

**REPRODUCING INEQUALITY:
RACIAL CAPITALISM AND THE COST OF
PUBLIC EDUCATION**

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REPRODUCING INEQUALITY: RACIAL CAPITALISM AND THE COST OF PUBLIC EDUCATION

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Abstract: American democracy is marked by an unwavering deployment of racialized economic modalities of fines, fees, and debt aimed at scaffolding hierarchies of white power and prescribing Black people as commodities, not human beings. Over the last two decades, an expanding praxis in the economic justice field has emerged, opposing and disrupting racialized economic logics within a national anti-fine, fee and cost movement. From scholarly discourse to legal interventions and reforms at city- and county-levels, the movement has sought to target interlocking material and ideological forces that comprise racial capitalist geographies across many criminal and civil systems. Despite this significant work, however, the distinctly racialized dispossessive and extractive economic realities of fines and fees regimes in other public state systems, namely K–12 public education, have escaped interrogation and advocacy. This Article serves to fill that gap at three levels—theoretical, analytic, and prescriptive—presenting an incisive critique of public education absent from the existing legal literature and highlighting explicating existing remedies available to civil rights education attorneys to protect Black stu-

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dents and families. In advancing racial capitalism as its constructive feature, this Article does not simply rely on a theoretical approach. Instead, it employs critical theory and social science methodologies, drawing on an original dataset of first-hand accounts of clients and analyses of more than seven hundred different published and publicly-available individual public school, charter school, cyber charter school, and district handbooks and codes of conduct. The data illuminates how public education functions across key dynamics of racial capitalism—accumulation, dispossession, debt, punishment, and containment. This work thus contributes richly to legal scholarship and legal practice by attending to an undertheorized yet formative area of critical theory, and exposing the operation of racial capitalism through a familiarly racially evasive modality that fundamentally undermines Black students' access to their education.

INTRODUCTION

When Chloe,¹ a Black high school student living in an emergency shelter without access to any supportive services, lost her student identification card, she was denied access to her school until she paid both a \$5 replacement fee and an additional \$1 per day fee for every day she was without it. Unable to pay either the original fee or the compounding daily fees, she was not allowed to enter her school and was forced to be absent and accrue unexcused absences. Following multiple days of absence, her school threatened to refer her to the local district court for violations of Pennsylvania's compulsory school law.

When Destiny, a proud Black single mother of two elementary school students at a Pennsylvania charter school, experienced unforeseen delays and safety concerns on public transportation, she arrived late to pick her children up from school. Despite calling the school to alert them of her delay and being told "see you soon, Mom" by the school's front office, upon her arrival she was confronted publicly by school personnel and informed that she would be issued "a late pickup fee" at the cost of "\$1 per minute" for each child because she had arrived after the school's brief "grace period."² The fee was non-negotiable, and payment was due immediately. Her

¹ Throughout this Article, pseudonyms are used to preserve the privacy and confidentiality of the clients' experiences upon which examples are drawn. Chloe's story, and all the other stories in this Article, are based on clients served by the Education Law Center-PA, a statewide nonprofit that, among other systemic and policy advocacy efforts, provides direct legal representation to families and students facing educational barriers. Some details have been changed to prevent identification and retaliation.

² The grace period was fifteen minutes. Notably, the fee came as a complete surprise to Destiny, as when she called the school to let them know that she was running late, she was told: "Hi, Mom, we will see you soon." A late pickup fee had never been mentioned to her at any other time, nor was it discussed in any of the many parental communications she received from the school. She would later come to find out that it was mentioned only once in the school's sixty-nine-page "Student and Parent

failure to do so, regardless of an inability to pay, would ensure that her children, who recently joined the school community, would be denied complete access to a range of school activities, and the school would hold their report cards at the end of the academic year until all balances were paid. Destiny, who describes herself as a vocal and fierce advocate for her children and herself, pushed back. Despite her best efforts, the fees remained and she was presented with an agreement that would oblige her to pay at a later date. She refused to sign it and only after she alerted the school that an attorney would contact them on her behalf did the school permit her to exit the school building with her children without immediate payment or signing an agreement to pay.

Since its inception, the American democracy has employed law and policy to fundamentally dispossess, control, dehumanize, and disenfranchise Black people.³ In the fields of economic justice and poverty law, specifically, legal scholars have exposed a historical lineage of racial exploitation.⁴ As has been

Handbook.” STUDENT AND PARENT HANDBOOK (on file with authors). The authors do not disclose further details regarding the specific handbook in question to maintain client confidentiality.

³ See DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* 8–9 (2011) (describing the new regime of colonial American laws, where a “monumental legislative effort to differentiate the status of blacks and whites . . . set all blacks clearly apart from all whites in terms of power and privilege”); Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 261, 263 (2021) (“Policing and criminalization practices have worked in tandem historically to monitor and contain people of color . . .”); Angela P. Harris, *Racing Law: Legal Scholarship and the Critical Race Revolution*, 52 EQUITY & EXCELLENCE EDUC. 12, 13 (2019) [hereinafter Harris, *Racing Law*] (“Race took root in American law as a means of resolving a political contradiction: how to justify human unfreedom and inequality in a society formally founded on universal freedom and equality.” (citing GEORGE M. FREDRICKSON, *RACISM: A SHORT HISTORY* 68–69 (2002))); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1715 (1993) [hereinafter Harris, *Whiteness as Property*] (noting that the codification of racial status in American law “has taken on more subtle forms, but retains its core characteristic—the legal legitimization of expectations of power and control that enshrine the status quo as a neutral baseline, while masking the maintenance of white privilege and domination”); see also *Palmer v. Thompson*, 403 U.S. 217, 219 (1971) (affirming the lower court’s decision upholding city’s choice to cease running swimming pools for the public, rather than to desegregate them); *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896) (holding that laws allowing or mandating racial segregation are justifiable uses of the states’ police power), *overruled by* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *The Civil Rights Cases*, 109 U.S. 3, 24 (1883) (stating that “[i]t would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make . . .”); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 403–04 (1857) (holding that the descendants of African people who were enslaved were not entitled to the privileges and rights that the Constitution affords citizens), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

⁴ See Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 935–36, 939 (2019) (describing how economic sanctions ascended as a primary method of white supremacist control over Black people who were newly emancipated in the nineteenth century, after the Thirteenth Amendment formally ended the economic exploitation of chattel slavery); see also Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal*

documented, the race logics of fines, fees, and debt of the antebellum era scaffolded hierarchies of white power and prescribed Black people as commodities, not humans.⁵ To preserve and enforce white power, Black people faced or were threatened with state violence, disenfranchisement, and imprisonment.⁶ Tracing the trajectory of the antebellum era to contemporary manifestations of fines and fees, law and political economy scholarship and advocacy have sought to deconstruct political arrangements that have actively sanctioned racialized debt in Black communities and built an interlocking punitive framework of compounding economic, social, and political harms.⁷ Within this prax-

Justice, 2014 U. ILL. L. REV. 1175, 1184–85 (describing the convict leasing system that hit its peak during Reconstruction and involved the conviction and leasing of Black individuals who were emancipated). Prior to this time, debtor's prisons allowed creditors to incarcerate people unable to pay their debts in abysmal conditions. Christopher D. Hampson, *The New American Debtors' Prisons*, 44 AM. J. CRIM. L. 1, 15–17 (2016).

⁵ See Goodwin, *supra* note 4, at 933, 939 (describing how lawmakers “instantiated new forms of governance over Black bodies,” including permanent indebtedness, some of which “predated abolition and were retrofitted to Reconstruction and Jim Crow”); see also Harris, *Whiteness as Property*, *supra* note 3, at 1716–18 (describing how chattel slavery developed along with the formation of whiteness and racial hierarchy).

⁶ See Goodwin, *supra* note 4, at 937–38, 946 (describing the post-bellum Black Codes and the reinstitution of slavery through accusations of criminality).

⁷ See, e.g., Beth A. Colgan, *Fines, Fees, and Forfeitures* (describing the emergence of a cohesive movement against fines and fees), in 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 205, 207–08 (Erik Luna ed., 2017); see also Goodwin, *supra* note 4, at 935–41 (describing the institution of Black Codes, including fines, as a method of reinstituting white control of Black labor). Although specific goals may vary depending on the institutional domain or locale, five key harms of fines and fees motivate the movement. First, fines and fees are exceptionally disruptive to people's lives. Making a payment in full can threaten the payer's ability to make other important payments. See Lisa Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIA. RACE & SOC. JUST. L. REV. 1, 13 (2020) (describing how the likely targets of monetary sanctions in the criminal legal system are unlikely to be able to pay). Second, fines and fees distort the purposes of institutions and undermine governmental goals. See Colgan, *supra*, at 209 (arguing that fines and fees put revenue collection ahead of public safety). For example, when criminal legal systems transform into revenue-generating systems, “governmental actors may fail to consider, or even implement policies that directly conflict with, public-safety needs.” *Id.* Third and relatedly, fines and fees impair access to institutional resources. See Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 521–22 (2016) (describing how penalization can embed distrust and discourage people from relying on public institutions); see also *Bearden v. Georgia*, 461 U.S. 660, 670–71 (1983) (disapproving of a policy that would revoke a person's probation if they could not make restitution on a good-faith basis, as that could encourage the probationer to turn to crime in order to pay). Fourth, fines and fees can cause adverse health consequences. Puja Upadhyay, Comment, *Health-Harming Effects of Court Fines and Fees: Modern Day Debtors' Prisons as a Public Health Threat*, 94 TEMP. L. REV. 677, 695–98 (2022). Fines and fees directly affect physical well-being because debt can “trigger stress that worsens health.” *Id.* at 696. Fifth and finally, fines and fees are ineffective at achieving their purported goals through punitive means and a significant body of research shows that criminal fines “do little to deter crime or improve public safety.” MATTHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN & NOAH ATCHISON, *THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES: A FISCAL ANALYSIS OF THREE STATES AND TEN COUNTIES* 11 (2019).

is of economic justice, openings have emerged for opposition, organization, and disruption, from law and social movement activities generating anti-fine and fee discourses,⁸ to legal interventions,⁹ to structural policy reforms, including the reconsideration of fines and fees in the criminal legal system.¹⁰ This work, increasingly defined through a racial capitalist framework,¹¹ has targeted the interlocking material and ideological forces that comprise racial capitalist

⁸ See Foster, *supra* note 7, at 3–4 (describing how, following the 2014 police shooting of Michael Brown in Ferguson and a report by the U.S. Department of Justice on the Ferguson Police Department, advocates have worked to reform fines and fees); Peter Edelman, *The Criminalization of Poverty and the People Who Fight Back*, 26 GEO. J. ON POVERTY L. & POL'Y 213, 213 (2019) (describing the “criminalization of poverty” through fines and fees); Colgan, *supra* note 7, at 208 (examining “scholarship that explore[s] poorly designed systems involving fines, fees, and forfeitures”). See generally JUV. L. CTR., REIMAGINING RESTITUTION: NEW APPROACHES TO SUPPORT YOUTH AND COMMUNITIES (2022), <https://debtorsprison.jlc.org/documents/JLC-Reimagining-Restitution.pdf> [<https://perma.cc/F3RY-MHKT>].

⁹ See PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA 21–43 (2017) (cataloging reforms against fines and fees in the legal systems of cities, counties, and states across the country); Foster, *supra* note 7, at 28 (describing legislative reforms in “California, Nevada, and Maryland . . . prohibiting the imposition of fines and fees in juvenile delinquency cases”).

¹⁰ See, e.g., *Government-Levied Fines and Fees Reform: San Francisco, CA*, RESULTS FOR AM. (2022), <https://catalog.results4america.org/case-studies/fines-and-fees-san-francisco> <https://catalog.results4america.org/case-studies/fines-and-fees-san-francisco> [<https://perma.cc/G6KW-C6ZL>] (describing San Francisco’s attempt to reform fines and fees in its criminal legal system); CMTY. EMPOWERMENT & OPPORTUNITY, THE IMPACT OF CRIMINAL COURT AND PRISON FINES AND FEES IN PHILADELPHIA 4–6 (2021), <https://www.phila.gov/media/20210505004207/FinesandFees-final.pdf> [<https://perma.cc/KWB7-9U2M>] (describing, in a City-led investigation, the impact of fines and fees on those convicted or incarcerated in Philadelphia). Public library systems have also moved towards the elimination of fines associated with library use, such as late fees. See, e.g., JOSEPH MONARDO, S.F. FIN. JUST. PROJECT, LONG OVERDUE: ELIMINATING FINES ON OVERDUE MATERIALS TO IMPROVE ACCESS TO SAN FRANCISCO PUBLIC LIBRARY 4–5 (2019) (recommending the elimination of overdue fines in San Francisco libraries); *We’re Going Fine-free!*, FREE LIBR. OF PHILA. (Dec. 11, 2019), <https://libwww.freelibrary.org/blog/post/3991> [<https://perma.cc/L9TW-XJ6B>] (announcing that overdue fines will no longer be collected within one library system); *Resolution on Monetary Library Fines as a Form of Social Inequity*, COUNCIL OF AM. LIBR. ASS’N (Jan. 28, 2019), <https://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/Resolution%20on%20Monetary%20Library%20Fines%20as%20a%20Form%20of%20Social%20Inequity-FINAL.pdf> [<https://perma.cc/NK9H-PTD9>] (recommending the elimination of library fees); Letter from U.S. Dep’t of Just. to state courts, local courts, and juvenile justice agencies “Dear Colleague Letter” (Apr. 20, 2023), <https://www.justice.gov/opa/press-release/file/1580546/dl?inline> [<https://perma.cc/T5CN-NAUX>] (providing guidance and encouraging states and localities to eliminate fines and fees imposed on youth in the juvenile legal system); U.S. DEP’T OF JUST., ACCESS TO JUSTICE SPOTLIGHT: FINES AND FEES (2023), <https://www.justice.gov/d9/2023-11/doj-access-to-justice-spotlight-fines-and-fees.pdf> [<https://perma.cc/PWR3-ZAP9>] (highlighting the devastating impact of fines and fees on the lives of individuals and the common and innovative approaches available to reduce reliance on criminal and civil fines and fees).

¹¹ See CEDRIC J. ROBINSON, BLACK MARXISM, REVISED AND UPDATED THIRD EDITION: THE MAKING OF THE BLACK RADICAL TRADITION 1–3 (Univ. of N.C. Press 3d ed. 2020) (1983) (explicating racial capitalism as a phenomenon and social ideology of exploitation and capital accumulation, which are mutually constitutive and have fortified “the development, organization, and expansion of capitalist society [which] pursued essentially racial directions”).

geographies in criminal¹² and civil systems.¹³ As creative imaginations of reparations¹⁴ and abolition,¹⁵ coupled with refinements in the exposition of the constitutive nature of capitalism and racism¹⁶ have matured, so too conceptions

¹² See Joshua Page & Joe Soss, *The Predatory Dimensions of Criminal Justice*, 374 SCI. 291, 291–92 (2021) (applying racial capitalism to predation in the criminal justice context); Foster, *supra* note 7, at 10–15 (describing the confluence of race and poverty in the criminal legal system that serves to extract wealth from vulnerable communities); Edelman, *supra* note 8, at 215 (“The criminalization of poverty takes place at one of the most dangerous intersections in America: The intersection of race and poverty.”); EDELMAN, *supra* note 9, at 21 (stating that the criminal legal system has “been preying on black people and poor people . . . using the courts as a tool to continue systemic racism” (quoting Thomas Harvey, a public defender)).

¹³ See Joseph Shapiro, *As Court Fees Rise, the Poor Are Paying the Price*, NPR (May 19, 2014), <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> [<https://perma.cc/75YS-LH4R>] (“48 states have increased criminal and civil court fees, added new ones or both.”); EDELMAN, *supra* note 9, at 121 (describing how the referral of students to court is a “story . . . of poverty as well as race and disability”); see also Erin K. Burke, Note, *Utah’s Open Courts: Will Hikes in Civil Filing Fees Restrict Access to Justice?*, 2010 UTAH L. REV. 201, 201 (examining the effects of an increase in filing fees in civil court). In the context of criminal fines and fees, law and political economy analyses examine how municipalities, starved of funds to govern for the common good, utilize suspect financial mechanisms to exist, including criminal fines and fees. See, e.g., Hayley Hahn, *Stripping the Gears of White Supremacy: A Call to Abate Reliance on Court Fines and Fees and Revitalize Local Taxation*, 2 J.L. & POL. ECON. 25, 25–26 (2021) (describing how “states and municipalities rely on court fines and fees to generate revenue and prevent budget shortfalls”). We assert a similar process is occurring in the case of school-based fines and fees. Public schools seek to impose fines and fees because they are caught within a governance structure that forces them to depend on neoliberal politics within a racist republic that has shaped political geographies around racial hierarchy.

¹⁴ See generally WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY* (2d ed. 2022) (discussing reparations); see also Allen J. Davis, *Reparations in the United States*, UNIV. OF MASS. AMHERST, <https://www.printfriendly.com/p/g/6Mgtdx> [<https://perma.cc/K6KG-W7Z9>] (Oct. 23, 2023) (summarizing payments for reparations made dating from 1783).

¹⁵ See, e.g., Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1684 (2019) (arguing that “an abolitionist framework and strategy is necessary to challenge the conditions faced by Black communities in this country, and that only through an abolitionist struggle will we repair our communities and undermine the systems of oppression we know have facilitated devastation, from the transatlantic slave trade through the prison industrial complex”); DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 8–9 (2022) (calling for the abolition of the “child welfare system”).

¹⁶ See, e.g., Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022) (exploring how racial capitalism functions in civil courts). Robinson’s seminal work has served as the catalyst for reinvestment in Black radical traditions, as well as the reconceptualization and application of racial capitalism across multiple scholarly disciplines. See generally *id.*; Jalil B. Mustaffa & Caleb Dawson, *Racial Capitalism and the Black Student Loan Debt Crisis*, 123 TCHRS. COLL. REC., June 2021, at 1, 1 (utilizing racial capitalism to explicate how the policy behind student loan debt is underpinned by racist, anti-Black logic); Hyunsu Oh, *Racial Capitalism and Neighborhood Health Disparities: The COVID-19 in California Counties*, 10 J. RACIAL & ETHNIC HEALTH DISPARITIES 2338, 2341–43 (2023) (investigating the links between racial capitalism and neighborhood-level health disparities); Satnam Virdee, *Racial-*

of legal responsiveness and remedies have evolved beyond their initial frameworks toward the abolition of the fines-and-fees regime.¹⁷ For example, a 2014 lawsuit against the City of Montgomery yielded a settlement that required the City to adopt new policies applicable to people who were unable to pay traffic fines to avoid imposing jail time.¹⁸ In 2017, legislative and policy reforms in California and Mississippi curbed the practice of suspending driver's licenses for non-payment of fines.¹⁹

Despite this significant work,²⁰ however, the distinctly racialized dispossession, extractive, and punitive economic realities of fines and fine regimes in other public state systems, in particular K–12 education,²¹ have escaped inter-

ized Capitalism: An Account of Its Contested Origins and Consolidation, 67 SOCIO. REV. 3, 4–10 (2019) (examining the birth of sociology and racial capitalism).

¹⁷ See EDELMAN, *supra* note 9, at xviii–xix (describing how law enforcement practices that criminalized poverty initially escaped attention, but that a movement toward the abolition of such laws is growing); see also MONARDO, *supra* note 10 (suggesting the elimination of library fees); *We're Going Fine-Free!*, *supra* note 10 (reporting on the elimination of library fees); *Resolution on Monetary Library Fines as a Form of Social Inequity*, *supra* note 10 (suggesting the elimination of library fees). During the height of the COVID-19 pandemic, many municipalities suspended debt collection entirely and directed private debt collection agencies to do the same. *Easing the Burden of Fees and Fines During Covid-19*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/easing-burden-fees-and-fines-during-covid-19#:~:text=The%20first%20Covid%2D19%20federal,payment%20of%20fees%20and%20fines> [<https://perma.cc/CX2A-FGAC>] (Jan. 7, 2022). For example, Nevada recommended that the entirety of debt collection be suspended for thirty days; New York suspended medical and student debt owned by the state, mortgage payments, evictions, and foreclosures for no less than ninety days; and the city of Moreno Valley in California suspended late fees, penalties for late fees, and “late fee interest on payments including utility bills, business license fees, parking citations, and library fines indefinitely.” *Id.*

¹⁸ Joseph Shapiro, *Alabama Settlement Could Be Model for Handling Poor Defendants in Ferguson, Mo.*, NPR (Nov. 20, 2014), <https://www.wuwm.com/2014-11-20/alabama-settlement-could-be-model-for-handling-poor-defendants-in-ferguson-mo> [<https://perma.cc/B3L5-LVJS>]. Plaintiffs had sued the City, claiming that their incarcerations for not paying fees and fines to the court were unlawful. *Id.*

¹⁹ *Californians Can No Longer Lose Their Driver's License Due to Unpaid Traffic Fines*, W. CTR. ON L. & POVERTY (July 5, 2017), <https://wclp.org/californians-can-no-longer-lose-their-drivers-license-due-to-unpaid-traffic-fines/> [<https://perma.cc/9Q5C-YEQR>]; *SPLC Reaches Agreement with Mississippi to Reinstate Over 100,000 Driver's Licenses Suspended for Non-Payment of Fines*, S. POVERTY L. CTR. (Dec. 19, 2017), <https://www.splcenter.org/news/2017/12/19/splc-reaches-agreement-mississippi> [<https://perma.cc/HAP5-YNAE>].

