

County Schools Move to “Unlevel” Most Classes

May 6, 2022



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Albemarle county public schools have been working to “unlevel” course instruction across the curriculum for the past several years in an effort to increase equity and decrease the stigma around taking lower-level classes compared to one’s peers. After slow progress on the initiative during the pandemic-impacted school years, teachers are now fully implementing the division’s unleveling policy, and parents have lots of questions about how the plan is working.

A system of “leveled” instruction means that a school offers separate sections of a class—for example, Standard English and Honors English

sections—for students of differing levels of readiness. Unleveling (or de-leveling) is the process of removing those options by pooling all students into single-level classes, each taught by one teacher. A decade ago, county high school core subject classes were offered at five levels: Practical, Standard, Advanced, Honors, and AP or Dual Enrollment.

“My question is, why do we need so many levels?” said Director of Secondary Education Jay Thomas, who is also a former high school principal. “Why do we level in the first place? The reality is that whether you’re in a Standard, Advanced, or Honors class as we used to call them, it’s the same exact standards from the state that need to be taught.” Thomas says that offering so many levels creates problems for teachers with multiple class preps moving at different paces through the material.

“If you’re teaching, say, English 11 three different ways, that’s more preps, and more stress,” he said. “So [the reason for unleveling] is a combination of those things and just trying to have equitable opportunities regardless of the schools we’re in across our division, because at the end of the day, we’re one Albemarle County Public School system.”

Henley Middle School principal Beth Costa said unleveling has to start in elementary school to avoid labeling students based on early testing. “A second or third grader knows what group they’re in, and why that group is together,” she said. “They’re very savvy. They start to use words like ‘that kid’s smarter than I am,’ or ‘I’m in the dumb class,’ so they are making decisions about themselves as a learner because of these groupings.” Costa said that a leveled approach changes instruction for students who may not “get it” yet.



Henley Middle School principal Beth Costa. Photo: Malcolm Andrews.

“What teachers do, with the best of intentions, is they slow down, and then it’s a train that students can’t get off,” she said. “If you start to lose out on curriculum because of the pacing at which you’re receiving grade level instruction, then you’re almost bound to be behind grade level, because you haven’t received the same instruction as your peers. It starts to put little ceilings on students. It’s just a dangerous model, separating kids based solely on readiness.”

Leveled instruction has also been decried by some education professionals as inherently inequitable because of imbalances in how students are assigned to lower-level classes and upper-level or advanced sections. The division’s anti-racism policy commits to “ending the predictive value of ... race, class, or gender on student success,” and one of the school division’s 2019 Equity Report key goals is to “consider alternatives to removing struggling students from core instruction in the Tier 1 [top level] setting and

provide more unleveled classes in secondary schools."

Rise to the Challenge

Parents have begun voicing their concerns about the unleveling policy as it's been implemented in practice in middle and high schools, chief among them the worry that more advanced students are no longer being challenged in school. "This initiative is leading to less rigorous academic opportunities for all our students in the subject areas of language arts, history and science and, as a result, less engagement in the classroom by the students," said Katie Fusco, parent of a seventh and ninth grader, in a letter to the School Board.

Fusco's letter listed several "negative educational outcomes as a result of unleveled classrooms," including the re-use of books and films that have been taught in previous years, the grading of student work based on lowered expectations (e.g., grade level benchmarks vs. individual potential), and significant amounts of wasted time while other students are still learning class material.

Tracy Betsworth, parent of a fifth grader, wondered about data or studies supporting unleveling. "It was difficult to get information from the middle school, but we finally did hear that classes like English would have no levels," she said. "So, we connected with a group of other parents asking the same questions about data." Division officials pointed one parent in the group to a 1992 study in support of the unleveling paradigm, but the study actually showed the opposite—it concluded that placing average-achieving eighth graders into (leveled) advanced math classes helped improve their math scores.

The school division says that to meet students' needs successfully, an unleveled class requires a teacher who is adept at "differentiation," a technique that uses flexible grouping and continuous assessments to tailor instruction to individual students. The teacher should be trained to group

students creatively so they are not always clustered together with students of similar ability—perhaps grouped instead by interest or affinity or learning style—so that their in-class experiences are varied.



Henley Middle School. Photo: Lisa Martin.

“Exposing children to children who may not have had the same experiences is a good thing,” said Henley eighth grade English teacher Elizabeth Sweatman. “Kids can learn from each other, and I don’t necessarily mean academically, I mean they can just learn about other perspectives. So there’s a diversity aspect, and even though we aren’t very racially diverse, we are diverse in other ways.”

Sweatman also sees behavioral differences in her students under unleveling. “When kids struggle they tend to act out, trying to deflect from the fact that they can’t read well or are having trouble learning, and with all those kids in one [leveled] class we sometimes struggled to reach our goals,” she said. “Now that we’re unleveled, I have zero behavior problems because students

who may want to act out do not have an audience the way they used to. My students are amazing, and I try to create an environment where every child can thrive, no matter their background or ability."

Kristin Smith, parent of a sixth grader, wonders how one teacher can manage an unleveled classroom. "It requires so much of these teachers, to differentiate within a single classroom," she said, "and I just don't know how that can be successful for anyone, including the ones who need it the most. I think that it's possible to be done well, and beautifully, but I think that it's completely unrealistic to expect all teachers to have that level of talent and patience."

Smith's son is an advanced learner and reports "feeling bored and like school is a waste of time." "He's disappointed," she said. "He's becoming old enough to be able to think past this year and ask himself, 'Am I going to be ready for high school?' 'Am I going to be ready to compete with the kids in college who are getting more than I'm getting at other schools?' We don't have time to waste—we don't want to be the guinea pigs, and we can't wait another four years to figure out that this isn't working for us."

