

Public Education: What is the Responsibility of the Commonwealth? Lesson Plan

Target Audience: 12th grade government students

Length: 1 day (90–minute class)

Objectives

The students will:

1. Describe the reaction of Virginia lawmakers to the *Brown v. Board of Education* decision.
2. Interpret the meaning of Article VIII, Section 1 of the Virginia Constitution.
3. Compare and contrast the possible impact of the proposed referendum in the 1950's to combat the Brown decision and the impact of the current policy of charging fees to public school students.

1. Overview

Public education remains one of the primary responsibilities shared between state and local government. The Constitution of the Commonwealth of Virginia requires the General Assembly to provide a system of free public schools. That provision has been the source of a surprising amount of controversy across the Commonwealth. In this lesson, students will be reminded of the role that the Virginia Constitution's public education section played in the Commonwealth's historic response to the Supreme Court's decision in *Brown v. Board of Education*. After reflecting upon the time in Virginia known by historians as "Massive Resistance," the students will read the current Constitutional provision which requires the Commonwealth to maintain public schools. Turning to recent news events, the students will read a publication from a child advocacy group that challenges the common practice of school districts in the Commonwealth of charging school fees with the ultimate goal of assessing the legitimacy of the complaints made by the group and attempting to interpret this important section of the Virginia Constitution.

2. Source Analysis

Activity 1

- Show the press conference of Governor Thomas B. Stanley discussing Section 141 of the Virginia Constitution which requires the Commonwealth to provide a system of free public schools.
 - The clip is available online at:
http://www2.vcdh.virginia.edu/civilrightstv/wdbj/segments/WDBJ1_03.html.
 - If internet access is not available, Handout #1: *Virginia's Dilemma—Thomas B. Stanley Interview Transcript* may be used instead.
 - Before watching the clip,
 - refresh the students' recollections of the period in Virginia after school desegregation was ordered by the Supreme Court in the Brown decision.
 - explain that the Gray Commission proposal allowed the Commonwealth to give parents vouchers and tuition assistance so that a child could attend a private, white academy.

- After students view the clip, as a class discuss the following questions:
 - What were the conditions in Virginia public schools in 1954 prior to the Supreme Court’s desegregation order?
 - In what ways would the Gray Commission proposal have defeated the purpose of the Court’s decision in *Brown v. Board of Education* and threatened public education in general?

Activity 2

- Distribute Handout #2: *Virginia Constitution, Article VIII, Section 1* and have students answer the questions and discuss their answers as a class.

Activity 3

- Distribute Handout #3: *The Price of a Free Education* and Handout #4: *The Price of a Free Education Analysis Questions*. Handout #3 is a publication from the children’s advocacy group JustChildren Program of the Legal Aid Justice Center and is also available online at:
<http://www.justice4all.org/files/The%20Price%20of%20a%20Free%20Public%20Education.pdf>.

3. Group Discussion

Conclude the lesson with a group discussion in which students respond to the following questions:

- How should state and local levels of government implement public policy regarding fees and public schools?
- What fundamental principles guide government policy in public education?
- How do interest groups influence policymakers at state and local levels of government?

4. Background

Massive Resistance

The Massive Resistance movement to the Supreme Court decisions in *Brown v. Board of Education* and its progeny, in which Southern states attempted to block or delay implementation of desegregation of schools, represents a political controversy with a multifaceted nature. From 1954 until 1959, first Governor Thomas B. Stanley and later Governor J. Lindsay Almond advocated legislative means of circumventing desegregation, including setting up a system of publicly funded private “white academies” and even closing public schools in Virginia. Many of these measures would have necessitated amending or repealing Virginia’s constitutional requirement that the General Assembly maintain a system of free public education. Although schools were closed briefly in Norfolk and Charlottesville and for five years in Prince Edward County, Massive Resistance was singularly ineffective in blocking implementation of desegregation; in Virginia Massive Resistance as a means of achieving a state-wide response to *Brown* was dropped nearly as soon as it was put in place. In 1959, after both the United States Supreme Court and the Supreme Court of Virginia ruled that the measures taken were unconstitutional, Governor Almond abandoned the cause of Massive Resistance and encouraged the General Assembly to follow his lead. Scholars have advanced a variety of theories to explain the decision by Virginia’s political leaders to abandon massive resistance, most of which consider the decision to drop massive resistance as a triumph for urban and suburban forces over the previously overrepresented rural Southside region from which the Byrd Organization obtained its political domination. Ultimately, Governor Almond explained his decision to leave Massive Resistance behind by

asserting that the importance of maintaining good public education in Virginia eclipsed his opposition to desegregation of the schools.