²⁰ See *supra* note 16 and accompanying text; see also Briana Hammons, *Monetary Sanctions, Racialized Wealth Extraction, and Momentum for Fines and Fees Reform*, THE FORGE (June 18, 2020), <https://forgeorganizing.org/article/monetary-sanctions-racialized-wealth-extraction-and-momentum-fines-and-fees-reform> [<https://perma.cc/6RF3-JFRG>] (“[F]ines and fees reform is an essential step toward ending racial capitalism.”); Sherally Munshi, *Dispossession: An American Property Law Tradition*, 110 GEO. L.J. 1021, 1025, 1080–81 (2022) (explaining that without a racial capitalism framework, reform efforts will “not address the broader political economy shaped by municipal decisions—decisions to hoard resources, avoid raising taxes on property owners and corporate residents, and, instead, mine the most vulnerable for fees and fines”).

²¹ We have adopted a common lexicon of “fines and fees” throughout this Article. See Appendix 1 for a complete list of coded terms.

rogation and advocacy. In legal scholarship, our work is most closely aligned with Steven Nelson and Ray Orlando Williams's formulation of the concept of a "racial-political economy of education" and their application of this concept to contemporary policy in urban education, arguing it is "a reincarnation of past efforts to racially subjugate Black peoples."²² We also view a connection to Helen Hershkoff and Nathan Yaffe's assertion that the "confinement experienced by Black, Brown, and poor students in resource-starved carceral public schools serves to maintain and reproduce economic stratification within a system of racial capitalism," which indicates these systems are functioning as intended and designed.²³ Within this work, however, we recognize a distinction to our analysis as presenting a concrete and discrete form of coercive racial capitalism at play in schools. Despite the fact that education functions as a free public system uniformly made available across the states, the malleable structure of capitalism, and more significantly, racial capitalism has become systematically and operationally interlaced, serving to rationalize exploitation, accumulation, and containment of Black students and parents through a neutral frame of fines, fees, and charges.

Across other fields of study, scholars have also contended with the physical practices and ideological effects of racial capitalism in education.²⁴ They have raised provocative questions with respect to caste education,²⁵ school discipline,²⁶ urban education,²⁷ STEM education,²⁸ teacher training,²⁹ educational

²² Steven L. Nelson & Ray Orlando Williams, *From Slave Codes to Educational Racism: Urban Education Policy in the United States as the Dispossession, Containment, Dehumanization, and Disenfranchisement of Black Peoples*, 19 J.L. SOC'Y 82, 98–99 (2019).

²³ See Helen Hershkoff & Nathan Yaffe, *Unequal Liberty and a Right to Education*, 43 N.C. CENT. L. REV. 1, 4–5 (2020). That the schools are resource-starved is often intentional. See *id.* at 4 (arguing that the state's decision to create school districts "withholds from the households within affected local districts the resources they need to carry out their educational goals").

²⁴ See Mustaffa & Dawson, *supra* note 16, at 1, 13 (looking at student loans through a racial capitalist analysis, in which student loans "answer demands for social access and inclusion . . . and reproduce both the disposability and dispossession of Black people's everyday lives," and examining the system of profit extraction that student loans create). See generally Ali Mir & Saadia Toor, *Racial Capitalism and Student Debt in the U.S.*, 30 ORG. 754 (2021) (examining the structure of student debt and its consequences for Black borrowers and racial capitalism). The majority of the work focuses on K–12 education, with new attention on Black student debt arising from higher education. See *infra* notes 25–33 and accompanying text. See generally Mustaffa & Dawson, *supra* note 16; Mir & Toor, *supra*.

²⁵ See Clayton Pierce, *W.E.B. Du Bois and Caste Education: Racial Capitalist Schooling from Reconstruction to Jim Crow*, 54 AM. EDUC. RSCH. J. 23S, 24S, 39S–43S (2017) (using W.E.B. Du Bois's caste education framework to examine charter schools and school choice).

²⁶ See Jeremy Benson & Michael J. Dumas, *Building Out the Edges: Reading Racial Capitalism into Jean Anyon's Political Economy of Urban Education*, 123 TCHRS. COLL. REC., Dec. 2021, at 72, 90 (discussing "the centrality of the state-capital order in orchestrating the policing, warehousing, and destruction of Black and Brown individuals rendered surplus and disposable by the dynamics of neoliberal racial capitalism").

leadership,³⁰ dispossession of land on which schools are built,³¹ the creation of racialized divisions of labor by education systems,³² and student debt in terms of both its accrual and its impact.³³ This has challenged and strengthened clarification of the subtleties and nuances of racial capitalism.³⁴ As legal scholarship has underscored, “[t]he interlocking material and ideological forces that comprise neoliberal racial capitalism offer rich and urgent sites for critical educational research, and such scholarly critiques can point to openings for opposition, organizing, and disruption.”³⁵ This observation of the disruptive and generative nature of the framework of racial capitalism analysis raises a serious question for legal scholars to grapple with—“[h]ow . . . might we use racial capitalism as a theoretical framework to better understand racialized educational inequities?”³⁶

²⁷ See *id.* at 77, 80–82 (stating that racial capitalism “determines urban educational policy and practice,” and exploring “the city as context for racial capitalism”).

²⁸ See Daniel Morales-Doyle & Eric “Rico” Gutstein, *Racial Capitalism and STEM Education in Chicago Public Schools*, 22 RACE ETHNICITY & EDUC. 525, 525–26 (2019) (analyzing the role played by STEM initiatives in Chicago through racial capitalism).

²⁹ See Lauren Anderson, *Private Interests in a Public Profession: Teacher Education and Racial Capitalism*, 121 TCHRS. COLL. REC., June 2019, at 1, 2–4 (arguing that teacher education and entrepreneurial neo-liberalism in education policy reify structures of racial capitalism).

³⁰ See James Wright, *The Deep Roots of Inequity: Coloniality, Racial Capitalism, Educational Leadership, and Reform*, 58 EDUC. ADMIN. Q. 693, 695–96 (2022) (critically analyzing educational leadership and administration’s “historically privileged Eurocentric epistemologies, research methodologies, and intellectual norms” and developing the author’s concept of “Coloniality Racial Capitalism and Modernity”).

³¹ See Jessica Gerrard, Arathi Sriprakash & Sophie Rudolph, *Education and Racial Capitalism*, 25 RACE ETHNICITY & EDUC. 425, 425, 431 (2022) (arguing that “formal systems of education have been based on . . . the dispossession and enclosure of people and land”).

³² See *id.* at 425 (arguing that “the division of labour” and “the extraction of value” shaped education systems, “thereby working as a system that hierarchically differentiates life itself”).

³³ See Mustaffa & Dawson, *supra* note 16, at 1, 13 (describing “how Black educational desires are co-opted,” how the arrangement benefits profiteers at the expense of Black people, and how “debt is inflicted and profit is extracted from Black students”); Mir & Toor, *supra* note 24, at 755 (examining how higher education forces Black students into “debt servitude”). Debts created by educational expenses beyond the K–12 context can be used to gatekeep access to career and higher educational opportunities, including the ability to become an attorney who could challenge the existence of laws enabling such systems. See Adam S. Minsky, *Court Cites Student Loans as Reason to Deny Bar Admission to New Lawyer*, FORBES (Jan. 23, 2020), <https://www.forbes.com/sites/adamminsky/2020/01/23/court-denies-bar-admission-to-new-lawyer-due-to-student-loans/?sh=4c18e45d548f> [<https://perma.cc/3PQG-XWG9>]; see also Katrina Gipson, *Forgive Student Loans to Ensure Diversity in Higher Education*, THE HILL (Aug. 4, 2023), <https://thehill.com/opinion/education/4135597-forgive-student-loans-to-ensure-diversity-in-higher-education/> [<https://perma.cc/G7M6-6F55>] (describing how the cost of tuition deters students, especially students of color, from pursuing higher education).

³⁴ See *supra* notes 24–33 and accompanying text.

³⁵ Benson & Dumas, *supra* note 26, at 80.

³⁶ *Id.*; see also Gerrard et al., *supra* note 31, at 427 (“[T]he concept of racial capitalism is not in itself new, but its redressal within education research and practice remains urgent.”).

As a critical education scholar and education civil rights attorney, this question sparks a multiplicity of responses between us and guides our intervention into the literature at three levels.³⁷ The first is theoretical. This Article synthesizes existing work on interactions of racial capitalism, drawing most specifically on analyses by Carmen Gonzalez and Athena Mutua, as well as work by Prentiss Dantzer, on law and sociology, respectively, to explicate racial capitalism's constitution in U.S. public education.³⁸ The second is descriptive and analytic. This Article applies these frameworks to the fines and fees regime present in Pennsylvania public schools and finds three central features of racial capitalism expressed.³⁹ Lastly, this work is prescriptive and provides education civil rights attorneys with a framework for state and federal law that may be available to protect Black students and families from resource extraction.⁴⁰

This Article deliberately uses fines and fees throughout rather than the full set of coded terms included in Appendix 1 to emphasize two central features of racial capitalism.⁴¹ In the case of fines, it expresses the constitution of punishment within a racial capitalist ideology. For example, “[r]acialized debt is a cornerstone of racial capitalism” and reflects “the structural ways in which profit is exploited and dispossession is inflicted upon groups rendered different through race and other intersecting power dynamics.”⁴² With respect to fees, the term signals and privileges the privatization of public education and the state's active production of highly inequitable, under-resourced, and segregated learning environments.⁴³ As it has been argued in the case of racial capitalism and Black student debt, “Black people are treated as a means for finance capital.”⁴⁴

³⁷ This work is the first of several interventions we intend to make into the academic racial capitalism discourse at the intersection of education law and policy.

³⁸ See *infra* notes 62–126 and accompanying text; Prentiss A. Dantzer, *The Urban Process Under Racial Capitalism: Race, Anti-Blackness, and Capital Accumulation*, 2 J. RACE, ETHNICITY & CITY 113, 119 (2021) (providing an analytical framework for racial capitalism, and inviting scholars to conduct such an analysis for various institutions); Carmen G. Gonzalez & Athena D. Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J.L. & POL. ECON. 127, 129 (2022) (explicating the processes of racial capitalism).

³⁹ See *infra* notes 129–200 and accompanying text.

⁴⁰ See *infra* notes 202–268 and accompanying text.

⁴¹ More directly, other terms used in the school handbooks and codes of conduct would be meaningless without the context and conceptual frameworks of fines and fees—they are simply these phenomena known by other more neutralized names.

⁴² Mustaffa & Dawson, *supra* note 16, at 2; see also Destin Jenkins & Justin Leroy, *Introduction: The Old History of Capitalism* (“[R]acial capitalism is the process by which the key dynamics of capitalism . . . [including] credit [and] debt . . . become articulated through race.”), in *HISTORIES OF RACIAL CAPITALISM* 1, 3 (Destin Jenkins & Justin Leroy eds., 2021).

⁴³ See Mahasan Offutt-Chaney, *‘Black Crisis’ and the ‘Likely’ Privatization of Public Education in New Orleans and Liberia*, 63 CRITICAL STUD. EDUC. 180, 183–85 (2022) (discussing the imposition of neo-liberal education policies and the colonial logics of American education); Tomás Monarrez, Brian Kisida & Matthew Chingos, *The Effect of Charter Schools on School Segregation*, 14 AM. ECON. J.: ECON. POL’Y 301, 320 (2022) (describing the impact that charter schools have on school

In advancing racial capitalism as a constructive feature of this Article, however, we do not simply seek to contribute to the academic literature with a theoretical exposition of fines and fees in public education. Instead, we use critical race theory and social science methodologies to construct a direct understanding of the infrastructure, pervasiveness, and impact of economic education sanctions in Pennsylvania public schools.⁴⁵ As the client stories recount, the dispossession inherent in capitalism operates to create, reinforce, and intensify racial differences for students, parents, caregivers, and families. As such, this Article contributes to the field in multiple ways. It attends to an un-

segregation); Wright, *supra* note 30, at 698 (describing the inequities resulting from curricula not epistemologically aligned with the lived experience of Black and Indigenous students of color); Benson & Dumas, *supra* note 26, at 74 (“[P]ublic policies ‘maintain poverty in city neighborhoods and therefore the schools.’” (quoting JEAN ANYON, *RADICAL POSSIBILITIES: PUBLIC POLICY, URBAN EDUCATION, AND A NEW SOCIAL MOVEMENT* 5 (2d ed. 2014))); *see also* Rita Kohli, Marcos Pizarro & Arturo Nevárez, *The “New Racism” of K–12 Schools: Centering Critical Research on Racism*, 41 REV. RSCH. EDUC. 182, 188 (2017) (finding that a growing corpus of research on education has focused on how testing, the development of charter schools, school choice, and divestment from public education exacerbates racialization and racism); Martha Minow, *Confronting the Seduction of Choice: Law, Education, and American Pluralism*, 120 YALE L.J. 814, 823–24 (2011) (stating how “‘freedom of choice’ plans” had “[d]eveloped ostensibly to implement desegregation within public school systems . . . [and] became a euphemism for resurgent racial separation” and resulted in the perpetuation of segregated schools, where white families generally selected schools which were historically white, and Black families generally chose schools which were historically Black); Louise Seamster & Kasey Henricks, *A Second Redemption? Racism, Backlash Politics, and Public Education*, 39 HUMAN. & SOC’Y 363, 368 (2015) (describing how white backlash, including white retreat from public educational spaces, “reshap[es] . . . public institutions like education . . . from whites’ inability to fully include [B]lack in their conception of the American public”); EDUC. L. CTR., *WE NEED SUPPORTIVE SPACES THAT CELEBRATE US: BLACK GIRLS SPEAK OUT ABOUT PUBLIC SCHOOLS 4–5* (2023), <https://www.elc-pa.org/wp-content/uploads/2023/05/FINAL-Supportive-Spaces-for-web.pdf> [<https://perma.cc/X6SN-8HL4>] (outlining the harms of anti-Black racism in Pennsylvania public schools and setting forth solutions as articulated by student experts). Further, state retreat from public schools can also be traced back to efforts to deny Black students access to desegregated schools through privatization schemes. *See* Mark Keierleber, *Critical Race Theory and the New ‘Massive Resistance,’* THE 74 (Aug. 18, 2021), <https://www.the74million.org/article/critical-race-theory-massive-resistance-brown-v-board/> [<https://perma.cc/BS7K-WLJE>] (describing how “massive resistance” included closing public schools and moving their funding to private schools, not bound by *Brown v. Board of Education*); *see also* Act of 1953, Act No. 652, 1953 Ala. Laws 912 (providing assistance for private school instruction for children who have disabilities); Act of 1966, Act No. 170, 1966 Ala. Laws 197–198 (providing state tuition grants for private schools, and declaring that “no child shall be compelled to attend any school”); *A History of Private Schools and Race in the American South*, S. EDUC. FOUND. (2016), <https://southerneducation.org/publications/history-of-private-schools-and-race-in-the-american-south/> [<https://perma.cc/2RAX-WAQ3>] (detailing how “private school enrollment grew at unprecedented rates” around the time of and following *Brown*).

⁴⁴ Mustaffa & Dawson, *supra* note 16, at 2.

⁴⁵ This project, and our larger collaborative work, exist within the interdisciplinary movement of critical race theory and empirical methods (eCRT). *See, e.g.,* Kimani Paul-Emile, *Foreword: Critical Race Theory and Empirical Methods Conference*, 83 FORDHAM L. REV. 2953, 2954, 2956–60 (2015) (identifying the intersection between critical race theory and social science, as well as the mutual benefit to each discipline to complement each other and animate new race scholarship).

dertheorized yet formative area of critical theory and exposes how racial capitalism operates through a familiar racial evasiveness modality to structure and shape educational processes across a spectrum of axes.⁴⁶ Additionally, it invites civil rights education lawyers as well as economic justice and poverty movements to be in direct conversation with the aim of altering the racialized, extractive, and punitive education landscape. We are ready to imagine what the dismantling of fines and fees—akin to work in other public systems—would mean for Black students and families, as well as for Pennsylvania schools to meet their explicit constitutional commitments to public education for all students, which has been recognized as a fundamental right under Pennsylvania’s Constitution, and related statutory commitments to ensure the public education system is free.⁴⁷

⁴⁶ This Article uses the term “racial evasiveness” rather than “colorblind,” though the critical race theory literature has long relied on “colorblindness” to describe racist ideologies, practices, and justifications in law. In using racial evasiveness, this Article responds to Lissa Stapleton and Liam James’s insightful critique:

The racial ideology of denying the significance of race should not be equated with blindness because it is an inadequate descriptor. Color-blindness, as a racial ideology, conflates lack of eyesight with lack of knowing. By naming this racial ideology as color-evasiveness, we demonstrate the social construction of race and ability while simultaneously confronting the social and material consequences of racism and ableism.

Lissa Stapleton & Liam James, *Not Another All White Study: Challenging Color-Evasiveness Ideology in Disability Scholarship* (Practice Brief), 33 J. POSTSECONDARY EDUC. & DISABILITY 215, 216 (2020) (quoting Subini Ancy Annamma, Darrell D. Jackson & Deb Morrison, *Conceptualizing Color-Evasiveness: Using Dis/ability Critical Race Theory to Expand a Color-Blind Racial Ideology in Education and Society*, 20 RACE ETHNICITY & EDUC. 147, 154 (2017)). Although race-critical discussions have historically been relegated “largely or exclusively [to] the domain of constitutional law, criminal law, or criminal procedure,” critical race scholars have recently sought to explicate the impact of race and racism on civil law and civil proceedings. See Portia Pedro, *A Prelude to a Critical Race Theoretical Account of Civil Procedure*, 107 VA. L. REV. ONLINE 143, 158–59 (2021), <https://virginialawreview.org/articles/a-prelude-to-a-critical-race-theoretical-account-of-civil-procedure/> [<https://perma.cc/JDR2-GJ5R>] (discussing the underdevelopment of critical race theory as it relates to civil procedure); Brito et al., *supra* note 16, at 1249–50 (demonstrating “how the [civil] courts assist in capital accumulation through patterns of racialized extraction and dispossession” and arguing that “a primary function of the civil courts is to produce profit for those with capital . . . [and to] maintain the racialized social and economic order that role requires”). As explored in Part I, this Article also engages with the ways that a racial capitalism reproduces ableism. See *infra* notes 62–126 and accompanying text.

⁴⁷ See PA. CONST. art. III, § 14 (mandating a “thorough and efficient system of public education”); William Penn Sch. Dist. v. Pa. Dep’t of Educ., 294 A.3d 537, 947 (Pa. Commw. Ct. 2023) (holding that “the right to public education is a fundamental right explicitly and/or implicitly derived from the Pennsylvania Constitution”); Order Denying Motion for Post Trial Relief, William Penn Sch. Dist. v. Pa. Dep’t of Educ., No.587 M.D. 2014, 2023 WL 4285737, at *6 (Pa. Commw. Ct. filed June 21, 2023) (denying respondents’ Motion for Post Trial Relief and requiring respondents to undertake “the challenge of delivering a system of public education that the Pennsylvania Constitution requires—one that provides for every student to receive a meaningful opportunity to succeed academically, socially, and civilly, which requires that all students have access to a comprehensive effective, and con-

As the stories that open this Article illuminate, racial capitalism in education produces conditions that map against multiple contours of race-making aimed at reifying ideologies of inferiority and justifications for state-sponsored violence and disenfranchisement.⁴⁸ Put another way, for students like Chloe, the threat and actuality of financial penalties expands far beyond the boundaries of economic inequality or injustice or debt creation. They operate to perpetuate race-making stereotypes and tropes of Black identity, implicitly label a Black child as being unworthy of meaningfully accessing their right to public education, and justify the creation and enforcement of systems that deprive Black children (and Black communities) of educational opportunities altogether.⁴⁹ They also ascribe worthiness to learn as bound to racial and class identi-

temporary system of public education”); 22 PA. CODE § 12.1(a) (2023) (“All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free and full education in the Commonwealth’s public schools.”); *see also Resolution on Monetary Library Fines as a Form of Social Inequity*, *supra* note 10 (recommending the elimination of fines and fees in libraries). Although our site of analysis is limited to Pennsylvania, the constitutional commitment to free public education is consistent with many other jurisdictions. *See William Penn Sch. Dist.*, 294 A.3d at 948–49 (discussing other jurisdictions which recognize a constitutional right to public education).