The Onus on Teachers

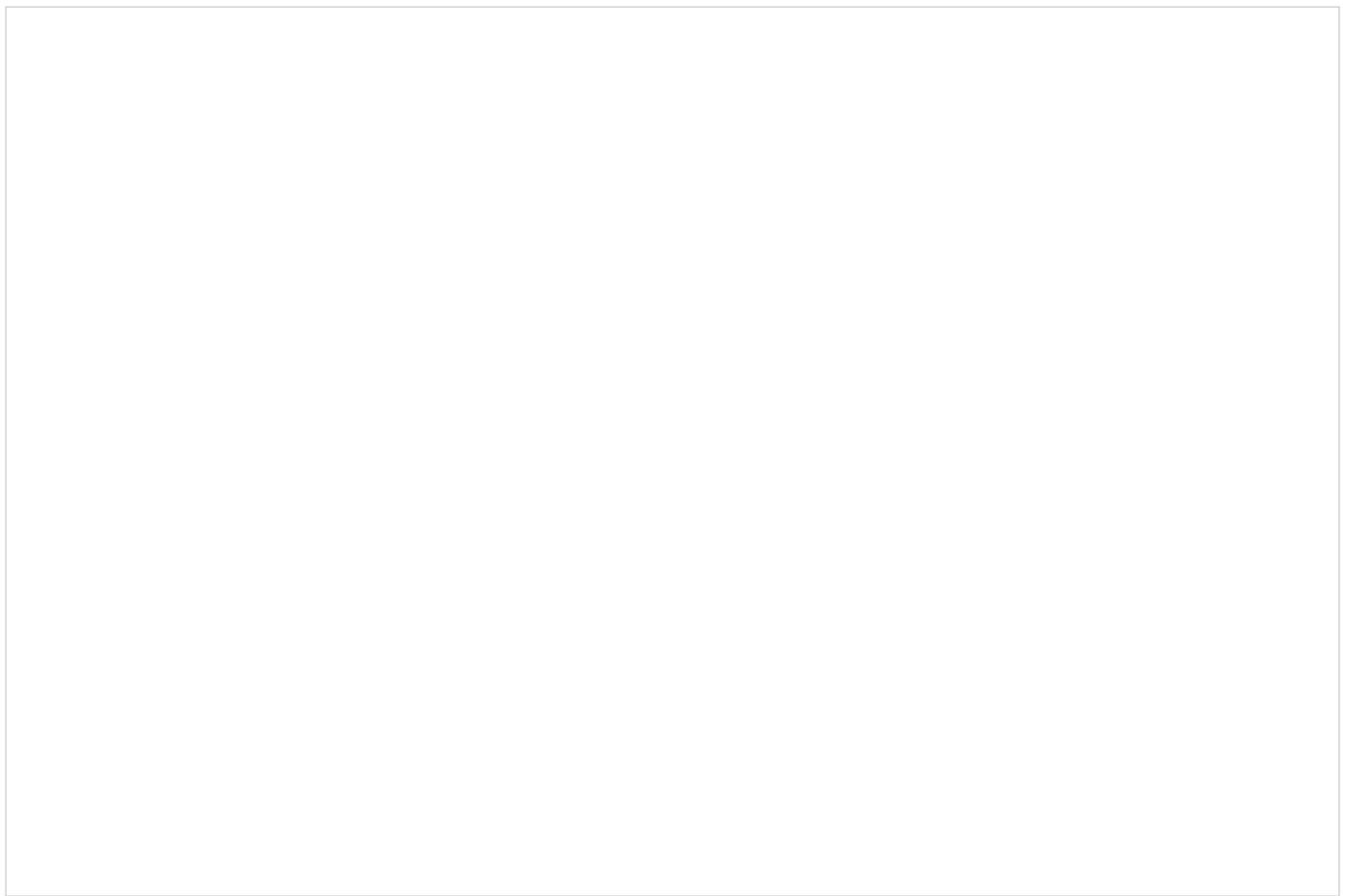
The school division says it is committed to training teachers on differentiation techniques, though only two of Henley's teachers attended a summer seminar in 2019 at UVA on differentiation in the classroom. (School division officials were unable to provide the total number of county teachers who have attended external training sessions on the subject.) Other teachers have participated in weekly or monthly online Professional Learning Community meetings with their school and county peers, and Kristina Doubet, an education professor at James Madison University who specializes in flexible grouping, has provided support at some of those meetings.

"Teachers weren't alone in this process," said Megan Wood, principal of

Lakeside Middle School. "It wasn't like, okay, we're de-leveling and good luck. Extensive professional learning was put in place to support de-leveling. For instance, in English this year our teachers are focused on incorporating literature circles into the classes as part of English curriculum strategies, so that students can pick texts that are related to a common theme, but then be challenged by what they are reading."

Ashby Johnson, principal of Jouett Middle School, echoed Jay Thomas' point about grade level standards being the same no matter the readiness level of the student. "The SOL's [required standardized testing] are the same by grade, so even if you have a reader that is a tenth grade level reader, they can be working on the same standard as a second grade level reader, but they might have different passages," she said. "Passages are leveled differently so that they're able to focus on the skill, but also achieve that and master that grade level standard."

During the pandemic school year (2020-21), progress on unleveling courses was stalled, and this year teachers have been playing catch-up while also navigating new policies that radically shift gifted student identification and grading practices. "This year we've done more with culturally responsive teaching, trying to get teachers to evaluate their curriculum and assessment through a culturally responsive lens," said Costa. "That's a form of differentiating too—the two ideas intersect. I'm trying to be mindful of everything I'm asking teachers to do, trying not to burden them with too much in terms of training."



