

BATH COUNTY SCHOOL BOARD

AGENDA ITEM: INFORMATION { } ACTION { X } CLOSED MEETING { }

**SUBJECT:** SUPERINTENDENT’S REPORT - ACTION

OEI (Opportunity Education Institution) Resolution – 2<sup>nd</sup> Reading

**BACKGROUND:** VIRGINIA SCHOOL BOARDS ASSOCIATION AND NORFOLK PUBLIC SCHOOLS  
FILING SUIT TO INVALIDATE OEI LEGISLATION  
Opportunity Educational Institution (OEI) Violates Virginia Constitution

Norfolk, VA (August 21, 2013) – The Virginia School Boards Association (VSBA) and Norfolk City School Board are filing suit in the Circuit Court for the City of Norfolk requesting the Court to invalidate the legislation enacted by the General Assembly at its 2013 session creating the Opportunity Educational Institution (OEI) and the Opportunity Educational Institution Board. The Norfolk City School Board authorized the suit at today’s board meeting, and the suit will be filed in the near future.

“The Virginia School Boards Association and Norfolk City School Board request the court to declare the OEI legislation unconstitutional and to enjoin the OEI Board from taking any action to implement the legislation,” said Barbara Coyle, VSBA executive director.

**What is the Opportunity Educational Institution (OEI)**

The legislation declares the OEI to be a “statewide school division” administered and supervised by the OEI Board, which is declared to be a policy board in the executive branch of state government and an educational institution under Title 23 of the Code of Virginia, which relates to institutions of higher education. The legislation requires the OEI Board to take over the supervision and operation of any school in a local school division that has been denied accreditation and it permits the OEI Board to take over the supervision and operation of any school that has been accredited with warning for three consecutive years. The legislation further authorizes the OEI Board to require any school in a local school division that is in its third year of being accredited with warning to provide it with such information and documentation as the OEI Board deems appropriate.

**Why is OEI Unconstitutional?**

The Virginia School Boards Association and Norfolk School Board challenge the OEI legislation on two primary grounds.

(1) The legislation violates Article VIII, Section 7, of the Constitution of Virginia, which provides that “the supervision of schools in each school division shall be vested in a school board.” The OEI Board is not a school board. Rather, the legislation declares that the OEI Board to be a policy board in the executive branch of government and an education institution falling under Title 23 of the Code of Virginia, which relates to institutions of higher education.

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SUBJECT: SUPERINTENDENT’S REPORT - ACTION

OEI (Opportunity Educational Institution) Resolution (continued)

(2) The legislation violates Article VIII, Section 5, of the Constitution of Virginia, which provides that the State Board of Education shall create school divisions. The General Assembly, not the State Board of Education, created the OEI Board as a statewide school division. Consequently, the OEI legislation violates the constitutional mandate that school divisions be created by the Board of Education

“Creation of the Opportunity Educational Institution and the OEI Board clearly violate the Constitution of Virginia,” said Dr. Kirk Houston, Norfolk school board chair, “As Governor McDonnell referenced last week in a visit to Northern Virginia, local school boards and local control are vital to the success of local schools.”

Related Article

August 15, 2013, Washington Post - “Va. governor says local control is key to school success” [http://www.washingtonpost.com/local/education/va-governor-says-local-control-is-key-to-school-success/2013/08/15/398bc526-05c4-11e3-88d6-d5795fab4637\\_story.html](http://www.washingtonpost.com/local/education/va-governor-says-local-control-is-key-to-school-success/2013/08/15/398bc526-05c4-11e3-88d6-d5795fab4637_story.html)

Loss of Local Control, Dollars & Resources

When the OEI Board takes over a school, the school board of the local school division in which the school is located must transfer to the OEI Board all per pupil federal, state and local funding that goes to that school, including the local “aspirational” funding, that is the funds appropriated to the school board by the local appropriating body over and above the funding mandated by state law. In addition, the OEI Board is given the right to take possession and control of any facilities used by a school that is taken over, although the locality is still required to pay for any capital improvements to the facilities. Further, the school board and locality are prohibited from selling affected school facilities without permission of the OEI Board.

The VSBA has asked local school boards to adopt a resolution in support of the OEI lawsuit. A draft resolution for your consideration follows.

RECOMMENDATION: If the Board feels that the OEI is a potential threat to local control of schools (and associated funding), consideration should be given to the adoption of the attached resolution.

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## **RESOLUTION BATH COUNTY SCHOOL BOARD**

**WHEREAS**, in its 2013 session, the General Assembly enacted legislation, which was subsequently approved by the Governor, creating the Opportunity Educational Institution (OEI) and the Opportunity Educational Institution Board; and

**WHEREAS**, the legislation mandates that the OEI Board take over the supervision and operation of any local public schools that have been denied accreditation and authorizes the OEI Board to take over any local public school that has been accredited with warning for three consecutive years; and

**WHEREAS**, it is the firm conviction of the Bath County School Board that this legislation violates the Constitution of Virginia in that it usurps the role of local school boards in supervising and managing the public schools of the Commonwealth; now therefore;

**BE IT RESOLVED**, the Bath County School Board hereby supports the lawsuit brought forth by the Virginia School Boards Association and Norfolk City School Board to declare the OEI legislation unconstitutional and to enjoin the OEI Board from taking any action to implement the legislation.

**PASSED AND ADOPTED this 1st day of October, 2013.**

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**Rhonda Grimm, Chairman**

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**Cathy Lowry, Vice-Chairman**

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**Amy Gwin**

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**Bill Manion**

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**Ellen Miller**