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After The OEI

By Chris Braunlich

7/17/2014 -- The recent state court ruling that the Opportunity Educational Institution (OEI) is a violation of the Virginia Constitution leaves thousands of Virginia schoolchildren consigned to schools with decades-long records of failure.

Passed with bipartisan approval last year, OEI sought to provide all students – regardless of what school they attended – the kind of equal opportunity education envisioned when Virginia finally desegregated its schools. The law was especially aimed at helping students at six schools denied full accreditation for at least seven of the past 10 years.

Those six schools are a clear minority in a state-wide system that typically ranks in the "Top Ten" in nearly every academic indicator. But improving those underperforming schools is vitally important for the children attending them and the communities they are located in.

Judge Charles Poston based his opinion on the fact that Article VIII Section 7 of the Virginia Constitution reserves "the supervision of schools in each school division" to the local school board, suggesting that the General Assembly could "address these problems" of low-performing schools by operating at the edges in prescribing how school boards are chosen or deciding the standards for local superintendents.

That's awfully thin gruel, as Judge Poston – the husband of a former Norfolk City School Board chair – surely knows. Claiming that one can affect an imploding local school by deciding whether or not local school boards should have two or four year terms is rather like suggesting caloric intake will be affected by downing a Diet Coke after eating a quart of ice cream each day.

Too bad Judge Poston didn't get a chance to rule on Section 4 of Article VIII: "The general supervision of the public school system shall be vested in a (state) Board of Education." Unfortunately, OEI's authors ignored the established state Board of Education, and the lawsuit lost its best shot at being sustained. Instead of discussing the merits of whether the state had a moral and legal responsibility to help students stuck in persistently underperforming schools, legal wordplay debated the arcane issue of whether OEI had a right to exist.

It's a missed opportunity, but one that can and should be corrected next year.

A pathway for doing so comes from a new report by the Joint Legislative Audit and Review Commission (JLARC), *Low Performing Schools in Urban High Poverty Communities.* The report notes, "There is a growing consensus among education practitioners and researchers, both within Virginia and nationwide, that the ability to exercise greater state control over low performing schools is critical to ensuring a high quality education system."

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To avoid a "state takeover" of local schools (which invites new state costs and duplication of existing local functions), the JLARC study suggests giving the State Superintendent of Public Instruction greater oversight, including authority to approve or disapprove decisions affecting academic functions in a chronically failing school or school division. Under its proposal, the Superintendent could make "overriding and binding recommendations to local school divisions" regarding such matters as instructional expenditures made from federal or state funds; instructional personnel; curricula and instructional programs.

The local board would retain control over non-academic decisions and advisory responsibilities in the academic arena. Criteria would be established stating the conditions under which schools enter and exit such an arrangement.

Make no mistake: This, too, will be challenged by local school boards fighting to preserve their "right to supervise" local schools … even if it places adult interests above the best interests of children.

But there should be no doubt that the state *does* have a constitutional responsibility to "ensure that an educational program of high quality is established and continually maintained," including "general supervision of the public school system." That quality is not maintained and supervised if persistent pockets of failure are permitted to operate without risk of real consequence. A "system" is only as good as its weakest components.

Put another way: If any other institution – whether a private factory making car brakes or a treatment plant cleaning drinking water – produced substandard outcomes injurious to the public, some higher authority would step in with the authority to enforce improvements. Here, we talk about a generation of students failed by their schools, and there's no right to intercede?

While disagreements on Medicaid may abound, on this issue there's a strong sense of frustration in both the executive and legislative branches over unresponsive or inadequate school leadership and a desire for strong reforms.

As those leaders begin crafting measures to strengthen the hand of the state in improving local public schools, they will likely face a united front from those wishing to preserve "local control," even at the risk of allowing certain schools and the children in them to drift away to failure.

Perhaps those who favor decisive state action need to present a united front too.

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This commentary was originally published in The Richmond Times-Dispatch. *Chris Braunlich is vice president of the Thomas Jefferson Institute for Public Policy and President of the Virginia State Board of Education. The views expressed here are his own and do not necessary reflect the opinions of the Institute or its Board of Directors, or of the State Board of Education. He may be reached at c.Braunlich@att.net.*