School Fees and the Virginia Constitution

In response to the study made by the Legal Aid Justice Center, the Virginia Department of Education conducted its own survey of school districts to determine what sorts of fees were being charged. A wide range of practices was revealed. The state Superintendent issued a memo clarifying his understanding of appropriate practices concerning school fees. Many school districts drastically decreased fees thus creating a budget deficit that only further contributed to the shortfall in funding facing public education at a time of economic downturn.

5. Conclusion

The importance of the state constitutional requirement that the Virginia General Assembly maintain a system of free public elementary and secondary schools for public policy formation by state politicians and interest groups has been demonstrated. During the upheaval of school desegregation, politicians were thwarted in their attempts to circumvent federally ordered school desegregation in part by the presence of this section of the Virginia Constitution. Similarly, policy entrepreneurs found this section of the Virginia Constitution of great value in their fight against school fees which the Legal Aid Justice Center contended disproportionately impacted low income families, thus serving to highlight the role of interest groups in the formation of public policy at the state and local level.

6. Differentiation

Rather than distributing Handouts #2 and #3 to students, the teacher could display these sources with an LCD projector or overhead projector and guide students in reading the documents. Students with access to either laptops or a computer lab could access the materials directly and perform related searches expanding their inquiry to relevant news articles relating to both school closings in the 1950's and debate over school fees during the 2008-2009 school year.

7. SOL Skills

The student will demonstrate mastery of the social studies skills citizenship requires, including the ability to

- analyze primary documents (GOVT.1a);
- evaluate information for accuracy, separating fact from opinion(GOVT.1e);
- identify a problem and prioritize solutions (GOVT.1f);
- select and defend positions in discussion (GOVT.1g).

8. SOL Content

The student will demonstrate knowledge of the organization and powers of the state and local governments described in the Constitution of Virginia by

- analyzing the relationship between state and local government (GOVT.8c).

The student will demonstrate knowledge of the process by which public policy is made by

- explaining how local and state governments formulate public policy (GOVT.9b);
- analyzing how individuals, interest groups, and the media influence public policy (GOVT.9d).

9. Materials

- Handout #1: *Virginia's Dilemma—Thomas B. Stanley Interview Transcript*
- Handout #2: *Virginia Constitution, Article VIII, Section 1*
- Handout #3: *The Price of a Free Education*
- Handout #4: *The Price of a Free Education Analysis Questions*

Name _____

Period _____ Date _____

Virginia's Dilemma
Thomas B. Stanley Interview Transcript
December 17, 1955

Patterson:

Governor, what questions are asked of you most frequently about the Gray Commission proposals and what answers do you give?

Stanley:

Well, I've run to [into] people, and the first thing they would say when this subject is mentioned is, "We need information." We will continue by saying that we have not read the Gray report, we did not have an opportunity to hear what was said before the committees, or what was said on the floor on the House or on the Senate when this bill was passed." And they insist that they need more information, which I can readily understand, before intelligently voting on this. So I reply that on Monday, December twelfth, the Referendum Information Office will set up in Richmond on a state-wide basis with the purpose of furnishing factual information. There's a staff there who are working on replies to questions as they come in daily, or by the hour, or whatever time they arrive. What we are trying to do, when I say we, this has become a part of my program because I recommended it to the Assembly of Virginia, and the Assembly took it. So, it is our program now. So we are trying to furnish information to these people, to say to the voters, to say to them: that you are voting for or against a limited constitutional convention to amend Section 141 of the constitution, which will give the General Assembly the right to amend that Section, whereby, they may restore what is has been doing, that we found to be unconstitutional in the last two or three years, and provide tuition grants for the parents of children, who object to sending their children to a mixed school.

Voice:

I believe John Nurer has the next question.

Nurer:

Governor, this one that we have heard re-pounded a good many times and it was discussed in it was discussed in the legislature, do you think that [the amending of] Section 141 in the State Constitution, as proposed, will in anyway effect Section 129 of the Constitution?

