

ESSAYS

WHOSE CHILD IS THIS? EDUCATION, PROPERTY, AND BELONGING

*LaToya Baldwin Clark**

Previous work suggests that excludability is the main attribute of educational property and residence is the lynchpin of that exclusion. Once a child is non-excludable, the story goes, he should have complete access to the benefits of educational property. This Essay suggests a challenge to the idea that exclusion is the main attribute of educational property. By following four fictional children and their quests to own educational property in an affluent school district, this Essay argues that belonging, not exclusion, best encapsulates a child's ability to fully benefit from a school's educational property. Property as belonging involves a spatial relationship through which property claims are recognized and supported. In staking an unconditional claim for educational property, a child must be recognized as part of a group of entitled claimants and the property rules of the district must "hold up" that claim as legitimate. Simply because a child has a legal claim to access education does not mean that claim is equal to all other claims. Belonging helps us understand why some claims are accorded more security than others. The strength of a child's claim to educational property depends on the extent to which the child belongs, as measured by that child's proximity to the idealized bona fide resident.

INTRODUCTION	1202
I. EXCLUSION	1206
II. INCLUSION	1211
III. BELONGING.....	1215
CONCLUSION.....	1220

* Assistant Professor, University of California, Los Angeles, School of Law. Thank you to the participants of the Symposium for helpful discussion, Sunita Patel and Guy-Uriel Charles for valuable feedback, and the *Columbia Law Review* editors for their unending patience and support. William, Ahmir, Amina, and Ahmad: I am because you are. All mistakes are mine.

INTRODUCTION

Imagine four children all living within the boundaries of or in proximity to Hidden Heights, a predominately White,¹ well-resourced school district sitting in a White, well-resourced municipality.² Students in Hidden Heights have access to many resources that characterize educational property, including a curriculum that builds their skills, cultural resources that prepare them for middle-class and affluent social life, and resources derived from well-connected social networks.³ In this community and others like it, community members treat education as private property, a scarce resource deserving of protection like other forms of property. Because education is regarded as property, the community will encourage school officials to make it available only to those who deserve it (i.e., pay for it in property taxes and rent) and unavailable to all others without similar entitlements.

Our first child is Amanda, a White, middle-class girl who is typical of what school attendance laws consider a “bona fide resident.”⁴ Amanda lives within the Hidden Heights boundaries with her archetypical family, including two parents, in a house they own.⁵ She is the prototypical student for school attendance; because she is a bona fide resident, the district cannot exclude her from its schools⁶ and may be obliged to protect her

1. I choose to capitalize “White” when referring to the racial group. See LaToya Baldwin Clark, *Stealing Education*, 68 *UCLA L. Rev.* 566, 568 n.1 (2021) [hereinafter Baldwin Clark, *Stealing*] (“I believe that capitalizing ‘Black,’ . . . without also capitalizing ‘White’ normalizes Whiteness, while 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.’”).

2. By focusing on a predominately White, well-resourced school district, I do not mean to make a normative claim that such schools are “better” than others. My claim is only that it is these school districts where claims to educational property may be most contested.

3. See LaToya Baldwin Clark, *Education as Property*, 105 *Va. L. Rev.* 397, 401 (2019) [hereinafter Baldwin Clark, *Property*] (“Children need access to social and cultural capital, resources not easily monetized but that educational researchers have shown are integral to success in the modern workplace.” (footnotes omitted)).

4. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49 (1973) (holding that schools can restrict education to only bona fide residents).

5. Most White children live in two-parent households, compared to less than 40% of Black children. See Paul Hemez & Chanell Washington, *Number of Children Living Only With Their Mothers Has Doubled in Past 50 Years*, 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/Z572-GJNM]. Middle-class children are much more likely to live with two married parents than relatively poorer children. See Richard V. Reeves & Christopher Pulliam, *Middle Class Marriage Is Declining, and Likely Deepening Inequality*, Brookings Inst. (Mar. 11, 2020), <https://www.brookings.edu/research/middle-class-marriage-is-declining-and-likely-deepening-inequality/> [https://perma.cc/6QT2-VZGS].

6. See Baldwin Clark, *Stealing*, supra note 1, at 590 n.105 (listing state statutes from thirty-three states that require districts to prioritize residents for enrollment); *id.* at 570 (“Only residence within a school district’s jurisdiction confers on a parent a ‘seat license’ unavailable to nonresident parents.”).

educational property by excluding others.⁷ In other words, bona fide residents enjoy the right not to be excluded and the privilege of protection through the exclusion of others.

Our second child is Monica, a girl from a Black, working-class family who lives during the school week with her grandmother.⁸ While her grandmother is a bona fide resident within the Hidden Heights boundaries, Monica may not be, despite her presence in the district on school days. School attendance laws tend to reject living situations like Monica's as indicative of bona fide residence, partly because most states require that a child's address for school attendance be that of their parents or guardians, regardless of the child's actual living situation.⁹ If she is not found to be a bona fide resident, Hidden Heights can exclude her.

Our third child is Malcolm, a Black boy from a low-income family, who lives with his parents right outside the Hidden Heights boundaries in a community not as affluent, or as White, as Hidden Heights. Unlike Amanda and (arguably) Monica, he is not a bona fide resident, and Hidden Heights has no obligation to educate him. But Hidden Heights schools are among the best, and his parents want him to attend its schools. Because they are not residents, their (legitimate) options are few.¹⁰ His parents' best option is to have Malcolm participate in an interdistrict transfer program¹¹ that breaks the tight connection between school attendance and residence. Available in most states, these programs allow students who do not live inside a district's boundaries to attend that school district's schools.¹² But his continued attendance is conditional and relies on considerations not applicable to resident students including academic and behavioral standards. Unlike bona fide resident children, Malcolm does not enjoy the unconditional right not to be excluded.

7. See generally Baldwin Clark, *Property*, supra note 3, at 410 (describing how "officials treat education as property by allowing taxpayers to lawfully exclude others, particularly through the coercive machinery of civil and criminal penalties" (emphasis omitted)).

8. See LaToya Baldwin Clark, *Family | Home | School*, 117 Nw. U. L. Rev. 1, 29 (2022) [hereinafter Baldwin Clark, *Family*] (explaining how Black children are more likely than White children to be cared for through extended kin relationships, making it a common family form among Black families).

9. *Id.* at 14; see also *id.* at 9–19 (describing "the three components of school residency laws [that determine bona fide residency]: 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").