⁴⁸ *See* Gonzalez & Mutua, *supra* note 38, at 138 (“States, for their part, employ physical coercion, law, policies, and ideologies to enact race-making. Racist state policies are often legally enshrined and institutionalized ‘in the areas of marriage, employment, housing/residence, education, sports, etc.,’ and ‘ideological propaganda, [which] gives substance to “popular” racism.’” (alteration in original) (quoting Francis Adu-Febiri, *The State, Racism and Domination in Contemporary Capitalist Societies*, 38 BERKELEY J. SOCIO. 193, 195 (1993))); *see also id.* at 128 (explaining that race-making “structures, facilitates, and naturalizes the injustices profit-making processes create, with expropriation often serving as a fount for nonwhite racialization). “In doing so, race-making reinforces a global system of Euro/white supremacy and domination, which assigns and distributes the benefits and burdens of society along the lines of racial hierarchy.” Gonzalez & Mutua, *supra* note 38, at 128. This is not surprising given that the birth of public schools in the United States emanated from what Du Bois defined as a crisis of white supremacy and accumulation of capital. Pierce, *supra* note 25, at 41S. As Kelley incisively writes, “[r]acial capitalism’s driving force was not the invisible hand of the market but the visible fist of state-sanctioned violence.” *See* Robin D.G. Kelley, *Foreword: Why Black Marxism? Why Now?* to BLACK MARXISM, REVISED AND UPDATED THIRD EDITION: THE MAKING OF THE BLACK RADICAL TRADITION, at xi, xiii (Univ. of N.C. Press 3d ed. 2020) (1983).

⁴⁹ *Cf.* Donna Coker & Thalia González, *A Call for an Intersectional Feminist Restorative Justice Approach to Addressing the Criminalization of Black Girls*, 95 ST. JOHN’S L. REV. 977, 985–86 (2021) (describing the ways in which Black girls are both hypersexualized and perceived as deviant, disobedient, and disruptive at school: stereotypes that contribute to the way in which they are criminalized in school settings); Subini Annamma, Deb Morrison & Darrell Jackson, *Disproportionality Fills in the Gaps: Connections Between Achievement, Discipline, and Special Education in the School-to-Prison Pipeline*, 5 BERKELEY REV. EDUC. 53, 57–60 (2014) (finding that the overrepresentation in certain special education programs of students of color cannot be explained by rates of medically defined disability, leading to schools labeling individuals as having disabilities and thus less worthy of societal benefits due to perceptions of ability to learn rooted in both racism and ableism). *But cf.* PA. CONST. art. III, § 14 (requiring “a thorough and efficient system of public education”); 22 PA. CODE § 12.1(a) (“All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free and full education in the Commonwealth’s public schools.”). In the 1960s and 1970s, legislation, attitudes, and ideologies that criminalized young people led to a growing contin-

ty.⁵⁰ Furthermore, they create intentional boundaries and obstacles that Black children must navigate across the arc of educational experiences, from threats of criminalization that lead them directly into other sites of subjugation, control, and exploitation, to limits on engaging in activities with peers or participating in life-defining moments such as graduation ceremonies.⁵¹ And for caregivers, such as Destiny, late charges are not a “benign” act of economic disenfranchisement. They are direct, abusive, and coercive mechanisms cooperating to compound intersectional matrices of oppression⁵² levied against Black mothers.⁵³ They reinforce the expansive reach of education laws and

gent of police officers present in schools. Thalia González, *Race, School Policing, and Public Health*, 73 STAN. L. REV. ONLINE 180, 185 (2021) [hereinafter González, *Race and School Policing*], <https://www.stanfordlawreview.org/online/race-school-policing-and-public-health/> [<https://perma.cc/Z5QT-YQWX>]. Additionally, “[i]n the 1980s and 1990s, Black students were subject to law-and-order approaches, including broken-window policing strategies, that characterized them as ‘superpredators,’” which in turn “enlarged the scope of law enforcement practices in schools.” *Id.*; see also Elizabeth Hinton, *Creating Crime: The Rise and Impact of National Juvenile Delinquency Programs in Black Urban Neighborhoods*, 41 J. URB. HIST. 808, 814–15 (2015) (describing how 1974 legislation “firmly embedded the carceral state in black urban neighborhoods”).

⁵⁰ See Benson & Dumas, *supra* note 26, at 88 (“[R]acialized founding myths echo . . . discourses around the need for poor and working-class students to have *growth mind-sets* . . . Growth mind-set policy discourse combines colorblind meritocratic ideology, discourses of self-optimization . . . and cutting-edge neuroscience to excise from educational policy discourse the roles of race and class.”).

⁵¹ Examples cited in the text do not necessarily correlate to the schools implicated in clients’ stories. See LOWER MERION SCH. DIST., LOWER MERION SCHOOL DISTRICT HANDBOOK 2021–2022, at 27 (2021) (on file with authors) (“School ID’s [sic] are distributed at the beginning of the school year free of charge. If a student loses/misplaces his/her school ID, there will be a replacement fee of \$20 before a new ID is issued.”); DOWNINGTOWN AREA SCH. DIST., LIONVILLE ELEMENTARY SCHOOL 2021–22 PARENT HANDBOOK 28 (2021) (“Families of elementary students participating in music activities will be assessed a \$25 activity fee per student, per year which allows the student to participate in all music programs . . . This fee is applied to the family max.”) (on file with authors); CORNWALL-LEBANON SCH. DIST., CEDAR CREST HIGH SCHOOL STUDENT HANDBOOK 2020–2021, at 10 (2020) (on file with authors) (“Students in the Class of 2021 are required to pay class dues. . . . Students who do not pay class dues will not be permitted to attend the class trip, prom or graduation.”); *infra* note 192 (describing the truancy laws in Pennsylvania).

⁵² See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) (criticizing the “tendency to treat race and gender as mutually exclusive categories of experience and analysis”); Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door,”* 49 UCLA L. REV. 1343 (2002) (reflecting on the development of critical race theory); Trust Kupupika, Essay, *Shaping Our Freedom Dreams: Reclaiming Intersectionality Through Black Feminist Legal Theory*, 107 VA. L. REV. ONLINE 27 (2021), <https://virginialawreview.org/articles/shaping-our-freedom-dreams-reclaiming-intersectionality-through-black-feminist-legal-theory/> [<https://perma.cc/C5U4-ZACK>] (reasserting intersectionality’s Black feminist roots).

⁵³ See Thalia González & Paige Joki, *Discipline Outside the Schoolhouse Doors: Anti-Black Racism and the Exclusion of Black Caregivers*, 70 UCLA L. REV. DISCOURSE 40, 46–47, 49 (2022) (articulating how the language and enforcement of school rules authorizing the exclusion of caregivers perpetuates the construction of caregivers, particularly Black female caregivers, as “dangerous” or “threats to the school community”); Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters*

policies to regulate Black families beyond the schoolhouse doors and police, punish these families, and exclude those that do not conform to normative formulations of fit parents (re)produced by white supremacy.⁵⁴ Moreover, they serve to concretize the adversarial and anti-Black positionality of public education institutions charged, under the law, with an explicit duty to serve Black children and families.⁵⁵ Following this experience, Destiny's children felt unwelcome and expressed fear about attending and participating in school altogether because it could subject their mother to additional harm and humiliation. This shift in school climate and connectedness was particularly damaging and harmful for Destiny and her children, and transformed their educational experience profoundly. Left unchecked, these assertions of racialized economic power destabilize and limit Black resources and opportunities by predating the right to full participation in public schools implicitly and explicitly on the ability to pay.⁵⁶

& *White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2030 (2017) (emphasizing that Black mothers who need substance abuse treatment are disproportionately shamed, and highlighting the trope of associating addiction with Black mothers, despite white and Black women engaging in substance use or misuse behaviors at approximately the same rates); Alycee Lane, "Hang Them if They Have to Be Hung": Mitigation Discourse, Black Families, and Racial Stereotypes, 12 NEW CRIM. L. REV. 171, 192 (2009) (describing the perpetuation of the stereotype of the "single black mother" linked with "broken families, illegitimacy, . . . economic dependency, . . . [and] crime" (quoting Ludwig L. Geismar & Ursula C. Gerhart, *Social Class, Ethnicity, and Family Functioning: Exploring Some Issues Raised by the Moynihan Report*, 30 J. MARRIAGE & FAM. 480, 481 n.3 (1968))).

⁵⁴ See González & Joki, *supra* note 53, at 45–48 (examining the use of parental exclusion notices and how their negative influence, along with other school discipline, extends outside traditional conceptions of schools and their spatial boundaries, punishing and excluding Black female caregivers); Joya Misra, Stephanie Moller & Marina Karides, *Envisioning Dependency: Changing Media Depictions of Welfare in the 20th Century*, 50 SOC. PROBS. 482, 496 (2003) (finding that the media talks about welfare through a dependency framework because, in part, it represents welfare recipients as single Black mothers); Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 244 (2014) (describing the inception of the stereotype of the "Welfare Queen" applied to Black women); Julilly Kohler-Hausmann, "The Crime of Survival": *Fraud Prosecutions, Community Surveillance, and the Original "Welfare Queen"*, 41 J. SOC. HIST. 329, 335 (2007) (analyzing the "welfare queen" and its constituent stereotypes).

⁵⁵ See Nelson & Williams, *supra* note 22, at 102–04 ("Black peoples and communities are framed as problems in schools. These problems are not based on generalizable behavior patterns, but they are based on stigmas that a broader, whiter general population has created and attached to Black peoples and blackness." (citing Michael J. Dumas & Joseph Derrick Nelson, *(Re)imagining Black Boyhood: Toward a Critical Framework for Educational Research*, 86 HARV. EDUC. REV. 27, 35 (2016))); PA. CONST. art. III, § 14 (requiring a "a thorough and efficient system of public education"); 22 PA. CODE § 12.1(a) (2024) ("All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free and full education in the Commonwealth's public schools.").

⁵⁶ See Pierce, *supra* note 25, at 41S (describing how neo-liberal education policies aid a white oligarchy, while dehumanizing "the dark world"); see also ENV'T CHARTER SCH. AT FRICK PARK, FAMILY HANDBOOK 2018–2019, at 47 (2018) (on file with authors) (establishing a policy for payments required for school activities); N. LEHIGH HIGH SCH., STUDENT HANDBOOK 2021–2022, at 55

To approach U.S. education through the framework of racial capitalism this Article is structured in three parts. Part I introduces the theoretical dimensions of racial capitalism with specific attention on synthesis of current explorations in education.⁵⁷ Part II turns its attention to a specific systemic site of racial capitalism—Pennsylvania schools.⁵⁸ It brings three forms of racial capitalism (accumulation/dispossession, resource extraction/debt creation, and punishment/containment) in direct conversation with a specific modality (fines and fees) through first-hand accounts of Education Law Center-PA clients and analysis of more than seven hundred published and publicly-available and searchable individual public school, charter school, cyber charter school, district handbooks, and codes of conduct which define the rules that public school children must follow or can face discipline and removal including up to permanent expulsion.⁵⁹ From this original dataset, this Article tells a story of racial economic injustice as a central and reproductive fixture in public schools in a manner that neither the poverty law, education law, nor civil rights law fields have done thus far. Recognizing that dismantling a deep-rooted enterprise of control in U.S. education is a formidable task, even in times of racial progress, Part III outlines federal and state mechanisms and protections that civil rights education attorneys could employ to protect Black students and families and halt a reproduction of inequalities.⁶⁰ Although such legal tactics can support and protect individuals in moments of urgency, it will only be through repeated resistance to racial capitalist conditions and mythologies of racial beneficence of education that it will be possible to counterbalance growing retributive, exclusive, antidemocratic, and authoritarian currents.⁶¹

(2021) (on file with authors) (obligating class dues for seniors); CORNWALL-LEBANON SCH. DIST., *supra* note 51, at 10 (requiring class dues).

⁵⁷ See *infra* notes 62–126 and accompanying text.

⁵⁸ See *infra* notes 127–201 and accompanying text.

⁵⁹ See 22 PA. CODE § 12.6(b)(2) (defining expulsion as any period of exclusion exceeding ten school days which “may be permanent expulsion from the school rolls”); see also *id.* §§ 12.3(c), 12.6(a) (requiring the adoption of a code of student conduct, including disciplinary policies, and the publication of school rules defining prohibited behaviors that could result in students being excluded from school).

⁶⁰ See *infra* notes 202–258 and accompanying text.

⁶¹ K–12 public education in the United States is increasingly a site of contestation for retrenchment and white supremacist ideologies. See, e.g., Gloria Oladipo, ‘Just the Tip of the Iceberg’: Kimberlé Crenshaw Warns Against Rightwing Battle Over Critical Race Theory, THE GUARDIAN (Mar. 4, 2023), <https://www.theguardian.com/us-news/2023/mar/04/critical-race-theory-kimberle-crenshaw-segregation-us-democracy> [<https://perma.cc/C66Q-H3HM>] (arguing that the movement against the teaching of racial history is an effort to roll back racial progress and support segregation and authoritarianism); Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 61, 90–94 (2021) (describing a history of racial retrenchment in the United States, and analyzing, among other currents, the movement against critical race theory in schools within this history); *Race, Reform*

I. EDUCATION AND RACIAL CAPITALISM

Legal scholarship has long centered interrogation of the diverse, co-influential, and compounding formulations of explicit and implicit racial privileges implanted in U.S. educational structures and systems, producing and reproducing racialized inequalities and injustices for more than two hundred years.⁶² A broad body of work has exposed how educational jurisprudence has fundamentally operated to preserve an educational apartheid of the exclusivity

& *Retrenchment Revisited: Can States Ban Learning About Our Full History?*, ABA (Feb. 1, 2022), https://www.americanbar.org/groups/crsj/events_cle/archive/race-reform-retrenchment-revisited/ [<https://perma.cc/RWX8-NC7A>] (describing the movement against critical race theory as anti-democratic); CRT FORWARD, TRACKING THE ATTACK ON CRITICAL RACE THEORY 4–5 (2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf [<https://perma.cc/G36D-QV7Z>] (describing the misrepresentation of and attack on critical race theory); Dana N. Thompson Dorsey & Gwen D. Roulhac, *From Desegregation to Privatization: A Critical Race Policy Analysis of School Choice and Educational Opportunity in North Carolina*, 94 PEABODY J. EDUC. 420, 427, 436 (2019) (arguing that white people are reclaiming a right to segregated schools in North Carolina); Anthony Conwright, *Today It's Critical Race Theory. 200 Years Ago It Was Abolitionist Literature*, MOTHER JONES (2021), <https://www.motherjones.com/politics/2021/07/critical-race-theory-slave-abolition-school-literature/> [<https://perma.cc/8BVX-XYK2>] (arguing that conservatives, out of a fear of rebellion in 2020, first sought to punish protesters, then aimed to ban books that would help challenge white supremacy).

⁶² See Amity L. Noltemeyer, Julie Mujic & Caven S. McLoughlin, *The History of Inequity in Education* (describing how white Americans prevented Black Americans who were both enslaved and free from accessing education in the earliest years of slavery's prevalence), in DISPROPORTIONALITY IN EDUCATION AND SPECIAL EDUCATION: A GUIDE TO CREATING MORE EQUITABLE LEARNING ENVIRONMENTS 3, 5 (Amity L. Noltemeyer & Caven S. McLoughlin eds., 2012); *Brown v. Bd. of Educ.*, 347 U.S. 483, 487–88 (1954) (describing instances where Black students were denied access to public schools due to laws allowing or mandating racial segregation); Harris, *Whiteness as Property*, *supra* note 3, at 1754 (stating that “*Brown* declined to acknowledge the problem of substantive and de facto inequities in the education system”); *Milliken v. Bradley*, 418 U.S. 717, 724–27, 752–53 (1974) (disallowing an inter-district remedy to school segregation, despite residential segregation and educational segregation that existed all throughout the Detroit metropolitan area and across multiple school districts); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37, 54–55 (1973) (holding that the use of local property taxes to fund local public schools was permissible despite the inequitable result in funding school districts, and that there is no right to equal funding in education); *Racial Disparities in Education and the Role of Government*, U.S. GOV'T ACCOUNTABILITY OFF. (June 29, 2020), <https://www.gao.gov/blog/racial-disparities-education-and-role-government> [<https://perma.cc/J9PK-L3WN>] (reporting data that shows racial inequalities in the quality and access to education and highlighting that the racial makeup of the schools with the highest poverty and least resources was mostly composed of Black and Latinx students); Pierce, *supra* note 25, at 34S (describing W.E.B. Du Bois's 1935 research into education in Reconstruction and his conclusion that state disinvestment from education was an effective strategy to prevent an emancipatory educational system). Research by federal agencies demonstrates that racial inequality affects disciplinary action in schools, with a disproportionate number of Black students being expelled or suspended. *Racial Disparities in Education and the Role of Government*, *supra*. See generally Kirsten Weir, *Inequality at School: What's Behind the Racial Disparity in Our Education System*, 47 MONITOR ON PSYCH., Nov. 2016, <https://www.apa.org/monitor/2016/11/cover-inequality-school> [<https://perma.cc/RCW5-36Y2>] (reporting data showing that due to disparities in accessing educational opportunities, in 2014 the rate of high school graduation for Black students was 73%, while the rate of graduation for white students was 87%).

of whiteness in K–12 schools.⁶³ Some of the most pronounced early legal expressions of racial capitalism—represented as racial violence, dispossession, and epistemicide—in American education are evidenced in the legally enforced denial of education to both free and enslaved Black people,⁶⁴ forced attendance by Indigenous and Native American children at abusive settler colonial residential schools,⁶⁵ the placement of eugenics into education policy,⁶⁶

⁶³ See, e.g., Harris, *Whiteness as Property*, *supra* note 3, at 1754 (alleging that the Supreme Court, in “*Brown II* recognized the property interest in whiteness by leaving intact the ability of whites to control, manage, postpone, and if necessary, thwart change”). As Dumas contends, “any racial disparity in education should be assumed to be facilitated, or at least exacerbated, by disdain and disregard for the Black. . . . That is to say, these are all policies in which the Black is positioned on the bottom.” Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11, 17 (2016); see also Harris, *Whiteness as Property*, *supra* note 3, at 1713 (describing whiteness as a “valuable asset”); Pierce, *supra* note 25, at 38S (echoing W.E.B. Du Bois in his description of caste education, noting that “[a] fundamental goal of caste schooling is the need to teach individuals from both the white and dark worlds how to understand and *live* as caste subjects as well as the value of social life attached to each”); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1377–78 (1988) (“It is not separation *per se* that made segregation subordinating, but the fact that it was enforced and supported by state power, and accompanied by the explicit belief in African-American inferiority.”). Further, in 1973, the U.S. Supreme Court in *San Antonio Independent School District v. Rodriguez* held that the use of local taxation of property related to local control of public schools was a permissible consideration in funding school districts inequitably and that there is no right to equal funding in education between districts afforded by the Constitution. 411 U.S. at 54–55.

⁶⁴ Noltemeyer et al., *supra* note 62, at 5 (describing how most white Americans prevented Black people who were both free or enslaved from accessing educational opportunities in the early years of the era of slavery, including through anti-literacy laws); Terence Fitzgerald, *Control, Punish, and Conquer: U.S. Public Schools’ Attempts to Control Black Males*, 12 CHALLENGE: J. RSCH. ON AFR. AM. MEN 38, 39 (2006) (drawing a line between social control in the education of Black people, particularly Black men, and the denial of education during the era of slavery); Conwright, *supra* note 61 (citing early anti-literacy laws that criminalized reading and writing for Black people who were enslaved).

⁶⁵ Noltemeyer et al., *supra* note 62, at 3–4, 9 (describing the emergence of boarding schools for Native American children with the goal of forcing them to assimilate to white culture while also prohibiting them from speaking Indigenous languages); Ann Murray Haag, Note, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 TULSA L. REV. 149, 150–54 (2007) (providing a history of the United States’ policy of assimilation toward Native Americans, including instituting boarding schools to eradicate Native American culture); Andrea A. Curcio, *Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses*, 4 HASTINGS RACE & POVERTY L.J. 45, 48–49 (2006) (providing an overview of the differences between Indigenous and European culture); Hope MacDonald LoneTree, *Healing from the Trauma of Federal Residential Indian Boarding Schools*, ADMIN. FOR CHILD. & FAMS. (Nov. 2021), <https://www.acf.hhs.gov/blog/2021/11/healing-trauma-federal-residential-indian-boarding-schools> [<https://perma.cc/Y8TA-53DQ>] (highlighting the negative consequences of the federal Indian Civilization Act of 1819, enacted to establish residential Indian boarding schools); Nat’l Indian Youth Council, *Intermountain Indian Sch. Chapter v. Bruce*, 485 F.2d 97, 98 (10th Cir. 1973) (describing the facts of the case, in which students at a residential school sued to have it closed on the basis that, among others, it violated the Fifth Amendment and students’ constitutional rights).

and decades of formal racial segregation buttressed by a complex web of interlocking Jim Crow laws.⁶⁷ Legal scholars have argued that these laws paint “Black people [as] tenants at best and trespassers at worst.”⁶⁸ We extend this

⁶⁶ Ruth Jones, *Eugenics in Education Policy and the Impact on African American Students* 16–17 (May 16, 2019) (Master’s thesis, University of San Francisco), <https://repository.usfca.edu/cgi/viewcontent.cgi?article=2286&context=thes> [<https://perma.cc/P6C5-RCKB>] (describing how eugenics theories became embedded in the education system); Ann Gibson Winfield, *Eugenics and Education: Implications of Ideology, Memory, and History for Education in the United States* 11 (2004) (Ph.D. dissertation, North Carolina State University), <https://repository.lib.ncsu.edu/server/api/core/bitstreams/22c4a4ba-b80d-4e95-8480-315927fa0157/content> [<https://perma.cc/QHP8-QV82>] (examining the connection between the “Fathers of Curriculum” and eugenic theory); John Rosales & Tim Walker, *The Racist Beginnings of Standardized Testing*, NEATODAY (Mar. 20, 2021), <https://www.nea.org/nea-today/all-news-articles/racist-beginnings-standardized-testing> [<https://perma.cc/88PM-K52B>] (detailing that by 1918, over one hundred standardized tests were developed and used thereafter as instrumentalities of racism and exclusion); Alan Stoskopf, *The Forgotten History of Eugenics*, RE-THINKING SCHS. (1999), <https://rethinkingschools.org/articles/the-forgotten-history-of-eugenics/> [<https://perma.cc/48WS-LKPD>] (“Eugenics became a top-down model of ‘education reform . . .’”); see also Pierce, *supra* note 25, at 36S (describing Du Bois’s arguments against the eugenic model of racial schooling within a caste education framework).