Stanley:

No, John, I do not think that the amendment of Section 141 will in anyway change or effect Section 129 of the Constitution. As you know of Section 129, the General Assembly shall establish and maintain an efficient system of public free schools throughout Virginia. And I don't believe that this tuition rank, the reason for which the referendum is called, will in any way effect Section 129.

Patterson:

Governor, opponents contend that this tuition grant plan would endanger public education in Virginia, how do you reply to these opponents?

Name _____

Period _____ Date _____

Stanley:

My reply to this question is, that there would be less danger to the public school system if tuition grants are made available, and if they're available to parents who may have the choice of sending their children to an integrated school or taking them out, and sending them to a private school.

Patterson:

Well Governor, you're on record for favoring the highest possible school standards for Virginia, do you believe it will be possible for the state to maintain acceptable standards in private schools as contemplated in the Gray Commission Proposal?

Stanley:

Well I think that's a good question, and I would like to say that the State Board of Education provides the standards by which all public schools must meet, now. And it makes the same standards available to the private schools in Virginia, and I assume and am in fact assured that standards will be provided to any private school that may be set-up in the future.

Nurer:

Mr. Stanley, we know you hope that this referendum will approve the Constitutional Convention and indirectly, the amendment to the Constitution. What on the other hand, do you think will be the result? What will happen, if the vote is to defeat the proposal, would you then offer it to them in the January ninth referendum?

Stanley:

Well I feel that if the majority of the voters vote against the calling of the Constitutional Convention, that it will be in fact saying that they want mixed schools. And I might think of it this way, would it not almost be a mandate to the members of the Assembly to take no action on legislation when they meet again?

Third reporter:

During the debate in the Legislature, it was said, Governor, that the Assignment plan alone would take care of Virginia's school segregation problems, and the (?) should be given a fair trial before amending the Constitution. I believe in conversation a minute ago, we brought up that North Carolina has pretty much taken that position. What would you say... (sound discontinued)

Stanley:

The Assignment plan is desirable, but I can not say that it will be the solution to this problem. It will work, in my opinion, if both races would fully cooperate, but if not, the tuition grant in my opinion is the crux of the effectiveness of the success of the whole, overall plan. It is the only plan so far offered, to avoid enforced integration in our public schools.

Third reporter:

Governor, a good many of honest people are concerned with the possible weakening of the compulsory attendance law, it would be weakened or at least, they say it would be weakened by the insertion of the provision requiring no child to attend an integrated school. Do you regard this potential weakening as a serious problem?

Name _____

Period _____ Date _____

Stanley:

When I first... (?) I prefaced my remarks by saying that this is a question that is not affected by the amending of Section 141 of the constitution. The constitution now provides that the General Assembly may make such laws as they deem necessary with reference to the compulsory education. I can visualize that there might be some attempt made at taking a child, here and there, out of school, but I do not believe that would seriously effect the attendance of children in our private or public schools.

Patterson:

Getting at the overall purposes of the Gray Commission proposals and the proposals of your administration and recommending them; what are those purposes, Governor Stanley?

Stanley:

Well... (reply discontinued)

Nurer:

In this one, Mike seems to be putting you on the spot and frankly we think maybe it is, I told them to ask you whether it will be your intention as Governor, if the Gray Commission plan is adopted, to see that educational opportunities are provided for all children, black and white, in Virginia?

Stanley:

Well John, I don't feel that you're putting me on the spot there at all. My recommendation to General Assembly, regular session 1956, I shall recommend from the funds of the commonwealth, a sufficient amount to continue our public school system throughout Virginia, as we have in the past. In fact, I can give you a little advance in information that we are offering, I believe, the best program for public school education that has ever been offered in Virginia before. So it is my program, not to cripple the public school system in anyway, and I am assuming that if we are going to get good cooperation and I hope, in every instance, continue out [our] public schools. But if there should be an instance, where it is determined by a locality not to continue public schools there, why then we have this other provision, and I'm of the firm conviction that there will be a limited number of such cases. You know, we can not overlook the fact that in certain sections of Virginia, we may look for a considerable number of private schools withdrawing from the public school system, if the situation is not dealt with as we hope it will be to this need.