Henley Middle School English teachers Jenna Magistro, Elizabeth Sweatman, and Andrew West. Photo: Lisa Martin

Teachers also have less control over who is in their classes, because in recent years the school division dropped mandatory prerequisites for most classes, and teacher recommendations regarding which class a student is ready to take next—and at what level— are no longer required to be followed. So, students may choose to enroll in whatever level class they or their parents prefer, including AP classes. Though the division’s goal is to increase enrollment of underrepresented demographic groups in upper level classes, the pace of such classes can cause complications for all students.

A junior at Western Albemarle High School described the problem. “In my AP Calculus class, a lot of students who might fare better in a slower-paced class do not do well on the tests and assignments, so my teacher has to go over those topics again,” he said. “Now my teacher says that it is going to be tough to get in all the content before the AP exam in May. Because there aren’t other levels of advanced math [offered], students are put into this

class where they require a slower pace to better understand the material, which takes away from the students who took AP Calculus to have a faster-paced class."

Future Perfect

At this point, only math instruction provides advanced options, partly because of the nature of defined instructional strands in math such as Algebra and Geometry. "At the middle school level, accelerated learning opportunities are limited to the area of [leveled] math instruction," said Fusco in her letter, noting that the rest of the curriculum does not benefit students who learn new concepts quickly or are interested in more challenging materials. "Students need the opportunity to be challenged in the classroom, by their regular teacher, on an ongoing basis."

School administrators dispute the idea that access to more class material sooner is better for advanced learners. "One thing that kind of gets conflated is that acceleration equals enrichment," said Wood. "Just because you're moving faster through content, does it mean that your kids are getting a deeper understanding of the information—acceleration doesn't always equal enrichment."



Western Albemarle High School. Photo: Lisa Martin.

Costa said that teachers are working to build a database of sorts within the online Schoology learning platform that will allow students to have greater access to more advanced materials. "We don't have a gifted model anymore, and I don't want students ever sitting in class biding their time," she said. "So, the part that I am heartened about is that once we have everything in Schoology, I can give kids lots of choice and action and depth to work on if they're finished or if they want to go further than their peers. It takes time to develop those resources."

Costa said that more county teachers will attend a Curriculum Assessment and Instruction Institute at UVA in June, where a team of specialists will work with teachers from across the country on differentiation skills, and there's a waitlist for teachers from Henley who wish to attend. "[Looking ahead to next year,] we're going to sort of recommit to this whole idea [of unleveling]," she said. "If we're going to unlevel, and we told families and kids and the division

that we're changing the instructional model, we really have to do that. You can't teach 'whole class' in an unlevelled class, you just can't, and there is [still] a lot of that happening."

Measures of Success

Many parents say they would have appreciated more transparent discussion about the policy and its implementation over the last few years. "We were not really aware that [unleveling] was happening, and we just wanted to understand why," said Betsworth. "When we asked questions, we were told by administrators and teachers that 'oh, your child will be fine,' but I'm not okay with 'fine.' I want to ensure that my child is given every opportunity to rise and I just don't feel confident that he's going to in Albemarle county right now."

Measures of the success of the policy, such as improved SOL scores for underrepresented groups, will take a while to untangle from the pandemic era's learning losses, though school officials see glimmers of progress on other fronts. "Anecdotally, people have said that the classroom or the school culture is improved because students aren't moving from class to class in terms of cohorts," said Wood. "We have a variety of students that are engaging with each other, and they know more of their classmates, and teachers report that the classroom community has actually improved."

But Smith says that prioritizing education can't wait, and will have withdrawn all of her three children from the system by next year. "I feel like there's a mass exodus—half of our neighborhood is going private," she said. "I think that the explanation [for unleveling] is that they've been tasked with the goal of narrowing the achievement gap, and they think this is the answer. And they're probably right—I agree that this is probably going to narrow the achievement gap because the kids at the top are leaving."

School Employees Seek Collective Bargaining Rights

January 7, 2022



Atlanta Hutchins, third grade teacher at Crozet Elementary. Photo: Lisa Martin.

The Albemarle Education Association (AEA), a public educators' union, is engaged in a major push to recruit new members in an effort to establish collective bargaining rights for county school employees. In response to a 2021 change in Virginia law that now allows public sector workers to collectively bargain with their employers, the AEA says the time is right for all school employees to pursue that goal.

"The key big shift, especially in regards to bargaining, is that now that the Virginia law has changed, it gives workers the opportunity to have a say in negotiating a legally binding contract," said Vernon Liechti, president of the

AEA. "It's really good news, and actually, it's normal in most of the rest of the country." Virginia, along with North Carolina and South Carolina, were the only U.S. states that did not allow public sector unions to bargain collectively before this change.

Albemarle educators say that their drive to unionize has been largely prompted by working conditions imposed by pandemic protocols beginning last year and extending into the current school year. While many unions focus primarily on issues of pay and benefits for their workers, AEA representatives hear most often that current teachers, especially, are feeling left out of school division decisions that they feel they should have the ability to negotiate in their contracts.

"I think in regards to a lot of issues, the pandemic just exposed what was already there—it served as kind of a magnifying glass," said Liechti.

"Teachers feel like there's a lot of responsibilities that keep piling higher and higher with nothing being removed. And at the same time, there's a lot of pressure to get things back to where they were in 2019." If teachers and staff are not given time to focus on fewer important priorities, he said, "that's going to cause burnout and more people leaving the profession, and that's not something I think anybody wants to see."