⁶⁷ See Noltmeyer et al., *supra* note 62, at 6 (describing the post-bellum enactment of Jim Crow laws, which required racial segregation, and the segregation of schools based “on a ‘separate-but-equal’ philosophy”); *Cumming v. Richmond Cnty. Bd. of Educ.*, 175 U.S. 528, 529, 543, 545 (1899) (ruling that a county Board of Education in Georgia did not violate the Constitution when it closed the county’s only Black high school, without considering the validity of the Georgia Constitution’s provision requiring public school segregation); *Gong Lum v. Rice*, 275 U.S. 78, 79–80, 85–86 (1927) (affirming that a Chinese-American student could be legally denied access to a white school on the basis of her race); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 342–43, 351 (1938) (holding that the State of Missouri was required to provide facilities for public legal education for Black students “substantially equal to those which the State there afforded for persons of the white race”); *Sweatt v. Painter*, 339 U.S. 629, 635–36 (1950) (declining to reexamine *Plessy v. Ferguson*, in which racial segregation in schools and the doctrine of separate but equal was upheld).

⁶⁸ Marissa Jackson Sow, *Whiteness as Contract*, 78 WASH. & LEE L. REV. 1803, 1843 (2022). Such a description is also well-suited for the violence perpetuated against children of color by the juvenile justice system in Pennsylvania. See, e.g., Lisa Gartner, *Beaten, Then Silenced*, PHILA. INQUIRER (Feb. 20, 2019), <https://www.inquirer.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html> [<https://perma.cc/PFM5-XU9G>] (describing the continual abuse experienced by students at Glen Mills, a reform school); *News Room: Derrick et al. v. Glen Mills Schools et al.*, EDUC. L. CTR., <https://www.elc-pa.org/cases/derrick-et-al-v-glen-mills-schools-et-al/> [<https://perma.cc/VC5X-AGXS>] (describing a class action lawsuit filed on behalf of former students at Glen Mills Schools who were placed by court in a residential “rehabilitative” facility where they were subjected to physical and emotional abuse and deprived of their right to education in violation of federal and state laws and constitutional protections—disproportionately affecting Black youth, many of whom are disabled); *Chester County Intermediate Unit Approves \$3 Million Settlement in Glen Mills Schools Class Action Suit to Benefit Former Students*, EDUC. L. CTR., <https://www.elc-pa.org/2023/03/20/glenmillssettlement/> [<https://perma.cc/NW5H-SJVG>] (reporting on a \$3 million settlement with one of the defendants, Chester County Intermediate Unit to resolve claims against the local educational agency, awarding damages for abuse and compensatory education services for deprivation of education on a per day basis).

logic and W.E.B. Du Bois's penetrating critique of American democracy⁶⁹ to K–12 schools, asserting that Black *students* are tenants at best and trespassers at worst, and punished for their status along a continuum by local, state, and federal affirmations of exclusivity of dominion.⁷⁰ Further, as Cedric Robinson distills in his seminal work on racial capitalism, “comprehension of the particular configuration of racist ideology and Western culture has to be pursued his-

⁶⁹ W.E.B. DU BOIS, *DARKWATER: VOICES FROM WITHIN THE VEIL* 80 (Paul Negri & Julie Nord eds., Dover Publ'n 1999) (1920) (describing how, after Reconstruction, efforts toward democracy gave way to disenfranchisement for people of color).

⁷⁰ See Janel A. George, *The End of “Performative School Desegregation”: Reimagining the Federal Role in Dismantling Segregated Education*, 22 *RUTGERS RACE & L. REV.* 189, 192 (2021) (arguing that the federal government has helped to increase school segregation through inaction); Kimberly Jenkins Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, 96 *IND. L.J.* 51, 55 (2020) (arguing that when it comes to the protection of education as a fundamental right, “neither the federal, state, nor local governments can tackle these herculean challenges alone”). It is no accident that when Black people have “transgressed” into white dominant educational spaces, they have been met with punishment and domination. See, e.g., *Davis v. Cnty. Sch. Bd. of Prince Edward Cnty.*, 103 F. Supp. 337, 340 (E.D. Va. 1952) (holding that Virginia’s statutory provisions requiring segregated education were valid), *rev’d*, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Briggs v. Elliott*, 103 F. Supp. 920, 922–23 (D.S.C. 1952) (holding that South Carolina’s statutory provisions requiring segregated education were valid), *rev’d*, *Brown*, 347 U.S. 483. Both historical and contemporary records affirm that the preservation of whiteness and normative view of white superiority have subjected individuals and communities of color to punishment, including violence and even death. See, e.g., *Cooper v. Aaron*, 358 U.S. 1, 7, 11 (1958) (describing actions taken by the Governor of Arkansas to prevent Black students from entering a white school after the *Brown* desegregation mandate by stationing Arkansas National Guard members to “forcibly prevent[]” Black students from entering school for three weeks); 1968: *East Los Angeles Walkouts*, *LIBR. CONG.*, <https://guides.loc.gov/latinx-civil-rights/east-la-walkouts> [<https://perma.cc/2STY-NSQM>] (documenting the carceral response from police following the East Los Angeles Walkouts, organized to protest discrimination and unequal treatment of Mexican-American students in schools); Benson & Dumas, *supra* note 26, at 90 (describing how schools reify racial capitalism through the punishment of activists). Additionally, violence in the form of youth criminalization in schools is especially prevalent, disproportionately affecting students of color. See Katherine Elizabeth Holloway, *Consequences of Police in Schools: The Criminalization of Children in an Era of Mass Incarceration*, 19 *HASTINGS RACE & POVERTY L.J.* 3, 6, 18 (2021) (reporting that police in schools punish students of color at a disparately higher rate, especially Black students, through the use of discipline, including arrest and physical abuse). From the late 1960s to today, youth have been over-policed and criminalized through the presence of police in schools, making schools a major site of educational inequality. See *id.*; Ryan King & Marc Schindler, *Reconsidering Police in Schools* (discussing “the ‘school-to-prison’ pipeline”), in *A BETTER PATH FORWARD FOR CRIMINAL JUSTICE* 38, 38–39 (Rashawn Ray & Brent Orrell eds., 2021), https://www.brookings.edu/wp-content/uploads/2021/04/Better-Path-Forward_Brookings-AEI-report.pdf [<https://perma.cc/8745-MBB7>]; González, *Race and School Policing*, *supra* note 49, at 180 (articulating the harms of criminalization and racism experienced by youth of color in schools using a public health perspective); Chelsea Connery, *The Prevalence and the Price of Police in Schools*, *UConn NEAG SCH. OF EDUC.* (Oct. 27, 2020), <https://education.uconn.edu/2020/10/27/the-prevalence-and-the-price-of-police-in-schools/> [<https://perma.cc/SPP5-CYU4>] (reporting that police are deployed mainly in schools serving predominantly Black and Latinx students); Amber Baylor, *Criminalized Students, Reparations, and the Limits of Prospective Reform*, 99 *WASH. U. L. REV.* 1229, 1230–31 (2022) (exploring the psychological toll of youth criminalization and involvement with police, particularly as experienced by Black students).

torically through successive eras of violent domination and social extraction.”⁷¹ Additionally, “racialism and its permutations persisted, rooted not in a particular era but in the civilization itself.”⁷²

In advancing racial capitalism as the theoretical framework by which to interrogate public education, and specifically Pennsylvania’s educational fines and fees regime, we join with others who approach racial capitalism as an “activist hermeneutic,” that “makes a temporal claim upon the study of capitalism.”⁷³ At its center, racial capitalism is a disruptive and generative framework with transdisciplinary applications.⁷⁴ Legal scholars have observed that “[r]acial capitalism cuts through the clouded mystification of capitalism’s evolution story by linking it to the origin’s most indispensable component: exploitation.”⁷⁵ As such, the taxonomy of racial capitalism emerged as a corrective course to both a historical record that failed to fully capture the racialized productions of globalized neoliberal capitalism and Marxist misrecognitions of racial structures that composed capitalism.⁷⁶ Originating with South African scholars,⁷⁷ the internalization of racial capitalism into an American conversational domain occurred through the work of Cedric Robinson.⁷⁸ Simply put, for Robinson there is no capitalism without race; race exists as a material and ideological power that comprises capitalism, and “[t]he historical development of world capitalism was influenced in a most fundamental way by the particularistic forces of racism and nationalism.”⁷⁹ Moreover, he argues that as “[t]he

⁷¹ ROBINSON, *supra* note 11, at 82.

⁷² *Id.* at 29.

⁷³ Benson & Dumas, *supra* note 26, at 76 (quoting Jodi Melamed, *Racial Capitalism*, 1 CRITICAL ETHNIC STUD. 76, 76 (2015)); Jenkins & Leroy, *supra* note 42, at 10.

⁷⁴ See *supra* note 16 and accompanying text; Jenkins & Leroy, *supra* note 42, at 8–15 (recounting the racial capitalist tradition, and describing racial capitalism as “chronologically and sequentially disruptive” and tied to radical political change). See generally Jarod Kawasaki, *Racial Capitalism and Student Teachers of Color: A Mixed Methods Case Exploring the Cost of Becoming a Teacher*, 19 NEW EDUCATOR 197 (2023) (applying racial capitalism to the preparation of teachers).

⁷⁵ andré douglas pond cummings & Kalvin Graham, *Racial Capitalism and Race Massacres: Tulsa’s Black Wall Street and Elaine’s Sharecroppers*, 57 TULSA L. REV. 39, 41 (2021).

⁷⁶ See Benson & Dumas, *supra* note 26, at 78, 79 (describing racial capitalism’s break with Marxist theory and its analysis of neo-liberalism); Jenkins & Leroy, *supra* note 42, at 12 (noting that racial capitalism requires a reconsideration of the methodology of capitalist history).

⁷⁷ Gonzalez & Mutua, *supra* note 38, at 129. Gerrard, Sriprakash, and Rudolph note, however, that the lineage of racial capitalism may not be as discrete as some scholars suggest, arguing that the “co-articulation of racism and capitalism can be traced to a long history of anti-colonial and anti-racist scholarship and struggle – even if some of these did not draw on the term ‘racial capitalism’ explicitly.” Gerrard et al., *supra* note 31, at 426.

⁷⁸ ROBINSON, *supra* note 11, at 1; see also Jenkins & Leroy, *supra* note 42, at 4 (describing how Robinson put forth the dominant conception of racial capitalism). Robinson asserts that the European civilizational tendency was “not to homogenize but to differentiate—to exaggerate regional, subcultural, dialectical differences into ‘racial’ ones.” ROBINSON *supra* note 11, at 27.

⁷⁹ ROBINSON, *supra* note 11, at 9.

development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology.”⁸⁰ As recent legal scholarship explicates, Robinson’s formulation of racial capitalism is an expositive evolution of the historical: “[c]apitalism was ‘racial’ not because of some conspiracy to divide workers or justify slavery and dispossession, but because racialism had already permeated Western feudal society.”⁸¹ Engagement with racial capitalism thus provides critical scholars and civil rights education attorneys an interdisciplinary valence from which to probe historical and contemporary implications of education laws, policies, and practices such as those briefly noted subsequently and the lived experiences of Chloe and Destiny that framed this work.

In theorizing the “long game” of racial capitalism, the argument has been made that “[c]apitalism and [w]hite supremacy are dynamically linked in a ‘complex recursivity’ wherein racial violence shapes, and is shaped by, the *state-capital order*.”⁸² These hierarchies are also inextricably tied to and depend upon ableism and its intersection with white supremacy:

Disability Justice understands that ableism operates by incorporating capitalist definitions of our worth based on our productivity or our labor, or our output, and likewise, that other forms of oppression depend upon ableism[—]white supremacy depends upon ableism[—]by positing that people of color are necessarily inferior to white people, that our body [and] minds exist only to be extracted from and exploited for the benefit of whiteness and for racialized capitalism.⁸³

Moreover, anti-Blackness and ableism cannot exist without each other: “‘Anti-Black ableism’ is redundant and contradictory simultaneously . . . because ableism and anti-Blackness are mutually inclusive and mutually dependent. So you can’t have one without the other and you also can’t adjectively modify one with the other because where one is they both must be.”⁸⁴ In

⁸⁰ *Id.* at 2. Ruth W. Gilmore, a leading theorist of racial capitalism, defines racism as “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability.” RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (Earl Lewis et al. eds., 2007).

⁸¹ Robin D.G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, BOS. REV. (Jan. 12, 2017), <https://www.bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice/> [https://perma.cc/6MKT-9P3X].

⁸² Benson & Dumas, *supra* note 26, at 77.

⁸³ Qudsiya Naqui & Lydia X.Z. Brown, *Intersectionality and Algorithmic Bias*, DOWN TO THE STRUTS, at 09:38 (Aug. 10, 2021), <https://www.downtothestruts.com/episodes/season-3-episode-3-algorithmic-bias> [https://perma.cc/P34G-T3EY].

⁸⁴ Talila A. Lewis, *Why I Don’t Use “Anti-Black Ableism” (& Language Longings)*, TALILA A. LEWIS (Aug. 17, 2020), <https://www.talilalewis.com/blog/why-i-dont-use-anti-black-ableism> [https://perma.cc/AZQ2-CGXQ].

schools, these mutually reinforcing systems generate the policed social strata and generate an environment of racial capitalism that flourishes even more fully.⁸⁵

That the transcendent power of racial capitalism as a political arrangement invites rich scholarly inquiry is evidenced in the fields in which examination exists, from sociology, to political science, to urban studies, to public health, to geography, to education, to law.⁸⁶ Within and across these distinctive critical works, central themes of racial capitalism exist.⁸⁷ In Part II, this Article identifies three expressions of racial capitalism from client stories and systematic coding of school handbooks and codes of conduct: dispossession, resource extraction and debt creation, and punishment.⁸⁸

An analysis grounded in racial capitalism also allows for the identification of the beneficiaries of educational policies and how economic benefits are mutually constitutive of intersectional racialized orders of subordination.⁸⁹ In the case of fines and fees, we contend there are at least four classes of beneficiaries. The first is the state, vis-à-vis schools, which directly extracts fines and fees from Black students, caregivers, and families.⁹⁰ The second are white students (and their families) who, benefitting similarly from examples of race-neutral and color-evasive policies and practices of school choice and school discipline, are able to more freely access their fundamental right to education.⁹¹ It is not simply an issue of educational access, however. The racial capitalist regime serves simultaneously to exacerbate the economic precarity experienced by students who have been relegated to the margins of education systems under the intersectional burden of racism and economic injustice, while

⁸⁵ See *id.* (describing the impact of ableism on Black people, and the benefits that ableism brings to institutions of white supremacy).

⁸⁶ See, e.g., *supra* note 16 and accompanying text (summarizing existing scholarship into racial capitalism); Gonzalez & Mutua, *supra* note 38 (exploring racial capitalism's logic); Oh, *supra* note 16, at 2338 (describing the role of racial capitalism in public health); Prentiss A. Dantzler & Aja D. Reynolds, *Making Our Way Home: Housing Policy, Racial Capitalism, and Reparations*, 26 J. WORLD-SYS. RSCH. 155, 156 (2020) (analyzing "the racial character of housing policy under a system of racial capitalism"); Carmen G. Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 O'NATI SOCIO-LEGAL SERIES 108, 108 (2021) (applying racial capitalism to climate justice).

⁸⁷ See, e.g., Dantzler, *supra* note 38, at 119 (providing a schema for racial capitalism's interactions and levels); Brito et al., *supra* note 16, at 1262–63 (describing different strands in racial capitalism scholarship).

⁸⁸ See *infra* notes 127–200 and accompanying text.

⁸⁹ See Naqui & Brown, *supra* note 83, at 09:38 (describing how ableism and racism serve to benefit racial capitalism).

⁹⁰ See *infra* notes 162–171 and accompanying text.

⁹¹ See Pierce, *supra* note 25, at 43S ("The 'gated communities for children of privilege' that have emerged in cities across the country are sites where an ontological value of life is being stamped on bodies and populations through free market rationalizations that accompany choice and charter reorganizations.").

also strengthening white students' economic stability and positively compounding resource accumulation for white families.⁹² Third are the corporations that rely on consumer debt, including collection and delinquency.⁹³ The experience of one school parent that was assisted by Education Law Center-PA, Janae, a Black mother who is raising of several children with disabilities who attend public schools on her own, provides just one example of this. The prohibitive cost of her daughter's school uniform caused significant economic challenges for her family: unmooring their economic stability and forcing not only choices as to necessities, but bringing them in close contact with extractive capitalist entities and structures. This pragmatic reality, coupled with narratives associated with racialized debt and moral blame of Black people, ensures the racial capitalist structure remains intact and without question.⁹⁴ A fourth class of beneficiaries are civil and criminal court systems that punish through ancillary economic sanctions.⁹⁵ As discussed later in this Article, fines and fees can trigger compulsory school attendance and truancy proceedings, placing students like Chloe at even greater risk.⁹⁶ Further, as schools relocate students into court systems, they reinforce race-making processes and generate fear to prevent resistance to dehumanizing treatment.⁹⁷

Though legal scholarship has yet to fully develop racial capitalism as a framework to analyze education law and policy,⁹⁸ interdisciplinary works problematize and challenge white epistemologies and white supremacist cultures sited in K–12 and higher education.⁹⁹ Drawing on diverse methodologies, scholars offer a range of engagements from systemic analyses to theoretical examinations, treading into topics familiar to those legal audiences, e.g., racial violence,¹⁰⁰ caste education,¹⁰¹ dispossession of land on which schools are

⁹² See *id.* at 24S (describing capitalist accumulation and white supremacy as essential parts of the caste schooling regime).

⁹³ See *infra* notes 157–182 and accompanying text.

⁹⁴ See Cammett, *supra* note 54, at 264–65 (discussing how racist stereotypes as to welfare recipients shifted the policy discussion toward punishing beneficiaries and away from the economic realities of the beneficiaries' lives).

⁹⁵ See Brito et al., *supra* note 16, at 1271 (“A major function of the civil courts is to facilitate the routine transfer of assets from individuals, disproportionately people of color, to white-controlled corporations.”).

⁹⁶ See *infra* notes 183–200 and accompanying text.

⁹⁷ See *infra* notes 183–200 and accompanying text.

⁹⁸ Legal scholars have, however, peripherally treated racial capitalism in education; for example, Brito et al. note the malleability of racial capitalism and argue the applicability of the framework of racial capitalism to non-markets, including education. Brito et al., *supra* note 16, at 1266–67.

⁹⁹ See, e.g., *supra* notes 25–33 and accompanying text.

¹⁰⁰ See Benson & Dumas, *supra* note 26, at 74–75, 77–78, 90 (using racial capitalism to analyze education, including the violence of policing in schools).

¹⁰¹ See generally Pierce, *supra* note 25 (analyzing Du Bois's conception of a racial capitalist society through the framework of caste education).

built,¹⁰² and creation and maintenance of higher education debt,¹⁰³ to more distal conceptions, e.g., the exploitative economies in teacher education,¹⁰⁴ educational leadership and reform,¹⁰⁵ and curriculum.¹⁰⁶ Across each of these diverse works, a central theme exists—that entwined systems of capitalism and racial domination have been constitutive of educational systems and practices.¹⁰⁷ It has been argued that this understanding necessitates that educational research engage in wider analyses.¹⁰⁸

To conceptualize K–12 education as a site ripe for racial capitalism analysis and civil rights intervention, we draw on the frameworks set forth by Dantzer (analyzing urban processes) and Gonzalez and Mutua (addressing racial capitalism’s implications for law).¹⁰⁹ From Dantzer, we adopt the modality-agent-ideology framework.¹¹⁰ From Gonzalez and Mutua, we elevate racial capitalism’s structural feature of race-making processes.¹¹¹ This integrative approach aligns with recent calls to education scholars for incisive inquiry into racial capitalism “not only as a framework within which racial violence is produced and

¹⁰² See Gerrard et al., *supra* note 31, at 425 (exploring the basis of education within the dispossession of land and people).