Patterson:

Well thank you very much, Governor Stanley and John Nurer, for being with us on this session of "Virginia's Dilemma," and we invite you to be back with us at this same time when we are here again on Saturday evening at seven o'clock.

Name _____

Period _____ Date _____

Virginia Constitution Article VIII

Education

Section 1. Public schools of high quality to be maintained.

The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.

Directions: After reviewing Article VIII, Section 1 of the Constitution of Virginia, answer the questions.

1. Explain what you think is the intent of Article VIII, Section 1.
2. Identify and explain the costs and benefits to the Commonwealth of providing public education.
3. What expenditures for public education are necessities?
4. What expenditures for public education might be considered luxuries?

The Price of a Free* Public Education

A Report by the JustChildren Program of the Legal Aid Justice Center

**Valid only at participating locations. Some restrictions apply.*



\$260

\$260. That's what a single mother of three had to pay this year for her children to attend public school in Virginia.

Because her children qualify for the free lunch program, this mother was able to apply for a small reimbursement (\$65) – but not until after she took out a loan against the title of her car. Seven months later, she is still paying off that loan.

The Virginia Constitution states: “The General Assembly shall provide for a system of *free* public elementary and secondary schools for all children of school age throughout the Commonwealth . . .”

The **Purpose of this Report** is to draw attention to the increasingly common practice of passing on the costs of public education to students. In this Report, we make the following observations:

- Facing increasing costs and inadequate state support, Virginia's schools are struggling to provide students with a quality education that meets state and federal standards.
- Many schools live up to the Virginia Constitution's promise of a free public education, but countless others pass on the costs of education to their students, charging fees for instruction, materials, or simply, “school.”
- Every family feels the burden of these fees – which can quickly add up – but low-income families are particularly affected as they attempt to stretch the family budget even further at the beginning of the school-year.
- Most schools have no formal policies on fees or waivers based on financial hardship. It is common for notices sent home to parents to imply that fees are mandatory, even when they are not, and demand immediate payment. Often, such notices do not alert parents to the availability of waivers for low-income students or to the procedure for applying for them.
- Many of the fees charged by schools may be unlawful under the Virginia Constitution, statutes, and regulations and should be eliminated.

Why Charge Students?

Historically, financial support for Virginia public schools at the state level has been low. Virginia's relative wealth has not necessarily translated into higher per pupil spending. Virginia ranks 5th in per capita income.ⁱ In 2005, however, Virginia ranked only 33rd in state funding per pupil in grades K-12. The state spent \$4,047 per pupil, well below the national average of \$5,032.ⁱⁱ Thus, public schools have relied heavily on local governments for financial support. In 2005, Virginia ranked 14th in *local* spending on K-12 education.ⁱⁱⁱ

Money for the Fare?

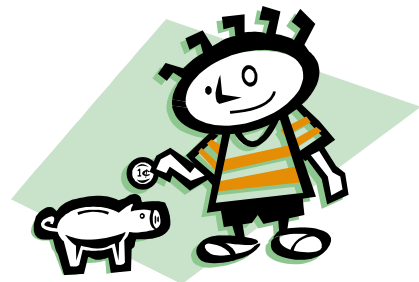
To address increased fuel costs and a budget shortfall, Albemarle County Public Schools recently considered charging students for transporting them to and from school! Albemarle is not alone in considering fees for transportation services. This spring, the Petersburg Public Schools joined scores of other school districts in charging for field trips and/or related admission costs.

In response to a letter from Henrico County's then Delegate John S. Reid, a 2007 opinion from Attorney General Robert F. McDonnell states that school systems are not authorized to charge students for transportation to and from school and suggests that fees for field trips might be equally impermissible.

Despite the disappointing level of support for schools at the state level, the state and federal governments have increasingly demanded greater outcomes from schools, all without figuring out the cost of providing each child a meaningful opportunity to meet the state's standards.

In 2003, the state found that the greatest predictor of achievement on Virginia's Standards of Learning tests was the level of student poverty in the school district.^{iv} Authorities estimate that a 40% to 60% adjustment above basic per pupil funding is needed to pay for research-based interventions targeted at students at-risk of educational failure.^v Nevertheless, Virginia dedicates a relatively modest amount of money to address the challenges of educating students in schools of concentrated poverty.^{vi}

Facing inadequate resources, tapped out local governments, and the inability to raise revenue themselves, school systems have been forced to get creative, turning to an alternative source of direct revenue: their students.