*Vernon Liechti, president of the
Albemarle Educators Association.*

Submitted photo.

The AEA is the local arm of the Virginia Educators Association (VEA), which in turn is part of the National Educators Association (NEA). In preparation for collective bargaining, the AEA is establishing bargaining units broken down by type of employment contract, so there will be separate units for teachers, bus drivers, food service workers, counselors and other staff.

After a semester spent barnstorming every school in the district to explain

the potential benefits of joining the union to all school workers, Liechti said that membership in the AEA has grown by 20% since the 2021-22 school year began, though he declined to reveal the total number of members in the group currently. Once an AEA bargaining unit has secured signatures proving they have majority support for the move, they will submit a request to the Albemarle school board to collectively bargain for their contracts, which the board has 120 days to consider. Liechti says some units plan to move ahead in early 2022.

While the AEA must demonstrate that at least 50% of a bargaining unit approves of union representation, agreements the AEA reaches with the county will be binding for all. As part of the new law, Virginia's General Assembly granted "monopoly bargaining power" to unions representing public sector employees, overturning a ban on such power put in place in 1993, which means that unions will bargain for all employees in their bargaining unit, whether they belong to the union or not. However, because Virginia is a "right to work" state, workers may not strike and are not required to pay dues to unions who negotiate on their behalf.

Hardly Normal

Many teachers who experienced the chaotic 2020-21 school year have been unhappily surprised by the school division's expectations of them for the current year, given that so many restrictions remain in place. "It's really difficult to teach kids from six feet away and trying to keep kids three feet apart," said Cheryl Knight, teacher and AEA representative at Murray Elementary. "At the same time, all of the things we're expected to be doing—culturally responsive teaching training, making sure everyone passes the SOL's [after significant learning loss last year]—are still there. We're expected to do all of the normal things when things are hardly normal."

The main desire that teachers and staff name as the impetus for collective bargaining is to have a voice in decisions that affect their work lives. "I think

there are different pressures for those who are in administration," said Knight, "and they're looking at it from different viewpoints, but their decisions affect everyone who is part of this system under a time of, right now, continual stress. Things like planning time, duty-free lunches, those types of things are really important to teachers, especially during these strange pandemic times, and we need to have a say in those policies."



AEA president Vernon Liechti speaks with an ACPS employee who works as both a bus driver and food service worker at Monticello High School. Submitted photo.

Atlanta Hutchins, teacher and AEA representative at Crozet Elementary, said that the required Covid mitigation strategies such as masking and distancing have changed teaching the most, as well as dealing with a "revolving door" of student absences, in tandem with an avalanche of division dictates. "Last year there were a ton of decisions being made by division staff [from curriculum to protocol], and I felt like I didn't have a say in any of them,"

said Hutchins. "If you're not in the classroom, they make sense on paper, but when you put those into practice—virtually or in person—they often don't make sense. We just want to say, 'Can we tell you what we see?' and 'Can we do this in a way that makes sense?'"

As examples, teachers point to both simple and complex policy decisions. A recent change in how all ACPS workers are paid—from monthly to every two weeks—will cause pay imbalances during months with fewer work days and was, workers say, not well-communicated in advance. "We know it's going to hit bus drivers and teaching assistants the hardest, and there was no chance for anybody to say, wait, let's talk about this and think about it a little more," said Hutchins.

"Another example was that the school board changed the start day for the school year from a Wednesday to a Monday," she continued. "That sounds like a little thing, but we all have our calendars set up for a Wednesday start in terms of how we transition kids in for the start of the year without exhausting them (and us) the first week, and that just threw us all for a loop and made everybody a little more stressed. Teachers are not being consulted or told the reasons for these things."

Liechti is hoping for community support in the AEA's push for collective bargaining. "When we submit our resolution to the school board, they will vote to either approve or reject the resolution," he said. "So, what we're trying to do is make sure we have strong support from everybody, not just people that are working in the division, but also the community as well. We're trying to benefit the community by benefitting the people feeding their children, transporting their children, teaching their children, and we want to make sure those people can afford to live in the communities they work in."

Hutchins also stressed that working together with the school division is best for the students. "A lot of the stuff [imposed by the school division last year] ended up causing extra stress for us, or caused us to have to use resources that we weren't familiar with because we weren't given time," she said. "In

the end, the kids were the ones who were missing out and kind of getting the short end of the stick." She also referred to equity issues across school districts. "How equitable is it for one school to have \$20,000 in PTO funding for the classrooms and other schools to not even be able to provide snacks for their students?"

"The key line that keeps coming up is 'children's learning conditions are teachers' working conditions,'" said Liechti. "So, we've got to be willing as community to push forward and say, yes, we should have the right to be able to negotiate our working conditions, our compensation, our benefits, because those are things that will help recruit and retain teachers at Albemarle County Public Schools."

A Seat at the Table

For teachers and staff, AEA membership can be a costly commitment. Union dues for AEA members range from \$26 to \$48.50 per month for full-time professional and educational support personnel (regardless of tenure). The full-time dues add up to \$582 per year, of which about \$350 goes toward VEA and NEA membership dues. National surveys show that a majority of dues funding typically goes to the state and national union affiliates. The U.S. Department of Labor reports that about 75% of dues money pays for union salaries, overhead, and political spending, while about 25% goes toward employee representation.

The Charlottesville-based Virginia School Boards Association (VSBA) represents local school boards across the Commonwealth and actively lobbied against the collective bargaining law while it was under consideration in the state General Assembly. The group cited studies showing that "teacher collective bargaining has been shown to have a negative impact on student achievement, particularly on minority and disadvantaged students," and pointed out that, per Virginia law, no school board can agree to be subject to binding arbitration. (Though they have

issued public statements on the issue, the VSBA did not respond to multiple requests for comment.)