¹⁰³ See *supra* notes 16, 33.

¹⁰⁴ See generally Kawasaki, *supra* note 74 (using racial capitalism, in a study, to critique the traditional model of student teaching).

¹⁰⁵ See generally Wright, *supra* note 30 (analyzing the Eurocentric epistemologies of educational leadership and highlighting the need for more Black and Indigenous voices in education).

¹⁰⁶ See generally Nona Anderson et al., *Racial Capitalism and the School Geography Curriculum*, 47 TEACHING GEOGRAPHY 15 (2022) (arguing that racial capitalism is an important framework for educating students on environmental and geographic racism, including the impact of natural disasters on traditionally marginalized communities, which is the result of structural violence toward colonized peoples.); Morales-Doyle & Gutstein, *supra* note 28 (describing the restrictions on STEM curriculum in Chicago Public Schools, which help create a racially divided labor force).

¹⁰⁷ See Gerrard et al., *supra* note 31, at 429 (“[W]e see the theories of racial capitalism we have explored here as fundamental to understanding education systems and thus they should not be siloed into specialist inquiries or made marginal to the field.”).

¹⁰⁸ *Id.* This Article asserts research is not the only domain of action, but that legal practice should also centralize racial capitalism as a directive and orienting framework for advocacy.

¹⁰⁹ See Dantzer, *supra* note 38, at 119–21 (describing racial capitalism’s levels in the urban process); Gonzalez & Mutua, *supra* note 38, at 128 (analyzing racial capitalism and explicating two structural features thereof, race-making and profit-making).

¹¹⁰ See Dantzer, *supra* note 38, at 119–21. This is a framework for analyzing different mediums of racial capitalism. *Id.* at 119. The first level focuses on accumulation through dispossession and displacement. *Id.* at 120. The second level focuses on the racialized labor-capitalist relationship. *Id.* at 124. The third level focuses on ideology using a Marxian superstructure model. *Id.* at 127. In urban processes, level one examines processes of displacement and dispossession and modalities such as redlining, segregation, exclusionary zoning, foreclosures, and gentrification, to name a few. *Id.* at 120.

¹¹¹ See Gonzalez & Mutua, *supra* note 38, at 160–66 (mapping race-making processes, which involves stratification, differentiation, and stigmatization).

enacted but also as a system *for which* race and racial violence have been, and remain, a foundational, necessary, and constitutive material force.”¹¹²

In connecting frameworks from sociology, urban studies, and law, we seek to achieve multiple goals. One is to offer an organizing arrangement for other legal scholars interested in uplifting interlocking arrangements of structural racism expressed in specific modalities that have escaped interrogation of legal critical theorists and movement activists thus far. Another is to be additive to the larger field of racial capitalism and promote disruptive scholarship, building a broader corpus of literature relative to the exploitative nature of education law and policy. A third is to directly apply this framework to the functionality of educational fines and fees within the construct of racial capitalism. Before turning directed attention in Part II to the structural feature of race-making, we conclude Part I by superimposing the fines and fees regime onto Dantzler’s modality-agent-ideology framework.¹¹³

At one level are the formal policies of what we name a fines and fees regime in Pennsylvania, specifically 3,846 independently coded textual sections from 729 school and LEA school handbooks and codes of conduct that were made publicly available.¹¹⁴ These are a modality of racial capitalism.¹¹⁵ At another intermediary level are agents operating at micro-, meso-, and macro-levels.¹¹⁶ First are school officials who deploy various forms of the regime. Second are school attorneys enforcing the decisions of individual school officials and upholding the regime against challenges by education law attorneys. Third are school boards and LEAs that produce and promulgate the regime. In identifying agents of extraction, we do not claim that fines and fees are necessarily an accident borne from ignorance or a manifestation of personal bias, though they could be deployed in this manner, but instead an integral and intentional mechanism of a system that reproduces precarity, creates a surplus of racialized animosity, and subsists on Black suffering.¹¹⁷ As Jeremy Benson and Michael Dumas contextualize, “[u]rban schools and neighborhoods embody

¹¹² Benson & Dumas, *supra* note 26, at 77. As Gilmore argues, in the context of policing and perpetuation of the racist narrative of Black criminality, the racial capitalist order produces “abandonment of the weakest members of society.” GILMORE, *supra* note 80, at 52.

¹¹³ See Dantzler, *supra* note 38, at 119–21; Gonzalez & Mutua, *supra* note 38, at 128.

¹¹⁴ See Appendix 1.

¹¹⁵ See Dantzler, *supra* note 38, at 120–21 (describing racial capitalism modalities which involve racializing processes).

¹¹⁶ See John E. Tropman, *Micro, Mezzo, and Macro: A Guide to the Levels of Social Work*, MSW ONLINE, <https://mastersinsocialworkonline.org/resources/levels-of-social-work/> [<https://perma.cc/NAG4-ZQPA>] (Dec. 18, 2023) (“[S]ocial work is divided into three levels: micro (the individual level), mezzo (the group level), and macro (the community/governmental level).”).

¹¹⁷ See Pierce, *supra* note 25, at 24S (emphasizing the importance of the system of public schools for manifesting the caste system, perpetuating white supremacy and “producing racial and economic competition between the White and non-White worlds”).

historical continuities in the racialization of space, as ‘a plantation logic characteristic of (but not identical to) slavery. . . .’¹¹⁸ The third level is the ideological basis of racial capitalism and its historical and continued impact on education law, policy, and practice as mutually imbricated hierarchies of wealth and race.¹¹⁹

Public education, like other American systems, exists within a constitutive system of violence and exploitation organized by political, social, and jurisprudential dimensions that maintain a “racial superstate”¹²⁰ in which “expectations of power and control that enshrine the status quo as a neutral baseline . . . [mask] the maintenance of white privilege and domination.”¹²¹ As is the case in other examples of education law, and identified previously, the racial capital beneficiary of fines and fees is not simply the state. As wealth is transferred away from Black students and families, and punishments are aimed at dispossession of access to educational opportunities, capital relocates to white students and white families either directly in educational attainment or downstream, represented as higher wages, lower education debt, and other formulations of capital accumulation.¹²² For example, in the context of school choice

¹¹⁸ Benson & Dumas, *supra* note 26, at 86 (quoting Katherine McKittrick, *Plantation Futures*, 17 SMALL AXE: CARIBBEAN J. CRITICISM 1, 3 (2013)).

¹¹⁹ See Dantzer, *supra* note 38, at 127 (stating that to use the framework of racial capitalism, one must accept the presence of capitalism and racism).

¹²⁰ Sow, *supra* note 68, at 1839; see *supra* notes 54–61 and accompanying text (describing the education system’s imposition of anti-Blackness).

¹²¹ See Harris, *Whiteness as Property*, *supra* note 3, at 1715; Dantzer, *supra* note 38, at 127 (describing racial capitalism as an organizing belief system, with political, economic, and social dimensions); see also Erika K. Wilson, *The Legal Foundations of White Supremacy*, 11 DEPAUL J. FOR SOC. JUST. 1, 7, 13 (2018) ([M]uch of American law for much of this country’s history was indeed very race-conscious. Race-conscious laws formed the foundation for . . . white supremacy” and noting that “the wealth gap and power distribution . . . seems neutral—like a fair distribution of resources—when, in fact, it was not, because the hierarchical significance of race generally and whiteness specifically was produced and/or reinforced by race-conscious laws favoring whites.”); Dumas, *supra* note 63, at 17 (“[A]ny racial disparity in education should be assumed to be facilitated, or at least exacerbated, by disdain and disregard for the Black. . . . That is to say, these are all policies in which the Black is positioned on the bottom”); Osamudia James, *Superior Status: Relational Obstacles in the Law to Racial Justice and LGBTQ Equality*, 63 B.C. L. REV. 199, 226 (2022) (“[S]chool segregation came to reflect the superordinate social status of white people.”).

¹²² See Pierce, *supra* note 25, at 43S (“In a human capital ‘race to the top,’ where freedom is attained through property acquisition/accumulation (affluent schools and the currency they provide such as advanced placement courses, better funding, lower classroom sizes, etc.), social life is attached to Whiteness and social death is attached to Blackness in material ways.” (citing Michael J. Dumas, *Contesting White Accumulation in Seattle: Toward a Materialist Antiracist Analysis of School Desegregation*, in THE PURSUIT OF RACIAL AND ETHNIC EQUALITY IN AMERICAN PUBLIC SCHOOLS: MENDEZ, BROWN, AND BEYOND 291, 291–32 (Kristi L. Bowman ed., 2015))). There are parallels to the operation of racial capitalism in the United States education system as was present in South African apartheid, with the goal of the system to ensure that Black South Africans would remain a hyper-exploited underclass. See, e.g., Alfreda A. Sellers Diamond, *Constitutional Comparisons and Con-*

laws, legal scholars have argued such systems were “[d]eveloped ostensibly to implement desegregation within public school systems,” but that “‘freedom of choice’ plans became a euphemism for resurgent racial separation,” and resulted in the perpetuation of segregated schools.¹²³ Understanding school choice through a racial capitalist framework, other scholars have asserted that “[a]s replaceable parts in racial capitalist society, the Black fungible body and populations form a base for neoliberal caste reconstruction because choice/charter policies help provide Whites access to greater assets for thriving through wages of Whiteness generated from the currency of Black social death.”¹²⁴ Reflecting on the 1977 U.S. Supreme Court decision in *Milliken v. Bradley*, it has been asserted that the case “maintain[ed] a system of racial hierarchy by conceding to the desire of white school districts to maintain segregated systems” and served as a “cover for covert segregation in the form of white flight.”¹²⁵ In the example of school district boundaries, scholars have defined their operationalization as a mechanism for racial stratification using facially non-racial geographic separa-

verging Histories: Historical Developments in Equal Educational Opportunity Under the Fourteenth Amendment of the United States Constitution and the New South African Constitution, 26 HASTINGS CONST. L.Q. 853, 869–77 (1999) (describing apartheid education and Black South African children); Timothy G. Reagan, *The Politics of Linguistic Apartheid: Language Policies in Black Education in South Africa*, 56 J. NEGRO EDUC. 299, 302 (1987) (describing how the Bantu Education Act of 1953 normatively internalized apartheid with the aim of “an inferior education designed to stress tribal loyalty and the acceptance of a subservient position in South African society”). Bantu schools, similar to schools serving Black students during educational apartheid of the Jim Crow era in the United States, were intentionally underfunded by the government, whereas white schools received strong and consistent support. *Head of Dep’t: Mpumalanga Dep’t of Educ. v. Hoërskool Ermelo* 2009 (2) SA 415 (CC) at para. 46 (S. Afr.). In higher education, Davies argues that the Bantu Act and the segregation of universities were “designed to contain the heightened aspirations of the most educated Blacks and arrest the development of an African urban middle class.” John Davies, *The State and the South African University System Under Apartheid*, 32 COMPAR. EDUC. 319, 322 (1996). In Pennsylvania, it has been documented that Black children have fewer educational opportunities than white children statewide due to systemic disinvestments and allocation of disparate resources. See JUSTIS FREEMAN & DAVID BAMAT, RSCH. FOR ACTION, PERSISTENT UNEQUAL ACCESS TO EDUCATIONAL OPPORTUNITY IN PENNSYLVANIA FOR K–12 STUDENTS 2 (2022), <https://www.researchforaction.org/wp-content/uploads/2022/10/RFA-PersistentUnequalAccessToEducationalOpportunityinPennsylvaniaForK-12Students.pdf> [<https://perma.cc/FVV4-393V>] (categorizing the ways that students of color are consistently denied educational opportunities across multiple indicators in the state); see also *Historic School Funding Lawsuit Is a Game Changer for Our Students*, EDUC. L. CTR., <https://www.elc-pa.org/wp-content/uploads/2023/03/FAQ-Re-School-Funding-Decision-final.pdf> [<https://perma.cc/S3X3-2F89>] (describing a court ruling that found that the system for funding schools in Pennsylvania was unconstitutional because high disparities in funding between richer and poorer districts was discriminatory and could not be justified by any compelling or reasonably related state interest). See generally *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 962 (Pa. Commw. Ct. 2023).

¹²³ Minow, *supra* note 43, at 823–24.

¹²⁴ Pierce, *supra* note 25, at 42S.

¹²⁵ George, *supra* note 70, at 211, 213.

tion sorting, which thereby contributes to a racial caste system in education.¹²⁶ It is under such far-reaching and deep-rooted ideological commitments to post-bellum apartheid that American public education has been left unchecked to structure and restructure an interwoven web of punitive racial capitalist threads generative of deep, lasting, racialized, and intergenerational harm.

II. FINES AND FEES AS A MODALITY OF RACIAL CAPITALISM

Although this Article focuses on a specific site analysis—the current fines and fees regime in Pennsylvania public schools—the theorizing of education through the framework of racial capitalism is intended to invite broader engagement and research. More specifically, this Article intentionally foregrounds economic extractions in public education within the context of the larger economic justice movement against fine and fees.¹²⁷ Data in this Part are thus meant to expand mainstream discourse and dispel mythologies about the race-neutrality of a specific economic modality in education. Though the data present a terrain of economic injustice in one state, we assert that Pennsylvania is not an outlier among the states, and neither are the schools operating within it. Pennsylvania schools exist within a common ecosystem of racial capitalism that defines American education and transcends state borders.¹²⁸ As such, the applied analysis is a challenge to the economic justice field, among others, to take a longer analytic view of the permanence of racial capitalism across systems and processes. Engagement with collective efforts under this broader context will not only expose the multiplicity of ways in which racial hierarchies and formulations of dispossession are examined, but also how such hierarchies can be dismantled.¹²⁹

Section A of Part II presents this Article's methodology.¹³⁰ Sections B, C, and D analyze the dataset and introduce evidence of three expressions of racial

¹²⁶ Daniel Kiel, *No Caste Here? Toward a Structural Critique of American Education*, 119 PENN ST. L. REV. 611, 620 (2015). School funding has been, and remains, a pervasive source of seemingly colorblind jurisprudence that promotes educational inequality and racism. Kevin E. Jason, *Dismantling the Pillars of White Supremacy: Obstacles in Eliminating Disparities and Achieving Racial Justice*, 23 CUNY L. REV. 139, 184 (2020) (explaining that school funding represents an area where litigation remedies connected to racial evasiveness, are incapable of addressing systemic inequities and ignore the history of systemic racism). Additionally, in the education context, school suspensions serve as a racially evasive harm, "yielding similar outcomes to the disparities found in criminal justice." *Id.* at 192.

¹²⁷ See, e.g., Colgan, *supra* note 7, at 227–34 (describing reform efforts against fines and fees).

¹²⁸ See Dumas, *supra* note 63, at 12 (describing an "anti-Black social imagination" in schools around the country).

¹²⁹ See Dantzier, *supra* note 38, at 115, 130 (providing recommendations for future research using a racial capitalism framework and arguing that race is central to any attempts to achieve social justice).

¹³⁰ See *infra* notes 134–143 and accompanying text.

capitalism in Pennsylvania public schools. More directly, Section B reveals the dispossessive processes of the fines and fees regime.¹³¹ Section C outlines the extractive nature of the fines and fees regime.¹³² Section D details the punishments derived from fines and fees.¹³³

A. Methods

To study expressions of racial capitalism within education, we developed an original dataset from two primary sources. First, we collected accounts of Education Law Center-PA clients with the Pennsylvania public school fines and fees.¹³⁴ Methodologically grounded in a “commitment to social reflexivity” and employing storytelling, we understand that these lived experiences are critical to constructing a hidden narrative of the costs of public education for Black students and families, in a manner that data collected in other forms could simply not expose.¹³⁵ Second, we collected data from 729 publicly-available and searchable individual public school, charter school, cyber charter school and district handbooks and codes of conduct.¹³⁶ Using textual content analysis,¹³⁷ we developed a primary set of codes¹³⁸ and coded an initial data

¹³¹ See *infra* notes 144–156 and accompanying text.

¹³² See *infra* notes 157–182 and accompanying text.

¹³³ See *infra* notes 183–200 and accompanying text.

¹³⁴ To our knowledge, there is no data collection undertaken or completed by schools of their use of fines and fees. This is also true at local or state levels. Education Law Center-PA is presently screening and tracking for such information in any client intakes, calls, and other communications to inform its litigation and policy reform strategies.

¹³⁵ See Harris, *Racing Law*, *supra* note 3, at 18 (describing the introduction of storytelling into legal scholarship by critical theorists). A cornerstone of critical theory is that the epistemological power of lived experience is crucial to unmask race evasiveness and race neutrality of law and policy. See *id.* (describing the view that requiring objectivity and neutrality hides epistemological distances between the lived experiences of white and non-white individuals).

¹³⁶ It is important to note that the total *n* of school-based fines, fees, and charges is likely higher than 3,846, as not all individual public school, charter school, cyber charter school and district handbooks, and codes of conduct were publicly available and searchable at the time of data collection. See, e.g., ACHIEVEMENT HOUSE CYBER CHARTER SCH., <https://achievementcharter.com/> [<https://perma.cc/Q963-HV32>] (not listing handbook or code of conduct on website for the 2021–2022 school year). Although the research team engaged in due diligence and contacted schools and districts individually for access, by phone and in writing, it was not always granted.

¹³⁷ See Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CALIF. L. REV. 63, 64, 67–76, 99–100 (2008) (analyzing the history and benefits of content analysis and arguing that content analysis could serve as the foundation for a “uniquely legal empirical methodology”). Content analysis is an empirical methodology accepted across multiple fields and is an important method to increase both policymakers’ and the public’s understanding of legal systems. See, e.g., *id.*; John B. Gates, *Content Analysis: Possibilities and Limits for Qualitative Data*, 73 JUDICATURE 202, 202–03 (1990) (arguing that content analysis is a valuable research tool for testing theories or theoretical concepts which already exist and that it produces reliable data in studies); Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 LAW & SOC’Y REV. 11, 13 (2005) (discussing how

subset line-by-line to identify additional terms that met inclusion criteria.¹³⁹ A final *n* from these sources yielded 3,846 independently coded textual sections that appeared in the collected materials. Sub-analysis revealed three primary groupings based on prevalence, including the use of the terms “fine” 959 times, “fee” 847 times, and “cost” 736 times.¹⁴⁰ Appendix 1 presents full disaggregation by categories and subcategories of analysis.¹⁴¹ It is important to note that schools may have a practice of imposing fines and fees without any written policy, as borne out by the Education Law Center’s experience representing children and families subjected to such practices without any prior notice.

We then combined and coded data using common modes of racial capitalism from the existing literature, which reveals three dominant expressions: dis-possession, resource extraction and debt creation, and punishment (Figure 1).

social context and institutions affect the preferences of workers and their choices about enforcing their rights through interviews conducted with employees who had negotiated in the workplace for leave); Christina L. Boyd, Response, *In Defense of Empirical Legal Studies*, 63 BUFF. L. REV. 363, 363, 377 (2015) (exploring the importance of empirical studies as an invaluable method of studying law); Jodi L. Short, *The Paranoid Style in Regulatory Reform*, 63 HASTINGS L.J. 633, 636, 662–75 (2012) (conducting content analysis of close to 1,400 law review articles); Theodore Eisenberg, *Why Do Empirical Legal Scholarship?*, 41 SAN DIEGO L. REV. 1741, 1746 (2004) (“Across a broad range of legal issues, empirical studies can inform policymakers and the public.”).

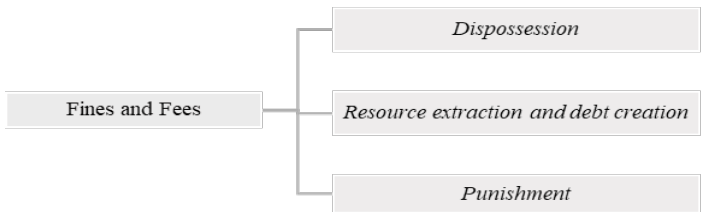
¹³⁸ Coding is an empirical data analysis method by which specific terms are applied to data in a closed (predetermined) and open (axial) manner. See generally ROBERT M. LAWLESS, JENNIFER K. ROBBENOLT & THOMAS S. ULEN, *EMPIRICAL METHODS IN LAW* 62–64 (2d ed. 2016) (describing closed-ended and open-ended questions in data gathering). In the analysis process, the codes facilitate the identification of concepts around which the data can be assembled into categories, themes, or patterns. See *id.* at 137–56 (describing the coding process in legal analysis); Thalia González, *The State of Restorative Justice in American Criminal Law: Appendix*, 87 WIS. L. REV. FORWARD 87 (2020), <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2021/01/25-Gonza%CC%81ez-Appendix-Final-.pdf> [<https://perma.cc/B67C-S825>] (providing an example of a coded dataset); Hall & Wright, *supra* note 137, at 80–81, 107–17 (describing the protocols for the systematic coding of judicial opinions). The study codebook was developed in collaboration with the Education Law Center-PA, beginning with an initial seven terms: fine, fee, outstanding balance, charge, cost, due, and pay. These terms represented the most commonly-used definitional text describing fines, fees, charges, costs, and/or payments, based on the Education Law Center-PA’s legal expertise representing caregivers and students in Pennsylvania public schools.

