple adults who may live in different places.¹⁰³ On average, families in the United States pay over \$8,000 a year on childcare per child so the adults can work.¹⁰⁴ As a result, many people may not act as parents to a child and nonetheless provide critical caregiving that the parent alone cannot provide.¹⁰⁵ These adults are not taking the parent’s place in form, but are providing the crucial function of helping to raise a child. Indeed, relatively wealthy parents may hire full-time nannies to care for their children who may spend more time with the children than do the parents.¹⁰⁶

But for those without wealth and in precarious financial situations, the family form must sometimes deviate from the archetype to fulfill the private welfare function. The Supreme Court has recognized that non-family members can help perform the private welfare functions we expect out of the family. In *U.S. Department of Agriculture v. Moreno*, at issue were the U.S. Department of Agriculture’s eligibility rules for the Food Stamp Program. The Food Stamp Act’s goal was “to alleviate hunger and malnutrition among the more needy segments of our society” and was not administered to individuals, but households.¹⁰⁷ Initially, the Act allowed homes of “non-related” people to receive food stamps as long as they were “living as one

¹⁰¹ Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 398–99 (2008).

¹⁰² *Id.* at 387.

¹⁰³ *Id.*

¹⁰⁴ Megan Leonhardt, *Parents Spend an Average of \$8,355 per Child to Secure Year-Round Child Care*, CNBC (May 19, 2021, 10:03 AM), <https://www.cnbc.com/2021/05/19/what-parents-spend-annually-on-child-care-costs-in-2021.html> [<https://perma.cc/2R8B-TKTN>].

¹⁰⁵ Murray, *supra* note 101, at 386.

¹⁰⁶ *Id.* at 390–93 n.13.

¹⁰⁷ *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 529 (1973). The Act also sought to

promote the distribution in a beneficial manner of our agricultural abundances and . . . strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

Id. at 433–34 (quoting the Food Stamp Act, 7 U.S.C. § 2011 (1964)).

economic unit sharing common cooking facilities and for whom food is customarily purchased in common.”¹⁰⁸ An amendment removed those families’ eligibility, making only those households of related people eligible for receiving food stamps.¹⁰⁹

The amendment excluded any household that included any person “who is unrelated to any other member of the household.”¹¹⁰ Moreno was an unemployed older woman who lived with a poor single mother and her three children.¹¹¹ Moreno shared living expenses with the mother, and the mother took care of Moreno, who was in poor health.¹¹² Both Moreno and the mother would have been eligible to receive food stamps had they been living apart.¹¹³ But living apart, neither woman would have been able to support their other needs, and not receiving food stamps would devastate their meager budget. Without the food stamps, Moreno had only \$10 left every month after paying rent, transportation, and laundry.¹¹⁴

The law, the Court pointed out, “create[d] two classes of persons for food stamp purposes: one class is composed of those individuals who live in households all of whose members are related to one another, and the other class consists of those individuals who live in households containing one or more members who are unrelated to the rest.”¹¹⁵ The Court declared the classification unconstitutional because it found that the classification was not rationally related to any legitimate purpose; that is, it was “clearly irrelevant” to the purpose of the Act: “[t]he relationships among persons constituting one economic unit and sharing cooking facilities have nothing to do with

¹⁰⁸ *Id.* at 530.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 529.

¹¹¹ *Id.* at 531.

¹¹² *Id.*

¹¹³ *Id.* at 531–32. The case was a class action that included two other households that were denied eligibility based on having unrelated persons living together:

Appellee Sheilah Hejny is married and has three children. Although the Hejnys are indigent, they took a 20-year-old girl, who is unrelated to them because “we felt she had emotional problems.” The Hejnys receive \$144 worth of food stamps each month for \$14. If they allow the 20-year-old girl to continue to live with them, they will be denied food stamps . . .

Appellee Victoria Keppler has a daughter with an acute hearing deficiency. The daughter requires special instruction in a school for the deaf. The school is located in an area in which appellee could not ordinarily afford to live. Thus, in order to make the most of her limited resources, appellee agreed to share an apartment near the school with a woman who, like appellee, is on public assistance. Since appellee is not related to the woman, appellee’s food stamps have been, and will continue to be, cut off if they continue to live together.