The Myth of Free Public Education

JustChildren sent Freedom of Information Act requests to 26 of Virginia's 132 school divisions asking for their fee lists, school board policies pertaining to fees, waiver information, and examples of notices sent home to parents.^{vii} The results revealed that almost every school division we asked charged some kind of fee for instruction, services or materials. Although some divisions had minimal fees and charges associated with their instructional programs, others had long fee schedules and elaborate fee collection systems.

Of the school divisions we reviewed, about one-third reported charging very few fees, and several noted that they try to accommodate children whose families cannot afford the fee. But only one – Loudon County Public Schools – reported absolutely no fees. “What do you mean by ‘no fees’?” we asked a Loudon County representative. “Surely you must charge for something . . .?” We asked about class dues, instructional fees, materials fees, PE uniforms, elective classes, and science lab fees. The response: NO FEES. Period. But all good things come to an end – especially when times are tight. The Loudon school system's 2008-2009 budget was cut by almost \$50 million this year, and the school representative we spoke to signaled that charging fees could be on the table for next year.

We put the various types of fees we discovered into six categories:

Instructional Fees – We were shocked to find that a handful of schools charge mandatory, tuition-like “instructional” (or “activity”) fees to all students in a particular grade or school. For example, Goochland Middle School charges all students an annual instructional fee of \$20, not including charges associated with electives, science labs, and gym uniforms. The total bill to attend Goochland Middle School in 2007-08 was \$48. According to the school's newsletter, the “total due” from twelfth graders at Cave Spring High School in Roanoke County was \$150, including a \$20 “school fee,” \$45 in class dues, and an \$85 laptop fee.

Course Fees – Like instructional fees, these fees are charged to every student who enrolls in a particular course. We found fees for required core classes – such as Geometry, middle school Math and English/Reading courses, an Earth Science course,

Come to Fee Night and meet your child's teacher!

Most schools have mandatory “Parent and Student Registration and Orientation” nights. These events are held before school begins and parents must come to complete required registration forms, pay all school fees, sign laptop contracts, receive student schedules and meet their children's teachers. Some schools in Henrico County call their open houses “**Fee Night.**”

Chemistry lab, and Biology lab – as well as for electives, such as AP courses or career and technical education classes. It is not uncommon for high school art and music classes to cost \$25 or more. Fees for core classes are usually kept fairly low (e.g., \$5-\$10 science lab fees; \$5 for high school math; \$5 for P.E.), but electives can get quite pricey—as high as \$245 for cosmetology in Accomack County and \$350 for show choir in Chesterfield County. Several school divisions offer a full range of career and technical education classes, which have some of the highest fees. In the next year, the Virginia Board of Education is expected to approve two new technical diplomas, calling into serious question the wisdom and legality of fees for classes necessary to earn these diplomas.

Fee Collection Systems

Some schools have developed a collection system for school fees. For example, William Byrd Middle School in Roanoke County issues a notice to parents entitled: “News from the Bookkeeper.” Against a backdrop of \$100 bills, the notice requests that parents pay \$29.00 in school fees, plus an additional \$3.00 if the parent pays by credit card. The notice does not specify the purpose of the fee.

The notice also contains the following warning: **“If you were notified of writing an insufficient check this year, and did not take care of this error, you will be required to pay for the insufficient check and fees + all other fees for the upcoming 2007-2008 school year. This will need to be paid by CASH or VALID CREDIT CARD (Visa or MasterCard). Your child will not be given his/her schedule until all fees have been taken care of.”**

Laptop Fees – We found that a few school divisions are replacing textbooks with laptops issued to each middle and high school student. The laptops typically have the students’ textbooks downloaded onto them. These computers are hardly free, with schools charging typically around \$50 to \$85 per student in “user fees.”

Materials Fees – Many schools charge for consumable materials, such as agendas, workbooks, or physical education uniforms. Sometimes these materials are a requirement for participation in the course (like a gym uniform); sometimes they go toward materials like paper and printer ink used by the school as a whole. Some schools specified the fee for a particular item, while others charged an undesignated “materials fee” to all students in a particular grade.

