

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?

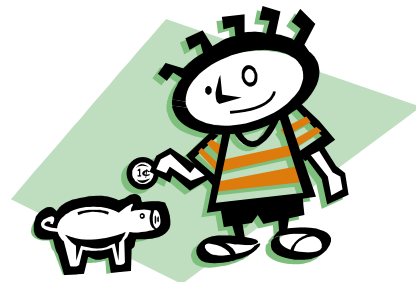
To address increased fuel costs and a budget shortfall, Albemarle County Public Schools recently considered charging students for transporting them to and from school! Albemarle is not alone in considering fees for transportation services. This spring, the Petersburg Public Schools joined scores of other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

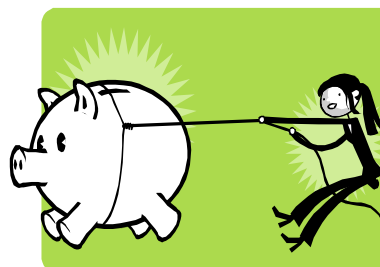
Education on Layaway

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.

* * * * *

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).