Id. at 532.

¹¹⁴ *Id.* at 531. The mother, after only rent expenses—the case did not discuss her transportation or laundry costs—was left with just forty-eight dollars a month for herself and her three children. *Id.*

¹¹⁵ *Id.* at 529.

their abilities to stimulate the agricultural economy by purchasing farm surpluses, or with their personal nutritional requirements.”¹¹⁶ The form of the relationship was less important than its function.¹¹⁷

For an example of how families in precarious situations must often adjust the form to fulfill the function, consider multigenerational households. According to a 2018 Pew Research Center survey, about 20% of Americans live in multigenerational households.¹¹⁸ From a low of 12% in 1980, this growth peaked in the years directly following the Great Recession,¹¹⁹ suggesting that when families find it hard to meet basic needs, they adapt to living situations that deviate from the hegemonic norm. While these statistics are about people living in the same household and fit into the existing law, the general principle stands: nonnuclear family forms are compensatory adaptations that fulfill the private welfare function, adaptations the law should recognize.

Basing residence on the nuclear family form assumes only parents care for children. These laws thus are inherently biased against children who depend on a collective of adults to care for them to satisfy the functional, everyday routines of caring for children. Moreover, for children who receive care from family located in different places, their families are implicitly illegitimate legal arrangements because they fail to conform to the archetype.

B. *Status v. Contract*

Being a “resident” is more than a statement about a contractual relationship to land; for example, owning or leasing it. In other words, simply owning or having legal possession of land does not, on its own, bestow the status of resident. This distinction is a central theme in family law. The theme arises most often in discussions of marriage—should we treat marriage as the result of a bargained-for contract between autonomous individuals? Or should marriage have some additional symbolic meaning beyond contract principles, a symbol that justifies special treatment? The same can be said

¹¹⁶ *Id.* at 534 (quoting *Moreno v. U.S. Dep’t of Agric.*, 345 F. Supp. 310, 313 (D.D.C. 1972)). Second, it found that the real reason for the legislative amendment was a concern about “hippies,” and “a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.” *Id.*

¹¹⁷ But in other areas where family law butts up against other doctrines, the result is often different. For example, Professor Murray points out how under many employee benefit schemes, only parents can claim a child for health insurance even if someone else provides the bulk of childcare to the child. Murray, *supra* note 101, at 407. She also points this out for the Family and Medical Leave Act. The Act contemplates only parents as childcare givers, even if parents prefer to delegate that task to others. *Id.*

¹¹⁸ D’Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RSCH. CTR. (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/> [<https://perma.cc/85L7-Z6UE>].

¹¹⁹ *Id.*

for residence—should we understand residence simply as the result of contractual exchange (homeownership), or does residence have some symbolic meaning that transcends the individual and thus entitles it to privileges based on that relational identity?

Contract refers to “legal obligations oriented around individuals and based in their free agreement.”¹²⁰ Marriage as a contract suggests that the “family” consists of a private agreement between autonomous individuals making an independent choice to join in the relationship. “Status,” on the other hand, refers to legal rules that apply to particular social arrangements, considering marriage, for example, as a unit beyond the individual.¹²¹ Status connotes something special about *this* type of relationship that should be protected not by contract, but by state sanction and recognition.¹²² As a result, in its expressive sense, the law bestows those in marriages a higher social rank than those not married.¹²³ Being married, then, is a status identity—an identity that grants entitlements to certain privileges, and an identity that allocates symbolic meanings.¹²⁴

Professor Kaiponanea Matsumura provides the following as features of “status” that help illustrate residence as connoting something more than simply the contractual relationship inherent in ownership or possession:

First, legal rules flow from a *particular identity*, like paterfamilias or wife. Second, they were *bundled*: one’s identity triggered various types of legal obligations. Third, the legal rules were *mandatory*. Fourth, the relationships governed by status were *hierarchical*: the fixed legal relationships conferred authority to some subordinate others. And fifth, status had a clearly defined *social meaning*.¹²⁵

While not every feature Matsumura identifies relates to residence for school enrollment, several do. As the residency laws illustrate, access to schools flows from the identity of “resident.” As I have written elsewhere, people covet the identity of “resident” because the law gives a child an

¹²⁰ Kaiponanea T. Matsumura, *Breaking Down Status*, 98 WASH. U. L. REV. 671, 680 (2021).