Fees for Optional or Extracurricular Activities – Most schools charge for optional and extracurricular activities. These might include sports, after-school clubs, or parking permits. Most schools charge class dues to high schools students, ranging from \$5 to \$45. Often, these fees are listed as mandatory or are required to participate in graduation ceremonies.

School Supplies – In response to our request for information about fees, many school divisions sent us their school supply lists. Sent out over the summer or given to parents at back-to-school night, these notices ask parents to purchase a number of items that their child will need to come to school. These lists often asked for very specific

items (e.g., Elmer's brand white glue, Crayola brand crayons, "Fiskar" brand scissors, "Fleece blanket with pillow," "2 pocket folders – 1 blue, 1 yellow (no brads)"), and some schools ask parents not to label any supplies, as they will be shared for general classroom use.

Schools often make it clear that the applicable fees are mandatory and that failure to pay has consequences. Some send out notices or "Friendly Reminders" when payment is not received. By law, schools are not permitted to withhold diplomas or report cards for nonpayment of fees;^{viii} however, several school divisions threaten to withhold class schedules or disallow participation in school-sponsored activities. At Amelia County High School, students are warned that they may not participate in graduation, vote, hold office, or represent the class in any activity unless dues are paid in full. In addition, many schools require a school-issued PE uniform for gym: if students do not dress out for gym, their grades suffer.

Fee collection is a distraction from teaching. A simple Google search reveals that assessing student fees takes an investment of time from teachers. Often fee collection is done by a bookkeeper, but we found several teachers who use their classroom blogs and newsletters to exhort parents to pay fees. One Goochland County teacher posted pleas for payment of fees on her blog five times over the first six weeks of school and another had students write reminders in their agendas each week. If fees weigh so heavily on the minds of teachers well into the school year, it stands to reason that collecting fees, filling out receipts, and tracking nonpayment takes up valuable instruction time.

School Fees on a Shoestring

To many of us, these fees may seem insignificant. Indeed, many families likely regard the high quality educational experience provided by many Virginia schools to be well worth the price in fees. **But to many families living at or near poverty, school fees can be a substantial burden.**

In Roanoke County, the single mother of three featured earlier in this report ultimately paid nearly \$200 in school fees, even after being reimbursed for a portion of the laptop fee. These fees consisted of \$94.00 in "materials fees," \$15.00 for science and technology

Can everyone afford a free public education?

Not without help. The Westhaven Tenants Association, an association of public housing residents, used precious grant money to pay **almost \$800 in activity fees** for residents to attend the Charlottesville City Public Schools! The fees were paid to elementary and secondary schools on behalf of 62 students living in public housing. No one from the school questioned whether it was appropriate to assess fees to these low-income students. The group also purchased school supplies for these students.

classes, a fee of \$85.00 (\$65 of which was later reimbursed) for the use of a laptop for her high school son, and a number of charges for physical education uniforms, lockers, and other materials. This amount does *not* include the money she spent on required school supplies, like notebooks, crayons, pens, and paper.

Some school systems do offer waivers for students who qualify for free or reduced price lunches or whose parents are experiencing financial hardship.

Augusta County, for example, automatically waives fees for families receiving any form of public assistance and includes notices of these waivers in their student handbooks.^{ix}

However, our FOIA requests revealed that many school divisions lack clear policies regarding waivers for families that are unable to pay fees, or inconsistently apply their waiver policies. Most school divisions had no formal policy regarding waivers, relying on informal procedures to waive fees for families the school believes may not be able to afford them.^x Of those schools that had formal waiver policies, there was seldom any notification to parents of the existence of a waiver or how to apply, and some of our clients have reported that they were told by school personnel that no waiver was available, despite the fact that their children were eligible for the free lunch program.

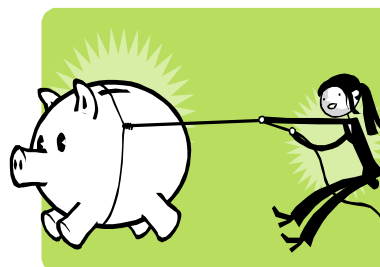
Education on Layaway

In the Nelson County Public Schools, the schools set up payment plans for parents who have difficulty paying fees. One such “Fee Payment Plan” form states:

“A \$5 down payment must be paid to enroll in the payment plan. This plan is set up so that a \$5 payment for fees can be made monthly from August to December, for a total of \$25 for school fees. If a payment is not made each month, then the total amount will be due immediately. Please understand, you [sic] child will not be allowed to pay for or attend any field trips this school year if the fees are not paid.”