AEA president Vernon Liechti recruits teachers and staff at Baker-Butler Elementary. Submitted photo.

The VSBA has also noted in public documents that school boards do not have taxing authority, so they are prohibited by law from contracting with bargaining units on financial issues like pay increases—those decisions are made by the county Board of Supervisors. However, Liechti says that the AEA could work with the school board to craft an annual budget proposal. “We can support the school board in their negotiations with the Board of Supervisors,” he said. “That’s where community support [of the AEA] helps out as well, so we can let the board know that this is what the community wants to see happen.”

“There are many other things [besides pay] that can be put into a contract—

say, how many personal days a teacher gets and how much professional development," said Knight. "All of those types of things contribute to a work environment that's much more pleasant." She also recalled prior superintendents' perspectives on shaping the budget. "I think Dr. Haas presented a balanced budget last year, but Pam Moran used to do what she called a needs-based budget—'this is what we need'—where there was a gap to fill," she said. "You know, if you don't ask, it's still a no."

The VSBA's "Task Force on Collective Bargaining" has made recommendations to local school boards on how to decide whether or not to enter into collective bargaining agreements with constituent groups. The group hosted a workshop in Charlottesville on December 7 that proposed alternatives to collective bargaining while still giving employees "a seat at the table." A crowd of about 100 AEA members rallied in support of bargaining on the Downtown Mall ahead of the workshop, which was attended by Albemarle School Board attorney Ross Holden and board member Graham Paige.

For its part, Albemarle's school district has said only that it is prepared to deal with any AEA request. "The division's position is that the School Board will follow the law," said Phil Giaramita, strategic communications officer for the school division. "If a petition or request that meets the law's requirements is submitted to the Board, it will be reviewed and voted upon within the 120-day window permitted by the law."

Since the law went into effect in May of 2021, the Richmond Education Association has been approved for collective bargaining with their local school board, while the Loudoun Education Association has submitted a request and is awaiting a decision from their board.

What will AEA members do if Albemarle's school board says no? "Then it becomes, well, what are we going to do about it?" said Hutchins. "You're an elected official, so maybe we work on electing people who support collective bargaining."

Editor's note: The print version of this article inaccurately described the annual AEA dues. It has been corrected here.

Western District Parents Sue School Board Over Curriculum

February 4, 2022



Justice concept

Five western district families have filed a lawsuit against Albemarle County Public Schools (ACPS), Superintendent Matt Haas, and Assistant Superintendent Bernard Hairston in the county's Circuit Court, alleging that the school division's new anti-racism curriculum employs racially discriminatory policies and practices against students. Represented by Alliance Defending Freedom (ADF), a nationally active legal firm that specializes in cases involving freedom of speech, religious rights, and parental rights, the group of plaintiffs is asking the court to prohibit ACPS from implementing portions of its ["Courageous Conversations"](#) set of

lessons.

“The problem is that this curriculum violates students’ civil rights by treating them differently based on race,” said ADF senior counsel and vice president of legal strategy Ryan Bangert. “When you look at the Virginia constitution, it’s very clear that every student deserves to be treated equally under the law regardless of race, ethnicity, or religion. A corollary to that is that public schools can’t attack or demean students based on those qualities and characteristics.”

The five sets of plaintiff families in the case all have children who attended Henley Middle School during the spring of 2021 when an anti-racism curriculum was introduced toward the end of the school year as students briefly went back to school in person. The adult plaintiffs are Carlos and Tatiana Ibañez, Matthew and Marie Mierzejewski, Kemal and Margaret Gokturk, Erin and Trent Taliaferro, and Melissa Riley. The families, several of which include immigrant and biracial members, assert that “schools should not teach children to focus on the race of their peers... to judge or define others,” according to the complaint filed on December 22. (The plaintiffs have declined to comment publicly on the suit at this time.)

“I have to credit the parents who bravely stepped forward to raise questions in public,” said Bangert, who noted that ADF is representing the plaintiffs pro bono (at no charge). “They reached out and brought it to our attention, and doing so is not easy. The [anti-racism] curriculum that’s in place in Albemarle has gone further down the road of implementation than many places we’ve seen ... and now is in the process of being more deeply implemented throughout the school’s curriculum. Kids simply can’t avoid it—they can’t opt out.”

The Issues

Henley’s anti-racism lesson program explores issues of racial awareness and

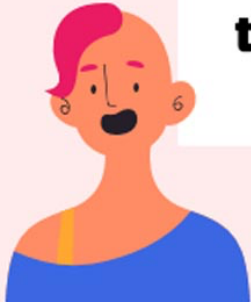
prejudice in society and encourages students to become “anti-racists” by proactively working to eliminate racist systems and structures that harm and exploit minority groups. As a way of defining racism, the lessons teach that the “dominant culture” in the U.S. belongs to “people in society who hold the most power,” including those who are “white, middle class, Christian, and cisgender,” and labels those groups as dominators—and thus inherently part of racist systems—while the other groups are subordinate.

The parent plaintiffs object to the labeling of their children based on immutable characteristics such as race and gender. “[This teaching] damages every student, regardless of race, because it locks them into these categories purely based on race,” said Bangert. The lawsuit contends that “discrimination based on race is morally wrong,” and that “the curriculum creates hostility based on race in the school environment, rather than eliminating it.”