¹²¹ *Id.* at 674.

¹²² *Id.* at 674–75.

¹²³ *See id.* at 676.

¹²⁴ This was a main argument for legalizing same-sex marriage. While in many states, same-sex couples could enter contractual relationships with each other and civil unions that afforded all the benefits of marriage, they could not enter into the status of being married. Obtaining this status was a main objective of the same-sex marriage movement, as marriage symbolizes a formal recognition from the state that your intimate relationship is legitimate. *Obergefell v. Hodges*, 576 U.S. 644, 669 (2015) (“[J]ust as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union.”).

¹²⁵ Matsumura, *supra* note 120, at 681.

ownership interest in the educational property based on that identity.¹²⁶ Many legal entitlements flow from residence; as discussed above, “resident” appears in several legal definitions as a holder of rights in multiple domains. “Residence” is hierarchical; it separates residents from nonresidents in access to a valuable public good.

Lastly, “resident” has a social meaning that equates deservedness with physical address, mainly within racially segregated communities with varying quality of schools. In past work, I showed how through exclusion across race–class-stratified jurisdictions, districts create a dynamic of “resident v. nonresident,” with residents being middle-class White people and community members, and nonresidents being poor Black families without a legitimate residential claim.¹²⁷ This residence–race–entitlement connection imbues residence with stereotypes and narratives associated with Whiteness as a favored racial identity and Blackness as a disfavored racial identity to justify denying school entitlement. The outsiders are not just nonresidents: they are culturally inferior to residents.

Thus, for school residency laws, the fact of a contractual relationship to the land is not enough to convey the status of resident. That status is all-important; without it, school districts deny many children, impoverished children, the opportunity to benefit from well-funded and supported schools.

C. Property-Plus

As described above, school residency laws require more than physical presence. I call this the “property-plus” principle, styled after the “biology-plus” framework for establishing paternity for biological, nonmarital fathers.

A biological father who is not married to the child’s mother can have his constitutional rights as a parent recognized and protected only “where the father ‘demonstrate[s] a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child.’”¹²⁸ This framework illustrates a “biology-plus” conception of fatherhood, where biology is insufficient to lay claim to parentage. Instead, the law requires more: “performances as fathers.”¹²⁹ A father must do more than have a mere biological relationship with a child. He must *act* as a parent.

A biological father cannot become a legal father without evidencing some behavior that establishes him as a parent. So too must parents who want to lay claim to the school entitlement. School residency laws require

¹²⁶ Baldwin Clark, *Education as Property*, *supra* note 1, at 409.

¹²⁷ See Baldwin Clark, *Stealing Education*, *supra* note 2, at 575.

¹²⁸ Melissa Murray, *What’s So New About the New Illegitimacy*, 20 J. GENDER, SOC. POL’Y & L. 387, 404 (2012) (quoting *Lehr v. Robertson*, 463 U.S. 248, 249 (1983)).

¹²⁹ *Id.*

“property-plus” to establish bona fide residence for access to educational property.¹³⁰ It is not enough for a parent to have established a household within a school district’s boundaries. They must do more—they must act as a resident.

As discussed above, a district can reject a parent’s claim to residency if that parent has not shown enough evidence of making a “home.” Whether a parent can legitimately fulfill the role associated with being a resident—participation in community activities, spending most of the time in one address, enrolling children in extracurricular activities—will determine whether a child can benefit from a district’s schools. As I have shown before, it is this requirement that serves as an impetus for investigation: investigators will conduct sweeps early in the morning for evidence that the child slept at the residential address and survey the home for indications of a child living there—food in the pantry, toys on the floors.¹³¹

But to establish a child’s residency, that “plus” requirement incorporates aspects of the “whom” and “where” requirements. Because of property-plus, a parent cannot send a child to live with another adult only because that parent wants the child to get a good education. But middle-class and affluent parents consistently rank “school quality” as a top consideration when choosing where to live.¹³² Yet it is only poor and working-class families who rely on collective childcare that need to provide some other reason in order to establish a child’s residency.