In the Harrisonburg City Public Schools, failure to make payments according to your monthly payment plan used to result in a \$5 late charge *per month*. Commendably, however, this division completely overhauled its fee policies earlier this year, eliminating all mandatory fees and making it a model for other school divisions.

Indeed, the mother mentioned above was initially told by school personnel that there were no exceptions to the laptop fees for low-income families. A laptop fee form included in the school’s FOIA response revealed a waiver for students receiving free or reduced lunch, but our client was never given this form. After further inquiry, the mother learned from another parent that she could apply for a waiver. After two visits to the school board office and one to her son’s school to fill out forms, her persistence was rewarded, and she finally received all but \$20 of the laptop fee.



The Right to a *Free* Public Education

The Virginia Constitution explicitly states that the public elementary and secondary schools are to be free for all school age children in the state.

Thus, there are serious constitutional questions about charging fees for activities, services, and materials that are required for participation in a class. Virginia Attorney General opinions have consistently distinguished between fees for required activities, which are not authorized, and fees for optional activities, which are permitted.^{xi}

Yet some schools continue to levy “instructional fees” and other mandatory fees for a particular grade-level or for required and elective coursework. These fees are of particular concern to us, as students are required to earn 22 total credits to receive a standard diploma. Seven of those credits must come from electives, fine arts, or career and technical education coursework. Instructional fees are not

“[T]he General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.”

-- Article VIII § 1 of the
Constitution of Virginia

constitutionally or statutorily authorized and are problematic given the language of the state constitution, Virginia statute and regulations, and the very premise of public school itself.

Virginia’s local school boards have been twice cautioned against levying instructional fees. In 1993, the state Superintendent of Public Instruction, Joseph A. Spagnolo, Jr., explained that “fees may not be charged as a condition of school enrollment, but may be charged for ancillary or optional services.... Based upon the statutes and regulations, school divisions have no authority to charge instructional or material fees in general.”^{xii} Again in 1994, the Superintendent of Public Instruction, William C. Bosher, Jr., warned school systems that if they were to replace textbook fees with general instructional fees, the General Assembly would react negatively.^{xiii}

Notwithstanding these warnings, it appears that some divisions continue to charge instructional fees. In many others, textbook and general instructional fees have been replaced by fees for consumable materials – either generic “materials fees” or charges for specific items such as workbooks, agendas, and gym suits – that are required for participation in a class. Absent clarification from the Virginia Board of Education, the legality of these fees is an open question. We expect and hope, however, that when the Board does clarify which fees, if any, schools are permitted to charge students, it will prohibit fees for activities, services and materials that are necessary for students to benefit from instruction in a particular grade or course.

A Call to Action

Everyone should be concerned about fees for public school, not just low-income families. Every school-aged child in Virginia has been granted the right to a free public education, regardless of income. As the demands on our public schools continue to grow, the pressure to pass on costs to students will be immense.

We recommend that local schools stop charging mandatory fees. We further recommend that the state take the following remedial steps to curtail the improper charging of school fees:

- In the short term, the Superintendent of Public Instruction should issue a memorandum to all school divisions clarifying their obligations under the law.
- The Board of Education should review and revise its regulations to ensure that they unambiguously prohibit the charging of mandatory, tuition-like fees and other mandatory fees related to instruction and coursework.
- We reviewed the policies of less than 20% of Virginia's school divisions, but we suspect that the practices we describe in this Report are widespread across the Commonwealth. The Virginia Department of Education should study and monitor the fees charged by all school divisions in order to protect students and parents in the future.

Finally, and most importantly, we exhort the General Assembly to increase state funding for public schools. The fact that school systems are turning to parents to help fund schools is evidence that the General Assembly is not adequately funding our system of public education. School systems find themselves in an unenviable position: they do not have the funds they need to provide the necessary services and instruction to students to enable them to meet state standards. As a result, they have looked to parents for additional revenue. Increased state funding and investment in education is imperative.