¹³⁹ Two research assistants coded data independently. Coding was then cross compared for validity by two individuals. Any outliers to the codebook were noted and confirmed by joint analysis.

¹⁴⁰ The first grouping is *fine* (*n* = 959), *fees* (*n* = 847), and *cost* (*n* = 736). The second grouping is *pay/paid* (*n* = 461), *charges* (*n* = 369), and *purchase* (*n* = 259). The third grouping is *price* (*n* = 72), *outstanding balance* (*n* = 55), *dues* (*n* = 55), and *buy* (*n* = 33). Appendix 1 presents the disaggregation by categories and subcategories of analysis. For this study, the research team applied the following closed set of terms or codes to each student handbook, code of conduct, and technology/virtual handbook: Fine, Fee, Outstanding Balance, Charge, Cost, Due, Pay/Paid, Price, and Purchase. We excluded more generalized terms associated with fines and fees, such as Technology, Device, and Punishment (Suspension and Expulsion) as they yielded a high number of results that fell outside the study scope.

¹⁴¹ See *infra* note 268 and accompanying text.

Figure 1. Fines and Fees Expressions of Racial Capitalism



Though presented as distinct for analytic clarity in Figure 1 and the following discussion, the logics and systemic forces of dispossession, resource extraction, debt creation, and punishment function in interlocking and compounding ways. For example, in deploying a fee or fine (modality), school officials (agents) sought to extract resources directly from Chloe, Destiny, and Janae, and Caleb (whose experiences we discuss in more detail later in this Article) while simultaneously reinforcing race-making narratives of unworthiness and white hierarchy,¹⁴² which in turn necessitated segregation and distinct punitive responses.¹⁴³

B. Dispossession and Inequitable Access to Educational Opportunities

Scholars have illuminated how dispossessive processes of racial capitalism in education policy and practice exist in multiple dimensions, yet have “escaped accountability” for their commitment to “whiteness and by nature antiblackness,” and instead, “Black students, parents, and communities have been accused of not placing the proper value on educational attainment,” which is predicated first and foremost upon participation in oppressive and exclusionary educational institutions.¹⁴⁴ In the case of school discipline, for

¹⁴² See, e.g., John A. Powell, *The Race and Class Nexus: An Intersectional Perspective*, 25 LAW & INEQ. 335, 394–96 (2007) (explaining that the non-evidence of “racial imprint on middle class consciousness and institutions makes it possible for rejuvenated narratives of Black inferiority and unworthiness to persist”); Michael J. Dumas, Adrienne D. Dixon & Edwin Mayorga, *Educational Policy and the Cultural Politics of Race: Introduction to the Special Issue*, 30 EDUC. POL’Y 3, 7 (2015) (contending that there are cultural-ideological meanings that inform that race is “not . . . a variable, but rather, as part of an explanatory framework” in educational policy and politics); Gonzalez & Mutua, *supra* note 38, at 160–61 (describing hierarchical racial stratification and stigmatization in the race-making process).

¹⁴³ See Gonzalez & Mutua, *supra* note 38, at 165 (discussing the role of segregation in race-making, including its role in repressing resistance to racial capitalism).

¹⁴⁴ See Nelson & Williams, *supra* note 22, at 105–06 (examining the outcomes of contemporary reforms in education).

example, legal scholars argue that the centrality of the racial-political economy of education reinforces and creates novel racial oppressions and hierarchies of white supremacy, dispossessing and containing Black students both theoretically and corporeally.¹⁴⁵ We assert the same is true for fines and fees. Fines and fees help not only to reproduce educational apartheid, but also to support a pervasive larger social system that necessitates a perpetually dispossessed class to operate.¹⁴⁶

Fines and fees provisions dispossess Black children and families by directly denying them access to a range of educational opportunities, including participation in field trips, dances, and even graduation events.¹⁴⁷ For example, at Northern Lehigh High School, “[s]tudents in their senior year are required (obligated) to pay class dues to offset the expenses of their class for the past three years” and “[f]ailure to pay class dues will result in *exclusion from class-related activities* and ultimately serve as an obligation *prohibiting participation in graduation exercises*.”¹⁴⁸ Under the policies of Lincoln Leadership Academy Charter School, whose student body is 95% of color and 81% economically disadvantaged, children are denied basic education supplies: if a child “writes, doodles, or ‘tags up’ a book, with a crayon, marker or pen,” a parent “will be charged a minimum of \$85.00,” and a “[s]tudent will not be issued *any textbooks for the next year* until fines have been satisfied for non-returned book(s) . . . [s]tudent report cards and transcripts will not be released until all fines have been paid for non-returned book(s).”¹⁴⁹ It is not lost on us, and others who examine the underlying mean of text, that the use of the word

¹⁴⁵ See *id.* at 98–99, 106, 108–09, 116 (analyzing education reforms and “the school-to-prison pipeline”); see also Hershkoff & Yaffe, *supra* note 23, at 5–6 (describing how the carceral school and the school-to-prison pipeline enable racial capitalism).

¹⁴⁶ See Hershkoff & Yaffe, *supra* note 23, at 5–6 (describing how the carceral school allows racial capitalism to maintain surplus populations through the criminal legal system).

¹⁴⁷ See, e.g., NORTHWOOD ACAD. SCH. BD., NORTHWOOD ACADEMY K–12 STUDENT HANDBOOK 27 (2021) (on file with authors) (stating that student debt must be paid before end of the year events such as graduation, and that parents who do not pay outstanding debts will have their student placed on financial suspension); ALL. FOR PROGRESS CHARTER SCH., PARENT/STUDENT HANDBOOK 2019–2020, at 41 (2019) (on file with authors) (stating that families who do not pay off debt within the trimester that the debt accrued will miss school activities such as prom, field trips, and graduation).

¹⁴⁸ N. LEHIGH HIGH SCH., *supra* note 56, at 55 (emphasis added). The policy further provides that “[s]tudents who choose not to participate in class activities *are not relieved* from their financial obligation to the class,” and that “[e]arly Graduates *are required* to pay class dues.” *Id.* (emphasis added).

¹⁴⁹ LINCOLN LEADERSHIP ACAD. CHARTER SCH., 2021–2022 STUDENT AND PARENT MANUAL 7 (2021) (emphasis added) (on file with authors); *Lincoln Leadership Academy Charter School*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/pennsylvania/districts/lincoln-leadership-academy-charter-school/lincoln-leadership-academy-charter-school-16761> [<https://perma.cc/KX38-7L93>] (setting forth the demographics of the Lincoln Academy Charter School).

“tag” expresses a conversational domain in which students’ behavior is communicated implicitly as criminality.¹⁵⁰

Fines and fees, however, do not simply serve to dispossess or strip Black children of educational opportunities. They simultaneously function to segregate and contain them from their peers by withholding access to school-based activities and extracurricular experiences, thereby creating entrenched intersectional inequities and narrations accusing Black students, parents, and communities of causing the problem, not the system.¹⁵¹ Consider Brielle, a four-year-old pre-school student with a disability who was eligible for Early Intervention special education services, but was not permitted to attend a school-based summer pre-school program because her family could not afford the required fee.¹⁵² The program would have enabled her to build academic and behavioral skills that would have supported her entry into school and helped her build key peer relationships and positive school connectedness.¹⁵³

It is essential to situate dispossession or containment and the functionality of fines and fees, as a modality of racial capitalism, within a co-productive relationship between “capitalist and [w]hite supremacist power structures foundational to the creation and development of the U.S. nation state. . . . [These] patterns of social control . . . have spanned the colonial-plantation period to current neoliberal restructuring education projects.”¹⁵⁴ Put another way,

¹⁵⁰ See Werner Erhard, Michael C. Jensen, Steve Zaffron & Jeri Echeverria, *Course Materials for: “Being a Leader and the Effective Exercise of Leadership: An Ontological/Phenomenological Model”* 188–89 (Harv. Bus. Sch., Working Paper No. 08-03, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1263835 [<https://perma.cc/F3DT-FY7K>] (describing the linguistic structure of a conversational domain).

¹⁵¹ See, e.g., Nelson & Williams, *supra* note 22, at 99 (arguing that education reforms target Black students rather than the structural issues that are the actual source of educational racism); Dumas & Nelson, *supra* note 55, at 29 (describing how the public discourse depicts Black boys as “‘problems’ in themselves” (citing WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996))).

¹⁵² Telephone Interview with Brielle’s Mother (Mar. 21, 2023) (on file with authors). Although Brielle was experiencing homelessness, she was never identified as such by her school, and the school never apprised her mother of her legal right to have the fee waived pursuant to federal law due to the family’s housing status. *Id.* Instead, Brielle required legal intervention to ensure her continued participation in school. *Id.* Brielle’s mother feels certain that without legal intervention she “would have continued to face discrimination.” *Id.*

¹⁵³ *Id.*; see also DEBRA PEPLER & KAREN BIERMAN, PENN ST. UNIV., *WITH A LITTLE HELP FROM MY FRIENDS: THE IMPORTANCE OF PEER RELATIONSHIPS FOR SOCIAL-EMOTIONAL DEVELOPMENT* 2, 6–8 (2018), <https://www.rwjf.org/en/insights/our-research/2018/11/with-a-little-help-from-my-friends--the-importance-of-peer-relationships-for-social-emotional-development.html> [<https://perma.cc/PZ8P-C3VT>] (finding that “[p]ositive peer relationships make critical contributions to healthy social-emotional development”); Annie Gowing, *Peer-Peer Relationships: A Key Factor in Enhancing School Connectedness and Belonging*, 36 EDUC. & CHILD PSYCH. 64, 64 (2019) (finding that peer relationships built school connectedness among adolescents).

¹⁵⁴ Pierce, *supra* note 25, at 28S.

the fines and fees present in Pennsylvania schools did not arise out of thin air. They were an outgrowth of slavery, Jim Crow, and present-day formulations of structural discrimination that seek to produce precarity and reproduce racial stigmas.¹⁵⁵ As evidenced by the narratives of Destiny and Chloe discussed previously, as well as Janae discussed below, race and gender act as powerful determinants in whose educational opportunities, experiences, and outcomes are denied. It is also no accident that school officials, conditioned to respond to challenges of the racial-capital feudal order, met them with race-making processes of hostility, dehumanization, and threats of segregation.¹⁵⁶

C. Resource Extraction and Debt Creation

As examined in other public systems, such as civil courts, resource extraction and racialized debt creation are defining features of racial capitalism.¹⁵⁷ In the context of education, Black student debt¹⁵⁸ is examined as a model of educational violence in which “[d]ebt-contingent education is acceptable because racial capitalism glorifies the prospect of upward mobility.”¹⁵⁹ Repudiating claims of access and equity, the historicization of the use of racialized debt and the origins of higher education draws sharp distinctions between Black and white debt.¹⁶⁰ There are analogies in each of these lines of work to fines and fees in K–12 schools, not only as to shared features of resource extraction, racialized debt creation, and punishment of poverty, but also in the rootedness of racial capitalism in “nonmarket systems.”¹⁶¹ Put most directly, the very extraction of fines and fees in a system of supposedly “free” education is a capitalist enterprise.

The analysis of 729 publicly-available individual public school and LEA handbooks and codes of conduct reveals 10 categories and 26 subcategories by which economic resources can be extracted from Black students, parents, and

¹⁵⁵ See *id.* (viewing education within patterns of racial capitalism from the era of slavery to the modern day).

¹⁵⁶ See Gonzalez & Mutua, *supra* note 38, at 163 (describing how racialization incentivizes those in the dominant strata of the hierarchy to act violently against those deemed inferior).

¹⁵⁷ See Brito et al., *supra* note 16, at 1263, 1278 (describing racialized debt as a central focus of scholars of racial capitalism, and examining debt collection in the civil courts). The predatory regime of fines and fees replicates these defining features of racial capitalism by locking Black people in cycles of debt. Foster, *supra* note 7, at 11 (“Fines and fees perpetuate and exacerbate poverty, and they keep communities of color from accumulating wealth.”).

¹⁵⁸ See *supra* notes 16, 33 (summarizing existing scholarship on racial capitalism and Black student debt).

¹⁵⁹ Mustaffa & Dawson, *supra* note 16, at 12.

¹⁶⁰ *Id.* at 3–4.

¹⁶¹ See Brito et al., *supra* note 16, at 1263–65 (describing how racialized debt and racial capitalism extracts, exploits, and expropriates, even in non-market contexts).

caregivers in public schools across the state of Pennsylvania. From \$1 per minute late pick up and drop off fees¹⁶² to \$20 identification card replacement charges;¹⁶³ from participation fees¹⁶⁴ and \$100 activity fees¹⁶⁵ to up to \$25 for parking fines¹⁶⁶ and daily library fines of \$0.25;¹⁶⁷ from \$5 hall pass replacement charges¹⁶⁸ to up to \$100 per household technology charges¹⁶⁹ and class dues for graduating students.¹⁷⁰ The magnitude of capital transfer from students to public schools who are charged with providing free education cannot be overstated.¹⁷¹

Consider, for example, the experiences of Aiden and Josiah, two elementary school students who were eligible for special education services and forced to miss weeks of remote learning during physical school closures during the COVID-19 pandemic when their school-issued laptops were stolen. Their caregiver could not afford the required six hundred dollar laptop replacement fee demanded by school officials, and despite the family's requests, school officials were unwilling to waive the fee until legal counsel pursued legal remedies.¹⁷² During this time, Aiden and Josiah were illegally deprived of their ed-

¹⁶² HATBORO-HORSHAM SCH. DIST., HATBORO-HORSHAM SCHOOL DISTRICT C CHILD CARE 43 (2021) (on file with authors); INQUIRY CHARTER SCH., STUDENT AND FAMILY HANDBOOK 2020–2021, at 8 (2020) (on file with authors).

¹⁶³ LOWER MERION SCH. DIST., *supra* note 51, at 27 (on file with authors).

¹⁶⁴ ENV'T CHARTER SCH. AT FRICK PARK, *supra* note 56, at 47.

¹⁶⁵ KEYSTONE JUNIOR-SENIOR HIGH SCH., PANTHERS STUDENT HANDBOOK 2021–2022, at 25 (2021) (on file with authors).

¹⁶⁶ AVON GROVE SCH. DIST., SECONDARY SCHOOLS HANDBOOK 2021–2022, at 24–25 (2021) (on file with authors) (nothing that, in addition to fines for parking violations, parking permit applications cost \$150 to complete).

¹⁶⁷ CAMERON CNTY. SCH. DIST., CAMERON CNTY. JR/SR SCHOOL STUDENT HANDBOOK 2021–2022, at 47 (2021) (on file with authors).

¹⁶⁸ PHILIPSBURG-OSCEOLA AREA SCH. DIST., PHILIPSBURG-OSCEOLA SENIOR HIGH SCHOOL STUDENT HANDBOOK 2021–2022, at 10 (2021) (on file with authors).

¹⁶⁹ BRISTOL TWP. SCH. DIST., ELEMENTARY HANDBOOK AND PROCEDURES 2021–2022, at 26 (2021) (on file with authors); *see also* DISCOVERY SCHS., STUDENT-PARENT HANDBOOK PREK–12TH GRADES 2021–2022, at 74 (2021) (on file with authors) (assessing technology fee); CHESTER CNTY. SCH. DIST., STUDENT LEADERSHIP HANDBOOK 2019–2020, at 43 (2019) (on file with authors) (assessing a \$15 per child per device per year fee).

¹⁷⁰ CORNWALL-LEBANON SCH. DIST., *supra* note 51, at 10.

¹⁷¹ According to our scope research, there are presently no fine- or fee-free schools in Pennsylvania as defined by the boundaries of our study.

¹⁷² Our research found no handbooks or codes of conduct with universalized exemptions for waiver of fines and fees. In limited instances, such as in South Butler County School District, schools will reduce fines and fees. *See, e.g.,* S. BUTLER CNTY. SCH. DIST., KNOCH HIGH SCHOOL STUDENT/PARENT HANDBOOK 2021–2022, at 21 (2021) (on file with authors) (allowing limited fee exemptions for students participating in the National School Lunch Program who are “verified” and for “families experiencing financial hardship” who successfully apply and are granted “activity fee waivers”). According to our research, however, no schools waive such fees or fines entirely for all students, or prohibit their issuance. Additionally, many schools do not notify families about the availability of fee waivers.

ucations altogether.¹⁷³ And the endemic nature, e.g., fines, fees, charges, etc., are not localized to a single school, district, or even LEA.¹⁷⁴ From these perspectives, fees in Pennsylvania schools, like student debt in higher education, serve as a “racialized underwriter” with both risk and actuality of racialized debt creation.¹⁷⁵

The fines and fees regime in Pennsylvania schools does not solely operate at the level of extraction. Emanating from a lineage of the caste system of racial capitalism modalities of debt bondage of the Jim Crow South, the fines and fees that Black students, parents, and caregivers face do not exist in a single form or pattern.¹⁷⁶ Instead, educational fines and fees, like their corollaries in civil and criminal contexts, generate conditions of debt creation through various mechanisms.¹⁷⁷ For Janae, a Black single mother of four public-school children, ranging in age from pre-school to high school, the required school uniform fees for *one* child pushed her into a cycle of poverty and debt accumulation that threatened her stability of housing and access to utility services. When school officials made it clear to Janae that her child could not come to school until she had a complete uniform, which cost more than three hundred dollars, and would be sent home if she failed to comply, Janae faced an impossible decision either to purchase the uniform and forego her car and utility payments or allow the school to refuse to educate her daughter despite a guaranteed right to free public education in Pennsylvania.¹⁷⁸ In “choosing” her daughter’s education, she was unable to make her car payment and pay for her utilities. By midyear, the economic impact of the school uniform fee endured, as the family was unable to pay off the cost of the uniform. They not only accrued late-fees on the uniform cost, but also the collateral costs of unpaid car

¹⁷³ The Education Law Center-PA had to intervene legally to have the fee removed from the students’ account and ensure that the children received makeup educational services for the instructional time of which they were deprived.

¹⁷⁴ As stated above, according to our research, there are no schools in Pennsylvania that completely prohibit fines and fees or provide blanket exemptions to students. Additionally, as noted earlier, many schools do not notify families of the availability of a fee waiver for students experiencing homelessness.

¹⁷⁵ See Mustaffa & Dawson, *supra* note 16, at 19 (describing how higher education creates racialized debt by co-opting the educational dreams of Black people).

¹⁷⁶ See, e.g., Timothy Black & Lacey Caporale, *The New Debt Peonage in the Era of Mass Incarceration*, CULTURAL ENCOUNTERS, CONFLICTS & RESOLS. 2020, at 1, 1–3, <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1087&context=cecr> [<https://perma.cc/KC5B-6ZWE>] (describing the historical origins and ubiquitous use of multiple modalities of debt as a format of social control and domination of laborers in the United States, including fines and fees in a criminal context).

¹⁷⁷ See *id.* (describing mechanisms of criminal debt creation).

¹⁷⁸ The school’s uniform had many components, including a blazer, a sweater, a button-up shirt, a tie, black shoes, a skirt and pants, and socks. All of the items had to be purchased from a specific retailer or from the school itself because most of the required components had to include the school’s logo, which required an additional charge to have affixed.

and utility bills.¹⁷⁹ As a result, the family's access to adequate housing and transportation was imperiled. The extraction of Janae's resources extends beyond materiality. Associating indebtedness with subordination and "being nonwhite in America" is "a lasting American discursive tradition,"¹⁸⁰ that has often been coupled with tropes of unfitness of parenthood, especially for Black mothers.¹⁸¹ Under such logic, Janae affirms a structural feature of racial capitalism—race-making processes—by exemplifying the failure of Black mothers, and affirms hierarchies of difference, rather than confronting the education system for being racially extractive.¹⁸²

D. Punishment

As is the case with civil courts, public schools function "[a]s an arm of the state . . . [and] enforce and legitimize racial capitalism."¹⁸³ Not only do public schools, like the civil courts, seize assets by force or couple taking with threats of force or violence, they use punitive and retributive coercion to impose fear and maintain social order.¹⁸⁴ This role exists at co-influential levels in which modalities, agents, and ideologies interlock vertically and horizontally. First, the punitive and authoritarian function is transcribed into school policies.¹⁸⁵ Second, school officials operationalize governance by policing who has and does not have a right to exist within a school community.¹⁸⁶ The practical realities of capital needs in public schools, in a similar way to criminal and

¹⁷⁹ This Article argues that Janae's experience mirrors a familiar pattern of racial capitalism that has echoed since the post-bellum period, whether one looks to examples in housing, labor, or political participation that aim to restrict Black opportunity and mobility. Black & Caporale, *supra* note 176 (describing debt in Jim Crow as a form of social control).