Many families do not have such choices of where to establish a home and why. Of course, lacking economic capital will always restrain poor and working-class people’s choices of where to live. Financial precarity forecloses the possibility of many parents moving to their desired residential area. Sending a child to live with someone who cares for the child is more affordable, and thus a smart economic choice. But the law renders these families’ choices illegitimate and implicitly favors those who can easily fulfill the “property-plus” requirements.

* * *

¹³⁰ *Supra* notes 26–29.

¹³¹ Baldwin Clark, *Education as Property*, *supra* note 1, at 405 (“The Copley-Fairlawn school district surveilled Ms. Williams-Bolar and her children, using private investigators that filmed the family.”); *see also supra* note 81 and accompanying text (detailing a private investigator’s repeated trips, at the behest of the public school, to surveil an apartment and physically follow a family to determine residence).

¹³² ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS PARENTS ARE (STILL) GOING BROKE* 8 (2003) (arguing the middle-class parents’ “most prized possession” is a “home in a decent school district”); *see* Shelley McDonough Kimelberg, *Middle-Class Parents, Risk, and Urban Public Schools*, in *CHOOSING HOMES, CHOOSING SCHOOLS* 207, 207 (Annette Lareau & Kimberly Goyette eds., 2014).

This Part shows how family law themes that prioritize the nuclear family living in a singular dwelling around their personal and community lives are pervasive in school residency laws. Children living in nonnormative, alternative family forms are disadvantaged because their family form deviates from the norm, even if the arrangement allows them to benefit from the crucial private welfare role family law requires. The status of resident transcends the contractual relationship inherent in homeownership or legal possession by designating residents only as those who use the address as a child's singular "home," around which the child's life outside of school must also revolve. And lastly, the laws are akin to family law's biology-plus framework for unmarried biological fathers, requiring adults to perform like residents to claim residential status. In the next Part, I argue that by disadvantaging nontraditional family forms, school residency laws deny children education and further entrench a race-class-gender ideal of family.

III. FAMILY LAW'S EDUCATION

To be sure, I am not arguing that school residency laws explicitly denigrate non-White single-mother-headed households. Instead, my argument is that these uniform rules further reify an ideal-type family that receives privileges over many domains, including school. Nevertheless, the laws fail to recognize legitimate family forms more prevalent in non-White families. For example, in 2020, while only 13.4% of White children lived with their mothers only, 46.3% of Black children and 24% of Latino children lived with their mothers only.¹³³

I focus on Black single-mother-headed households not because other groups do not face these issues but because of (1) the material differences by race discussed in the introduction and (2) the historical and contemporary societal derision reserved for Black single-mother-headed households.

Contemporary disrespect for Black family forms, especially single motherhood, is evident as early as the 1965 report *The Negro Family: The Case for National Action*, colloquially known as the *Moynihan Report* after its author Patrick Moynihan. In the report, Moynihan sought to explain Black

¹³³ Paul Hemez & Chanell Washington, *Number of Children Living Only with Their Mothers Has Doubled in Past 50 Years: Percentage and Number of Children Living with Two Parents Has Dropped Since 1968*, U.S. CENSUS BUREAU (Apr. 12, 2021), <https://www.census.gov/library/stories/2021/04/number-of-children-living-only-with-their-mothers-has-doubled-in-past-50-years.html> [<https://perma.cc/3URY-GZXG>]. Additionally, 52% of Native American children live in single-parent homes. *Children in Single-Parent Families by Race in the United States*, KIDS COUNT DATA CTR., <https://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by-race> [<https://perma.cc/QBX8-N3B2>].

economic disadvantage as caused by a “single fact of Negro American life” that is “so little understood by whites.”¹³⁴

Noting the stagnation of Black economic progress amid the Civil Rights Movement, Moynihan argued that the “fundamental problem . . . is that of family structure.”¹³⁵ According to him, the Black family social structure caused a “tangle of pathology” due to women-headed households:

In essence, the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequences, on a great many Negro women as well.¹³⁶

Moynihan argued that this Black family is unstable and disorganized because of the husband and wife’s role reversal.¹³⁷ In addition, he noted that employment prospects for Black men at the time of the Report were quite dismal due to racism in education and employment.¹³⁸ Even so, he argued, a situation in which a woman is providing financially for the family may cause a man to behave poorly, withdraw from his family, and perhaps turn to crime.¹³⁹

To his credit, Moynihan recognized that a matrilineal family was not deficient per se. But the deviation from White middle-class family form caused him concern:

[I]t is clearly a disadvantage for a minority group to be operating on one principle, while the great majority of the population, and the one with the most advantages to begin with, is operating on another. This is the present situation of the Negro.¹⁴⁰

Moynihan believed he was simply telling the truth to White people who did not understand the stall of economic progress for Black people. Yet this is no longer true: the Black family is often blamed as being behind the so-called cultural deprivations of Black communities.¹⁴¹

But scholars of Black family life have consistently illustrated how Black family formations, even if different in form, are legitimately

¹³⁴ OFF. OF POL’Y PLANNING & RSCH., U.S. DEP’T OF LAB., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 5 (1965).

¹³⁵ *Id.* at iii.

¹³⁶ *Id.* at 29.

¹³⁷ *Id.* at 30 (“A fundamental fact of Negro American family life is the often reversed roles of husband and wife.”).

¹³⁸ *Id.* at 30–33.

¹³⁹ *See id.* at 34 (presenting comments on this notion from White social scientists and Black civic leaders).

¹⁴⁰ *Id.* at 29.

¹⁴¹ *See* Baldwin Clark, *Stealing Education*, *supra* note 2, at 605–18.

functioning families. For example, in his study *The Black Family in Slavery and Freedom: 1750-1925*, Professor Herbert Gutman showed that rather than being viewed as pathology, Black family formations are evidence of Black people's "adaptive capacities" during and after slavery to an economic and racial system of subordination.¹⁴² In Black families under slavery, children often needed to be absorbed into families when their parents were sold or died.¹⁴³ To facilitate such a possible transition, nonkin were family; enslaved children learned to refer to all Black adults as "Aunt" or "Uncle."¹⁴⁴ There was no bright line between parent and child that precluded other adults from having childcare responsibilities.

In her classic study of working-class and poor Black single-mother-headed families in the 1970s, Professor Carol Stack offered a definition that respects the family forms she noted in her work. She explained family as "the smallest, organized, durable network of kin and non-kin who interact daily, providing the domestic needs of children and assuring their survival."¹⁴⁵ Nonkin refers to members of a family that are unrelated by blood or marriage. The key to Stack's definition of family is an emphasis on how children are cared for. Under such a definition, the network consisting of not just the parent but other kin and nonkin assumes responsibility for that child. Rather than being unstable, poor Black familial networks in Stack's study were highly organized, characterized by individuals contributing and receiving essential resources from multiple households.

Given her findings, Professor Stack argued that "arbitrary imposition of widely accepted definitions of the family, the nuclear family, or the matrifocal family blocks the way to understanding how [Black families] describe and order the world in which they live."¹⁴⁶ Today, Black families continue to rely on kinship networks. Kinship care involves splitting "practical support, such as help with transportation, housework, and childcare."¹⁴⁷ This networked care spreads child-caring responsibility over several adults, an arrangement that deviates from the hegemonic White middle-class archetype. Unfortunately, school residency laws fail to recognize these forms as legitimate bases upon which residency can derive.

¹⁴² HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM: 1750-1925*, at 212–14 (1976).

¹⁴³ *See id.* at 219.

¹⁴⁴ *See id.* at 217.

¹⁴⁵ CAROL B. STACK, *ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY* 31 (1974).

¹⁴⁶ *Id.*

¹⁴⁷ Sacha M. Coupet, "Ain't I a Parent?": *The Exclusion of Kinship Caregivers from the Debate over Expansions of Parenthood*, 34 N.Y.U. REV. L. & SOC. CHANGE 595, 606 (2010).