10. Some parents take the step of falsifying an address to afford a nonresident child an education in a district in which a child does not live. In previous work, I referred to this as "stealing" education. See generally Baldwin Clark, *Stealing*, supra note 1 (describing how some nonresident children attend schools by "stealing," or lying about their address to access school).

11. See Micah Ann Wixom, *Educ. Comm'n of the States, Open Enrollment 1* (2019), <https://www.ecs.org/wp-content/uploads/Open-Enrollment.pdf> [https://perma.cc/9EXD-L2M3] (describing differences in open enrollment statutes for various states).

12. *Id.*

Our fourth child is Kyle, a middle-class Black boy with a disability who is a Hidden Heights bona fide resident. Like Amanda, his claim should be the most secure, and in some ways, it is. Before the mid-1970s, Kyle may not have had a right to attend school, even as a bona fide resident.¹³ Today, federal law requires public schools to educate and accommodate children with disabilities.¹⁴ But like many children with disabilities deemed incompatible with the general education classroom, Kyle spends much of his day in a segregated classroom, away from children who do not live with a disability.¹⁵ Although every child with a disability is entitled to a free appropriate public education in the district in which they reside, the setting of that education need not be in the general education classroom, but only in the “least restrictive environment.”¹⁶ As a result, he has little access to the general education curriculum and social experiences with general education students.

Amanda, Monica, Malcolm, and Kyle all have claims to enjoy the Hidden Heights educational property. Still, the bases for their claims, the possibility of success when those claims are challenged, and the overall security of their claims differ.

Amanda’s claim to education is one of unconditional ownership, access, and benefits available to her if she remains a bona fide resident. Monica’s claim to the educational property is more tenuous than Amanda’s, even though she lives in the same area during the days she

13. See, e.g., Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400(c)(2) (2018) (explaining how prior to 1975, many children with disabilities were “excluded entirely from the public school system”).

14. Id. § 1412(a)(1) (requiring school districts to provide every child with a disability a free appropriate public education).

15. Approximately one-third of students with disabilities spend less than 80% of their school day in a general education classroom. Specifically,

[a]mong all school-age students served under IDEA, the percentage who spent 80 percent or more of their time in general classes in regular schools increased from 59 percent in fall 2009 to 66 percent in fall 2020. In contrast, during the same period, the percentage of students who spent 40 to 79 percent of the school day in general classes decreased from 21 to 17 percent, and the percentage of students who spent less than 40 percent of their time in general classes decreased from 15 to 13 percent.

Nat’l Ctr. for Educ. Stat., Students with Disabilities, The Condition of Education 2022, <https://nces.ed.gov/programs/coe/indicator/cgg> [<https://perma.cc/56UA-C55U>] (last updated May 2022).

16. IDEA’s LRE mandate requires that schools,

[t]o the maximum extent appropriate, [ensure that] children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(5)(A).

attends school. Because Monica does not live within the district's boundaries 24/7, her family must jump through evidentiary hoops Amanda's family avoids, proving that Hidden Heights is her true "home" to continue to attend school.¹⁷

While Malcolm has access to the educational property when he receives permission to attend, his continued access as a nonresident is contingent; Hidden Heights decides the conditions under which it accepts nonresident students and can condition continuing attendance on academics and discipline.¹⁸

Lastly, Kyle should be most secure in non-excludability, as both a bona fide resident and a child with a disability who has a statutory right to be educated in the district in which he resides. But his access to the educational property, the resources contained in the school's walls, is limited; schools may use his disability label as a justification for his segregation, especially because he is a Black boy.¹⁹

These children's experiences, where they all have a legal claim to the educational property amassed in this district, complicate the story about education, property, and access. Legal entitlement or permission to attend school does not mean that one can fully benefit from a district's educational property. This Essay suggests that the differences in these children's claims to Hidden Heights educational property are not only about who cannot be excluded and who must be included. Instead, the children's stories illustrate relational positions in the space of the Hidden Heights school district and the extent to which law, policies, and practices support their claims. The students' access to educational property rises and falls on whether they "belong."

A focus on belonging encourages us to see property claims as relational and spatial.²⁰ Instead of focusing on the Subject and Object of property ("who" owns "what"), belonging attends to the *Space* in which property claims are asserted and the organizational and structural practices that support and legitimate, or undermine and delegitimate, those claims. Accessing educational property is not solely about the individual attributes of students making a claim, but also about the law, policies, and practices that define the space and render determinations about whose claims are legitimate—thus deserving of protection—and whose claims are not.

The degree of a child's belonging depends not only on the legal right to ownership or access but also on the social processes, structures, and networks that support those claims. We can harmonize Amanda's,

17. See *infra* Part I.

18. See *infra* Part II (explaining how many districts impose academic and behavioral requirements on nonresident students as a condition of continued attendance).

19. See *infra* Part II.

20. See *infra* Part III.

Monica's, Malcolm's, and Kyle's seemingly divergent experiences by considering the extent to which the children belong.

Of course, residence plays an essential role in school attendance and access to educational property. Bona fide resident children are the privileged class with the most substantial claim not to be excluded. As argued below, Amanda is the ideal against which all the other children are judged.

This Essay proceeds as follows: Part I describes the conventional test for who gets to access a district's educational property. That test rises and falls on residency; thus, this Part focuses on Amanda's and Monica's disparate experiences in establishing bona fide residency, relating to family form and living arrangements. Part II describes circumstances in which nonresidents like Malcolm and bona fide resident children with disabilities like Kyle overcome exclusion to develop an inclusive right to educational property. Yet they experience that access very differently from prototypical Amanda.

Finally, Part III suggests how focusing on property as belonging complicates the story of education as property with the central characteristic of exclusion. To belong, the students need to show that not only do they (1) have a legal claim but also that (2) they are genuine members of the group that deserves the property and (3) the law, policies, and practices of the space support those claims. To conclude, this Essay suggests that thinking about access to educational property through the lens of belonging is particularly salient in the school context, in which belonging has long been considered critical to student academic and social success.

I. EXCLUSION

Residency is, no doubt, the lynchpin of educational provision and educational exclusion. Becoming a bona fide resident—and proving it—is the first step families must take to enroll in a district's schools. When fictional Amanda's parents bought a home within the Hidden Heights boundaries and attempted to enroll Amanda in school, the district would have required them to produce multiple proofs of residency: utility bills, leases, mortgage documents, and driver's licenses, among others.²¹ Amanda's parents can quickly meet that burden by providing a mortgage statement listing the parents' address. Those who have "bought in" have what may be considered a commonsense claim to ownership by the fact of purchase: "I bought this; it is mine," and the resulting, "You cannot come in or take advantage of it because you didn't pay for it."²² Once she's

21. See, e.g., Baldwin Clark, Property, *supra* note 3, at 404–05 (describing the potential documents a school can request to establish bona fide residency).