We hope that all Virginia citizens and policymakers will be motivated by this report to guard the rights enshrined in our state constitution, including the right to a free public education that meets the state standards. Please visit www.justice4all.org to learn how you can speak out for more state support for public education.

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This Report was prepared by Angela Ciolfi, staff attorney for the JustChildren Program of the Legal Aid Justice Center in Charlottesville, Virginia, and by Alexis Wade, third-year law student at the University of Virginia School of Law. The authors would like to acknowledge Blue Ridge Legal Services and the Legal Aid Society of Roanoke Valley for their advocacy on behalf of low-income students and their families. Please contact Angela Ciolfi at angela@justice4all.org or (434) 977-0553 with questions.

ⁱ Barrett, Katherine, & Richard Greene, “Grading the States ’08: A Management Report Card,” *Governing Magazine* (Mar. 2008), available at <http://www.governing.com/gpp/2008/va.htm>.

ⁱⁱ “Virginia Compared to Other States,” Joint Legislative Audit and Review Commission (Jan. 16, 2008), available at <http://jlarc.state.va.us/States08.htm>.

ⁱⁱⁱ See *id.*

^{iv} “Review of Factors and Practices Associated with School Performance in Virginia,” Joint Legislative Audit and Review Commission (January 2004), available at <http://jlarc.state.va.us/Reports/Rpt305.pdf>.

^v See Weiner, Ross, & Eli Pristoop, “How States Shortchange the Districts That Need Help the Most,” *The Education Trust* (2006).

^{vi} See Commonwealth of Virginia’s “Urban Policy Report,” at p. 14 (2007), available at http://www.commerce.virginia.gov/Urban_policy.pdf.

^{vii} We sent requests to a sampling of rural, urban, and suburban districts around the state. Most of the districts were picked because we were unable to find information about their fees online, or because the information we found online raised questions about their fees. Twenty-four school divisions responded to the request. The Arlington Public Schools initially responded with an estimate of “thousands” of dollars to fulfill the request and ultimately failed to deliver a revised estimate after JustChildren agreed to narrow its request. Mecklenburg County Public Schools also failed to respond.

^{viii} Va. Code Ann. §22.1-6 (1950).

^{ix} The Augusta County Public Schools handbook for elementary students omits this vital information.

^x In the fall of 2007, the Chesterfield County Public Schools reviewed the school board policies of six school divisions and found that they “generally did not address the issues of fees in any detail nor did they address waivers.” See CCPS Memorandum #58 (2007) from Marcus J. Newsome, Ed.D., to School Board.

^{xi} See, e.g., 2007 Op. Va. Att’y Gen. Ann. 53 (concluding that the General Assembly has authorized local school boards to charge for transportation only when it provides the transportation for optional extracurricular activities); 1991 Op. Va. Att’y Gen. Ann. 149 (concluding that optional annual parking fees were permissible and noting that prior opinions from Virginia attorneys general have concluded that the Virginia Constitution bars local school boards from imposing student fees as a condition of school enrollment, but not from charging fees for optional or ancillary services or activities).

^{xii} Memorandum from the Superintendent of Pub. Instruction and Deputy Superintendent of Administration, on Instructional Fees, No. 171 (Sept. 3, 1993).

^{xiii} “It is important, given the General Assembly’s position on the free textbook issue, that local boards not place themselves in the position of replacing textbook rental fees with general instructional fees. If such a trend were to develop, I believe that the final decision regarding the appropriateness of charging instructional fees would be decided in the halls of the General Assembly, rather than with each local board.” Memorandum from the Superintendent of Pub. Instruction, on Gen. Sch. Fees, No. 95 (May 13, 1994).

Name _____
Period _____ Date _____

The Price of a Free Education Analysis Questions

The publication, *The Price of a Free Education*, is published by the children's advocacy group The JustChildren Program of the Legal Aid Justice Center, which is an interest group and a policy entrepreneur. As is the goal of interest groups, they seek to influence lawmakers and public policy on behalf of those they represent. As you respond to the questions below, be mindful of the role of interest groups in policy making.

1. What approach should a researcher take when using information from this sort of source?
2. What are the goals of this group?
3. How are the goals of this group reflected in the text of the document?
4. What economic conditions might have an impact on the debate this group is sponsoring?
5. Forecast how state and local governments might react to this publication. Provide support and examples for your answer.