Such a misrecognition penalizes families with culturally different, but no less legitimate, ways of performing family.

Ms. Williams-Bolar described this dynamic in her family, in which childcare spans both people and space. Regarding her children's relationship with their grandfather, the resident of the school district in which Ms. Williams-Bolar attempted to enroll her children, she explained: "My dad helped me raise my girls. In my culture, our grandparents are very involved in their grandchildren's lives. My father has helped me with my girls since I've had them. That's, you know, that's our culture."¹⁴⁸ In other words, Ms. Williams-Bolar's father operated as a co-parent, a role that exists in many families. Still, school residency laws do not acknowledge his formal role as legitimate for purposes of school district residency.

Yet the Supreme Court has recognized that nonnuclear families often provide critical care for children, and the Constitution prevents states from such an intrusion into family life. In *Moore v. City of East Cleveland*, an East Cleveland zoning ordinance restricted occupancy to one "family."¹⁴⁹ The ordinance defined family as

a number of individuals related to the nominal head of the household . . . living as a single housekeeping unit in a single dwelling unit, but limited to the following: . . .

(b) Unmarried children of the nominal head of the household . . . provided, however, that such unmarried children have no children residing with them. . . .

(d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent . . . child of the nominal head of the household . . . and dependent children of such dependent child.¹⁵⁰

Inez Moore, a Black woman, lived in East Cleveland with her son Dale Sr. and his son Dale Jr. Ms. Moore also took in her infant grandson, John Jr., when his mother died. However, including John Jr. in the household violated the ordinance, for he was not a dependent child of Dale Sr. Failure to obey the ordinance was a criminal offense.¹⁵¹

The city argued that the rules defining family were to "prevent overcrowding, minimiz[e] traffic and parking congestion, and avoid[] an undue financial burden" on the schools.¹⁵² The Supreme Court found that while the goals were legitimate, the zoning rules served them marginally. The ordinance was overinclusive; it forbade "an adult brother and sister to

¹⁴⁸ *Ohio Mom Defends*, *supra* note 7.

¹⁴⁹ 431 U.S. 494, 495–96 (1977).

¹⁵⁰ *Id.* at 496 n.2.

¹⁵¹ *Id.* at 496–97.

¹⁵² *Id.* at 499–500.

share a household, even if both faithfully use[d] public transportation.”¹⁵³ It was also underinclusive; “the ordinance permit[ted] any family consisting of a husband, wife and unmarried children to live together, even if the family contain[ed] a half dozen licensed drivers, each with his or her own car.”¹⁵⁴

In addition, the Court ruled that the ordinance interfered with the “deeply rooted . . . tradition” of the family, which the Constitution protects as a fundamental right.¹⁵⁵ Justice Powell wrote that the nuclear family is not the only family covered by the Constitution: “The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”¹⁵⁶ Accordingly, “[w]hen a city undertakes such intrusive regulation of the family,” judicial deference to zoning ordinances is “inappropriate.”¹⁵⁷ Specifically, “the Constitution prevents East Cleveland from standardizing its children—and its adults—by forcing all to live in narrowly defined family patterns.”¹⁵⁸

While *Moore* protected families of related individuals, its premises are relevant to the school residency laws and how they particularly disadvantage non-White families, especially Black families. In his concurrence, Justice Brennan, joined by Justice Marshall, specifically noted how the ordinance failed to recognize how race–class–gender-subordinated communities often had to rely on “extended family” during financially perilous times. He noted that “[t]he ‘extended’ form is especially familiar among black families.”¹⁵⁹

School residency laws tend to exclude race–class–gender-subordinated families from well-resourced schools because they fail to meet the normative standards that center family life in one place where a parent and child live always. But “‘household’ and its group composition [is] not a meaningful unit to isolate for analysis of family life.”¹⁶⁰ The family is not always confined to one place. Children often go between households. Professor Stack explains, “A resident . . . who eats in one household may sleep in another and contribute resources to yet another. He may consider himself a member of all three households.”¹⁶¹

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 503.