22. School district officials point to their responsibilities toward taxpayers who pay for the schools. See *id.* at 412 (describing how school officials see themselves as protecting taxpayers' funds by excluding students who are not bona fide residents).

established bona fide residence, the state will require Hidden Heights to prioritize her education and protect it from others.²³

For some parents, like Amanda's, choosing a well-resourced school means choosing and living in a well-resourced neighborhood.²⁴ Parents with options adjust how much they are willing to pay for a home (or pay in rent) based on their assessment of the quality of the schools.²⁵ It is not hard to imagine which groups of students and their families tend to move into a district like Hidden Heights—those with the financial ability to do so. Unfortunately, race- and class-subordinated students and their families are at a grave disadvantage in the Hidden Heights housing market. Given differences in wealth²⁶ built on a foundation of past²⁷ and contemporary housing discrimination,²⁸ race- and class-subordinated groups will disproportionately lack the financial means to purchase a home or pay

23. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54–55 (1973) (holding that schools can restrict education to only bona fide residents).

24. Elizabeth Warren & Amelia Warren Tyagi, *The Two-Income Trap: Why Middle-Class Parents Are (Still) Going Broke* 8 (2003) (arguing that middle-class parents' "most important possession" is a "house in a decent school district").

25. Shelley McDonough Kimelberg, *Middle-Class Parents, Risk, and Urban Public Schools*, in *Choosing Homes, Choosing Schools* 207, 207–10 (Annette Lareau & Kimberly Goyette eds., 2014) (exploring how middle-class families evaluate risk in choosing schools for their children as they purchase homes and how this evaluation changes depending on the type of school (elementary, middle, or high school) being considered).

26. See Ana Hernández Kent & Lowell R. Ricketts, *Racial and Ethnic Household Wealth Trends and Wealth Inequality*, Fed. Rsr. Bank of St. Louis (Nov. 29, 2022), <https://www.stlouisfed.org/institute-for-economic-equity/the-real-state-of-family-wealth/racial-and-ethnic-household-wealth> [<https://perma.cc/LQ4G-5P7W>] (reporting that in the second quarter of 2022, "Black families had about \$957,000 less wealth, on average, compared with white families, while Hispanic families had about \$982,000 less wealth, on average, than white families"); Joshua Holland, *The Average Black Family Would Need 228 Years to Build the Wealth of a White Family Today*, *Nation* (Aug. 8, 2016), <https://www.thenation.com/article/archive/the-average-black-family-would-need-228-years-to-build-the-wealth-of-a-white-family-today/> (on file with the *Columbia Law Review*) (discussing the role of current policy in maintaining and widening the wealth gap along racial lines, with particularly devastating implications for Black families who experienced three times less growth in wealth than the average White family between 1983 and 2013). See generally Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (10th ed. 2006) (analyzing private wealth to understand the significant racial wealth gap between Black and White Americans and exploring the failure of public policy to remedy this deep economic inequality).

27. See generally Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) (discussing how federal, state, and local governments deliberately and systematically imposed and enforced residential segregation throughout the twentieth century and the contemporary implications of these policies and practices in places like Ferguson, Missouri, Baltimore, and Maryland).

28. See Elizabeth Korver-Glenn, *Compounding Inequalities: How Racial Stereotypes and Discrimination Accumulate Across the Stages of Housing Exchange*, 83 *Am. Socio. Rev.* 627, 630 (2018) (describing how racial stereotypes encourage inequality in housing at every step in the housing exchange to the disadvantage of non-White housing seekers).

high rents within the boundaries of a well-resourced school district like Hidden Heights.

Geography itself is race- and class-stratified not only due to private preferences in house buying but due to official acts of racism and neglect. The choice by Amanda's family to move to Hidden Heights is not solely of their own making; legal and extralegal forces like housing redlining²⁹ and White flight³⁰ have created separate and unequal school districts whereby wealthy and poor districts can exist side by side, separated only by a municipal border.³¹ Those with means will (almost) always choose the affluent district.³²

29. Historically, "redlining" refers to the Federal Housing Administration's (FHA) practice of assigning colors to geographic zones that represented a risk profile for government mortgage loans. Rothstein, *supra* note 27, at 70–71, 85–86. Those areas with a greater proportion of Black and other non-White people were colored red, indicating those zones that the FHA deemed most risky for granting home loans. *Id.* Today, scholars and practitioners often use "redlining" to refer to all policies and practices of housing discrimination. See, e.g., Candace Jackson, *What Is Redlining?*, N.Y. Times (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html> (on file with the *Columbia Law Review*) ("The term has come to mean racial discrimination of any kind in housing . . ."); Erik J. Martin, *What Is Redlining? A Look at the History of Racism in American Real Estate*, Bankrate (Feb. 8, 2023), <https://www.bankrate.com/mortgages/what-is-redlining/> [<https://perma.cc/7WFW-JF5C>] ("Technically, [redlining] refers to lending discrimination that bases decisions on a property's or individual's location, without regard to other characteristics or qualifications. In a larger sense, it refers to any form of racial discrimination related to real estate.").

30. "White flight" refers to the phenomenon by which the perceived "invasion" of nonwhites quickly leads to the exodus and eventual 'succession' of whites in the creation of all- or predominately minority neighborhoods." Samuel H. Kye & Andrew Halpern-Manners, *Detecting "White Flight" in the Contemporary United States: A Multicomponent Approach*, 51 *Socio. Methods & Rsch.* 3, 4 (2022) (citations omitted). Scholars have pinpointed policies like the FHA's redlining that caused White flight by "claiming that a purchase by an African American in a white neighborhood, or the presence of African Americans in or near such a neighborhood, would cause the value of the white-owned properties to decline." See Rothstein, *supra* note 27, at 270–72.

31. See EdBuild, *Dismissed: America's Most Divisive School District Borders* (2019), <https://edbuild.org/content/dismissed/edbuild-dismissed-full-report-2019.pdf> [<https://perma.cc/3T2Q-KMVS>] (mapping adjacent school districts with distinct and significant differences in racial composition of the student body and school funding). See generally Amy Stuart Wells, Bianca Baldrige, Jacquelyn Duran, Richard Lofton, Allison Roda, Miya Warner, Terrenda White & Courtney Grzesikowski, *Why Boundaries Matter: A Study of Five Separate and Unequal Long Island School Districts* 8–11, 53 (2009), http://www.longislandindex.org/wp-content/uploads/2015/10/Why_Boundaries_Matter_Final_100209.pdf [<https://perma.cc/S2H8-Y74B>] (examining segregated and unequal school districts on Long Island and their impact on students, educators, and parents).