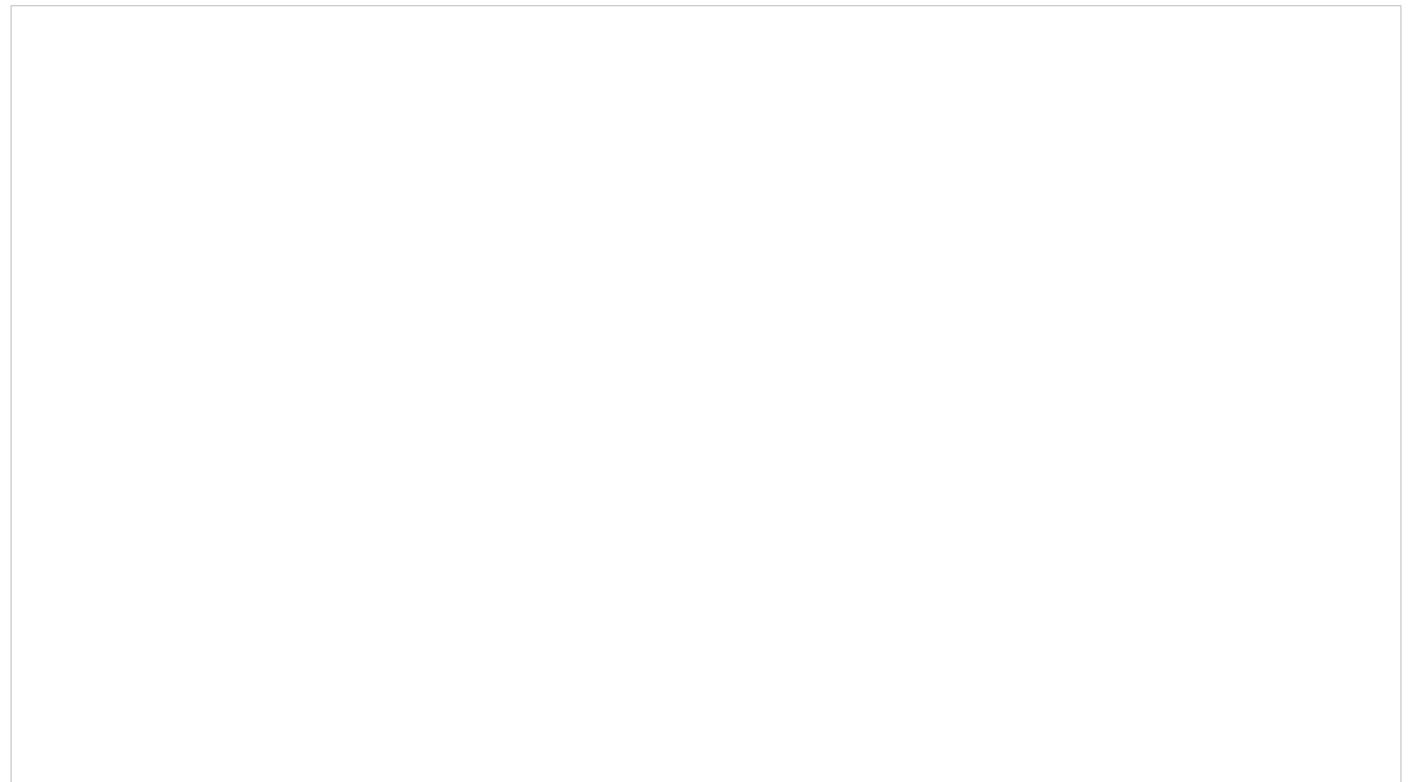
The initial court filing points to examples drawn from presentations and other curriculum materials as evidence of what are characterized as “efforts by the school system to indoctrinate students into harmful ideologies.” Examples include perpetuating racial stereotypes by classifying communication methods into “white talk” and “color commentary,” defining phrases like “colorblindness” and “Why can’t we all just get along?” as racist, and describing “white privilege” as a permanent, debilitating attribute.

Reminder: What is racism?