¹⁵⁶ *Id.* at 504.

¹⁵⁷ *Id.* at 499.

¹⁵⁸ *Id.* at 506.

¹⁵⁹ *Id.* at 509 (Brennan, J., concurring).

¹⁶⁰ STACK, *supra* note 145, at 31.

¹⁶¹ *Id.*

But the bona fide residential laws define “home” as a singular place where two parents provide for a child. Home need not be contextualized so narrowly. Rather than characterizing a single structure, Professor Barbara Bennett Woodhouse writes that

“home” is the place where there are people whose lives are “somehow” bound up with yours, where they “have to take you in” not because of what you can give or deserve, but because of who you “are”—your unique place in an interlocking network of individuals, families, and communities linked by bonds of socially constructed kinship.¹⁶²

A child who is loved and toward whom adults feel obligations will find home in more than one space, more than one location. Home is relational; a child can find a home where there are people who care for them. These relationships have significance across many spaces, and thus many spaces serve the function of home. Ms. Williams-Bolar identified this phenomenon of multiple places that her children could call home: “First of all, my dad’s home is—that’s my family home. And my dad always told me that his home, you know, is my home. And that’s how, you know, that’s—I’ve always, it’s my daddy’s house. I’ve always, always been like that”¹⁶³

Federal law regarding children experiencing homelessness and their access to school is instructive to show how the school residency laws sometimes recognize that a family’s financial circumstances require flexibility. The McKinney-Vento Homeless Assistance Act requires states and districts to revise their residence requirements to ensure that children experiencing homelessness have continuity in their educational environment regardless of residence.¹⁶⁴ Often such children may change where they eat and sleep multiple times during a school year, and those changes may occur across school-district boundary lines. Some states are also sensitive that some children experiencing homelessness may temporarily live apart from their parents. For example, New Hampshire requires “local school districts to educate all homeless children who are actually living, that is, eating and sleeping in the district, regardless of whether the student is living with his or her parents.”¹⁶⁵

Lastly, property-plus also imagines a specific familial relationship to space that implicates race, class, and gender inequalities. Relatively wealthy

¹⁶² Barbara Bennett Woodhouse, *“It All Depends on What You Mean by Home”: Toward a Communitarian Theory of the “Nontraditional” Family*, 1 UTAH L. REV. 569, 576 (1996).

¹⁶³ *Ohio Mom Defends*, *supra* note 7. Ironically, in theory, a child cared for by multiple adults across multiple spaces could be excluded from all school districts for not establishing enough of a connection to any singular area.

¹⁶⁴ 42 U.S.C. § 11431.

¹⁶⁵ N.H. Off. of the Att’y Gen., Opinion Letter No. 90-010 (Apr. 10, 1991).

parents can decide on schooling alone to establish residence and are more likely to be able to prove other motives. Non-White poor parents often lack the resources and opportunities for economic mobility. Accordingly, those unable to access safe neighborhoods and well-resourced schools, unlike families with resources, cannot afford to move an entire family to a sought-after school district. Sometimes, sending one child to live with a relative part-time is the only option to ensure a child can attend a well-resourced school. These parents must rely on adaptive family formations to get the same outcome for their children as relatively affluent parents.

School residency laws are not the only areas in education law that assume an ideal family with ideal resources. Federal special education law and policy assume a parental advocate to seek appropriate accommodations for their children.¹⁶⁶ In the first case to interpret the Individuals with Disabilities Education Act, the Supreme Court held that the procedural requirements were sufficient to secure a child's substantive rights under the Act. As a result, parents with the resources to advocate for their children within the law's procedural confines are better able to secure resources toward ensuring their child realizes the substantive rights to which they are entitled.¹⁶⁷

What then to do? To be sure, issues of stratification between school districts are more extensive than issues of determining residence. A design choice to fund schools based on local property taxes directly influences the quality of education. That funding is significantly less per child in property-poor areas than in property-rich areas.