32. While she was referring to schools within the public school system, MacArthur Fellow and Pulitzer Prize winner Nikole Hannah-Jones describes why she chose to keep her child in a "lower performing" school despite her ability to choose elsewhere. See Nikole Hannah-Jones, *Choosing a School for My Daughter in a Segregated City*, N.Y. Times (June 9, 2016), <https://www.nytimes.com/2016/06/12/magazine/choosing-a-school-for-my-daughter-in-a-segregated-city.html> (on file with the *Columbia Law Review*).

One basis for exclusion based on residency is purely financial. Taxes on real property constitute 37% of all educational revenue nationally,³³ a significant portion of school revenues and thus spending. Districts in property-rich municipalities will be able to fund their public schools adequately and spend more per student than property-poor districts.³⁴ While states have striven to equalize funding within their states, the mix of federal, state, and local financing varies significantly by district. Property-tax revenue may be the primary source of school funding in the most affluent districts.³⁵

The relationship between education, property, and geography, from where a child lives to how that child's schooling is funded, incentivizes officials in districts like Hidden Heights to aggressively enforce exclusionary residency laws to protect taxpayers.³⁶ Unauthorized attendance by a child that does not reside within the school's boundaries may be treated as "stealing."³⁷ Taxpayers and community members may support this aggressive enforcement, arguing that those families who "steal" benefit from something they did not pay for.³⁸

To bolster the financial incentives to exclude, many states allow school districts to inflict fines on nonresidents and sue families for back public school "tuition"³⁹ to compensate the taxpayers. In addition, many states allow for criminal prosecution,⁴⁰ sometimes for felonies,⁴¹ to deter

33. See Nat'l Ctr. for Educ. Stat., *Public School Revenue Sources, The Condition of Education 2022*, <https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue> [<https://perma.cc/EC6K-BRJG>] (last updated May 2022) ("In school year 2018-19, elementary and secondary public school revenues totaled \$795 billion in constant 2020-21 dollars. Of this total, 8 percent, or \$63 billion, were from federal sources. Some 47 percent, or \$371 billion, were from state sources and 45 percent, or \$361 billion, were from local sources." (footnotes omitted)).

34. West Ed, *From Equity to Adequacy: School Funding 4-5* (2000), https://www.wested.org/www-static/online_pubs/po-00-03.pdf [<https://perma.cc/W898-WTZ3>] (explaining why funding adequacy is a better goal than funding equity).

35. Baldwin Clark, *Stealing*, *supra* note 1, at 622 (describing how in one affluent district, property tax revenue made up 80% of funding, while a neighboring district derived only 55% of its funding from property taxes).

36. Baldwin Clark, *Property*, *supra* note 3, at 413 (explaining that school officials conceive of education as an exclusive right of those who pay property taxes in that school district, and therefore believe that enforcing residential status requirements for attending taxpayer-funded schools is in taxpayers' best interest).

37. See generally Baldwin Clark, *Stealing*, *supra* note 1.

38. See, e.g., *id.* at 412 (quoting a school district official justifying enforcement of residency laws as asserting that "[w]e are responsible to the Board of Education and the Fair Lawn tax-payers to ensure only current residents of our district attend our schools" and that "[n]on-residents who fraudulently attend . . . reduce the number of resources available to the Fair Lawn children" (emphasis omitted)).

39. See Grace Chen, *Tuition for Public Schools? Some Districts are Saying Yes*, *Pub. Sch. Rev.*, <https://www.publicschoolreview.com/blog/tuition-for-public-schools-some-districts-are-saying-yes> [<https://perma.cc/FZ2F-WSCV>] (last updated Nov. 18, 2019).

40. Baldwin Clark, *Stealing*, *supra* note 1, at 593.

41. *Id.* at 594 n.136.

nonresident unauthorized attendance.⁴² Of course, this monetary and criminal enforcement structure imposes an additional class-based barrier to attending a well-resourced public school. It is conceivable that an affluent family could live outside the district, perhaps in a cheaper area, and choose to pay tuition for their child to attend the preferred school district's schools. But the ability to pay tuition as an option to attend a public school condemns relatively poorer families who cannot move into a district for schools or afford nonresident tuition.⁴³

But establishing residency is not nearly as straightforward as Amanda's story suggests. Sometimes states' bona fide residence laws may systematically exclude some residents by claiming that they are not *bona fide* residents to attend school.

When a family's form and function differ from the archetype of the White, middle-class, two-parent household, establishing bona fide residence is complicated. When a child's claim to bona fide resident status is challenged, that family must jump through three evidentiary hoops. To judge bona fide residence, schools interrogate with whom a child lives, where that child calls home, and why the family lives in the district.⁴⁴ These laws are not neutral; they standardize what a family looks like and how family functions.⁴⁵

First, residency laws assume children's residences to be those of their parents, regardless of their actual living circumstances.⁴⁶ Yet many families, especially racially subordinated families, care for children in extended kin networks, an informal configuration whereby different family members care for children's diverse needs.⁴⁷ Monica's family functions this way—she lives with her grandmother during the week when she attends school.

42. Id. at 593 (describing an Illinois law that allows for criminal convictions for unauthorized attendance, described by an official as a “weapon” and “the teeth of a tiger”).

43. Id. at 622 (describing how tuition in one district may be higher than tuition in another district if the tuition is pegged to the per-pupil spending derived from property taxes).

44. See generally Baldwin Clark, Family, *supra* note 8, at 5 (noting that schools tend to evaluate residency based on the location of the parents, whether that location is in fact a “home,” and whether the parents actually live in the home for reasons other than establishing residency for school eligibility purposes).

45. This is concerning because families are thought to perform a private welfare function, where families are tasked with caring for each other to reduce reliance on public assistance. See Courtney G. Joslin, Family Support and Supporting Families, 68 Vand. L. Rev. En Banc 153, 168 (2015) (describing how governments provide benefits for families because they serve a private welfare function by “minimizing reliance on state and federal coffers” (internal quotation marks omitted) (quoting Laura A. Rosenbury, Federal Visions of Private Family Support, 67 Vand. L. Rev. 1835, 1866–67 (2014))).