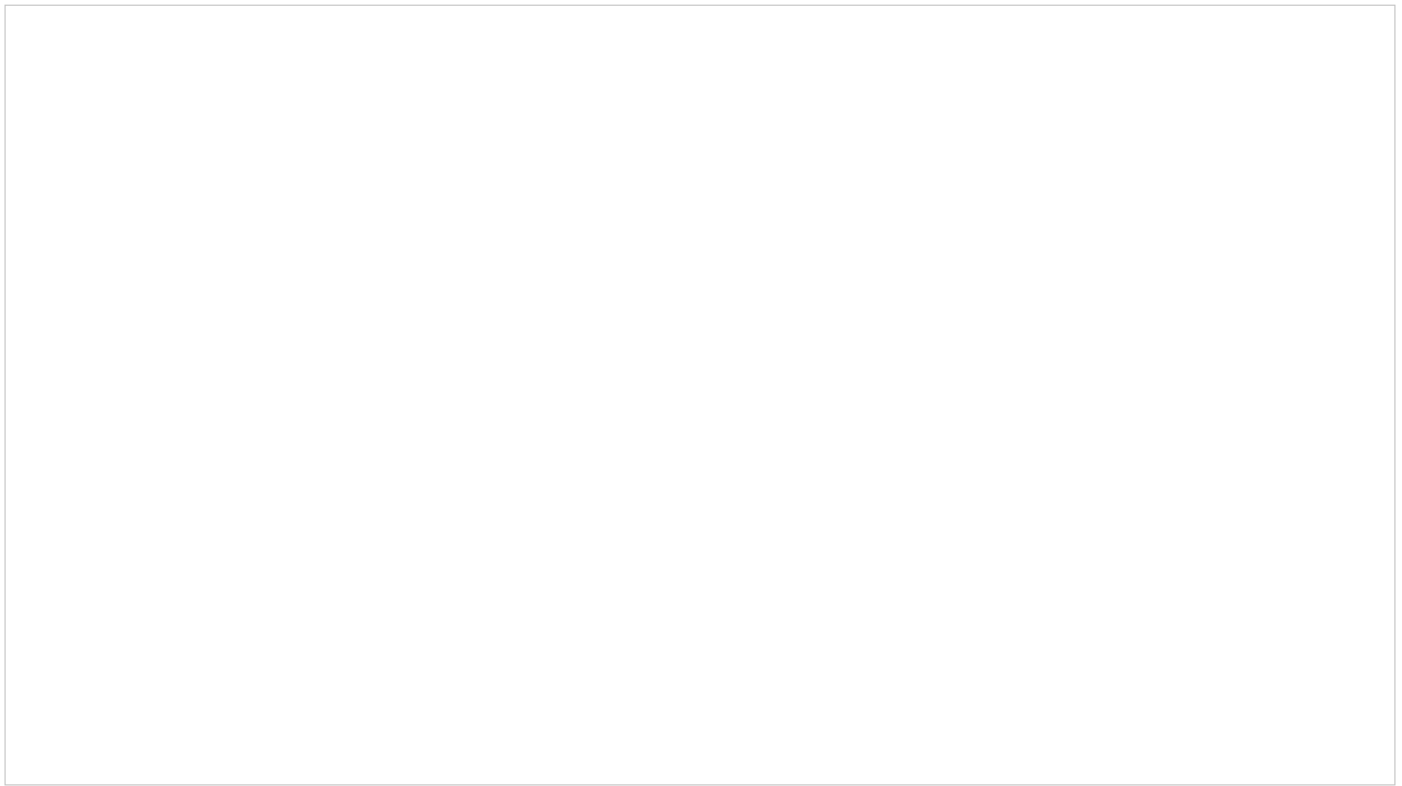
“The marginalization and/or oppression of people of color based on a socially constructed racial hierarchy that privileges white people.” - ADL



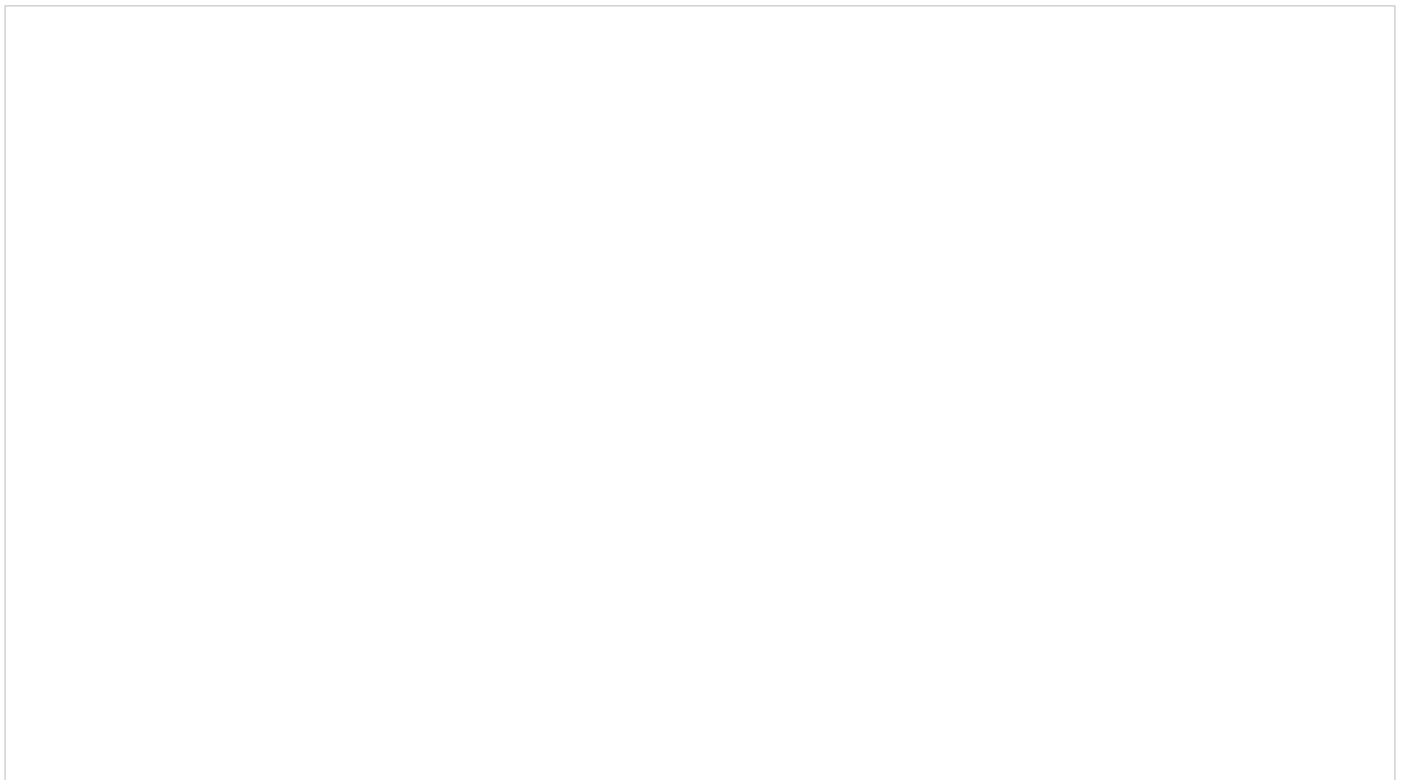
Sample slides from Henley Middle School’s “Courageous Conversations about Race” curriculum, cited by Alliance Defending Freedom representing western district parents in their lawsuit against the county School Board.