¹⁸⁰ K-Sue Park, *Race, Innovation, and Financial Growth: The Example of Foreclosure, in HISTORIES OF RACIAL CAPITALISM* 27, 40 (Destin Jenkins & Justin Leroy eds., 2021).

¹⁸¹ See *supra* note 53 and accompanying text; see also Dorothy E. Roberts, *The Value of Black Mothers' Work* (describing the societal image of a Black mother as unfit, uncaring, and easily separated from her children), in *CRITICAL RACE FEMINISM: A READER* 312, 313–14 (Adrien Katherine Wing ed., 1st ed. 1997).

¹⁸² See Gonzalez & Mutua, *supra* note 38, at 128 (describing the race-making process of socially constructing a hierarchy of differences); see also MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 109 (3d ed. 2015) (defining "racial formation as *the sociohistorical process by which racial identities are created, lived out, transformed, and destroyed*").

¹⁸³ See Brito et al., *supra* note 16, at 1268. This Article does not assert, however, that this is a reason for public education not to exist. Instead, we argue the structures of public education should be reordered so as not to create and sustain racialized debt.

¹⁸⁴ Cf. *id.* (describing how eviction courts redistribute assets and enforce social order). Civil courts are simply a modern-day example of racial capitalism and the racial caste order of the ideologies and pernicious systemic practices of extraction aimed at preserving white supremacy upon which the United States was founded. See *id.* (describing the function of the eviction courts and other civil courts as "the racialized production of profit").

¹⁸⁵ See, e.g., the story of Damien, *infra* notes 189–191 and accompanying text.

¹⁸⁶ See, e.g., the story of Caleb, *infra* notes 189–191 and accompanying text.

civil systems, is coupled with punitive and race-making commitments to control Black students' access to their fundamental right to education.¹⁸⁷ As one legal theorist underscores, "capitalism does not operate from a purely color-blind market logic but through the ideology of white supremacy."¹⁸⁸ In other words, the state's investment in human capital is directed toward white children over nonwhite children, and the fines and fees regime promulgates this. The functionality of educational apartheid in Pennsylvania is exemplified by the experiences of two students, Damien and Caleb.

Damien, a middle school student experiencing homelessness on his own, was living in an emergency shelter and was illegally denied the school uniform required by his school's dress code after he told the school he could not afford to pay the uniform fee. As a result, he was forced to serve detention for nearly a month for "dress code violations," solely because he was wearing the "wrong color of shoes."

Caleb, a senior in high school, was initially denied an opportunity to participate in his school's graduation ceremony as he could not afford the school's required and non-waivable fees to rent graduation regalia.¹⁸⁹ It was only as a result of legal intervention that the school was willing to provide Caleb with a loaner graduation robe they had in their possession, moments before he took the stage, despite previously being aware that his family was unable to pay the regalia rental fee. Although Caleb was ultimately able to participate in his commencement ceremony, the loaner robe he was given did not match the robes of his peers, causing him to feel stigmatized and prompting questions from his classmates. Caleb felt embarrassed, which marred his ability to enjoy graduation day and relish his accomplishments. Though Caleb deserved a moment of joy, he was instead made to feel ostracized and self-conscious, a structural feature of the race-making that racial capitalism employs.¹⁹⁰ As a regime,

¹⁸⁷ See Brito et al., *supra* note 16, at 1267–68 (describing how state institutions engage in "racialized governing, profit-making, and predation" and maintain, through fear, the racial capitalist order); *supra* note 47 and accompanying text.

¹⁸⁸ Kelley, *supra* note 48, at xv (recognizing "a neoliberal variant of racial capitalism that involves dismantling the welfare state, promoting capital flight; privatizing public schools, hospitals, housing, transit, and other public resources; and the massive growth of police and prisons").

¹⁸⁹ Restrictions on or barring students from participating in graduation is an all-too-common form of racial capitalism. See, e.g., FELL CHARTER ELEMENTARY SCH., STUDENT/PARENT HANDBOOK 36 (2021) (on file with authors); FERNDAL AREA JUNIOR-SENIOR HIGH SCH., STUDENT-PARENT HANDBOOK 2021–2022, at 18 (2021) (on file with authors); IMHOTEP INST. CHARTER HIGH SCH., 2021–2022 STUDENT/PARENT HANDBOOK 28 (2021) (on file with authors).

¹⁹⁰ See Gonzalez & Mutua, *supra* note 38, at 160 (emphasizing the importance of stigmatization in the racialization process). Through racial stigmatization, fines and fees also operate to control and suppress resistance to the conditions of economic repression that they create by holding hostage the reputations of Black students and families. See *id.* at 162 (describing how stigmatized groups are made vulnerable for further exploitation).

finances and fees undermine the credibility of Black students and their reputational credibility in schools.

The expansion of the state's coercive, repressive, and punitive features is not always direct, as in the cases of Damien, Caleb, and Chloe. It also functions indirectly through the normalization of threats of a child's segregation—as a further constitution of racial stigmatization—from the school community (Janae) or parental exclusion from school grounds (Destiny), often with a directed aim at suppressing resistance. Additionally, it operates within educational geographies as public shaming and castigation. At Freedom Area High School, for example, on a monthly-basis “all teachers, staff & coaches,” are asked to submit “the names of students who owe money, equipment, uniforms, etc [sic] to the school,” who are then added to a “Student Debt List,” if they cannot pay within a two-week “grace period” they are also barred from participating in extra-curricular activities.¹⁹¹

Further, as discussed previously, punishment, whether actual or threatened, can create barriers to attendance (Chloe, Aiden and Josiah), placing students at risk for criminalization under compulsory school laws with intensifying harms, including referral to the department of children, youth and families, additional fines, and potential imprisonment.¹⁹² In this manner, the fines and fees regime works alongside other punitive infrastructures in public schools that serve to push out Black children and direct them into the carceral system, where they function as reserve labor or as a population that has been abandoned altogether.¹⁹³ In Pennsylvania, as is true across the country, families of color and families living in poverty are most likely to be subjected to truancy proceedings as a result of intersecting systemic barriers, racialized narratives

¹⁹¹ FREEDOM AREA HIGH SCH., 2021–2022 PARENT/STUDENT HANDBOOK 50 (2021) (on file with authors) (including in the list the names of all students “who owe money, equipment, uniforms, etc [sic] to the school”). The school lists the extra-curricular activities that students may be prevented from accessing as including “sports, fine arts performances, dances, trips etc.” Students who do “not rectify their student debt” may also lose their ability to drive to school, which could prevent a student from being able to attend school altogether. *Id.*

¹⁹² See, e.g., 24 PA. CONS. STAT. § 13-1327(a) (2024) (requiring school attendance for Pennsylvania children); *id.* § 13-1333.1 (allowing schools to report a child under fifteen to the county children and youth agency for habitual truancy); *id.* § 13-1333.3(a)(1) (allowing fines for truancy violations); AVON GROVE SCH. DIST., *supra* note 166, at 8 (stating consequences for habitual truancy, including potential fines). Under Pennsylvania state law, a student is considered “[t]ruant” if they have three or more unexcused absences in the current school year. 24 PA. CONS. STAT. § 13-1326. A student is considered to be “[h]abitually truant” under the law if they have six or more absences in the current school year. *Id.* Once a student is considered to be habitually truant under the law, they may find themselves in truancy court, where the student or the parent may be subject to various penalties, including fines and fees. *Id.* §§ 13-1333.1, 13-1333.3.

¹⁹³ See, e.g., 24 PA. CONS. STAT. § 13-1333.3(a)(1) (2023) (allowing a court to sentence a person who has violated the truancy laws to pay escalating fines); *id.* § 13-1333.3(f) (authorizing a court to sentence a person to up to three days in jail for failure to pay such a fine).

of the “undeserving poor,” and unequal access to justice resources.¹⁹⁴ In fact, when analyzing barriers to school attendance, the Pennsylvania Joint State Government Commission itself determined that both poverty and racism caused disparities in the ability to comply with compulsory school attendance law.¹⁹⁵ Despite this recognition—and the death of Eileen DiNino, a fifty-five-year-old mother of seven who died in jail while serving a forty-eight-hour sentence because she was unable to pay fines for truancy and court costs of close to \$2,000—state law upholds a hierarchical racial capitalist relationship between the state and parents.¹⁹⁶ The law currently permits fines (the amounts of which increase with each prosecution) and even jail time for caregivers if a court determines that they have willfully failed to pay associated fines.¹⁹⁷ If a court finds that a student aged fifteen or older is truant under the law, the student or the parent may be fined up to \$300 for the first “offense,” up to \$500 for the second “offense,” and up to \$750 for the third and any subsequent “offense.”¹⁹⁸ Importantly, neither students nor caregivers are presumed to be unable to pay.¹⁹⁹ Instead, a court must make this determination, setting forth the assumption that payment could be theoretically possible in every case.²⁰⁰

Knowing that Black students, parents, and caregivers navigate the perilous terrain of fines and fees across each of the areas discussed previously, and more, on a daily basis, this Article turns its attention to potential avenues for education civil rights attorneys to disrupt and resist these racial capitalist formulations.²⁰¹

¹⁹⁴ See JOINT STATE GOV'T COMM'N, TRUANCY AND SCHOOL DROPOUT PREVENTION: REPORT OF THE TRUANCY ADVISORY COMMITTEE 35 (2015), <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2015-10-27%202015%20TAC%20Final%20Report%2010-27-15%203pm.pdf> [<https://perma.cc/GL7Q-S8TZ>] (finding that systems of racism and economic deprivation likely prevent children from consistently attending schools); see also powell, *supra* note 142, at 396 (describing how “[t]he merit ethic of the American Dream” creates a middle-class identity that cuts against cross-racial solidarity); ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN 9 (2004) (describing a “politics of disgust” that informs public opinion of welfare beneficiaries); PREMILLA NADASEN, WELFARE WARRIORS: THE WELFARE RIGHTS MOVEMENT IN THE UNITED STATES 194–99 (2005) (describing anti-welfare views among white American workers).

¹⁹⁵ JOINT STATE GOV'T COMM'N, *supra* note 194, at 35.

¹⁹⁶ Associated Press, *Mom Jailed Over Truancy Died from Heart Failure*, KSL.COM (Aug. 14, 2014), <https://www.ksl.com/article/31138533/mom-jailed-over-truancy-died-from-heart-failure> [<https://perma.cc/FHR2-WQCC>].

¹⁹⁷ 24 PA. CONS. STAT. § 13-1333.3(a)(1), (f).

¹⁹⁸ *Id.* § 13-1333.3(a). “Offenses” are defined by the number of citations filed by the school, not by the number of unexcused absences a child of compulsory school age has accrued within a given time period. *Id.* § 13-1326. As authors, we unequivocally disagree with the use of criminalizing language in the statute, including the use of the word “offense.”

¹⁹⁹ See *id.* § 13-1333.3(f) (requiring the court, in the case of nonpayment, to determine if the non-payment was willful).

²⁰⁰ See *id.*

²⁰¹ See *infra* notes 202–258 and accompanying text.

III. PROTECTING BLACK STUDENTS AND FAMILIES

At present, there are no federal or Pennsylvania state laws that create a universal prohibition against a school's ability to impose fines and fees.²⁰² Despite the absence of necessary legal protections, this Part aims to provide civil rights education attorneys with a landscape mapping of specific laws that may protect Black children and families against local fines and fees apparatuses. It is important to note, however, that these protections are not universally applicable to all children. As identified subsequently, they are limited in scope,²⁰³ most commonly requiring a showing of hardship²⁰⁴ or a student's inclusion within a protected class.²⁰⁵ Further, notwithstanding the existence of such laws, schools in Pennsylvania have a documented failure to abide by current laws that waive fines and fees.²⁰⁶ Additionally, as the data collection reveals, schools

²⁰² It is well-settled in U.S. law that schools have broad discretion to create policies that govern the practices, policies, and norms of educational communities. *See, e.g.*, *Milliken v. Bradley*, 418 U.S. 717, 741–45 (1974) (relying on local control to limit school desegregation); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 58 (1973) (upholding local control of public schools and power to decide funding).

²⁰³ *See, e.g.*, *infra* notes 214–218 and accompanying text (describing the scope of the Every Student Succeeds Act); *infra* note 231 and accompanying text (describing the protected-class status that the McKinney-Vento Act institutes). Coding revealed that there were no uniform categorical exceptions or waivers aimed at protecting families and students based on socio-economic status. Some examples, however, exist on a case-by-case basis, such as at Chestnut Ridge School District and Derry Area School District. CHESTNUT RIDGE SENIOR HIGH SCH., STUDENT UNIFIED DISCIPLINE CODE AND HIGH SCHOOL STUDENT HANDBOOK 33 (on file with authors) (waiving activity fees over a \$100 cap); DERRY AREA SCH. DIST., PARENT HANDBOOK 2021–2022, at 32 (2021) (on file with authors) (waiving activity fees for students on free or reduced lunch plans).

²⁰⁴ *See, e.g.*, DERRY AREA SCH. DIST., *supra* note 203 (requiring proof of receiving reduced school lunch).

²⁰⁵ *See, e.g.*, 24 PA. CONS. STAT. § 13-1331.1(a) (2023) (removing educational and graduation barriers, including fines and fees for students who experience “education instability” due to homelessness, or adjudication through the foster care or juvenile justice system). Even in cases where a student is afforded additional protections under laws, such as students experiencing homelessness, school-side attorneys are not always aware of legal protections and may push back against well-settled rights. *See* Corey Mitchell, *Schools Must Help Homeless Students. Here's What You Should Know*, CTR. FOR PUB. INTEGRITY (Nov. 15, 2022), <https://publicintegrity.org/education/unhoused-and-undercounted/schools-must-help-homeless-children/> [<https://perma.cc/N9FY-QMMF>] (finding that schools were undercounting homeless students, and that there was confusion as to which students were included, affecting many students). If students are not in such a protected class, the advocacy of parent-side attorneys may face opposition from school-side attorneys who justify fines and fees as a legitimate source of revenue to raise funds. *See* EDELMAN, *supra* note 9, at xv–xvi (describing how a movement for tax cuts justified fines and fees as a revenue-generating method).

²⁰⁶ *See* ANNA SHAW-AMOAH & DAVID LAPP, RSCH. FOR ACTION, STUDENTS EXPERIENCING HOMELESSNESS IN PENNSYLVANIA: UNDER-IDENTIFICATION AND INEQUITABLE ENROLLMENT 5 (2018), <https://files.eric.ed.gov/fulltext/ED593694.pdf> [<https://perma.cc/F5V8-WFGS>] (finding that Pennsylvania likely under-identifies students experiencing homelessness and that “Pennsylvania ranks 44th out of 50 states in the homeless rate of identification”). Education Law Center-PA routinely represents students who have not been identified as eligible for a waiver despite being eligible and the

and districts often fail to meet basic notice requirements of publishing their rules, school policies, and potential exclusionary consequences in contravention of regulatory and statutory obligations, violating students' and families' legal rights.²⁰⁷

Section A of this Part describes the Every Student Succeeds Act, a comprehensive federal law which narrowly applies to fines and fees.²⁰⁸ Section B of this Part describes the Family Education Rights and Privacy Act of 1974, which applies to fees derived from educational records.²⁰⁹ Section C of this Part describes the McKinney-Vento Homeless Assistance Act, an act contained within the Every Student Succeeds Act, which applies specifically to students facing homelessness.²¹⁰ Section D of this Part describes the Pennsylvania counterpoint to McKinney-Vento, which is Act 1 of 2022.²¹¹

A. Every Student Succeeds Act

The Every Student Succeeds Act (ESSA) is the United States' most comprehensive national education law.²¹² Ambitiously and pragmatically, it is broad in scope and intended to "provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."²¹³ The ESSA narrowly conceptualizes fines and fees, referencing only five types of fees and providing for payment of several: "accelerated learning examination fees,"²¹⁴ charter school fees,²¹⁵ "dual or concurrent

clear obligation of LEAs to identify such students and afford them all protections under law. *See* EDUC. L. CTR., FACT SHEET: THE RIGHTS OF STUDENTS EXPERIENCING HOMELESSNESS 3 (Aug. 2023), <https://www.elc-pa.org/wp-content/uploads/2023/09/Rights-of-Students-Experiencing-Homelessness-2023.pdf> [<https://perma.cc/FGP8-JF9Y>] (describing how the McKinney-Vento Act requires schools to identify homeless students).

²⁰⁷ 22 PA. CODE § 12.3(c) (2023) ("Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians."); *id.* § 12.6(a) (requiring that the "governing board shall define and publish the types of offenses that would lead to exclusion from school"). In addition, Education Law Center-PA often represents students who have not been apprised of their rights under federal and state law or afforded required legal protections relating to fines and fees.

²⁰⁸ *See infra* notes 212–218 and accompanying text.

²⁰⁹ *See infra* notes 219–228 and accompanying text.

²¹⁰ *See infra* notes 229–246 and accompanying text.

²¹¹ *See infra* notes 247–258 and accompanying text.

²¹² 20 U.S.C. § 6301; *see also* Veronica A. Mantilla, Comment, *Recalculating ESSA to Account for "Every Student": The Need to Eliminate "Subtractive Schooling" Among Latino Boys and Fund Culturally Responsive Teaching*, 36 WIS. J.L., GENDER, & SOC'Y 289, 295 (2021) (describing ESSA's predecessor as the first comprehensive education law on the federal level).

²¹³ 20 U.S.C. § 6301.

²¹⁴ *Id.* §§ 7114(b)(3)(A)(ii), 6303b(c)(3)(C), 7117(a)(3)(D)(i).

²¹⁵ *Id.* § 7221b(f)(2)(G)(iii) (requiring notice of contract requirements).

enrollment program” fees,²¹⁶ fees for “educator development,”²¹⁷ and fees creating barriers to the “enrollment and retention of homeless children.”²¹⁸

B. Family Educational Rights and Privacy Act of 1974

The Family Educational Rights and Privacy Act of 1974 (FERPA)²¹⁹ is a federal law that the Student Privacy Policy Office, part of the U.S. Department of Education, administers.²²⁰ FERPA applies to the totality of educational agencies and educational institutions receiving funding from the Department of Education.²²¹ Generally, FERPA provides parents and “eligible students”²²² with confidentiality rights regarding access to and disclosure of student education records.²²³

Under FERPA, fines and fees are more broadly defined than in ESSA. Specifically, FERPA provides that educational institutions or agencies are not to be granted any funds from the program if they have “a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution . . . the right to inspect and review the education records of their children.”²²⁴

As data in Part II indicate, there is a substantive category of fees related to educational records in Pennsylvania.²²⁵ Importantly, FERPA’s regulations delineate that the right to inspect and review records is not the same as the right to obtain copies of a student’s record.²²⁶ Schools may assess a fee to obtain a copy of a student’s education record, “which is made for the parent or eligible student,” unless “the imposition of a fee effectively prevents a parent

²¹⁶ *Id.* § 6314(e)(2)(B).

²¹⁷ *Id.* § 6672(d) (requiring that grant money given for educator development would not be used to in a way that would generate fees for parents or students).

²¹⁸ 42 U.S.C. § 11432(g)(1)(I) (requiring, as a condition of receiving a grant for the education of children experiencing homelessness, that a state must create policies to eliminate barriers to enrolling youth experiencing homelessness).

²¹⁹ 20 U.S.C. § 1232g.

²²⁰ U.S. DEP’T OF EDUC., THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT: GUIDANCE FOR ELIGIBLE STUDENTS 1 (2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPAforeligiblestudents.pdf [<https://perma.cc/JM5P-BV22>].

²²¹ *Id.*

²²² 34 C.F.R. § 99.3 (2024) (defining, under FERPA, an “[e]ligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

²²³ U.S. DEP’T OF EDUC., *supra* note 220, at 1.

²²⁴ 20 U.S.C. § 1232g(a)(1)(A).

²²⁵ *See, e.g.*, MULTICULTURAL ACAD. CHARTER SCH., MULTICULTURAL ACADEMY CHARTER SCHOOL HANDBOOK 2021–2022, at 29 (2021) (on file with authors) (setting out policy of withholding academic records in cases where a student owes money to the school); INFINITY CHARTER SCH., PARENT/STUDENT HANDBOOK 2021–2022, at 53 (2021) (on file with authors) (maintaining that schools can bill for copies of educational records).