46. See Baldwin Clark, Family, *supra* note 8, at 13 n.61.

47. See generally Carol Stack, All Our Kin (1974) (documenting the social networks within socioeconomically disadvantaged and minority communities and concluding that extended family and social ties resulted in strong social networks, including in childcare contexts).

She sleeps there, wakes up in the morning there, and returns from school to that home in the district.

Second, and relatedly, bona fide residence laws require parents to establish one and only one “home” where one (and preferably two) adults care for all her needs.⁴⁸ But children like Monica may call multiple locations “home” because “home” is where she is cared for. She is at home with her grandmother. She is at home in the space she shares with her parents on the weekends. She is at home in multiple places.⁴⁹

Lastly, attendance laws require that adults establish a child’s residence for any reason other than solely to attend school.⁵⁰ This requirement specifically disadvantages families like Monica’s—she would not deny that she lives with her grandmother to attend school. But her family’s choice may not be good enough for school attendance, even though race- and class-privileged families routinely choose where to live based on their preferences for where their children should attend school.⁵¹ Monica’s family’s choice to spread care across multiple sites is not recognized as legitimate.

In sum, despite her living arrangement with a bona fide resident, for Monica to claim educational property, her family must clear evidentiary hurdles not required of families like Amanda’s. Laws impose a norm of home-making that is unrealistic, perhaps undesirable, for many families and disproportionately impacts race- and class-subordinated children. For if Monica is unable to satisfy the residence laws, she may be treated as a nonresident even though she is present in the district five days a week. Her claim to educational property in the place she lives is suspicious.

II. INCLUSION

While residency is often the lynchpin of school attendance and, in turn, access to a district’s educational property, school districts routinely enroll nonresident students. If Hidden Heights agrees, Malcolm, our Black boy who lives outside of the Hidden Heights boundaries, can access the schools by participating in an interdistrict transfer program, granting him a seat in the district’s schools and presumably access to educational property. In theory, these programs break the official correspondence between school attendance and bona fide residence. In doing so, these programs have the power to disrupt patterns of race- and class-based residential segregation that tends to keep schools looking like the neighborhoods surrounding them.⁵² Once a school district chooses to

48. Baldwin Clark, Family, *supra* note 8, at 14.

49. See *id.* at 32.

50. *Id.* at 16 (noting that residing in a school district only for the purpose of attending public school in that district is insufficient to qualify for residency for school purposes).

51. See *id.* at 26.

52. Because most children attend schools in their neighborhood, the demographics of the schools often closely mirror the demographics of the neighborhoods in which they sit.

enroll nonresident students, it assumes the legal obligation to educate that child. In other words, that permission means that the child cannot be excluded; the district should include that child as it would a bona fide resident.

Except that districts that accept nonresident students need not be so equitable. Nonresident inclusion can be contingent and conditional, separating nonresident students from resident students. While almost all fifty states have some form of attendance transfer provisions within their education statutes, in many states, these are voluntary plans; schools and districts *may* consider nonresident students for enrollment, but they are not required to do so.⁵³ And even when a district like Hidden Heights participates in an interdistrict transfer program, it does not have to allow nonresident students to enroll. Furthermore, it need not continue to enroll a nonresident child if that student fails to meet academic and behavioral standards, standards not applicable to bona fide resident students.⁵⁴

School districts may condition nonresident attendance in three ways. First, districts must determine how many seats are available in each school while adhering to state-defined class size requirements.⁵⁵ When a school has empty seats, it can enroll additional students. Second, schools prioritize filling those seats with bona fide resident children living in the district whose addresses fall outside a school's catchment area.⁵⁶ At the most desirable schools in a district, prioritizing bona fide, in-district students may prevent nonresidents like Malcolm from attending a particular school due to space.

Third, even when a nonresident child, such as Malcolm, secures a seat in a school, that child's nonresident status follows him into school. Schools

See Laura Meckler & Kate Rabinowitz, *The Changing Face of School Integration*, Wash. Post (Sept. 12, 2019), <https://www.washingtonpost.com/education/2019/09/12/more-students-are-going-school-with-children-different-races-schools-big-cities-remain-deeply-segregated/> (on file with the *Columbia Law Review*) (“In highly integrated districts, individual schools most closely reflect the demographics of the district as a whole. In districts that are not integrated, some schools are dominated by one race and others by another. The somewhat integrated districts are in between.”).

53. Wixom, *supra* note 11, at 1.

54. See, e.g., Santa Clara Unified Sch. Dist., Inter-District Attendance Transfer Request Form (2020), <https://www.santaclarausd.org/cms/lib/CA49000000/Centricity/Shared//Enrollmet/2020%20Interdistrict%20Transfer%20Form.pdf> [<https://perma.cc/D6WY-CT95>] (last visited Mar. 13, 2023) (specifying that interdistrict transfers “may be revoked at any time that the pupil’s attendance, citizenship, or scholarship is no longer satisfactory to the school and district of attendance”).

55. See, e.g., Cal. Educ. Code §§ 41276, 41378 (2021) (prescribing the maximum class sizes and penalties for those districts with classes that exceed the class size limits established in 1964).

56. See, for example, *id.* § 35160.5(b), which “permits parents to indicate a preference for the school which their child will attend, irrespective of the child’s place of residence within the district, and requires the district to honor this parental preference if the school has sufficient capacity without displacing other currently enrolled students.”

may hold nonresident transfer children to higher academic and behavioral standards than they apply to bona fide resident children.⁵⁷ These standards may systematically allow a district to expel students just like Malcolm. Black children are more likely to experience gaps in opportunities to learn and face disproportionate discipline. Indeed, the fact of his Blackness may generate systemic exclusion; heightened requirements schools impose on Black children allow those districts to nominally enroll a child but make it difficult for that child to remain enrolled. Stratified access to learning opportunities and severe discipline practices will tend to frustrate Black children's efforts to meet those expectations, which, again, are not imposed on bona fide resident children.

Despite these contingencies, Malcolm's claim to access is more secure than "stealing" education. But he is not equal to the bona fide residents who attend the district's schools. He is not treated like a bona fide resident, which restricts his ability to fully enjoy and benefit from the district's educational property. Far from treating interdistrict transfer students as non-excludable, districts routinely enact policies and procedures that allow them to revoke those students' permission to attend school. Malcolm's nonresident status and the school's treatment of his Blackness position his claim far from the Amanda ideal.