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A sample slide from Henley Middle School's "Courageous Conversations about Race" curriculum, cited by Alliance Defending Freedom representing western district parents in their lawsuit against the county School Board.

The suit also raises questions about governmentally compelled speech and students' due process rights. For instance, the curriculum's definition of the

central concept of racism is “the marginalization and/or oppression of people of color based on a socially constructed racial hierarchy that privileges white people.” Thus, plaintiffs allege that students must accept that only white people can be racists or face disciplinary action for “racist actions.”

The lawsuit does not focus on whether the history of racism or its present-day implications should or should not be taught in schools, but rather on whether ACPS' methods used to teach about racism are constitutional. From the complaint's text: “The question in this case is not whether racism still exists; it does. Nor is the question whether racism must be vanquished; it must. Rather, the question is whether Defendants may use unconstitutional means to indoctrinate students with an ideology that teaches children to affirmatively discriminate based on race. The Virginia Constitution answers with a resounding ‘no.’”

ACPS and the Governor's Executive Order

The school division was given a deadline of January 31 to respond to the initial complaint and declined to comment on the pending suit. “Although this suit was announced during winter break, we only recently were served and are reviewing its allegations,” said ACPS spokesman Phil Giaramita. “It's been the policy of the school division on any current litigation that the proper forum in which to respond to claims made against the school division is in the courts and not through the press.”

Giaramita pointed to a July 2021 ACPS news release in which the Albemarle School Board and Superintendent Haas reaffirmed their support for the anti-racism program, describing their commitment as “non-negotiable.” “We stand by our endorsement of programs and activities that empower staff to meet the requirements of our anti-racism policy. This expressly includes Henley Middle School's concluded pilot activity that added racial awareness conversations to its student advisory periods.”

The statement adds that the Henley lessons were the result of the division's anti-racism policy, developed in 2019, which requires that "[t]he Board and Division shall implement an anti-racist curriculum and provide educational resources for students at every grade level." The policy also stipulates that "[a]ll curriculum materials shall be examined for racial bias by the Division's Department of Student Learning. Where materials reflect racial bias, teachers utilizing the materials will acknowledge the bias and communicate it to students and parents." ACPS plans to expand the Courageous Conversations lessons into a full-year curriculum for all middle schools.

One argument the school division may use in its defense is the power vested in local school boards by Virginia law, which states, "[The local board of education] shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth." In response, Bangert said that schools are never permitted under the Virginia Constitution to violate basic civil rights.

ADF's attorneys are optimistic about the prospects of the ACPS lawsuit in the courts. "We've already seen, in a different context, some encouraging developments in Loudoun county," said Bangert, referring to an ADF case in which the Loudoun school division suspended a teacher for expressing his religious beliefs in conflict with division transgender student policy. The teacher was subsequently reinstated and the decision was upheld by the Virginia Supreme Court.

ADF is also currently representing a group of parents and teachers in Harrisonburg who object to the school division's policy of requiring school staff to use any name or pronoun requested by a student while also hiding the requested change from the student's parents. Should any decision in the Albemarle schools' case be appealed to higher courts, the matter could be decided by the Virginia Supreme Court, but would not rise to the U.S. Supreme Court because the case does not raise any federal questions in the complaint.

Newly installed Virginia Governor Glenn Youngkin issued an Executive Order on January 15 that “ends the use of inherently divisive concepts—including Critical Race Theory—in public education.” Critical Race Theory (CRT) is an academic framework that posits that any systemic imbalance in racial outcomes (e.g. educational achievement, law enforcement, social standing) is the result of racism and discrimination. CRT has been applied by scholars and writers such as Ibram X. Kendi and Glenn Singleton, whose materials are used in the ACPS curriculum, to define the “anti-racism” approach to combatting racism.

While CRT is not specifically referenced in any of the six Causes of Action in the parents’ lawsuit, the case does make the connection between the framework and the teaching materials used at Henley. “We commend Governor Youngkin for signing an executive order on day one to end Virginia public schools’ use of divisive concepts, including Critical Race Theory,” said Bangert. “As the governor’s order states, indoctrinating students in this dangerous ideology violates the Virginia Constitution and has no place in our public schools. That is exactly why we are representing parents who are suing Albemarle County School District.”

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The lawsuit’s initial complaint lays out six areas in which it asserts that the anti-racism curriculum violates Virginia constitutional law. (Quotes are taken from court documents.)

1) The right to freedom from government discrimination based on race. “Defendants’ differential treatment of students based on their race is intentional ... and creates a racially hostile educational environment.”

2) The right to freedom of speech with respect to viewpoint discrimination. “Defendants have labeled those who disagree with their ideology as racist.”

3) The right to freedom of speech with respect to compelled speech.

"Defendants have compelled and seek to compel Plaintiffs, subject to the pains of discipline and lower academic ratings, to affirm and communicate messages that conflict with their deeply held beliefs."

4) The right to freedom from discrimination based on religion. "Defendants' curriculum discriminates on the basis of religion by teaching that Christianity is a "dominant" "identity" that has oppressed "subordinate" "identities" such as Islam, Buddhism, Judaism, other non-Christian religions, and atheism."

5) The right to due process, to prohibit government from censoring speech or behavior. "Defendants' policy and standards are vague and give students insufficient notice on whether their desired words or actions will be considered to violate Defendants' policy and regulations."

6) The rights of parents to control the upbringing and education of their children. "Plaintiff parents [should] have a fundamental right to opt their children out of indoctrination and disparate treatment."