²²⁶ 34 C.F.R. § 99.11(a).

or eligible student from exercising the right to inspect and review the student's education records" upon a showing of "financial hardship" by the parent or eligible student.²²⁷ We note that this eligibility requirement places a burden on the family and the "eligible student" to substantiate "financial hardship," which is not otherwise defined in the regulations.²²⁸

C. McKinney-Vento Homeless Assistance Act

The federal McKinney-Vento Homeless Assistance Act (McKinney-Vento)²²⁹ "is designed to address the challenges that homeless children and youths have faced in enrolling, attending, and succeeding in school."²³⁰ Compared to ESSA and FERPA, McKinney-Vento provides the most comprehensive framework for protecting against fines and fees as a barrier to accessing educational opportunities. Specifically, it establishes protected-class status for students experiencing homelessness and provides a robust range of protections, including protections against certain fines and fees.²³¹ Students retain protection under McKinney-Vento for as long as they are experiencing homelessness, even if a student's experience lasts years or recurs, as the statute imposes no

²²⁷ *Id.*; *FAQ Regarding FERPA*, PROTECTING STUDENT PRIV., U.S. DEP'T OF EDUC., <https://studentprivacy.ed.gov/faq/if-redaction-or-segregation-education-record-multiple-students-can-be-reasonably-accomplished> [<https://perma.cc/L2MZ-WU5L>] (describing how FERPA "provides parents and eligible students with the right to inspect and review the student's education records" at no cost); *see also* 34 C.F.R. § 99.11(b) (prohibiting schools from charging parents and eligible students for searching and retrieving records); *FAQ Regarding FERPA*, *supra* (specifying that schools cannot charge parents and eligible students for finding, redacting, or separating student records to preserve student privacy).

²²⁸ *See* 34 C.F.R. § 99.11(a) (disallowing a fee for the copy of a record only when it would effectively prevent the parent or eligible student from accessing their records). An additional challenge with utilizing FERPA's protections is the "effectively prevents" requirement, under which schools have broad discretion to impose fees. *See id.* (forbidding the application of fees to obtain a copy of a record only if those fees would "effectively prevent[]" access to the record). The guidance does not specify what circumstances would result in a family or eligible student being "effectively prevented" from reviewing records, other than to provide that cases "would be limited to a parent or an eligible student providing evidence of the inability to pay for the copies due to financial hardship." *FAQ Regarding FERPA*, *supra* note 227. This leaves schools with significant discretion to deny requests to those challenging fees.

²²⁹ 42 U.S.C. § 11431.

²³⁰ U.S. DEP'T OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTHS PROGRAM NON-REGULATORY GUIDANCE 1 (2016), <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf> [<https://perma.cc/WAG7-EVL3>] (describing key aims of the McKinney-Vento Act).

²³¹ 42 U.S.C. § 11431 (mandating that children experiencing homelessness have equal access to public education); *see id.* § 11432(g)(1)(I) (mandating that states receiving certain grants must take steps to eliminate barriers to attendance for children experiencing homelessness caused by fines and fees). McKinney-Vento protections are afforded in conjunction with other rights a student may have under other applicable local, state, and federal laws, such as special education rights. *See, e.g.*, 24 PA. CONS. STAT. § 13-1331.1(a) (2024) (assisting students experiencing homelessness in Pennsylvania).

durational cap on homelessness.²³² The guiding purpose of McKinney-Vento is to ensure that eligible students from preschool to high school have “access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State academic standards to which all students are held.”²³³ Specifically, students are eligible for protection if they “lack a fixed, regular, and adequate nighttime residence.”²³⁴ A wide range of experiences are captured within the definition of “homeless,” including temporarily living doubled-up with others due to “loss of housing, economic hardship or similar reason,” living in temporary or emergency shelter, living in a car, hotel, or campground, living in a place that is not ordinarily used for sleeping, parks or in public spaces, or living in housing that is legally recognized as substandard.²³⁵

Relative to fines and fees in Pennsylvania public schools, McKinney-Vento imposes clear and ongoing obligations on State Educational Agencies (SEA) and LEAs. McKinney-Vento requires that they “review and revise[] policies to remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths in schools in the State, including barriers to enrollment and retention due to outstanding fees or fines, or absences.”²³⁶

Under McKinney-Vento, fines and fees are addressed through a barriers-based framework rather than a comprehensive ban. For example, there is no applicable income-based criterion that would otherwise restrict an eligible student’s access to having a fee or fine removed if it is a barrier to enrollment or retention.²³⁷ Additionally, Title I Part A funds may also be used to cover a wide range of costs that would otherwise be assessed against students experiencing homelessness, such as summer school, tutoring, AP and IB testing fees, college entrance exams (e.g., SAT or ACT) fees, or GED testing.²³⁸

²³² See *G.S. v. Rose Tree Media Area Sch. Dist.*, 914 F.3d 206, 210–11 (3d Cir. 2018) (holding that “the Act does not impose a limit on the duration of homelessness”).

²³³ 42 U.S.C. § 11431(1), (4).

²³⁴ *Id.* § 11434a(2)(A).

²³⁵ *Id.* § 11434a(2)(B).

²³⁶ *Id.* § 11432(g)(1)(I).

²³⁷ See *id.* McKinney-Vento subgrant funds can be used to cover such fees. See, e.g., *id.* § 11433(d)(9) (authorizing funds for the payment of costs for obtaining enrollment records).

²³⁸ U.S. DEP’T OF EDUC., *supra* note 230, at 38–39. Two principles govern the use of Title I, Part A funds to support services to students experiencing homelessness. See 20 U.S.C. §§ 6313(c)(3)(A), 6315(e)(2); 2 CFR § 200.403(a) (2024). First, the services must be reasonable and necessary to assist students to take advantage of educational opportunities. See 20 U.S.C. § 6313(c)(3)(A) (requiring reservation of funds as necessary); 2 CFR § 200.403(a) (allowing costs only when reasonable and necessary as a general rule). Second, Title I, Part A funds must be used only as a last resort when funds or services are not available from other sources, public or private, such as the USDA’s National School Lunch Program and Breakfast Program or local discretionary funds available for economically

Further, McKinney-Vento states the importance of requiring:

SEAs and LEAs to consistently review their policies and practices with regular input from homeless parents, youths, and advocates so that new barriers, or barriers that the SEA or LEA staff may be unaware of, do not prevent children and youths from receiving the free, appropriate public education to which they are entitled.²³⁹

Addressing fines and fees is a central aspect of this process, as both SEAs and LEAs must “[e]nsure that costs do not prevent students from participating in activities by waiving fees; using funds and strategies for homeless students comparable to those used to allow other low-income students to participate; paying for equipment,” and more.²⁴⁰ In addition to the obligation to revise policies, LEAs have the supplemental duty to ensure that “homeless children and youths are enrolled in, and have a full and equal opportunity to succeed in, schools of that local educational agency.”²⁴¹ Notably, enrollment is expansively defined by the Act to include both “attending classes and participating fully in school activities.”²⁴² Under this definition, a student not rostered for courses cannot otherwise be prevented from engaging with their school community through participation in school-sponsored events, extracurriculars, or other school-based opportunities.²⁴³

According to Pennsylvania’s ESSA Consolidated Plan (Plan), which provides, in part, state compliance with McKinney-Vento, the SEA must work to remove barriers for students, including fines and fees.²⁴⁴ Specifically, “[t]he SEA will ensure that regional coordinators and their staff train LEAs on McKinney-Vento guidelines that limit barriers to academic and extracurricular activities. LEAs cannot refuse participation in any extracurricular activities for students; strategies will be utilized to eliminate barriers.”²⁴⁵ Despite the important language contained in the Act, Non-Regulatory Guidance, and in Pennsylvania’s ESSA Consolidated Plan, and the acknowledgements that fines and fees result in education barriers for McKinney-Vento eligible students,

disadvantaged students generally. See 20 U.S.C. § 6315(e)(2) (describing the availability of such funds as a measure of last resort).

²³⁹ U.S. DEP’T OF EDUC., *supra* note 230, at 6; see also 42 U.S.C. § 11431(1) (stating that SEAs must make sure that homeless children have equal opportunities to access public education).

²⁴⁰ U.S. DEP’T OF EDUC., *supra* note 230, at 25.

²⁴¹ 42 U.S.C. § 11432(g)(6)(A)(ii).

²⁴² *Id.* § 11434a(1).

²⁴³ See *id.* (defining enrollment to include participation in extracurricular activities).

²⁴⁴ PA. DEP’T OF EDUC., EVERY STUDENT SUCCEEDS ACT: PENNSYLVANIA CONSOLIDATED STATE PLAN 149 (2019), <https://www.education.pa.gov/Documents/K-12/ESSA/PennsylvaniaConsolidatedStatePlan.pdf> [<https://perma.cc/HKH3-QDBH>].

²⁴⁵ *Id.*

McKinney-Vento does not provide a comprehensive ban on the use of fines, fees, or costs for all eligible students.²⁴⁶

D. Act 1 of 2022

Like the law at the federal level, for example, McKinney-Vento, Pennsylvania state law also establishes specific exemptions to fines and fees for students who are impacted by homelessness or placement in the foster care or juvenile justice systems.²⁴⁷ In 2022, Act 1 of 2022 (Act 1) went into effect²⁴⁸ with a stated purpose to “promot[e] timely high school graduation and facilitate[] equal access to academics and extracurricular activities and the removal of systemic barriers for students who experience education instability.”²⁴⁹ Fines and fees are broadly construed under Act 1.²⁵⁰ The Pennsylvania Department of Education has directly acknowledged that “[f]ees can be harmful to students and families and may create barriers to full participation in school.”²⁵¹

As explicated in the Pennsylvania Department of Education’s Basic Education Circular (BEC) Guidance on Act 1, schools must waive fees including, but not limited to, the following:

School ID fees, uniform fees, participation fees for athletics, extracurricular activities, school-sponsored trips, or clubs, course fees, materials fees, fees assessed for lost or damaged materials, athletic physical exam fees, parking or driving fees, school lunch fees, library fees, locker or padlock rental or replacement fees, summer school and credit recovery fees, technology fees, and graduation regalia fees.²⁵²

²⁴⁶ See 42 U.S.C. § 11432(g)(1)(I) (requiring the elimination of enrollment barriers from fines and fees for eligible students). Education Law Center-PA case review indicates that although schools eventually waive fines, fees, and costs for McKinney-Vento eligible students without needing to establish a barrier, it most often only happens after advocacy or legal action is initiated and a family or student has sought unsuccessfully to exercise their rights on their own. Further, analysis of school handbooks and codes of conduct reveals that most do not provide notice of McKinney-Vento eligibility relative to fines and fees, despite federal mandates that schools address these barriers.

²⁴⁷ *Id.* § 11432(g)(1)(I); 24 PA. CONS. STAT. § 13-1331.1(a)(4) (2024).

²⁴⁸ 24 PA. CONS. STAT. § 13-1331.1(a).

²⁴⁹ *Act 1 of 2022—Assisting Students Experiencing Education Instability*, PA. DEP’T OF EDUC. (Aug. 1, 2022), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Act1of2022AssistingStudentsExperiencingEducationInstability--.aspx> [https://perma.cc/2UVN-LD2F].

²⁵⁰ See 24 PA. CONS. STAT. § 13-1331.1(a)(4) (waiving “each fee that would otherwise be assessed against the student”).

²⁵¹ *Act 1 of 2022—Assisting Students Experiencing Education Instability*, *supra* note 249.

²⁵² *Id.*

There are no income-based requirements to qualify for a fee waiver; it applies automatically.²⁵³

Act 1's protections are limited to students in "kindergarten through grade twelve" if they experience "education instability."²⁵⁴ The law defines "education instability" as having "[o]ne or more changes in school entity enrollment during a single school year as the result of" experiencing homelessness, involvement in the foster care or juvenile justice systems, or due to a court-ordered placement, including voluntary placements.²⁵⁵ Act 1 imposes an ongoing obligation on "school entities" to identify students who are Act 1 eligible, including retroactively identifying students who were previously unidentified in violation of their rights.²⁵⁶ Once a student is identified as Act 1 eligible, a school must assign a "point of contact" who is responsible for ensuring that students are afforded protections under Act 1, including the waiver of "each fee that would otherwise be assessed against the student" and ensuring that the student's "participation in school-sponsored and extracurricular activities" is not limited "due to a waiver of the participation fees."²⁵⁷ Like McKinney-Vento, however, Act 1 does not require schools to remit previously collected fees and focuses instead on removing fee structures for protected students rather than prohibiting them in totality.²⁵⁸

CONCLUSION

Working with the concept of racial capitalism in U.S. education law and policy brings into focus the distortion of how modern American schools coercively force engagement in extractive and violent formulations of capitalism in a free, yet compulsory, public system. Given this reality, our coupling of education and the concept of racial capitalism is simultaneously analytic and pragmatic in its aim. At an analytic level, it is necessary to reimagine racialized inequities in education through new concepts and perspectives. We are not ask-

²⁵³ See 24 PA. CONS. STAT. § 13-1331.1(a)(4) (requiring waiver of fees).

²⁵⁴ *Id.* § 13-1331.1(e).

²⁵⁵ *Id.*

²⁵⁶ *Id.* §§ 13-1331.1(a), 1331.1(e) (defining school entity as any of the following: "(1) A school district. (2) A charter school. (3) A cyber charter school. (4) A regional charter school. (5) An intermediate unit. (6) A career and technical school"); see also *Act 1 of 2022—Assisting Students Experiencing Education Instability*, *supra* note 249 (outlining a school entity's obligation to identify students who have experienced educational instability retroactively if they were not identified in the 2021–22 school year but should have been, and explaining that in these cases, a student can be retroactively awarded a statewide Keystone Diploma if they meet relevant graduation eligibility requirements).

²⁵⁷ 24 PA. CONS. STAT. § 13-1331.1(a)–(b).

²⁵⁸ See 42 U.S.C. § 11432(g)(1)(I) (requiring educational agencies to eradicate barriers to the enrollment of homeless students, including those created by fines and fees); 24 PA. CONS. STAT. § 13-1331.1(a)(4) (forbidding the assessment of fees against educationally instable students).

ing whether race or economy function to produce and sustain education inequities, but how the racialization of capitalism's key features has migrated across and within public systems.²⁵⁹ Thus, racial capitalism offers a striking perspective on education that in many ways is consistent with critical race theory approaches to education.²⁶⁰ Yet, it is additive to a new ecosystem of analyses. A racial capitalism mapping of fines and fees, for example, reveals how they operate as a form of compulsory capitalism, e.g., participatory debt, for Black students and families.

On a practical side, this Article aims to shed light on a critically overlooked area of education policy and practice, openly calling for the abolition of all forms of economic extraction in public education. This Article should not be misinterpreted as speaking solely to the civil rights education law movement. On the contrary, we intend it to provoke attention from the economic justice, poverty law, and law and political economy fields, in particular those at the vanguard of anti-fines-and-fees activism in other systems that rely on Black dispossession.²⁶¹ It is essential to bridge disciplinary divides that have limited collective imaginations for a racially and economically just future. The pursuit of a new normative vision of economic justice has yielded substantive legal reforms across multiple public systems and diminished the reliance on strategies of subordination and regimes of punishment. We seek the same for the American public education system. As Angela Harris observes, “[j]ust as [Critical Race Theory], moving through capillaries within and outside law, has made *intersectionality* a common word, a racial capitalism literature that engages with law may help advocates dream into being new forms of governance adapted to a more just and sustainable future.”²⁶²

Abolishing a hidden feature of racial capitalism in education—what this Article systematically identifies as a fines and fees regime—is one step to-

²⁵⁹ The features of educational fines and fees regimes bear striking resemblance to other fines and fees regimes. *See generally, e.g.*, Brito et al., *supra* note 16 (describing racial capitalism in the civil courts); Mustaffa & Dawson, *supra* note 16 (analyzing student debt through racial capitalism).

²⁶⁰ *See generally* Gloria Ladson-Billings & William F. Tate IV, *Toward a Critical Race Theory of Education*, 97 TCHRS. COLL. REC. 47 (1995) (using race as an analytical tool for understanding school inequity); *see also* Gloria Ladson-Billings, *Race . . . to the Top, Again: Comments on the Genealogy of Critical Race Theory*, 43 CONN. L. REV. 1439, 1455 (2011) (revisiting racial inequity in the United States education system currently, positing that school inequality is “accepted as a fact of U.S. life,” and race is a predictor of lack of access to quality education); Kiel, *supra* note 126, at 619 (describing how the modern educational classification system, like explicitly racial classifications of the past, creates groups of students that are “racially identifiable,” but differs through using mechanisms that are not facial); Dumas, *supra* note 63, at 12 (describing an “anti-Black social imagination” in schools).

²⁶¹ An earlier version of this Article was intentionally presented at the 2023 Poverty Law Conference at Berkeley Law School.

²⁶² Angela P. Harris, *Foreword: Racial Capitalism and Law* to HISTORIES OF RACIAL CAPITALISM, at vii, xiv (Destin Jenkins & Justin Leroy eds., 2021).

wards dismantling a co-productive relationship of white supremacist racial hierarchy. Legal scholars argue that “the insights racial capitalism brings to the study of the past are also crucial for envisioning the future. If race came into being to justify the social dynamics of capitalism, then racial justice cannot thrive under capitalism.”²⁶³ Understanding the limits of academic scholarship, even at their most activist formulations,²⁶⁴ this Article is but one of multiple interventions to achieve this goal.²⁶⁵ This is particularly important because, as acknowledged in other work, the impact of education laws and policies are “not [a] single axis; rather, they are multi-axial and exist within a larger ecosystem of control and punishment that criminalizes Black people—whether they are students or not.”²⁶⁶ Confrontations against such an ecosystem must likewise be multi-axial and unearth hidden architectures of one of many systems built, nourished, and sustained by white supremacy and anti-Black racism. As Saidiya Hartman argues,

The possessive investment in whiteness can’t be rectified by learning ‘how to be more antiracist.’ It requires a radical divestment in the project of whiteness and a redistribution of wealth and resources. It requires abolition, the abolition of the carceral world, the abolition of capitalism. What is required is a remaking of the social order, and nothing short of that is going to make a difference.²⁶⁷

²⁶³ Jenkins & Leroy, *supra* note 42, at 15.

²⁶⁴ As Obasogie contextualizes, “critical race theory is a next generation project of human liberation that continues the substantive work of advocating racial justice. Yet it does this through a critical and self-reflective lens that acknowledges the shortcomings of mainstream legal advocacy so as to realize a future of true human equality.” Osagie K. Obasogie, *Foreword: Critical Race Theory and Empirical Methods*, 3 UC IRVINE L. REV. 183, 184 (2013).

²⁶⁵ This Article complements on-the-ground direct services, local- and state-level policy advocacy, and political education of parents, caregivers, and students in Pennsylvania.

²⁶⁶ González & Joki, *supra* note 53, at 44.

²⁶⁷ Catherine Damman, *Saidiya Hartman on Insurgent Histories and the Abolitionist Imaginary*, ARTFORUM (July 14, 2020), <https://www.artforum.com/columns/saidiya-hartman-on-insurgent-histories-and-the-abolitionist-imaginary-248115/> [<https://perma.cc/X2MS-HPP2>] (quoting author Saidiya Hartman).

APPENDIX 1²⁶⁸

<i>Categories</i>	<i>Subcategories</i>
Fine	Attendance-Related Fines Library Fines Parking Fines
Fee	School Records Copy Fee School Activities/Athletics Fees Parking Permit Fees
Cost(s)	Summer School Costs Field Trip Costs Elective Courses
Pay/paid	Athletic Equipment/Equipment Monetary Payment as Form of Discipline Tuition for Students Living Out-of-District
Charge	Loss/Damage of School Property Online Meal Payment Systems Charges for Bounced Checks
Purchase	ID Replacements Locker Locks School/PE Uniforms
Price	Meal Prices Property Replacement Prices
Dues	Yearly Class Dues Club Dues Sports Team Dues
Outstanding Balance	Resulting in Withholding of Report Cards Resulting in Prohibition from School Activities
Buy	N/A

²⁶⁸ See, e.g., GILLINGHAM CHARTER SCH., STUDENT/PARENT HANDBOOK 2021–2022, at 21, 31, 58 (2021) (on file with authors) (fees for receipt of copies of student records, subject-related field trip costs, and general transportation costs beginning with an encouraged \$5.00 per ride rate); AVELLA AREA SCH. DIST., PARENT/STUDENT INFORMATION 2021–2022, at 14 (2021) (on file with authors) (Chromebook insurance payments at a rate of \$28.00 per year); CARBONDALE AREA SCH. DIST., STUDENT AND PARENT HANDBOOK 2021–2022, at 42 (2021) (on file with authors) (charges for hall passes, with replacement costs beginning at \$1.00 and increasing by \$1.00 each time it is replaced); CENT. VALLEY SCH. DIST., 2022–2023 HIGH SCHOOL HANDBOOK, 55 (2022) (on file with authors) (mandatory purchasing of school and gym uniforms); CHAMBERSBURG AREA SENIOR HIGH SCH., CASHS STUDENT HANDBOOK 2022–2023, at 34–35 (2022) (on file with authors) (itemized list of a la carte meal prices for breakfast and lunch, with breakfast prices beginning at \$2.15 and lunch beginning at \$3.00). The education-related costs and charges in the outstanding balances category are not limited to unpaid fines/fees but also result in withholding of report cards, prohibition from school, and inability to participate in school activities. It should also be noted that in the case of expenses in the category of *purchase*, schools and districts allowed for additional and compounding fines.