Lastly, recall Kyle, our Black boy with a disability⁵⁸ who is a bona fide resident. As a bona fide resident like Amanda, Hidden Heights must educate him; he cannot be excluded from entering the door. Furthermore, federal law requires districts that receive federal money to provide every child with a disability a "free appropriate public education."⁵⁹ Federal law also requires that schools provide that education in the "least restrictive environment" (LRE), generally meaning students with disabilities must be inside a general education classroom with peers who do not live with a disability as much as possible.⁶⁰

The LRE requirement seeks to address the pervasive problem of in-school segregation based on disability, whereby children with disabilities are let into the building but separated from their peers without identified disabilities.⁶¹ The contemporary "inclusion" movement seeks to make LRE

57. See Santa Clara Unified Sch. Dist., *supra* note 54.

58. In this Essay, I am assuming that Kyle has a disability that impairs his access to the general education curriculum without accommodation and support. The issue of which label applies in this context is different from the concern of Black children being labeled as disabled when they are in fact not.

59. See 34 C.F.R. § 300.101 (2017) ("Each State must ensure that [free appropriate public education] is available to any individual child with a disability who needs special education and related services.").

60. See 20 U.S.C. § 1412(5)(A) (2018).

61. Nat'l Council on Disability, *IDEA Series: The Segregation of Students with Disabilities* 13 (2018), https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf [<https://perma.cc/MJ7Q-8ZYZ>].

a reality for every child with a disability, pressuring schools to see children with disabilities as first and foremost general education students who require special education accommodations. Inclusion “involves supporting students with disabilities through individual learning goals, accommodations, and modifications so that they are able to access the general education curriculum (in the general education classroom) and be held to the same high expectations as their peers.”⁶² In other words, the inclusion model rejects special education as distinct from general education. For a child with a disability to be included, he must have more than a seat in the school; the school must incorporate him in all aspects of the general education experience.⁶³

While school districts struggle with providing inclusion for all disabilities, they have shown particular challenges with including children with the most stigmatized disabilities.⁶⁴ Children labeled as having an “intellectual disability”⁶⁵ or experiencing “emotional disturbance”⁶⁶ are the least likely to be integrated into the general education experience than children labeled with other disabilities. These labels that question a child’s intellectual capabilities and ability to emotionally regulate tend to provoke the greatest reluctance to place those children in general education classrooms.⁶⁷ Furthermore, Black children like Kyle are disproportionately branded with these labels and thus disproportionately experience segregation within their schools.⁶⁸ Educated in a separate classroom, Kyle will not receive equal access to the general education curriculum,⁶⁹ hindering his academic success. His lack of meaningful engagement with children who do not live with disabilities may impede his social and

62. What Is Inclusion and Why Is It Important?, Iris Ctr., <https://iris.peabody.vanderbilt.edu/module/inc/cresource/q1/p01/> [<https://perma.cc/Q26D-X88X>] (last visited Feb. 5, 2023).

63. Jan Doolittle Wilson, Reimagining Disability and Inclusive Education Through Universal Design for Learning, *Disabilities Stud. Q.*, Spring 2017, at 1, 3 (describing how proponents of inclusion argue that children are entitled to every aspect of the educational experience).

64. LaToya Baldwin Clark, Beyond Bias: Cultural Capital in Anti-Discrimination Law, 53 *Harv. C.R.-C.L. L. Rev.* 381, 401 (2018) [hereinafter Baldwin Clark, Beyond Bias].

65. 34 C.F.R. § 300.8 (2021) (defining “intellectual disability” as a “significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance”).

66. *Id.* § 300.8(c)(4)(i) (defining “emotional disturbance” as a catch-all category for a student with what may colloquially be called “difficult” behaviors that are not explained by other disabilities).

67. Baldwin Clark, Beyond Bias, *supra* note 64, at 401.

68. *Id.* at 383.

69. See LaToya Baldwin Clark, The Problem with Participation, 9 *Mod. Am.*, no. 1, 2013, at 20, 20 (explaining that the impact of placement in “special day classes” is particularly damaging for Black children, as seen through statistics showing that more of these students “drop out of school altogether than receive a regular diploma”).

behavioral success.⁷⁰ Indeed, Black boys labeled as intellectually inferior and behaviorally uncontrollable are likely to fall behind academically in school and even drop out.⁷¹ Thus while state general education laws require districts to educate bona fide residents, practices that exclude children with disabilities mean that schools may deny even bona fide residents complete access to the educational property of the district.

The children's experiences recounted above illustrate that while "residence" is crucial in understanding educational access, residence alone does not explain the divergent struggle to obtain the full benefits of a district's educational property. Instead, as the next Part argues, the key to unlocking educational property is not residence per se but the extent of one's proximity to the ideal bona fide resident that signals belonging.

III. BELONGING

How can we harmonize these children's experiences as they attempt to claim an entitlement to educational property? All four have a legal entitlement to attend Hidden Heights schools, but only Amanda's claim is unconditional and secure.

This Part suggests that access to a district's educational property is not solely based on residence but on belonging. To belong is for others to recognize that you are "meant 'to be' in a place";⁷² in schools, bona fide residency is a proxy for that belonging. Belonging describes not only the entitlement to property but also the relationship of an individual claiming property to the space and others in that space, as well as the legal and organizational practices that support or fail to support that claim.

Belonging is a "relationship of connection, of part to whole."⁷³ Conceptualizing property as belonging shifts the focus from the individual subject and the thing to be owned to the space and network of relationships where the claim to ownership is made, supported, and legitimated. Property and belonging center not only the legal entitlement but the spaces in which practices that support that entitlement occur.

Belonging has three components: the "subject-object" relationship, the "part-whole" relationship, and the extent to which the space "holds up" those relationships.⁷⁴ The "subject-object" relationship, which is the conventional orientation toward property, says that Subject Y has a claim

70. *Id.*

71. *Id.*

72. See Kathleen Mee & Sarah Wright, *Geographies of Belonging*, 41 *Env't & Plan. A: Econ. & Space* 772, 772 (2009).

73. Davina Cooper, *Opening Up Ownership: Community Belonging, Belongings, and the Productive Life of Property*, 32 *Law & Soc. Inquiry* 625, 629 (2007).