But residency is the linchpin of these concerns, as it clearly illustrates the problem of tying school so tightly to geography and property. The property-tax-funding problem is directly related to residence. Those who reside in an area are taxed to pay for schools and understandably want to restrict that education. Concern with school financing leads many residents to empathize with nonresidents forced into poorly funded schools.¹⁶⁸ Still, they maintain the belief that the fact of property-based funding justifies exclusion.¹⁶⁹

¹⁶⁶ Baldwin Clark, *Beyond Bias*, *supra* note 23, at 384 (arguing that the Individuals With Disabilities Education Act “and accompanying regulations allocate resources according to a cultural expectation of ardent parental advocacy”).

¹⁶⁷ *See id.* at 385 (noting that “a parent’s ability to effectively use those formal procedures”[to achieve the substantive free appropriate public education to which the child is entitled “requires what sociologists term cultural capital—communication patterns, knowledge, behavioral strategies, and dispositions—to successfully navigate the cumbersome process and capture what are scarce benefits”).

¹⁶⁸ Baldwin Clark, *Stealing Education*, *supra* note 2, at 603–04 nn.164–68.

¹⁶⁹ *Id.*

Yet systemic exclusion from well-resourced schools is inherently subordinating, including over generations. Property-rich areas have well-funded schools, and well-funded schools tend to provide richer educational experiences not available to students in underfunded schools. Those experiences allow children to amass essential economic, social, cultural, and human capital. Given these disparities between school districts (and often between schools within one district), parents with options will move into the property-rich community, driving up property values. Conversely, property-poor districts become poorer as parents leave the area or avoid the area altogether, driving down property values. Lower property values mean fewer dollars per child spent on the children who remain. These children will be the most financially precarious, and may belong to families headed by single mothers, especially non-White and Black single mothers. That precarity forecloses access to well-resourced schools.

To be sure, school districts' ability to plan for enrollments year to year is undoubtedly a legitimate goal. But districts can meet these goals without privileging some families over others, enabling children who depend on networked childcare provided by out-of-district relatives to attend school. Moreover, the focus on relatives recognizes that the courts are less willing to intrude on families comprised of people related by blood, marriage, or adoption.¹⁷⁰

Despite the property-tax funding problem and the need for year-to-year enrollment planning, the law and school districts must recognize three principles when determining whether a child can attend a particular school. First, a parent should be able to proffer evidence that their child depends on a collective of childcaring relatives, any of which could provide the address supporting where a child receives education. Second, the law should consider how a child calls multiple places "home," given those who care for them. For example, a child's evidence of their intimate connection to a relative's house should suffice to meet the home requirements. Lastly, parents should not have to prove any reason for residency beyond attending school, because such proof seems to be an anomaly among statutes that rely on residence as a meaningful social category.

In addition to embracing these principles, school districts could simply survey their communities to determine how many children the districts must serve. Many school districts already do this for existing students, inquiring of their families whether the child will remain in the district or go elsewhere.

¹⁷⁰ Compare *Moore v. City of E. Cleveland*, 431 U.S. 494, 498–99 (1977) (striking down an ordinance that sought to categorize the types of relatives permitted to live together), with *Village of Belle Terre v. Boraas*, 416 U.S. 1, 2, 7 (1974) (upholding an ordinance that limited the number of nonrelated individuals living in a home).

The districts could expand that survey to the broader community, perhaps through the mail, social media, or the like. Relatives who plan to provide residence for a child can indicate so on the survey. The district could also request that relatives providing residence for education enroll their children early so that the district can plan for their enrollment.

Again, as discussed above, these are not ultimately the grand solutions to educational subordination. Yet these suggestions both are practical and would offer enormous opportunities to children who are otherwise presumptively excluded because of their version of family.

CONCLUSION

Determining a child's residence for school attendance can be highly contested. But that decision is crucial; where a child attends school allows them to access educational property and the benefits or disadvantages of a particular school district. When determining a child's residence, school residency laws judge families against an ideal-type relationship between the people who care for them and where that care occurs. Families that diverge from that ideal type are distinctly disadvantaged in prevailing in a contested residency. Residency laws especially disadvantage the children of poor, non-White single mothers, and especially Black single mothers. Because most Black children are born into single-mother-headed households, residency laws maintain race, class, and gender subordination.