74. Sarah Keenan, *Subversive Property: Reshaping Malleable Spaces of Belonging*, 19 *Soc. & Legal Stud.* 423, 426 (2010) ("Theorizing property in terms of belonging rather than exclusion shifts the focus away from the subject and onto the broader spaces, relations and networks that constitute property.").

to Object X.⁷⁵ The “part-whole” relationship refers to the Subject’s positionality in a network of relations: the extent to which the Subject is part of the group of persons that lay legitimate claims to Object X.⁷⁶ “Holding up” involves routinized practices that structure the relationship between the Subject, the Object, and the Space.⁷⁷ In particular, when an individual is not Part of the Whole, and the routines and practices of the Space question her claims, her claim to belonging is strained, and so too is her claim to the property.

Belonging helps to unpack why Monica’s claim to the educational property is contested; attendance laws question whether she belongs to the group with unconditional access because her family form differs from the archetypical resident child. Belonging affects Malcolm because he is not a bona fide resident and thus clearly not a part of the whole which is entitled; the law, policies, and practices place conditions on his claims and exclude him if he fails to live up to the standards applied only to him. And while Kyle is a bona fide resident, through law and practice his status as a child with a disability marks him as the “other,”⁷⁸ not a part of the whole, and not entitled to all benefits afforded to other bona fide residents, those without disabilities.

Understanding property through the lens of belonging is particularly central to explaining the children’s experience because this framework centers the Space in which claims are made. Crucially, Space is not merely the backdrop to claims-making. Instead, “space is part of that action,”⁷⁹ created and changed by the law, practices, and policies that set the rules of engagement. The Space in which school attendance is policed is far from static; schooling itself is tied to race, class, and geography—all three themselves malleable and unstable.⁸⁰

Belonging facilitates Amanda’s ease in claiming educational property; she is the prototype by which all other educational claims are made. Amanda has a legal claim to education by virtue of her geographic relationship to the school district (“subject-object”). She is also a bona fide resident, meaning she is a member of a networked community that, generally, cannot be excluded (“part-whole”). And practices of the school

75. See *id.*

76. See *id.*

77. *Id.* (“In order to constitute property, that set of networked relations must not only include one of belonging between either subject and object or part and whole, but must also be structured in such a way that that relation is recognized and respected, or ‘held up’ by the surrounding space.”).

78. Joan Susman, *Disability, Stigma and Deviance*, 38 *Soc. Sci. & Med.* 15 (1994) (describing how people with disabilities both are seen as deviant (negatively different) and experience stigma (adverse response)).

79. Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* 7–8 (2015).

80. See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *Harv. L. Rev.* 1841, 1845 (1994) (discussing how race and class are intrinsically tied to geography in the United States).

district “hold up” her claim. As a White middle-class girl in a predominately White school, she is not likely to be questioned or surveilled about her residence once her family provides a mortgage statement. Her race and class additionally establish her as an inconspicuous member of the community, clearly part of the whole who is entitled to benefit from education.

Understanding Amanda’s claim as the prototype of belonging shows how the other children’s claims lack security. For example, take Monica’s claim. If she is found to be a bona fide resident, then Hidden Heights cannot exclude her. But she will struggle to prove that relationship. Her family form, common in Black families⁸¹ and other racially subordinated groups, distinguishes her from the whole of which she seeks to be a part. Monica’s claim, while it should legally be as strong as Amanda’s, in practice, is not. The law of the Space requires her to prove her bona fides because her family deviates from the archetypical norm.

Monica’s experience establishing bona fide residency illustrates how belonging is “deeply intertwined with societal hierarchies of power” and “is deeply political and racialized.”⁸² Her family form invites suspicion about residence not simply because of the arrangement but also because this non-archetypical family form has long been associated with Black mother heads of household. Adaptive family forms that feature single Black mothers are perpetually demonized and used to prove how different Black people are from others. The infamous Moynihan Report blamed Black economic and cultural inferiority on Black-single-mother-headed households.⁸³ Bill Clinton championed welfare reform in so-called “welfare-to-work” legislation; Black single mothers flanked him as he signed the bill, suggesting the critical demographic targeted were “welfare queens.”⁸⁴

In addition, Monica is conspicuously a racial other, inviting speculation as to whether she “truly” is a bona fide resident, a part of the whole. Her claim may not be “held up” even with a legal entitlement because the practices and routines for determining bona fide residence systematically create suspicion as to whether she belongs.

Belonging helps us understand Malcolm’s tenuous claim to a Hidden Heights education. Even if he establishes a legitimate subject–object claim to education by gaining permission to attend the district’s schools, his nonresident identity follows him into the district. Nonresidents like

81. Baldwin Clark, *Family*, supra note 8, at 29 (describing how Black families, beginning in slavery and into the present, use kinship care as a fully functioning adaptation to the family-breaking structures of racial inequality).

82. Mariana Souto-Manning, *On the Abolition of Belonging as Property: Toward Justice for Immigrant Children of Color*, *Urb. Educ. OnlineFirst*, at 2 (2021), <https://doi.org/10.1177/00420859211017967> [<https://perma.cc/CDQ6-GH8M>].

83. Daniel Moynihan, *The Negro Family: The Case for National Action* 9–12 (1965).

84. *N.Y. Times*, *Welfare and the Politics of Poverty*, YouTube, at 3:55 (June 7, 2016), https://www.youtube.com/watch?v=Y9lfuqqNA_g (on file with the *Columbia Law Review*).

Malcolm are the last to be considered for attendance, and districts may hold nonresident students to academic and behavioral standards that do not apply to resident students. Resident students can continually fail or engage in discipline-worthy behaviors but still not be excludable.⁸⁵

Furthermore, as discussed above, as a Black boy, these conditions place Malcolm at a further disadvantage in claiming belonging. His claim is not held up not only because he is not a bona fide resident but also because he is a Black boy in a predominately White school district, already subjected to subordinating practices that restrict access to educational property.

His experience in school might be tarred by well-documented race- and gender-based academic opportunity⁸⁶ and discipline gaps.⁸⁷ Black boys tend to have lower reading proficiency by the third grade,⁸⁸ resulting in future denials of learning opportunities. Children who are not proficient readers by third grade struggle to keep up in school and often drop out altogether.⁸⁹ He may also face disproportionate discipline; Black boys

85. For example, Marin County in Northern California requires parents and students attending school pursuant to the district grant of a transfer to agree that the student must “[d]emonstrate positive, productive behavior in classes and school activities while on school grounds, while going to or coming from school, during the lunch period, whether on or off campus, and during or while going to or from a school-sponsored activity, with no more than two office referrals of detentions.” Mary Jane Burke, Marin Cnty. Superintendent of Schs., Interdistrict Attendance Transfers: Procedural Guidelines 36, https://www.marinschools.org/cms/lib/CA01001323/Centricity/Domain/113/InterdistrictTransfer_12062022.pdf [<https://perma.cc/TH2X-V6JW>] (last updated Dec. 6, 2022). Bona fide resident students do not face the prospect of not being able to attend their school due to detention.

86. Educational scholarship refers to “opportunity gaps” instead of “achievement gaps” to highlight the ways in which children’s opportunities to learn are stratified by social identities such that some identities are seen as lacking “achievement” when the true issue is that some groups do not have equal opportunities to achieve. See generally Kevin G. Welner & Prudence L. Carter, Achievement Gaps Arise From Opportunity Gaps, *in* Closing the Opportunity Gap: What America Must Do to Give Every Child an Even Chance 1, 1–10 (Prudence L. Carter & Kevin G. Welner eds., 2003).

87. The “discipline gap” refers to the phenomenon that Black children and especially Black boys are punished more often than other children. See generally Daniel Losen, Cheri Hodson, Michael A. Keith II, Katrina Morrison & Shakti Belway, Are We Closing the School Discipline Gap? (2015), https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf [<https://perma.cc/4X6Q-P3TY>]; U.S. Dep’t of Educ., Off. for C.R., An Overview of Exclusionary Discipline Practices in Public Schools for the 2017–18 School Years (2021), <https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf> [<https://perma.cc/A4GX-M5DJ>] (showing how Black children at all levels of school are more likely to be disciplined than other children).

88. Students Who Don’t Read Well in Third Grade Are More Likely to Drop Out or Fail to Finish High School, Annie E. Casey Found. (Apr. 8, 2011), <https://www.aecf.org/blog/poverty-puts-struggling-readers-in-double-jeopardy-minorities-most-at-risk> [<https://perma.cc/8G8A-576U>].

89. *Id.*

experience the highest discipline rates among public school children.⁹⁰ These heightened academic and behavioral requirements for interdistrict transfers stack the deck against nonresident Black children who wish to remain enrolled in a district's schools. In this way, not only is Malcolm not part of the whole of "residents," but he's also not part of the race-class ideal typified by children like Amanda. In this space, he does not belong.

Even though he is a bona fide resident, Kyle will also struggle with belonging. His claim should be as strong as Amanda's because his bona fide resident status marks him as a part of the whole which cannot be excluded from school. Indeed, his claim should be even more secure because the school space should "hold up" that claim; remember, he has a federal statutory right to receive a free appropriate public education in the least restrictive environment in his district of residence. But other practices that serve to segregate and deny access to the general education curriculum undermine, rather than support, his claim.

His status as a child with a disability categorically sets him apart from his classmates. His entitlement to LRE is only "[t]o the maximum extent appropriate."⁹¹ Children ostensibly cannot be excluded from the general education classroom unless "the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."⁹² In other words, Kyle's access to the general education curriculum is conditional on evaluations of his compatibility with the general education classroom—that is, whether he belongs.⁹³

Like Malcolm, Kyle's race and gender are additional markers of non-belonging. Kyle is more likely than White children to be labeled with intellectual or behavioral disabilities, the categories that also have the lowest rates of incorporation into general education classrooms.⁹⁴ Black boys like Kyle, who may be labeled as such, get very little access to the general education curriculum, are segregated for long periods of their days, and face disciplinary actions at rates far greater than their general education peers.⁹⁵ Kyle, by nature of his race and disability status, deviates

90. While Black children make up less than 15% of all public school students, in the 2017–2018 school year, Black children made up 34% of all students receiving one out-of-school suspension, almost 45% of all students receiving more than one out-of-school suspension, and 37% of all students expelled. U.S. Dep't of Educ., Off. for C.R., Civil Rights Data Collection, 2017–2018 State and National Estimations: Discipline, <https://ocrdata.ed.gov/estimations/2017-2018> (on file with the *Columbia Law Review*) (last visited Feb. 14, 2023).

91. 20 U.S.C. § 1412(5)(A) (2018).

92. *Id.*

93. See Mitchell Yell, Least Restrictive Environment, Inclusion, and Students with Disabilities, 28 *J. Special Educ.* 389, 402 (1995) (explaining the legal parameters for school districts to exercise their discretion in determining a child's educational setting).

94. See *supra* notes 65–70 and accompanying text.

95. See *supra* notes 65–70 and accompanying text.

from the ideal of the middle-class White (and presumably non-disabled) child like Amanda, even as a bona fide resident.

In sum, while residence is the lynchpin of school entitlements, some bona fide residents, because of factors like family form and disability status, do not enjoy an unqualified right to educational property. They should be part of the whole, but their deviation from the ideal sets them apart. Furthermore, school and district policies and practices make it difficult for these children to claim to belong by imposing evidentiary barriers and conditioning access on compatibility. And although nonresidents can access educational property, that nonresidence automatically marks them as not a part of the whole. School district practices like enhanced academic and behavioral requirements fail to “hold up” nonresidents’ claims even though they have a legal right to the education.

Focusing on belonging is particularly apt in the school context. When a child belongs in their school environment, that child “matters[] [and] is valued or appreciated.”⁹⁶ School belonging is the “extent to which students feel personally accepted, respected, included and supported by others in the school environment.”⁹⁷ Children who feel they belong have better academic performance, fewer behavioral infractions, and more positive school connections.⁹⁸

CONCLUSION

Focusing on belonging helps us understand how neither exclusion nor inclusion alone can explain how students who all have a legal entitlement to attend school can have different experiences of that entitlement. Belonging directs our attention to not just what people own but also how the policies and practices of space support or undermine property claims.

96. Emily Grant, *Belongingness*, 54 *Conn. L. Rev. Online Ed.* 1, 4 (2022), <https://connecticutlawreview.law.uconn.edu/archive/online-edition-3/> [<https://perma.cc/V79L-LAAU>] (internal quotation marks omitted) (quoting Terrell L. Strayhorn, *College Students’ Sense of Belonging* 32 (2d ed. 2019)). “[B]elongingness is about more than just academic performance, in the educational environment, students need to feel they belong in a variety of spaces—in the classroom, in the institution at large, and in their chosen profession.” *Id.* (footnote omitted).

97. Christopher D. Slaten, Jonathan K. Ferguson, Kelly-Ann Allen, Dianne Vella-Brodrick & Lea Waters, *School Belonging: A Review of the History, Current Trends, and Future Directions*, 33 *Educ. & Developmental Psych.* 1, 3 (2016).

98. *Id.* at 4–5.